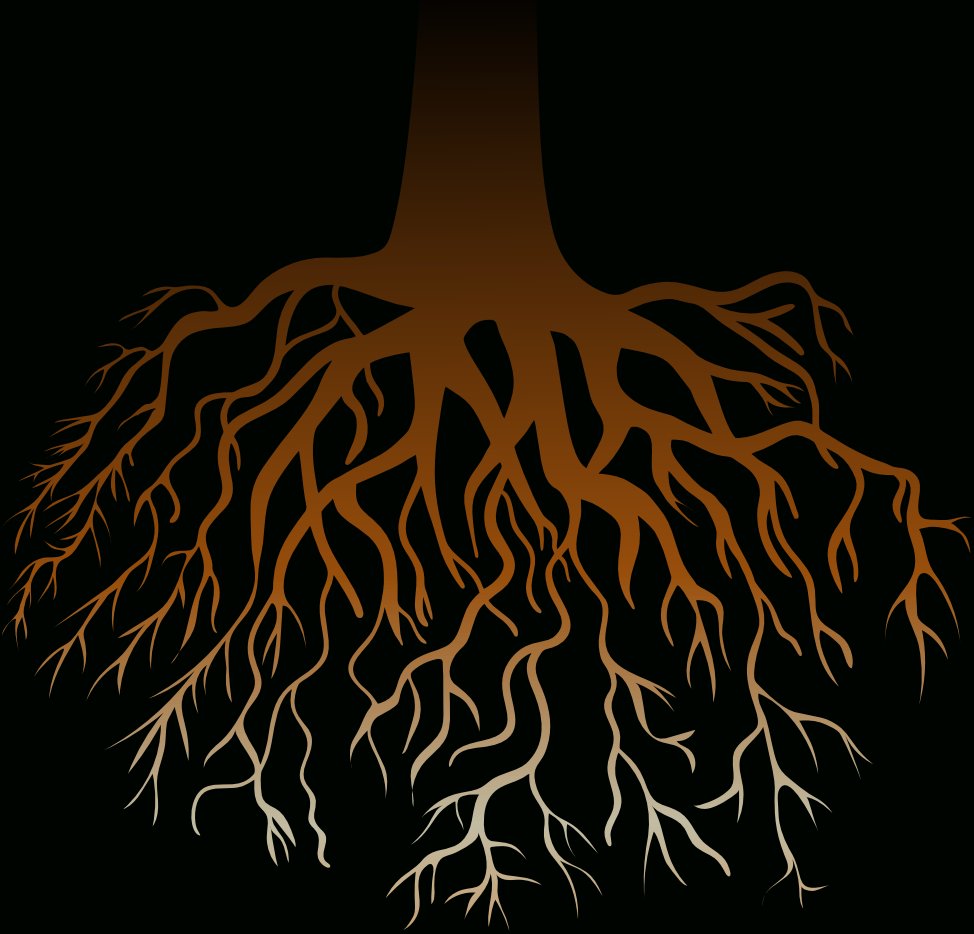


SOUTH ASIA
STATE OF MINORITIES
REPORT 2018

Exploring the Roots



THE SOUTH ASIA COLLECTIVE

SOUTH ASIA STATE OF MINORITIES REPORT 2018

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South Asia State of Minorities Report 2018 ***Exploring the Roots***



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Contents

<i>Executive Summary</i>	v
<i>Acknowledgements</i>	xiii
<i>Note on The South Asia Collective</i>	xv
<i>Abbreviations</i>	xvii
<i>Note on Contributors</i>	xxv
Chapter 1: Introduction	01
Exploring the Roots of the Vulnerabilities of Minorities in South Asia	
Chapter 2: Looking Back	35
2017–18 in the Lives of Minorities in South Asia	
Chapter 3: Bangladesh	55
Cracks in the Foundation	
Chapter 4: Bhutan	101
An Uneasy Mosaic	
Chapter 5: India	131
Unable to Protect; Reluctant to Promote	
Chapter 6: Pakistan	185
Striving for Realisation or Hitting Dead-Ends?	
Chapter 7: Sri Lanka	235
Examining the Weave	
Annexure: I	277
The State of Minorities in Afghanistan	
Annexure: II	285
The State of Minorities in Nepal	
Annexure: III-A	301
Research Methodology	
Annexure: III-B	307
Data Collection, Methods and Sources	

Executive Summary

1. South Asia's minorities - religious and linguistic groups, especially women and those from *Dalit* backgrounds amongst them, and the many indigenous / *Adivasi* communities, besides sexual minorities - make up disproportionate numbers of the poor and excluded in each country in the region, suffering discrimination in the socio-economic sphere, besides denial of the most basic human rights. They form the bulk of the marginalised in a region that houses over half the world's multi-dimensionally poor, and where country Human Development Index (HDI) rankings are among the worst. Yet, there is very little systematic documentation of the condition of minorities, and of discrimination in delivery of basic rights. Poor access of South Asia's minorities to socio-economic rights makes them vulnerable to violations of other critical rights too – life and security, freedom of religion, and to participation - a cycle we see playing out repeatedly in the entrenched exclusions and frequent targeted violence against minorities across South Asia.
2. *South Asia State of Minorities Report (SASoM 2018): Exploring the Roots* - the second in the series after South Asia State of Minorities Report 2016: Mapping the Terrain - is on the theme of socio-economic rights, aimed both to document evidence of denials as well as to act as a tool to galvanise action. *SASoM 2018* reports on the performance of each county in the region on equal and non-discriminatory access to socio-economic rights, specifically as it relates to their minorities. Using international treaties of direct relevance to socio-economic rights as basis for the assessment, *SASoM 2018* focuses on states promoting equality and non-discrimination in the provision of key rights - health, education, work, adequate standard of living and social security. The analysis here uses UN's Human Rights Indicators framework to report state performance, shedding light on *commitments* and *efforts* by state parties to deliver rights equally to their minorities, and the outcome of those measures. *SASoM 2018* uses official and non-official data, both qualitative and quantitative, and acknowledges the significant limitation of data, across the region, on socio-economic rights disaggregated by minority groups.

3. *Among South Asia's minorities are four major recurrent categories:*

- 3.1. Religion has been a major axis of contestation in South Asia. This has been aided by the multiplicity of religious identities in the region, and their politicisation. This results on the one hand, in fuelling majoritarianism – much of it competitive across borders – and on the other, severely impacting minority outcomes. Discrimination based on religion has been the most enduring, marginalising religious minorities.
- 3.2. Caste discrimination adversely affects more than 260 million people globally, the overwhelming majority of victims being Dalits living in South Asia. Caste discrimination is not only a serious violation of human rights but also a major obstacle to achieving development goals.
- 3.3. Women and girls in South Asia suffer doubly, both on account of their being religious, caste, ethnic or linguistic minorities, and as women. Despite constitutional guarantees in several countries, gender-based violence and discrimination exists in its worst forms in the region, manifested as economic exploitation and trafficking, besides sexual violence and that at birth.
- 3.4. Refugees and the stateless in South Asia - estimated at some 50 million - suffer some of the worst vulnerabilities - denied the right to fully enjoy human rights and fundamental freedoms and to have access to remedy for human rights violations. A large section of the stateless in the region are drawn from the ranks of the minorities, being victims of conflicts, targeted violence, forced population movements and migrations.

4. *Country Status*

- 4.1 South Asian states' performance on minority rights is poor overall. Most states have ratified the more important conventions geared to socio-economic rights, but ratification of optional protocols accompanying these treaties is sparse. This has prevented states from having to improve their enforcement of the commitments. Demonstrating the poor commitment in the region to ending discrimination is also the fact that no country – throughout the region – has legislations against discrimination in access to socio-economic rights. Efforts - to translate the poor commitment into results are also mostly wanting. Below a snapshot of country findings:

- 4.1.1 Minorities in **Afghanistan** – Hindus, Sikhs, Shias and Hazaras, as well as small ethnic groups – are particularly deprived. Afghanistan’s commitment to protecting and promoting minority rights is newfound and still forming. The 2004 Constitution lays the foundation for equal rights to all citizens. Afghanistan has also ratified all key international covenants. But religious and ethnic minorities continue to be discriminated against, both in law and in effect, due mostly to poor effort to translate commitments into domestic laws and actionable programmes. Lack of socio-economic data disaggregated by minority groups is a serious barrier.
- 4.1.2 **Bangladesh** is signatory to several international conventions relevant to minorities – including UN Declaration on the Rights of Indigenous Peoples (UNDRIP) and the ILO Convention 107, providing safeguard for indigenous peoples, yet domestic laws are not harmonised. There seems little resolve to enforce pro-minority laws and programmes, e.g. The East Bengal State Acquisition and Tenancy Act, 1950 and The Chittagong Hills Tribes Peace Accord (1997), among others. And whilst the Vested Properties Act, 1974 may have been replaced with Vested Properties Return Act, 2001, it is to be seen whether this new legislation has rolled back the mass dispossession that Hindus faced. Similarly, whilst Urdu-speaking population has gained citizenship status recently, it is excluded from welfare programmes, and only recently were token measures introduced for the country’s *Dalits*.
- 4.1.3 Rights of minorities in **Bhutan** must be seen against the backdrop of the stripping away of the citizenship of a sixth of the population, of Nepali-speaking Lhotsampas and their eventual expulsion in early 1990s. The 2008 constitution introduced nominal democracy – ‘democratic constitutional monarchy’ - restoring the rights of Lhotsampa. But minorities continue to be marginalised, with minority-concentrated districts being significantly deprived. Ultimately it is ironic that the country that devised the Gross National Happiness index continues not to ratify either CERD (1965) or CESC (1966), demonstrating its poor commitment to minority rights and against discrimination.

4.1.4 **India's** commitment to protecting and promoting rights of minorities, including socio-economic rights, is strong, but this excludes religious minorities. Muslim and Christian Dalits are excluded by law from the Scheduled Caste category, depriving them of preferential benefits in education, jobs, welfare programmes, and protection against violence that Dalits are entitled to. Other laws, such as provincial ones for cow protection and against beef, discriminate against religious minorities. There is also no anti-discrimination law in the country, despite the Constitution guaranteeing equality and India having ratified most key international treaties. The laws that do exist are poorly enforced, and there is little targeting of minorities for improved access to services and benefits. There is also only a poor regime of monitoring, evidence gathering and assessment of the impact of efforts on minorities, and data disaggregated by religious groups, is poorly available, resulting in the poor showing on socio-economic outcomes, especially for poorer Muslims.

4.1.5 *Tarai Dalits*, Muslims and *janjatis* (indigenous peoples), are among the most deprived sections in **Nepal**. The poor outcomes for them and other deprived minority groups, can be traced to both inadequate commitments, especially for specific minority groups and the poor implementation of laws and policies, representing weak and flawed effort. Nepal has taken various steps to ensure equality and non-discrimination, including constitutional provisions, and ratifying several international conventions to ensure non-discrimination. Yet the 2015 Constitution's flawed definition of secularism privileges Hinduism, creating openings for discrimination against religious minorities. And despite putting in place strong measures to translate good intentions into outcomes for minorities, weak provisioning, poor minority representation in government and the deep-seated bias against minorities, comes in the way of rooting out discrimination.

4.1.6 There is significant poverty in **Pakistan**, and large regional variations, with minorities suffering most. Minorities particularly targeted are religious - Christians and Hindus, and Ahmadis besides Shia. Baloch and Pashtun ethnic minorities too are targeted. When exclusions in-

tersect: Hindu brick kiln workers in Sindh, and Christian sanitation workers, including women among them, in Punjab, Karachi and elsewhere. Pakistan has ratified most key treaties, and the constitution guarantees equality, but there is a significant gap between ratification, legislation and implementation. An example is bonded labour and minimum wages acts that are not implemented for many reasons, including poor effort. Dearth of relevant data – disaggregated by social groups - is a barrier to analysis and planning.

- 4.1.7 Despite development outcomes being positive for **Sri Lanka** as a whole, they are poor for districts with high minority concentration, especially tea estates districts. Eastern districts are the worst affected, with food security and malnutrition being particularly problematic, as is land alienation. Poor commitment is a problem. The Constitution guarantees equality, and Sri Lanka has ratified most international treaties, but their translation into domestic law is poor. And there is only poor effort. For example. allocation of health personnel to minority concentrated districts is poor, as is that for education. And since data on socio-economic rights disaggregated by minority groups or by region is not available, it is difficult to make deductions on efforts and outcomes for minority groups.

5 *Conclusion: South Asia and its minorities*

Behind poor national commitment and effort for minority outcomes is the play of majoritarian nationalism in South Asia, much of it competitive across borders, that disincentivises action perceived as favouring minorities. Economic policies followed by South Asian states – neo-liberal, privileging private capital and outsourcing of services to private providers, besides heavy military spending, in place of redistributive policies and effective universal services for all – too have a role to play. As a consequence, minorities suffer in silence, unable to challenge the systematic patterns of discrimination and disadvantage due to the lack of power.

- 5.1 Below some preliminary thoughts on recommendations for action:

5.1.1 For state parties

Commitment:

- South Asian states need to strengthen their commitment to minority rights protection and promotion, in the first instance by ratifying all relevant international treaties, specifically the ones that bind state parties to ensuring equality and non-discrimination provisions, viz CERD (1965), CESCR (1966), CEDAW (1979), CRC (1989), CMW (1990) and CPRD (2006), including signing relevant optional protocols.
- This must be followed by writing these commitments into domestic laws, including amending national laws that discriminate against specific minorities, and addressing the key lacunae across the region of the absence of equality and anti-discrimination legislations, including mechanisms for their effective enforcement.

Effort

- Shore up policies and programmes, to operationalise the equality and non-discrimination commitments – through schemes and projects that meet the specific needs of minority groups; greater investment in those efforts; and appropriate institutional mechanisms. This must include greater minority representation in public services, and measures to change attitudes and behaviour of duty bearers, through training, exposure and appropriate incentives.
- Improved outcomes also require better observation and measurement, creating data disaggregated by individual groups and monitoring and measuring efforts using those data to provide an accurate picture of performance and outcomes.

5.1.2 Regional actors

But South Asian states only have poor incentives for improving their minority outcomes – due primarily to the rise of majoritarian nationalism across the region, mostly competitive, that sees deepening democracy and strengthening minority safeguards as unwelcome concession. Regional actors, especially civil society – given formal networks like SAARC have little interest – can play a role in disrupting this stalemate and engendering debate and dialogue across borders:

- Debates and discussions, based on new data, findings, analysis and insights, to educate the public and policy community, pushing the envelope on minority rights
- Sharing of experiences and good practices in providing for minorities, through South Asia-wide networks
- Regional networks and alliances, debate and discussions, developing common ground, voicing demands, creating collective pressure on duty bearers, and reaching out to international entities on the condition of minorities in the region

5.1.3 International community

International community must support this enterprise, through creating right incentives for state parties in the region and encouraging regional civil society efforts.

- a UN led effort to get members states in the region to agree on a charter of minority rights, and a mechanism and process for enforcing those.
- UN handholding the process, providing technical and legitimacy support, and other multilateral bodies as well as the rest of the international development community, supporting the process.
- This to include supporting minority-focused regional and national civil society networks, capacity building and shoring up their strengths

5.2. Minority communities and civil society

Ultimately minority communities and individuals and groups representing them need to take charge

- improve their capacity to act as effective CBOs, documenting evidence, mobilising support, networking with stakeholders, and raising demands.
- Rights-minded NGOs and civil society platforms supporting community-led effort, through handholding, signposting, investment and networking.

Acknowledgements

This report has been long in coming. When we released our introductory *South Asia State of Minorities Report 2016: Mapping the Terrain*, we decided to bring out subsequent reports annually. But getting multi-national reports out, like this on subjects where there is only limited material and analysis available, is a tall order. Doing this entirely as voluntary enterprise, even more so. Authors and researchers have stretched themselves to the limit, to see to it that the *South Asia State of Minorities Report 2018: Exploring the Roots* sees the light of day.

That everyone did do, goes to demonstrate that the South Asia region and its people are crying for justice and peace, and for regional initiatives that will help push the case for improved minority and human rights. This is also the reason why we – human rights experts and activists making up most of the authors of the *South Asia State of Minorities Reports* – got together in 2015 as the South Asia Collective, to document the condition of the region’s minorities and advocate for improved outcomes.

A word of acknowledgment then, first and foremost, to the authors – who gave their time, scholarship and commitment to the project, all freely. Zakir Hossain and Monjurul Islam of Nagorik Uddyog, Dhaka; Saroj K Nepal in Thimpu; Deepak Thapa of Social Science Baha in Kathmandu; Sahar Ahmed, advocate of the High Courts of Pakistan, currently pursuing doctoral research in Dublin; Widya Kumarsinghe and Dinushika Dissanayake of the Law and Society Trust, Colombo; and Sajjad Hassan of Misaal Foundation, New Delhi. Without their faith in the promise of the initiative, this project would have floundered. The South Asia Collective secretariat in Misaal Foundation itself, was ably supported by Shahnaz Khan and Nethra Singhi.

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The South Asia Collective Secretariat

C/o Misaal Foundation

New Delhi, India

November, 2018

The South Asia Collective

A group of human rights activists and organisations that dream of a just, caring and peaceful South Asia, came together in December 2015 to document the condition of the region's minorities – religious, linguistic, ethnic, caste and gender, among others – hoping this would help in bettering outcomes for South Asia's many marginalised groups. We call ourselves The South Asia Collective. We have since been able to rally other like-minded groups and platforms to our cause. Building on this initial success, we have also begun experimenting with small-scale practical support to minority groups across borders, to nurture their capacity for better outcomes for minority communities, working at local and regional levels. This coming together of like-minded groups is particularly gratifying given the otherwise fraught political environment in the region, which militates against any serious regional effort by state parties on minority and human rights. It is then left to civil society initiatives to try to pave the way in the hope for more formal efforts, going forward. Eventually we want to see the establishment of a South Asia charter of minority and human rights, and regional and national mechanisms to enforce those.

The members of The South Asia Collective are:

Institutional

Books for Change, Bengaluru
Bandhu Social Welfare Society, Dhaka
Centre for Equity Studies, New Delhi
Law and Society Trust, Colombo
Minority Rights Group International, London
Misaal Foundation, New Delhi
Nagorik Uddyog, Dhaka
National Commission for Justice and Peace, Lahore
Peoples' SAARC, Kathmandu
Social Science Baha, Kathmandu
Women in Struggle for Empowerment, Lahore

Individual

Sahar Ahmed, Dublin
Dinushika Dissanayake, Colombo
Saroj K. Nepal, Thimpu
Omar Sadr, Kabul

Abbreviations

AAN	: Afghanistan Analysts Network
AFSPA	: Armed Forces Special Powers Act
AIDWA	: All India Democratic Women's Association
AIHRC	: Afghanistan Independent Human Rights Commission
AIPP	: Asian Indigenous People's Pact
ALRD	: Association of Land Reform and Development
AMA	: Assessment and Monitoring Authority
AMU	: Aligarh Muslim University
ANA	: Afghanistan National Army
APAMR	: Afghan Professional Alliance for Minority Rights
APDP	: Association of Parents of Disappeared Persons
APHRM	: All Pakistan Hindu Rights Movement
ASCPA	: Anti-State Crimes and Penalties Act
ASEAN	: Association of South East Asian Nations
ASHA	: accredited social health activist
ASK	: Ain o Salish Kendra
BBC	: British Broadcasting Corporation
BBS	: Bodu Bala Sena
BCG	: Bacillus Calmette–Guérin (anti-tuberculosis)
BCS	: Bangladesh Civil Service
BDERM	: Bangladesh and Excluded Rights Movement
BDHR	: Bangladesh Dalit Human Rights
BDT	: Bangladeshi Taka
BGB	: Border Guards Bangladesh
BGP	: Border Guards Police
BISP	: Benazir Income Support Programme
BJP	: Bharatiya Janata Party

BMMA	: Bharatiya Muslim Mahila Andolan
BNBEIS	: Bangladesh Bureau of Educational Information and Statistics
BNP	: Bangladesh Nationalist Party
BSE	: Bombay Stock Exchange
BSP	: Bahujan Samajwadi Party
BSSMU	: Bangabandhu Sheikh Mujib Medical University
CBG	: Criteria Based Grants
CBS	: Central Bureau of Statistics
CCITPIC	: Convention Concerning Indigenous and Tribal Peoples in Independent Countries
CDO	: Chief District Officer
CDP	: community development project
CEDAW	: Convention on the Elimination of all Forms of Discrimination Against Women
CERD	: Convention on the Elimination of all Forms of Racial Discrimination
CESCR	: Committee on Economic, Social and Cultural Rights
CESLAM	: Centre for the Study of Labour and Mobility
CHRI	: Commonwealth Human Rights Initiative
CHT	: Chittagong Hill Tracts
CHTRC	: Chittagong Hill Tracts Regional Council
CIA	: Central Intelligence Agency
CLO	: community-led organizations
CoE	: Council of Europe
COYLE	: Chamber of Young Lankan Entrepreneurs
CPA	: Centre for Policy Alternatives
CPA	: Comprehensive Peace Agreement
CPC	: country of particular concern
CPI	: Communist Party of India
CRC	: Convention on the Rights of the Child
CTF	: Consultation Task Force
DDPA	: Durban Declaration and Programme of Action

DfID	: Department for International Development
DFO	: District Forest Officers
DLR	: Dhaka Law Reports
DPT	: Diptheria Polio Tetanus
EFA	: Education for All
EFI	: Evangelical Foundation of India
EQI	: Education Quality Inputs
ESDFP	: Education Sector Development Framework and Programme
ETPB	: Evacuee Trust Properties Board
FATA	: Federally Administered Tribal Areas
FCRA	: Foreign Contribution Regulation Act
FIR	: First Information Report
FPTP	: first past the post
GCTOC	: Control of Terrorism and Organized Crime Bill
GDP	: Gross Domestic Product
GEED	: Gender Equity and Environment Division
GESI	: Gender Equality and Social Inclusion
GFSI	: Global Food Security Index
GHI	: Global Hunger Index
GNH	: Gross National Happiness
GRB	: Gender Responsive Budget
HDC	: Hill District Council
HDI	: Human Development index
HDR	: Human Development Report
HIES	: Household Income and Expenditure Survey
HIV/AIDS	: Human immunodeficiency virus infection and acquired immune deficiency syndrome
HRC	: Human Rights Council
HRCP	: Human Rights Commission of Pakistan
HRCSL	: Human Rights Commission of Sri Lanka
HRW	: Human Rights Watch

HSC	: High School Certificate
IC	: Interim Constitution
ICCPR	: International Covenant on Civil and Political Rights
ICDS	: Integrated Child Development Services
ICEAFRD	: International Convention on the Elimination of All Forms of Racial Discrimination
ICES	: International Centre for Ethnic Studies
ICESCR	: International Covenant on Economic Social and Cultural Rights
ICPPCG	: International Convention on the Prevention and Punishment of the Crime of Genocide
IDSN	: International Dalit Solidarity Network
IIDS	: Indian Institute of Dalit Studies
ILO	: International Labour Organisation
IMR	: Infant Mortality Report
INC	: Indian National Congress
IOT	: Indian origin Tamils
IP	: indogenous people
IPC	: Indian Penal Code
IPTK	: Indian Peoples Tribunal for Kashmir
IRB	: Islamic Relief Bangladesh
JJA	: Juvenile Justice Act
JMB	: Jamaat-ul-Mujahideen Bangladesh
JMI	: Jamia Millia Islamia
JNNURM	: Jawaharlal Nehru Urban Renewal Mission
JTSA	: Jamia Teachers' Solidarity Association
JVP	: Janatha Vimukthi Peramuna
LeJ	: Lashkar-e-Jangvi
LGBTI	: lesbian, gay, bisexual, transgender and intersex
LST	: Law and Society Trust
LTTE	: Liberation Tigers of Tamil Eelam
MCD	: Minority Concentrated District

MDG	: Millenium Development Goals
MDM	: mid day meal
MEI	: Multidimensional Exclusion Index
MJF	: Manusher Jonno Foundation
MLE	: multi-lingual education
MMR	: Maternal Mortality Rate
MP	: Member of Parliament
MPCE	: Mean Per Capita Consumption Expenditure
MRG	: Minority Rights Group
MSDP	: Multi-sectoral Development Programme
NCJP	: National Commission for Justice and Peace
NCM	: National Commission for Minorities
NCPR	: National Centre for Policy Research
NCRB	: National Crimes Records Bureau
NDA	: National Democratic Alliance
NEFIN	: Nepal Federation of Indigenous Nationalities
NEP	: National Education Policy
NEP	: New Education Policy
NER	: net enrolment ratio
NGO	: non-government organisation
NHDR	: Nepal Human Development Report
NHFS	: National Family Health Survey
NHRAP	: National Human Rights Action Plan
NPA	: National Plan of Action
NRHM	: National Rural Health Mission
NRVA	: National Risk Vulnerability Assessment
NSAPR	: National Strategy for Accelerated Poverty Reduction
NSIS	: Nepal Social Inclusion Survey
NSSO	: National Sample Survey Organisation
NSSS	: National Social Security Strategy

OAA	: Office of Administrative Affairs
OAP	: old age pension
OBC	: other backward class
OfSCE	: Organization for Security and Cooperation in Europe
OHCHR	: Office of High Commissioner for Human Rights
PAF	: Pakistan Air Force
PARC	: Pakistan Agricultural Research Council
PCA	: Police Complaints Authority
PDS	: public distribution system
PDSN	: Pakistan Dalit Solidarity Network
PIL	: Public Interest Litigation
PILER	: Pakistan Institute of Labour Education and Research
PKR	: Pakistani Rupee
PPC	: Pakistan Penal Code
PPP	: Pakistan Peoples Party
PR	: proportional representation
PRC	: Public Representations Committee
PSA	: Public Security Act
PSDG	: Provincial Specific Development Grants
PSU	: Public Sector Undertaking
RJD	: Rashtriya Janata Dal
RSS	: Rashtriya Swayamsevak Sangh
SAARC	: South Asian Association for Regional Cooperation
SAFHR	: South Asian Forum for Human Rights
SAHR	: South Asians for Human Rights
SAHRDC	: South Asia Human Rights Documentation Centre
SATP	: South Asia terrorism Portal
SC	: Scheduled Caste
SC/ST	: Scheduled Caste/Scheduled Tribe
SCSP	: Scheduled Caste Sub Plan

SEHD	: Society for Environment and Human Development
SEZ	: Special Economic Zone
SLDHS	: Sri Lanka Demographic and Health Survey
SLIDA	: Sri Lanka Institute for Development Administration
SLMC	: Sri Lanka Muslim Congress
SME	: small and medium enterprise
SNTV	: single non-transferable vote
SP	: Superintendent of Police
SSC	: Senior School Certificate
SSRP	: School Sector Reform Programme
ST	: Scheduled Tribe
SVRS	: Sample Vital Registration System
SVV	: Sinhala Veera Vidana
TC	: Trinamool Congress
TFR	: total fertility rate
TSP	: Tribal Sub Plan
U ₅ MR	: under-5 mortality rate
UAPA	: Unlawful Activities Prevention Act
UDHR	: Universal Declaration of Human Rights
UNDM	: United Nations Declaration on Minorities
UNDRIP	: United Nations Declaration of the Right of Indigenous Peoples
UNHRC	: United Nations Human Rights Council
UNICEF	: United Nations International Children Emergency Fund
UNPFII	: United Nations Permanent Forum on Indigenous Issues
UPA	: United Progressive Alliance
UPR	: universal periodic review
USCIRF	: United States Commission on International Religious Freedom
UST	: United Sinhala Traders Association
VDC	: Village Development Council
VGD	: Vulnerable Group Development

- VGF : Vulnerable Group Feeding
VPRA : Vested Property Return Act
WCAR : World Conference Against Racism
WISE : Women In Struggle for Empowerment
WPR : workforce participation rate

Note on Contributors

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Introduction

Exploring the Roots of the Vulnerabilities of Minorities in South Asia

M. Sajjad Hassan

South Asia, home to 23% of the world's population, is among its poorest parts. Although there are intra-regional variations, much of South Asia is mired in poverty and marginalisation. According to the recently released Global Multidimensional Poverty Index (MPI) 2018, 546 million people are multidimensionally poor in South Asia (global total is 1.3 billion). More than 364 million of these were in India (in 2015/16). Nutrition deprivation alone contributes more than a fourth of the overall MPI.¹ In both Afghanistan and Pakistan, 1 in 4 persons lives in severe poverty (Oxford Poverty and Human Development Initiative, 2018). A look at some other indicators is also instructive (Table 1). Infant and Under-5 mortality in Pakistan and Afghanistan are shockingly high, but not much better in India, Nepal or Bangladesh. Child malnutrition figures are particularly alarming for Afghanistan, India and Pakistan. Mean years of schooling is poor for all except Sri Lanka, and GNI per capita low overall. Unemployment is also high. Taken together, barring Sri Lanka, the HDI ranks of all the countries are in three figures (Human Development Report 2015).

It is well established now that the most excluded groups everywhere are in fact minorities and indigenous peoples, with poverty rates amongst them typically double the national (Minority Rights Group 2013: 3). This applies to South Asia too. South Asia's minorities – religious and linguistic groups, especially women and those from Dalit backgrounds amongst them, and

1. MPI involves counting the different types of deprivation that individuals experience at the same time, such as a lack of education or employment, or poor health or living standards. These deprivation profiles are analysed to identify who is poor, and then used to construct a multidimensional index of poverty (MPI). See: <https://ophi.org.uk/research/multidimensional-poverty/alkire-foster-method/>

Table 1. South Asia development indicators

	HDI rank	Life Exp. at birth	Mortality rate (UNDP 2013)		Child mal-nutrition	Mean years of schooling	Gross National Income per K (PPP, \$ 2011)	Unemployment (ILO 2013)
			IMR	U-5 M				
Afghanistan	171	60.4	70.2	97.3	59.3	3.2	1,895	9.1
Bangladesh	142	71.6	33.2	41.1	41.4	5.1	3,191	4.3
Bhutan	132	69.5	29.7	36.2	33.6	3.0	7,176	2.8
India	130	68.0	41.4	52.7	47.9	5.4	5,497	3.6
Maldives	104	76.8	8.4	9.9	20.3	5.8	12,238	11.6
Nepal	145	69.6	32.2	39.7	40.5	3.3	2,311	2.7
Pakistan	147	66.2	69.0	85.5	45.5	4.7	4,806	5.2
Sri Lanka	73	74.9	8.2	9.6	14.7	10.8	9,779	4.6

Source: UNDP, *Human Development Report – 2015*

the many indigenous/adviasi communities, as well as sexual minorities – make up disproportionate numbers of the poor and excluded in each country, suffering both discrimination in the socio-economic sphere and denial of the most basic human rights. As the UN Special Rapporteur on Freedom of Religion or Belief noted in the foreword to the South Asia Collective’s South Asia State of Minority Report, 2016, ‘across the region, many of the religious, ethnic, linguistic and indigenous minorities, particularly women and the poor, face marginalization and suffer the worst forms of exclusion’. (South Asia Collective, 2016: v)

What are the roots of the particular marginalisation of the region’s minorities? The insights above point to widespread discrimination against minority groups in South Asian societies, and the concentrated forms of exclusions that perpetuate [ibid: x]. A key explanatory factor is minority groups’ inability to challenge systemic patterns of discrimination and disadvantage that keep people in poverty, because being minorities they ‘.... often lack the power, social or legal standing, or access to decision-making required to challenge their disadvantaged status....’ (Mepham 2014). The current (2018) volume seeks to explore the roots of the poor outcomes for minorities in South Asia, shining a light specifically on their socio-economic situation and their access to rights and opportunities. The purpose is both to document and report, and also to contribute to ushering change for the region’s multifarious minorities.

South Asia, as we know, also sees much violence against its minorities. South Asian states are unable to provide security and protection of life and freedoms to their minorities. They rank high on perpetrating or tolerating abuse of religious freedom. According to the US Commission for International Religious Freedom (USCIRF),² Pakistan continues to be characterised as Tier 1 (one of 16 worldwide); Afghanistan and India are both Tier 2 (among the 12 worldwide); and Bangladesh and Sri Lanka are characterised as countries of interest, amongst a small number of similar countries studied (USCIRF 2018). Many countries in the region figure high on global ranking of countries with a high risk of genocide and mass killings of minority groups – notably Afghanistan, Pakistan, and Sri Lanka (People Under Threat 2018). With safeguards against violence weakening in other countries too – India notably – the threats for minorities there are also rising significantly.

Experience shows that exclusion, discrimination and inequality make minorities vulnerable, and that ‘patterns of discrimination against particular minorities in the political, social economic and cultural spheres can translate into abuse and systematic violation of basic human rights and can escalate into atrocity crimes’ (United Nations 2014: 7). South Asia demonstrates amply how failures to prevent exclusion and discrimination against specific minorities opened the way for graver abuse of human rights and violence against those groups. This failure of states and societies in the region to address deep-seated and longstanding discrimination against minority groups – in the sphere of socio-economic rights – in other words society’s willingness to tolerate severe inequality and exclusion, also means that violence and atrocity crimes against those groups have been very difficult to prevent.

Structure of the Report and its Limitations

In the following sections of this introductory chapter of the report, we pro-

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2. USCIRF studies and ranks countries worldwide on their violations of religious freedom and progress. Tier 1 countries (or Countries of Particular Concern, CPC) are those ‘whose government engages in or tolerates particularly severe religious freedom violations, meaning those that are systematic, ongoing, and egregious.’ Tier 2 are ‘nations in which the violations engaged in or tolerated by the government during 2017 are serious and characterized by at least one of the elements of the “systematic, ongoing, and egregious” CPC standard’. Recently a new category was created, a Special Watch List, ‘for governments that engaged in or tolerated severe violations but are deemed to not meet all the criteria of the CPC test’. (USCIRF 2018: 3)

vide a summary of the objective, scope and justification for this exploration, foregrounding the focus of the report – equal access to socio-economic rights – and defining key concepts used, as well as articulating the broader public-action-for-minority-rights purpose of the effort; unpacking the concept of socio-economic rights, exploring its grounding in international human rights law, to be able to grasp its potential for informing initiatives and monitoring and tracking minority outcomes; and engaging with the practical issues of measuring performance on minority rights, and the choice and availability of sources of evidence. In Section 1.3 we summarise the findings of the report, drawing on individual country chapters to catalogue, firstly, the broad minority categories in South Asia, prioritising those that are cross-cutting across the region. This is followed (section 1.4) by individual snapshots of country reports on performance for their minorities in the socio-economic realm, after which we conclude (Section 1.5) with drawing, from the material presented, lessons for why minority rights protection and promotion efforts have seen poor traction in South Asia, concluding (Section 1.6) by presenting preliminary but pointed recommendations for the way forward.

The rest of the volume reports the condition of South Asia's minorities by country. But before we present country reports, we present, in Chapter 2, a summary of the recent developments affecting minorities in each country in the region, to provide a background to the more pointed audit of the performance of south Asian states to protect the interests of their minorities – the country chapters. This summary of the developments (we call it 'Looking Back: 2017–18 in the Lives of Minorities in South Asia') seeks to survey for each country threats, attacks and violence against minorities; majoritarian mobilisation against minority groups; and any changes in law and in policy and programmes that affect minorities either adversely or positively. This events chapter is expected to set the tone for the country reports to follow, contextualising each country's performance on socio-economic rights, with the aim to help us make sense of the curtailment – or advancement – of the rights of minorities in specific countries, within the wider dynamic playing out in the country. Limiting this survey to 2017–18 was a practical step. We, the South Asia Collective – the regional civil society network working to document, track and report minority outcomes at South Asia level – brought out our first report in late 2016, providing a broad-brush picture of the condition of minorities in the region. The 2018 report is our second. Surveying 'events' since the last report is meant to help maintain continuity in the reporting process.

The country reports (Chapter 3 onwards) themselves are quite straightforward. Missing from the volume is the Maldives, a South Asian country and member of the South Asian Association for Regional Cooperation (SAARC), but where we were unable to find local resources to partner with for the production of the report – likely a reflection of the hostile climate for human rights-minded civil society in the country. We faced similar problems in Afghanistan, with a local partner agency unable to continue work, reportedly due to heightened surveillance of human rights work, especially that focusing on minorities. We have a short account of the situation of minorities in Afghanistan, as a substitute for a full chapter, annexed to the report. Due to operational constraints we could not put together a full chapter on Nepal, and we have had to make do with a short account annexed to the report. Our 2016 report did not include Bhutan. The current volume does have a chapter on the country. Again, in the interest of continuity, the current Bhutan chapter has a broader frame: a broad-brush picture of minorities there and state efforts for them, similar to the scope of the 2016 report, rather than the limited socio-economic rights focus of the 2018 report. Lastly, we have always wanted to include Burma within the scope of our work. Though Burma is not part of the SAARC grouping, it has historically been seen as part of the South Asian region, and much of the dynamic around minority rights in the country has also affected one or the other of its South Asian neighbours. We hope to include Burma, along with the Maldives and Afghanistan, in our subsequent reports, which we hope now to bring out annually.

Reporting the Socio-economic Condition of South Asia's minorities

Scope and Justification

The South Asia State of Minorities Report 2016 provided a survey of the condition of minorities in the region. It used the UN Declaration on Minorities (UNDM) 1992 framework of the four-fold classification of minority rights (life and security, identify and culture, participation and equal access to socio-economic rights) to report the status of South Asia's minorities. We in the South Asia Collective decided that having established a benchmark, subsequent reports ought to be qualitatively different – they should have a thematic focus, for in-depth analysis and presentation of results for minorities in specific domains.

Accordingly, South Asia State of Minorities Report 2018 is focused on the theme of the socio-economic rights of the region's minorities – the first

of our thematic reports. According to the UNDM (1992), ‘persons belonging to minorities may exercise their rights individually as well as in a community with other members of their group without any discrimination.’ Non-discrimination and equality before the law are the basic principles guiding human rights. For minorities to enjoy non-discrimination, UNDM proposes: ‘there should be formal freedoms and equality (such as equal access to social services and employment in the public and private sectors) and programmes for empowerment of those who in the past have been the subject of discrimination or who suffer persistent discrimination’. (United Nations 1992: 10-11). We seek to report the performance of each county in the region on equal and non-discriminatory access to socio-economic rights, specifically as it relates to their minorities.

As with our benchmark report, we understand minorities as ‘a group numerically inferior to the rest of the population of a State, in a non-dominant position, whose members... possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and maintain, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language’ (Capotorti 1991: 98). Given our use of a rights-based perspective, our assessment seeks to compare performance to obligations placed on state parties, both by national laws as well as by international commitments, and their meeting those.

What do we seek to achieve by focusing on socio-economic rights?

- i. Socio-economic rights are not as well studied as for instance life and security, and there is generally only a poor evidence base available;
- ii. Within the catch-all phrase socio-economic rights are a range of rights of great importance to minorities’ ability to live fulfilling lives. There is very little systematic documentation of the condition of minorities on these counts. Unpacking this meta-right, so to speak, then, will help us identify specific sectoral rights, for further exploration down the line;
- iii. This is also the arena for a great deal of discrimination against minorities in the region, that largely goes unnoticed and unreported. Shining a light on these discriminations will be of great help to the advancement of minority rights;
- iv. It has been established that poor access to socio-economic rights makes minorities vulnerable to violations of other critical rights – life and security, freedom of religion, and participation. Hence focusing on this right will help shore up the defences, so to speak, against other violations; and

- v. There is wide variation in availability of evidence on socio-economic rights across countries, especially data disaggregated by minority groups, with some quite advanced with a mix of headcount and sample data, and others barely counting and documenting.

Focusing on the theme of socio-economic rights, then, has the potential to help build a body of evidence on violations as well as protection and promotion, on the range of specific rights that concern South Asia's minorities, covering new ground, and contributing to expanding the minority rights regime in the region.

Socio-economic Rights: What to Measure?

By using the UN Declaration on Minorities (1992) definition of minority rights, our assessment directly benchmarks international norms and standards. This helps us to (i) use universally accepted and up-to-date norms on the rights in question, socio-economic in this case, and (ii) use a framework that works for all countries in the region, regardless of the state of development of the particular country's regime for provisioning of the specific right (and we know that there is great variance here). Tethering the report to international norms also ensures the report is aligned to state parties' reporting requirements on specific rights (Universal Periodic Review and specific UN treaty bodies, such as the International Covenant on Economic, Social and Cultural Rights – CESCR 1966), thus directly aiding in civil society advocacy on the subject.

So, what are the international norms and standards on socio-economic rights?

The Universal Declaration of Human Rights (1948), and particularly CESCR, 1966, along with the following conventions, make up the international normative framework on socio-economic rights:³

- International Convention on Elimination of All Forms of Racial Discrimination (CERD), 1965
- Convention on Elimination of All Forms of Discrimination against Women (CEDW), 1979

2. Other potential candidates include: The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 1990; ILO 111 Discrimination Convention, 1958; and ILO 169 Convention Concerning Indigenous and Tribal Peoples, 1989.

Table 2. UN Human rights treaties and their rights
 (figures in brackets are article numbers)

CESCR, 1966	CERD, 1965 (Art 5)	CEDW, 1979	CRC, 1989	CRPD, 2006
Non-discrimination (2)	Non-discrimination	Non-discrimination (1)	Non-discrimination (2)	Equality and Non-discrimination (5)
-Right to work (6) -Favourable conditions of work (7)	work	Employment (11)		Work and employment (27)
Right to Social security, and social insurance (9)	social security and social services	Economic and social benefits (13)	Social security (26) Against child labour (32)	social protection (28)
Right to Physical and mental health (12)	Public health, medical care,	Health (12)	Health and health services (24)	Health (25)
Right to adequate standard of living – food and freedom from hunger (11)		Economic and social benefits	Adequate standard of living (27)	Adequate Standard of living (28)
	Housing			Habitation/ rehabilitation (26)
Right to Education (13)	Education and training	Education (10)	Education (28-29)	Education (24)

- Convention on the Rights of the Child (CRC), 1989
- Convention on the Rights of Persons with Disabilities (CRPD), 2006

Table 2 maps the main rights created by the above five (binding) treaties.³

Between the five treaties, the socio-economic rights that are marked most commonly are:

- i. Right to health
- ii. Right to education
- iii. Right to work
- iv. Right to adequate standard of living

3. Bhutan and Myanmar have not ratified CESCR and CERD, and only Bangladesh and Nepal, of all in the region, have signed CRPD. (Minority Rights Group International, 2014: 226-227)

v. Right to social security

These five rights are the focus of our survey of minority outcomes in the sphere of socio-economic rights. Given that the focus of our exploration is performance (on protection and promotion of rights) for minority groups, the question of equality and non-discrimination, assumes primacy – another common feature of all the main international treaty bodies.

‘Non-discrimination is at the heart of all work on human rights. It is a cross-cutting human rights norm... (and) prohibits discrimination on the basis of a list of non-exhaustive grounds such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status’ (United Nations 2012: 8).

Action on promoting equality and non-discrimination requires evidence gathering on the identified rights for specific minority/vulnerable groups. This presumes the presence of evidence disaggregated by social group – religion, caste, ethnicity, gender, age, etc – both quantitative and qualitative. Our 2016 report pointed us to the absence of much of this – especially statistical – information across the region. As it turned out, resolving the issue of evidence disaggregated by social groups continued to be our main measurement challenge.

Research Framework and Methodology: How to Measure?

Human Rights Indicators

We began our enterprise trying to identify for each of the five socio-economic rights a set of indicators to use for reporting state parties’ performance. To study performance we relied on the human rights indicators (HRI) framework, developed by the United Nations Office of the High Commissioner for Human Rights (OHCHR) ‘to promote and monitor the implementation of human rights and to make information about the progress that states are making in fulfilling the obligations that flow from human rights available to human rights monitoring bodies and civil society’ (Equality and Human Rights Commission 2015: 4). According to the UN, ‘[H]uman rights indicators are specific information on the state of an event, activity or an outcome that can be related to human rights norms and standards; that address and reflect the human rights concerns and principles; and that are used to assess and monitor promotion and protection of human rights’ (United Nations 2012: 2).

The HRI framework required us to identify, for each of the 5 rights domains

above, three types of indicators, measuring ‘commitment’ and ‘effort’ by state parties, and the ‘results’ of those for individuals and groups. The three types of indicators are:

- i. Structural indicators: These are formal commitments to human rights in principle, eg domestic human rights law/ratification of international treaties, and precedents in legal judgements;⁴
- ii. Process indicators: focusing on efforts made, or not, by duty bearers to meet the above obligations.

These are primary laws, policies, targets, guidelines, inspection and regulatory frameworks or resource allocation (budgets and borrowings), as well as information about key regulators, inspectorates, ombudsman and related mechanisms; and

- iii. Outcome indicators: Results achieved in terms of the position/experiences of individuals and groups, specifically minority groups.

Reporting these three types of indicators, and evidence on those, also meant we were able to mitigate for over-reliance on ‘outcome indicators’ to report performance, where availability of disaggregated data is mostly wanting. This also links to the broader objective of the use of human rights indicators to monitor human/minority rights: there is no claim, indeed attempt, to provide a complete evidence base on results of rights realisation; rather the objective is to shine a light on rights realisation – broken down by commitment, effort and results – in each country context, aiding in the progressive realisation of the rights (Equality and Human Rights Commission 2015: 9). This is particularly relevant to economic, social and cultural rights, which are ‘positive’ in nature (compared to civil and political rights, which are mostly ‘negative’) (United Nations 2012: 23). The use of the Human Rights Indicators framework aids, alongside, in the creation of evidence and disaggregation, feeding into the progressive realisation.

Evidence Base

Drawing on OHCHR’s work and that of the UK’s Equality and Human Rights Commission (EHRC), the evidence base we hoped at start to develop was aimed to bring together different types of information for minority

4. This combination of domestic law and international treaties also ensures the measurement is explicitly grounded in the legal framework (case law approach), whilst formulating some indicators and measures in terms of human rights values. This ensures a good mix of indicators of ‘minimal compliance’ (case law) and those that are proactive and encourage development of a ‘culture’ of human rights (EHRC 2015).

rights analysis and assessments (Equality and Human Rights Commission 2015: 9-10). These included:

- information about domestic human/minority rights laws and international treaty ratifications;
- information about human/minority rights case law outcomes (i.e. violations/ breaches);
- information about the public policy framework for protecting human/minority rights;
- concerns highlighted by domestic and international human/minority rights monitoring bodies (eg. UN treaty monitoring committees);
- findings of investigations, inquiries and reviews;
- issues raised by regulators, commissions, and ombudsmen;
- allegations and concerns raised by NGOs and other civil society mechanisms such

as media reports;

- statistical information drawing on a wide range of administrative and social survey sources; and
- administrative data, such as plans, budgets, spending, and programme reports.

The choice of indicators and evidence would themselves be a combination of:

- Qualitative and quantitative data/evidence. Case law, findings of human rights bodies; the findings of inquiries, investigations and reviews; the findings of regulators, commission and ombudsmen; and so forth;
- Official and non-official data (press and media, advocacy and NGO data); and
- A combination of objective and subjective measures, eg perceptions and self-reporting of discrimination.

Very soon into our research, we came up against major barriers of data and information, especially those disaggregated by minority groups. Our focus on socio-economic rights revealed how data on these rights was even more scarce. This remains the most significant shortcoming of the report.

Box 1: Measuring discrimination

OHCHR proposes the following tools for measuring the prevalence specifically of discriminatory practices:

- i. Socioeconomic statistics disaggregated by prohibited grounds of discrimination (eg life expectancy, age-specific sex ratios and unemployment rates broken down by ethnic origin);
- ii. Econometric models based on multiple regression analysis, which help in estimating the portion of differences in outcomes attributable to discrimination, as opposed to observable variables (eg percentage of the wage differential between women and men that cannot be explained by 'observable' criteria, such as the number of working hours or socio-professional characteristics, etc.);
- iii. Population surveys measuring experiences, perceptions and attitudes regarding discrimination (eg percentage of members of ethnic minorities reporting racially motivated victimisation and discrimination by public/private personnel); and
- iv. Discrimination or situation-testing surveys to directly measure discrimination in specific instances, such as those related to access to work, housing, health care, private educational institutions or other public services.

Source: United Nations (2012: 82)

Who are South Asia's Minorities?

Minorities in South Asia – suffering the worst forms of discrimination – are typically religious and sexual minorities, Dalits, refugees and IDPs and stateless people, with women being particularly vulnerable across categories. As a report on Dalits notes, 'the exclusion of Dalits and similarly affected communities by other groups in society lead to high levels of poverty among affected populations and exclusion, or reduced benefits, from development processes, and generally precludes their involvement in decision making and meaningful participation in public and civil life.' (IDSN 2009: 1)

Religious Minorities

Underlying poor outcomes for minorities in the region is South Asia's strong majoritarian atmosphere, fuelled in part by competing nationalism across

Table 3. Religious Plurality in South Asia
 (figures represent percentage of total population)

Bangladesh		India		Nepal		Pakistan		Sri Lanka	
Muslim	89.5	Hindu	80.67	Hindu	81.3	Muslim	96.3	Buddhist	76.7
Hindu	9.6	Muslim	14.23	Buddhist	9.0	Hindu	1.6	Muslim	8.5
		Christian	2.30	Muslim	4.4	Christian	1.6	Hindu	7.8
		Sikh	1.72	Kirat	3.1	SC	0.3	Catholic	6.1
		Buddhist	0.70	Christian	1.4	Ahmadi	0.2	Other Christian	0.9
		Jain	0.37	Pakriti	0.5				

Source: Adeney 2015

borders, which is also antagonistic, harking back to the region’s recent conflictual history. This is rooted in the politicising of ethnic and religious identities in South Asia by its colonial encounters (including anti-colonial struggles). The creation of post-colonial states through partition of much of the subcontinent, splitting up religious and ethnic groups across new and arbitrary borders, and the fears of the political elites of further disintegration of successor states reinforced the majoritarian trend. This has had an adverse impact on outcomes for minorities, particularly religious (South Asia Collective 2016: 40).

But nation-states in the region are not homogenous – there are majorities and minorities, and the majority in one country could be a minority in another. This undergirds the issue of ‘reciprocity’, where the treatment of a minority in one country is contingent on how minorities are treated in another, or subject to bilateral relations between two countries. The regional dynamics of minorities in India, Pakistan and Bangladesh (given their common experience of the Partition in 1947 and the creation of Bangladesh in 1972) and how it affects respective minorities – Muslims in India, Hindus and Sikhs in Pakistan and Hindus and ‘Urdu speakers’ in Bangladesh – is well-known. There are other examples too.⁵ All these have implications for the condition of South Asia’s minorities and the rights available to them. Given the multiplicity of religious identities, their politicisation, and their

5. A similar dynamic, although not on religious lines, exists between India and Sri Lanka too, impacting largely the Tamil minority in Sri Lanka; between India and Nepal, affecting Madhesis in Nepal and Nepalis in India; between Nepal and Bhutan, affecting Bhutan’s largest minority, Lhotsampas; and finally, between Pakistan and Afghanistan, the Pashtun minority in Pakistan being the main one affected. Clearly, minority rights in South Asia is also a trans-border issue.

repeated use to mobilise opinion, religion is a major axis of contestation in the region, on one hand fuelling majoritarianism and on the other severely impacting minority outcomes – life and security as well as access to socio-economic rights and equal participation. Discrimination based on religion has been the most enduring.

Caste-based Minorities

Caste discrimination adversely affects more than 260 million people globally, the overwhelming majority of victims being Dalits (or ‘outcastes’) living in South Asia. Caste, in the way we understand it, is practised widely in all south Asian countries, barring Afghanistan and Bhutan – although both these countries have their own and deep-seated forms of racial discrimination. Caste discrimination is not only a serious violation of human rights but also a major obstacle to achieving development goals. Victims of caste discrimination are routinely denied access to water, schools, health services, land, markets and employment. Among the most serious impediments to addressing caste discrimination is either a lack of law or a de facto denial of equality before the law, resulting in a lack of protection of caste-affected people against violent attacks and other crimes, and impunity for the perpetrators of such crimes. Below is a snapshot of the caste situation in each country, summarising a report by the International Dalit Solidarity Network (IDSN 2009).

Refugees and the Stateless

Artificial boundaries, longstanding intra- and inter-state conflicts, disasters, and persecution of minority groups, among others, have created in South Asia a constant stream of refugees, including many that are stateless. A very large section of the stateless in South Asia are drawn from the ranks of minorities, who are often victims of conflicts, targeted violence, forced population movements and migrations. It is estimated that there are some 50 million such people in South Asia. Refugees and the stateless represent the plight of the minorities in its most vulnerable form – denied the right to fully enjoy human rights and fundamental freedoms and to have access to remedy for human rights violations.

Women and Girls as Minorities

Women and girls suffer doubly, both on account of their being religious, caste, ethnic or linguistic minorities, and as women. Gender-based violence and discrimination exists perhaps in its most concentrated form in South Asia. This is despite constitutional guarantees in several countries

Box 2. Caste Discrimination – National Snapshots

Bangladesh: The estimates of the number of Dalits in Bangladesh vary from 3.5 to 5.5 million. Although most are Hindus, there are a sizeable number of Muslims too. The Dalits of Bangladesh have been much overlooked in the development and rights discourse and have only recently been able to raise their voices and mobilise for their rights, including the right to development.

India: According to the official census, India's Scheduled Castes (SC) number 167 million, making up the bulk of South Asia's Dalit population. This figure does not include Dalits who have converted or are born and raised within a non-Hindu religious community, especially Muslim and Christian Dalits (estimated to be over 30 million). These the constitution bars from inclusion within the SC label, and they are thus excluded from the elaborate programme for affirmative action available to Dalits identifying as Hindu, Sikh and Buddhist. At the same time, constitutional guarantees for Dalits have not been able to prevent violations of the fundamental human rights of the community that go on on a massive scale. Impunity is widespread.

Nepal: Although the official Dalit population is set at 13 % of the total (2001 census), activists claim it is closer to between 20 and 25%. The Dalit movement has over the past decades challenged the exclusion of Dalits in decision making and development processes in Nepal. The interim constitution indicates a degree of success for the Dalit movement in securing some constitutional provisions for non-discrimination, equality and protection – guaranteed representation (of only 8% though), as well as a national Dalit commission and other institutional mechanisms for securing rights.

Pakistan: Dalits in Pakistan are mostly part of the Hindu minority and fall victim to double discrimination on the basis of their religion and caste. The official figure for SC is approximately 330,000. Researchers claim, however, that the numbers could be as high as 2 million. The data does not include 'lower castes' within the Muslim community, who live under similarly depressed conditions. Dalits are exploited grossly as a work force in rural and urban areas – as bonded and forced labour in Sindh and Punjab.

Sri Lanka: Although in Sri Lanka there is no common identity as Dalits among the 'lower castes', an estimated 4–5 million persons (20–30% of the population) experience some form of caste discrimination. Caste discrimination continues to be entrenched in society among Sinhalese and particularly Sri Lankan and Indian Tamil populations, a result also of the caste-blind policies of both state and non-state actors. 'Lower castes' constitute a large number of IDPs in Sri Lanka, who are also the most vulnerable group, subjected to dual discrimination on the basis of ethnicity and caste in camps.

Source: Summarised from International Dalit Solidarity Network (2016: 1–2).

Box 3. Refugees, Migrants and the Stateless

The heightened global attention paid to migrants has largely bypassed South Asia, yet the problem in the region is as longstanding and severe as anywhere else. Research estimates that there are 50 million migrants, refugees, and stateless people in the region, among them populations transferred during wartime among Bangladesh, India, and Pakistan; caste and religious groups fleeing persecution; and Afghans, Chinese, Nepali-speakers, Rohingyas, Sri Lankan Tamils, Tibetans, and others who have fled violence or repression during the past seven decades. These population movements have added to the already daunting complexity of societies in the region, intensifying political volatility and sharpening security issues. With the exception of Afghanistan, no South Asian states are party to the UN Refugee Convention. Still, compared with other regions, South Asia has treated its refugees relatively well, partly through assistance programmes and partly through benign neglect. Most migrants have got jobs, and many have even become citizens of their countries of refuge. But South Asia also provides examples of some of the most enduring kinds of vulnerabilities faced by refugees: Biharis or Urdu Speakers in Bangladesh; Lhotsampas, in Bhutan; up-country Tamils in Sri Lanka; Bengali speakers and Chakmas in India's Assam and other northeastern states; and Hazaras and Pashtos in Pakistan.

Source: Summarised from Nathan (2017).

and gender-friendly social movements – the patriarchal mindset oppresses all that are not male (South Asia Alliance for Poverty Eradication 2016: 60). Violence is manifested in various forms: rape and sexual harassment; dowry-related violence; sexual harassment at the workplace; forced or early marriages; acid attacks; psychological violence in a custodial setting; domestic violence by family members; and economic exploitation and cross-border trafficking. Honour killings are also common in Afghanistan, Pakistan and parts of India; and violence, including sexual, targeting minority women everywhere. Violence against women and girls takes place at the family, community, workplace, and public levels (ibid).

A telling example of discrimination against girls is the violence against them at birth. Male to female sex ratio at birth and throughout life reveals that in nearly all countries except Sri Lanka and Nepal, the number of girls remain lower than normal (Table 4). 'Not addressing this fundamental question of disappearance before birth that has led millions of girls "missing at birth", it is impossible to establish a gender-just society' (ibid). In any case, there is low investment in education and health, thwarting the life chances available to girls. The results are some of lowest standing of south Asian nations in gender indexes (Table 4).

Table 4. Gender Deprivation in South Asia
 (figures represent percentage of total population)

Country	Sex ratio (male: female) at birth (2010–2015)	GII ranking (lower is better)
	World Bank, 2015	UNDP, 2015
Afghanistan	1.06	171
Bangladesh	1.05	111
Bhutan	1.04	97
India	1.11	130
Maldives	1.10	49
Nepal	1.06	108
Pakistan	1.09	121
Sri Lanka	1.04	72

Source: South Asia Alliance for Poverty Eradication (2016: 39)

Another harsh manifestation of the violence against women in the region is human trafficking, estimated to affect over 150,000 persons a year in South Asia, most of whom are women and children, who are exploited for labour and sexual slavery, often sold to human traffickers. Trafficked women are divided from their families and exposed to rape, sexual assault, mental trauma and physical abuse. Neither anti-trafficking laws or procedures, at least in some countries in the region, nor the existence of SAARC Convention on Trafficking in Women and Children for Prostitution (2002) seems to have resulted in any effective progress against human trafficking in the region.⁶

How do South Asian Nations Check Out on Minority Rights?

Afghanistan

Minorities in Afghanistan are predominantly Hindus and Sikhs, and Shias among Muslims.

6. A similar dynamic, although not on religious lines, exists between India and Sri Lanka too, impacting largely the Tamil minority in Sri Lanka; between India and Nepal, affecting Madhesis in Nepal and Nepalis in India; between Nepal and Bhutan, affecting Bhutan's largest minority, Lhotsampas; and finally, between Pakistan and Afghanistan, the Pashtun minority in Pakistan being the main one affected. Clearly, minority rights in South Asia is also a trans-border issue.

Table 5. Status of Ratification on International Treaties on Socio-economic Rights

Treaty	Afghanistan	Bangladesh	Bhutan	India	Maldives	Nepal	Pakistan	Sri Lanka
ILO No. 111 Discrimination (Employment and Occupation Convention) 1958	✓	✓		✓	✓	✓	✓	✓
International Convention on Elimination of all forms of Racial Discrimination – CERD, 1965	✓(a)	✓		✓	✓(a)	✓(a)	✓	✓(a)
International Covenant on Economic, Social and Cultural Rights – CESCR, 1966	✓(a)	✓		✓(a)	✓(a)	✓(a)	✓	✓(a)
Convention on Elimination of all forms of Discrimination against Women - CEDAW, 1979	✓	✓	✓	✓	✓(a)	✓	✓(a)	✓
Convention on the rights of the Child – CRC, 1989	✓	✓	✓	✓(a)	✓	✓	✓	
ILO 169 Convention Concerning Indigenous and Tribal Peoples and Independent Countries, 1989	–	–	–	–	–	✓	–	–
International Convention on the Protection of the Rights of all Migrant workers and members of their families – CMW, 1990	–	✓	–	–	–	–	–	✓(a)
Convention on the Rights of Persons with Disabilities – CRPD, 2006	✓(a)	✓	–	✓	✓	✓	✓	✓
CRPD, 2006	–	–	–	–	–	–	–	–

Source: South Asia Alliance for Poverty Eradication (2016: 39)

Hazaras, as the intersectional case – suffering both religious and ethnic exclusions – are particularly deprived. Afghanistan’s commitment to protecting and promoting minority rights is newfound and still forming. Minority rights have been better since the Bonn Agreement, 2001, which installed a national unity government, replacing Taliban. In the 2004 Constitution that followed, Hazaras – the traditionally persecuted and marginalised – were given some of the same rights as others. But religious minorities continue to be discriminated against, both in law and in effect. This is despite Afghanistan having ratified all key international covenants.

Efforts to convert the weak commitment are also poor. The first barrier that one comes across is the absence of appropriate data disaggregated by religious groups, in the absence of which it is difficult to say in any precise manner whether minorities are provided socio-economic rights or not. Overall, minorities have poor access. Nomadic and tribal communities, eg Kuchis, have poor access to education. Poverty is highest in northern areas, areas inhabited by minorities such as Aimaq, Turkmanis, Uzbeks, Nuristanis; and central parts, amongst Hazaras. Areas occupied by Shias – Hazaras and Ismailis – are among the most deprived in Afghanistan.

Bangladesh

Religious minorities make up close to 14% of Bangladesh’s population, Hindus and Buddhist making up the bulk. Minorities experiencing intersectionality of exclusion suffer the most. These are the indigenous peoples, Dalits and tea garden workers that are religious minorities as well as class and caste minorities. Poorer sections among stranded Pakistanis or ‘Biharis’, who are both linguistic and class minorities, also figure here. Of all the minority groups, Chittagong Hill Tracts (CHT) indigenous groups are the most deprived.⁷ Stripped of their land and forest resources, thus deprived of livelihoods, these indigenous tribes suffer extreme poverty, hunger and malnutrition. They also suffer poor service provisioning – water and sanitation, health services and nutrition. There is high incidence of morbidity, especially among women, and high dropout levels from schools. Dalits in Bangladesh too suffer acute marginalisation. Poverty levels are high, living conditions dismal, and education and health access marginal. Similarly, Biharis suffer severe deprivation. Only some 5% are in formal employment,

7. According to a 2011 census, there are about 1.5 million indigenous persons in Bangladesh. Indigenous persons themselves claim their population is closer to 5 million. The CHT groups make up some 20% of this total population. See: <https://www.iwgia.org/en/bangladesh>.

with the rest entirely in the informal sector. Living conditions in refugee camps are harsh, and there are high dropout levels from schools.

Despite the severity of marginalisation of these groups, there seems to be little resolve to address the problem. Bangladesh is a signatory to many international conventions relevant to minorities. It has additionally ratified the United Nations Declaration on the Rights of Indigenous Peoples (UN-DRIP) and the ILO Convention 107, providing a safeguard for individual and collective rights of indigenous peoples, yet domestic law has not been harmonised, and land grabbing and loss of livelihoods are rampant. Even national laws to protect rights, such as The East Bengal State Acquisition and Tenancy Act, 1950, are not enforced fully. The deprivations were also the driving force behind the long-drawn armed conflict between *Shanti Bahni*, representing CHT tribes and the Government of Bangladesh. The Chittagong Hills Tribes Peace Accord (1997) was signed between the two parties to end the violence, guaranteeing safeguards against land alienation; devolution of power to local bodies; rehabilitation of refugees, IDPs and returnees; and investment in services and opportunities for the people. Rights groups claim the accord is only poorly implemented, resulting in deprivation persisting.

Similarly, despite the poor condition of dalits, there is very little commitment and effort for them. Only recently, nominal measures have been introduced for reservation of jobs as sweepers, and for enrolment and retention of children in schools. A nominal special allocation for pension and scholarship for Dalits was initiated only in FY 2011–12. Recently, the seventh national 5-year plan (2016–2020) recognised Dalits as the missing poor, and as the most marginalised. The result of this is yet to be felt. Bihari linguistic minorities continue to be excluded from welfare programmes (the national social security strategy), and services, due both to the poor provisioning for them – their stateless status was only overturned in 2008 when they were recognised as citizens – and the stigma attached to the refugee camps where most are housed.

Bhutan

Bhutan's is a case of a minority elite (the Ngalongs making up 15% of the population) being the dominant power in what is essentially a three-way ethnic make-up (Buddhist Ngalongs in the north-west; Buddhist Sharchopkas in the north-east; and Nepali-speaking, mainly Hindu, Lhot-sampas in the south). Sharchopkas (who speak a minority language) are

demographically the dominant group making up 50% of the population. They are the principal minority. But it is the Lhotsampas (the southerners, professing Hinduism and speaking Nepali), making up 22–25 % of the population at last count, who are minorities in the true sense. Christians are also excluded.

Language and Buddhism form the bedrocks of the Ngalong state, which seeks a homogenised society around the Dzongkha language, dress code and Buddhist religion. The homogenising trend was strong enough that in the late 1980s a sixth of the population of the Nepali-speaking Lhotsampas were stripped of their citizenship, paving the way for their expulsion in 1991–92. The backdrop to this was discrimination against Lhotsampas increasing from the late 1980s in the context of the Bhutanese elite's fears of Lhotsampa domination and of political/armed movements in the region, resulting in the government's rolling out of a 'One Nation, One People' policy. This resulted in land and jobs being taken away and the Lhotsampas being disenfranchised. More than 100,000 Lhotsampas became stateless as a result of the disenfranchisement and were forced to take refuge in UN refugee camps in Nepal. This was one of largest forced migrations in history. Not one refugee has been allowed to return since. Some 113,160 have relocated to western countries, including the US and Canada.⁸ Other minorities also suffer disadvantages, particularly religious minorities.

The 2008 constitution, which introduced nominal democracy – in the form of 'democratic constitutional monarchy' – in Bhutan, restored the rights of the Lhotsampas, but is still a far cry from providing a level playing field for minorities. Lhotsampa-concentrated districts (southern, with some 80% concentration) have higher poverty incidence and unemployment, and poorer health and education attainment figures. Commitment to international best practices is less than adequate; indeed, Bhutan has not ratified either the CERD (International Convention on Elimination of all forms of Racial Discrimination, 1965) nor the (CESCR) International Covenant on Economic, Social and Cultural Rights (1966). And although the 2008 constitution guarantees equality to all, and aims to reduce inequalities, these aspirations are not fully translated into laws, nor operationalised in policies and programmes. A key drawback here is the absence of data disaggregated by minority group, preventing the tracking and reporting of outcomes, even media and civil society based reports and analysis on the condition of minority groups.

8. Source: My Republica

India

Minorities, understood here as religious, make up some 19% of India's population. The poorest Muslims, also characterised as Arzal or Dalit Muslims and Dalit Christians, and women among them, suffer the worst forms of exclusion. Education and health outcomes and income and employment among these sections are some of the poorest among all social groups, as is access to services and benefits. Indeed, a recent report claims that inter-generational mobility (a proxy for equality of opportunity) has been steadily declining among Muslims, even though it has been rising for India's traditionally excluded – the Dalits (Asher et al 2018).

Underlying the vulnerability of religious minorities in India is poor commitment and effort towards improving minority outcomes. Commitment to international standards is poor. India has ratified most international covenants, including CESC (1966) and CERD (1965), but these have not been fully written into the law. An example is anti-discrimination and equality provisions; the core of most international covenants on socio-economic rights, but on which there is no specific legislation in India. Indeed, discriminatory provisions exist in the law itself, disadvantaging minorities, a glaring example being the exclusion of Muslim and Christians from the Scheduled Caste category, keeping the poorest sections among these religious groups away from benefits that affirmative action programmes provide SC populations. Overall, only recently have Muslims – who, recent research is confirming, are the poorest of the poor – been recognised as a subject of development.

Efforts to operationalise the weak commitments there are even poorer. This takes various forms. Minorities are ill-defined and not included in official categories, and are thus deprived of benefits. Data on minorities is available only partially; as a result there is poor preparation for targeting efforts, monitoring progress and measuring impact.

There is also poor targeting of minorities in terms of public policies, programmes and schemes. The poorest Muslims (and Christians) are excluded from affirmative action programmes that have, over time, helped SCs (or Dalits) enhance their inter-generational mobility. These sections – defined mostly as Other Backward Classes (OBC) – are forced to compete with groups that are quite advanced educationally and economically. The minority programmes that do exist are modest; not targeted, but generic; and use an area approach rather than focusing on deprivations faced

by specific groups. The budget size is also poor; data disaggregated by religious groups is absent; and attempts to monitor performance, evaluate results and communicate outcomes are weak. There is poor awareness about the minority programme, even amongst those tasked to implement them. The authors demonstrate that these lacunae are further pronounced at the state level – with even poorer funding, utilisation, and reporting even more pronounced.

Since the ruling Bharatiya Janata Party took power in 2014 in a landslide victory riding a majoritarian Hindu nationalist vote, religious minorities have suffered increasing violence and marginalisation. This has facilitated the gradual dismantling of the minority programme there was, thus further imperilling efforts. Plans for improving results on equality and non-discrimination, such as those for establishing an Equal Opportunity Commission (EOC) and Diversity Index (DI), have been shelved, as have plans for better data gathering and management, aiding planning and delivery, such as the Assessment and Monitoring Authority (AMA) and National Data Bank (NDB). There have also been calls for key institutions for minority development – the central Ministry of Minority Affairs, and National Commission of Minorities – to be disbanded. These years have also seen a gradual diminution in budgetary provisioning for minority programmes, and in some states, a complete reversal of minority schemes (eg Uttar Pradesh's erstwhile 20% budgetary allocation for minorities). India is a good example of how majoritarian nationalism can set the clock back significantly on minority rights protection and promotion.

Nepal

Nepal has been described as a land of minorities, considering the many identity groups in the country, defined along religious, caste and ethnic lines. Madhesi and Janjatis (indigenous groups), defined along ethnic lines; Dalit caste groups; and Muslim and Christian religious groups are the main minorities in the country. Of these, Dalits and religious minorities, especially women among them, suffer the worst disadvantages. Research is showing a wide disparity in socio-economic attainment among Nepal's social groups, the gap being especially large between Hindu caste communities and other dominant groups on the one side and minorities on the other. Tarai Dalits and Muslims, as well as Tarai Janjatis, demonstrate poor outcomes – child survival and other health access indicators; poverty, economic access and standard of living; and educational attainments.

The poor outcomes can be traced to inadequate commitment, especially for specific minority groups, and the poor implementation of laws and policies, representing a weak and flawed effort. Nepal has taken various steps to ensure equality and non-discrimination. Along with constitutional provisions, Nepal is also a party to several international conventions to ensure non-discrimination. How these otherwise robust measures might not be adequate when it comes to minorities is demonstrated by the example of the 2015 Constitution, which in effect discriminates against religious minorities. Building on the 2007 Interim Constitution, the 2015 constitution guarantees equality of all citizens and prohibits discrimination in any manner; sets aside specific quotas for women, Dalits and religious minorities; and affirms proportional representation, along with a plural voting system, to enable a share in power for smaller groups. All these provisions go to equalise access to power and resources for minority groups. Yet, the constitution's flawed definition of secularism privileges Hinduism over other faiths and undermines its otherwise equalising ethos, creating openings for discrimination against religious minorities.

Nepal has also travelled great lengths to translate the overall good commitments into efforts. Constitutional aspirations and international promises have been written into domestic laws and policies, examples being the 5th Human Rights National Action Plan 2015–2020, National Employment Policy (2015), and the School Sector Development Plan 2016–2023. Institutional changes are also being effected. National commissions for women, Dalits and other minorities (with the exception of Christians) have been set up, as have Gender Equality and Social Inclusion units in key ministries. Yet bias is deep-seated, and minorities are only poorly represented in government, making the rooting out of discrimination much more difficult. This, along with poor provisioning and a lack of clarity in roles and responsibilities for key inclusionary institutions, means minorities still face an uphill task in accessing rights and opportunities. However, Nepal's is also a case that shows the way forward for inclusion of minority groups, not least the significant progress made in creating and reporting data on a range of counts, disaggregated by social groups.

Pakistan

Pakistan has ratified ICESCR (1966), but there is poor implementation in terms of incorporating the laws into domestic legislation and operationalising those laws. There is a significant gap between ratification, legislation and implementation. This applies to the right to work, the right to standard of living, the right to health, and the right to education. An example

is the bonded labour and minimum wage acts, which are not implemented for many reasons, including simply poor effort. A dearth of relevant data disaggregated by social groups is a barrier to analysis and planning.

As a result, there is significant poverty, and large regional variations, with minorities suffering most. The situation for religious minorities is worsening. Minorities particularly targeted are Ahmadis (considered by extremist elements, but now also codified in law, to be un-Muslim), Christians (who are seen to be linked to the west) and Hindus (who are linked with India and partition). Baloch and Pashtun are also targeted, hence the nature of minority marginalisation has an ethnic and regional dimension too.

There are various threads in the Pakistan story that deserve attention:

The worst forms of exclusion happen when exclusions intersect – Hindu brick kiln workers in Sindh, and Christian sanitation workers (women among them) in Punjab, Karachi and elsewhere. Minority women in Pakistan are some of the worst sufferers. The conjuncture of economic marginalisation, gender discrimination and religious exclusion results in extreme abuse. But the Ahmadi community is a unique case, where persecution is purely on religious grounds – through both violence and marginalisation.

Everywhere we see state and non-state actors conspiring together – mostly with the state being captive of majoritarian elements – to target minorities. Exclusionary majoritarian nationalism provides the context to this take-over of the state, enabling the marginalisation of minority groups. This also might provide us a clue to the puzzle we noticed in Pakistan of poor resolve to address minority concerns.

Sri Lanka

Sri Lanka's minorities make up a combination of ethnic groups (Tamils, making up 15% of the population and Moors 9%) and religious groups (Hindus at 12% of the population, Muslims at 10% and Christians at 6.7%). Intersectionality is crucial, as is caste, as an important factor enabling discrimination. Whilst development outcomes, such as those for education and health, are positive on the whole for Sri Lanka, they are poor for districts with high minority concentrations, especially tea estate districts. Food security and malnutrition are particularly problematic, as is land alienation. Eastern districts are the worst affected. The recent spike in violence against Muslims is seen to have economic drivers, with Sinhalese nationalists using violence instrumentally to cripple Muslims economically.

Here too commitment and effort to realise minority outcomes and check discrimination are poor, even though Sri Lanka leads the region in sound social policies – a good example being making education free and compulsory for all in 1954, just after independence. Although Sri Lanka again has ratified most international treaties against discrimination and for economic and social rights, the translation into domestic law is poor. Furthermore, as in other countries in the region, data on socio-economic rights disaggregated by minority group is not available. There is none available by region either, at the district level, hence it is difficult to make deductions on efforts and outcomes for minority groups concentrated regionally.

The lack of effort is also reflected in the provision of services. For example, the allocation of health personnel (medical officers and nursing staff, and the preventive system of midwives) to minority concentrated districts is particularly poor. Another example of how effort is wanting is education. The district quota system was introduced in 1971 to equalise university places across the country. Only 30% of the places are now left to be determined by merit. This disadvantaged Tamils (from Jaffna), where the demand was large and quota places provided small. A challenge to the policy in the Supreme Court was thrown out, on grounds of discrimination. This ruling had the effect of entrenching the systemic discrimination initiated by the ‘Sinhala Only’ policy. Recent policy initiatives, such as the National Human Rights Action Plan, 2017, and National Plan for Action, 2016, for up country Tamils, to provide housing, basic services and health, are a fresh start. It remains to be seen to what extent they facilitate equal access to all.

Conclusion

The results across the region on the socio-economic rights of minorities are evidently poor, on account of poor commitment and poorer effort by state parties. At the national level, minorities suffer in silence. At the regional level there is no movement on minority rights. Only very occasionally are there any efforts at the international level. Further demand by minority groups themselves is too weak, too fragmented, and too occasional.

Minorities are unable to challenge the systematic patterns of discrimination and disadvantage due to their lack of power. Effective public policy can make that difference. Effective and universal public services, such as health care, education and social care, can counter inequality in health and education. Redistributive policies and schemes, such as social safety net and universal programmes can moderate inequality in wealth, and policies

enabling mobility can get entrenched minorities out of poverty. But as a report by a regional initiative for inclusive development explains, the contribution public policies might make to positive changes in South Asia, especially for minorities, is seen under a negative light. (SAAPE 2016). Opinion polls support this claim. The Gallup World Poll asks respondents about their satisfaction with basic services, their assessment of future well-being, and their views on government efforts to help the poor. Findings from India show that Muslims, who are more likely to suffer, have less confidence than other groups in public institutions to make change in their lives.⁹

At the core of this poor perception of public policy and institutions, especially among the region's poor and minorities, is poor commitment and effort to bridge gaps between the rich and poor, between minorities and the rest. The Commitment to Reducing Inequality Index (CRI) measures how countries fare in terms of their policies targeting inequalities, including social spending, taxation and labour rights. Reduction of inequalities has a disproportionate effect on poverty reduction. A recent report by CRI researchers shows that South Asian countries figure somewhere at the bottom of the pile on their CRI score. Six of the eight South Asian countries are in the bottom 20 of the 152 countries studied. India ranks 132, Afghanistan, 146. Nepal, South Asia's best performer on the count, is at 81 (Oxfam 2017).

Behind this lacklustre commitment by most South Asian states is the adoption of economic models that are neo-liberal, privileging private capital and outsourcing of services to private providers at the expense of public. This 'perpetuates pauperisation of larger masses by allowing greater chunks of GDP to accumulate in the wallets of the top few' (SAAPE 2016: 11). This harsh form of neo-liberal agenda privileges, among other things, '....privatisation, the dismantling of welfare state and social security programmes as well as fortification of market driven agricultural policies and increasing military expenditure' (ibid).¹⁰ As a result, all across South Asia, the nature of growth is under question, with increasing GDP on one hand and increasing unemployment on the other (ibid: 4). This impacts minorities – and the poorest among them – the most.

9. <https://news.gallup.com/poll/157079/muslims-india-confident-democracy-despite-economic-educational-challenges.aspx>

10. The region houses 22% of the world's population, but accounts for only 1.3% of the world's income. Yet military expenditure is one of the highest (India: 2.3 % of GDP, Sri Lanka, 2.3 %, Pakistan 3.4 % – SIPRI 2015). India is the largest importer of military equipment. Pakistan is not too far behind. Militarisation is a major roadblock to eradicating poverty (SAAPE, 2016: 50).

Recommendations

Below, we attempt to provide some helpful recommendations for the advancement of minority rights protection and promotion regimes in South Asia, especially on socio-economic rights. These are provided in general terms for countries to follow, as well as at regional and international levels. Recommendations are also provided for civil society and community groups to implement. Specific recommendations for individual countries are provided in their respective country chapters.

For state parties

Commitment

- South Asian states demonstrate weak commitment to minority rights protection and promotion. This must be changed. There is a need to ratify all international treaties that are relevant to minorities, specifically the ones that bind state parties to ensuring equality and non-discrimination provisions, viz CERD (1965), CESC (1966), CEDAW (1979), CRC (1989), CMW (1990) and CPRD (2006). South Asian states must also raise the bar and sign optional protocols relating to these treaties, to allow individual complaints mechanisms to be moved, thus stepping up of their own accord to improve minority outcomes and put accountability mechanisms in place;
- These international commitments must be written into domestic law, and measures for the operationalisation of these commitments must be put in place. This will include resolving contradictions and lacunae in national laws, to meet the higher standards that international treaties demand; and
- This will require amending national laws that discriminate against specific minorities. Equally, this will require working on a key lacuna in domestic law across the region – namely the absence of equality and anti-discrimination legislations that could be effectively enforced. Whilst most national constitutions guarantee equality of all citizens and non-discrimination, that aspiration has not been translated into specific laws and programmes of action. Nepal's is perhaps the strongest regime of equality and inclusion for minority groups as a whole, but its challenge has been poor implementation. India's experience with a similar instrument, though limited to the country's Dalits, has been similar. Exclusion and violence against Dalits continue. There is nothing like such an instrument for religious minorities.

Effort

- Policies and programmes to operationalise the commitments are poor. There is only limited provisioning for the socio-economic uplift of minorities and for ensuring their equal access to services and entitlements. This is about a lack of resources invested and limited institutional mechanisms to address minority deprivations. India's case is instructive. It has an expansive programme of affirmative action for SCs, STs and OBCs, with quotas in educational institutions and public sector employment. It also has a vast social service regime with safety net programmes for the poorest population. Only some of these are universal. Religious minorities are excluded from much of these impressive equalising programmes, all of which are caste or means tested, and there is little to provide religious minorities the chance to overcome barriers to accessing universal services. Most of the other countries in the region have even less to offer their minorities to provide equal access to rights and opportunities. What is required is newer programmes that meet the specific needs of minority groups, and greater investment in those efforts, including special institutional mechanisms. Nepal has led the effort, with the creation of constitutional bodies to advance the interests of women, Dalits and minorities. Other countries should follow suit, and better the example through providing these statutory bodies with effective authority, resources and personnel capacity;
- This last would also include greater minority representation in public services, so that minorities have a stake in government functioning, and their concerns also come through in how state institutions function and deliver services. Equally important here is changing the attitudes and behaviour of key duty bearers, as it is bias that is the biggest barrier to equal provision for minorities and socially disadvantaged groups. Despite the best of laws and programmes, outcomes continue to let minorities down, because discriminatory behaviour is so deep-seated. Training, exposure and appropriate incentives are required to change behaviour; and
- Effective effort for improved outcomes also requires investment of resources and energy in observation and measurement, creating data disaggregated by individual groups and monitoring and measuring efforts using those data to provide an accurate picture of performance and outcomes. The region as a whole is weak on data and analytics, but without statistical data specifically disaggregated by groups as well as qualitative data on experiences and impact, measuring and tracking performance is an impossible task. All states need to progress in that direction.

For regional actors

Behind poor national commitment and effort for minority outcomes in the region is majoritarian nationalism, much of it competitive across borders (examples being Hindu nationalism in India, in opposition to Islamic in Pakistan; and Sinhala-Buddhist in Sri Lanka against Tamil), which disincentivises action perceived as favouring minorities by deepening democracy and strengthening minority safeguards. In this kind of stalemate, hope for a breakthrough lies only in engendering cross-border dialogue and understanding. There are various forms this could take:

- Debates and discussions based on new data, findings, analysis and insights, to educate citizens and the policy community on the condition of minorities, to show how provision for them works or not, and how drivers of minorities' deprivations and their struggles for dignity everywhere, regardless of their affiliations, are similar;
- South Asia-wide cross learnings: sharing of experiences, good practices, and challenges in providing for minorities across borders, to showcase how challenges could be overcome and progress advanced;
- Regional networks and alliances for advancing minority rights, working across national borders and engaging with each other to share experiences, develop common ground on minority demands, voice demands, and bring to bear collective pressure on duty bearers and civil society actors to act for minorities; and
- Regional platforms drawing the attention of international entities to the condition of minorities in the region, leveraging their strengths and engaging with UN and other multilateral mechanisms to push the envelope for minority rights in the South Asia region.

Given the poor legitimacy, interest and capacity of formal regional entities – SAARC in particular – regional civil society must take the lead in this Track II type work, paving the way for greater regional movement on dialogue and exchange on minority and human rights.

For international community

The international community needs to pay greater attention to the condition of minorities in South Asia.

- The problem is vast, both in terms of the scale (the largest number of those deprived and discriminated against) and nature of the problem

(deep-seated caste and gender discriminations, and religious extremism, making progress that much more difficult).

- Progress with outcomes for minorities in South Asia will have a significant impact on meeting SDG targets, hence the additional attention is practical too.
- South Asia has seen many long-standing armed conflicts and identity-based movement, and some conventional intra-regional wars too. All have as their drivers grievances of minorities that remained unmet.
- Majoritarian nationalism has been on the rise in the region, including in countries as yet robustly democratic. Their capturing state power has been making life for minorities even more difficult, and progress on minority rights that much more contingent.

Yet South Asia is the only region without a regional mechanism or process for minority rights, and without traction amongst state parties on it. What is needed is a UN-led effort to get member states in the region to agree on a charter of minority rights, and a mechanism and process for enforcing those. This will require the UN's close handholding throughout the process, providing technical and legitimacy support, and for other multilateral bodies as well as the rest of the international development community to support the process.

For minority communities and civil society

Finally, no effort at advancing minority rights will bear fruit without the effective involvement of targeted communities themselves. Minorities are deprived and discriminated against ultimately because they are excluded from decision-making processes. Greater participation of minority communities will require:

- Their improving their capacity to organise themselves, mobilise support, network with other interest groups, document and track violations of rights and progress made, and make demands on duty bearers and laws and structures. This will require significant and organised investment of resources and energy in minority activists, community-based organisations and platforms; and
- Rights-minded civil society supporting this community-led effort, through handholding, signposting, investment and networking, at the local and national level, making demands on state institutions and influencing the policy community.

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Chapter 2

Looking Back

2017–18 in the Lives of Minorities in South Asia

The South Asia Collective

Introduction

Minorities in South Asia are a mix of religious, ethnic, linguistic and caste groups, with women being particularly vulnerable. Recent years have continued to be detrimental to minorities in the region. They have faced targeted attacks on individuals, groups and places of worship; and government suppression and prohibition of cultural practices. These include killings by armed Islamist groups in Afghanistan and Pakistan and by vigilante groups and lynch mobs associated with Hindutva groups in India; the targeting of bloggers by Islamists in Bangladesh; and communal flare ups involving Buddhist extremists in Sri Lanka. South Asia continues to be a difficult place for its minorities. The Peoples Under Threat rankings, which list countries where communities face the greatest risk of genocide, mass killing, or systematic violent repression, include every single country in South Asia, with varying degrees of threat (Minority Rights Group International 2018). The only one missing is Bhutan, about which there is little knowledge.

This chapter, looking back over the events of 2017 and 2018 (up to the month of August), especially targeted violence against minorities by both state and non-state actors in the region, catalogues the human tragedy playing out in the region in an attempt to demonstrate the implications of the more long term and institutionalised discrimination and marginalisation of minorities in the socioeconomic realm – the focus of this year’s report. In the literature on minority rights violations, one can see strong links between the two – the long term marginalisation of minorities and physical attacks against them. The causality works both ways. Long term and institutionalised marginalisation paves the way for overt physical violence and the targeting of minorities’ cultural rights and practices, because society becomes

used to the discrimination, and impunity is already established, giving the perpetrators free rein. At the same time, violence towards minorities and the resultant polarisation of society reinforces discrimination, especially by state actors that then lend weight to communal considerations in the delivery of citizenship rights and the rule of law. A vicious circle sets in, which is exactly what seems to be happening in South Asia.

Below is a summary of developments during 2017 and 2018, covering the period since the last State of Minorities Report was published, presented by country (listed alphabetically). This account is limited to the information available. In Bhutan's case in particular, we have struggled to find any information on minorities there. For the rest, most of what is available is work by international networks on human and minority rights as well as by local civil society and minority groups and networks. Official data on the condition of minorities is severely limited.

Bangladesh

Bangladesh has been teeming with attacks on its minorities, including indigenous people; atheist and secular writers and activists; and members of the LGBTQI+ community. Members of the Ahmadi, Sufi and Baul communities have also been targeted. There have been inter-group clashes too with entire villages attacked and burnt. While the government has attempted to clamp down on these attacks, minorities still fear for their lives, security and property.

The Bangladesh Hindu Buddhist Christian Unity Council compiled 959 reports of violations of minority rights between January and October 2017, based on media reports. These included murder, attempted murder, death threats, assault, rape, kidnapping, and attacks on homes, businesses, and places of worship (United States Department of State 2017a). These followed some 907 incidents of political violence in Bangladesh in 2016, many against minority groups, which resulted in 177 deaths and 11,462 injuries. Reports on these were compiled by the Bangladesh legal aid and human rights organisation Ain o Salish Kendra (ASK) (2016: 13). A bi-annual report by the Kapaeeng Foundation reported that in the first 6 months of 2018, there were attacks on at least 209 indigenous persons and 125 families. Victims included 12 children and 23 women.¹ This section aims to

1. <https://www.dhakatribune.com/bangladesh/2018/07/02/report-209-indigenous-people-victimized-in-six-months>

provide a snapshot of events in the country affecting minorities from January 2016 to August 2018, especially attacks by non-state actors on individuals from minority communities.

On 2 January 2017, a Hindu named Narayan Chandra Das was killed in Naokhali over extortion (ASK 2018). On 8 May 2017, Mustafijur Rahman, an imam of the Ahmadiyya community, was brutally hacked to death in Mymensingh district.² On 24 May 2017 the Bangladesh Christian Association reported a Christian family being attacked by Muslim real estate investors and local government officials, who wanted to seize their land (United States Department of State 2017a).

On 2 June 2017 at least 224 houses, offices and shops were razed to the ground in an attack on indigenous people in Langadu in Rangamati. Tensions began with the brutal killing of the local leader of the Awami League's youth front, Juba League: Nurul Islam Nayan. Two indigenous Chakma persons were accused. During the funeral procession, a crowd of thousands gathered. Some were holding banners demanding the punishment of 'indigenous criminals'. As the procession moved, someone threw bricks at Chakma houses and shops. Soon, houses began to be torched. A 70-year-old Chakma woman died during the attacks. The survivors managed to escape while their homes and livelihoods, including granaries and cattle, were destroyed.³ As of August 2017, 46 people had been arrested for the arson.⁴

On 8 September 2017, the Buddhist community, under the banner of the Bangladesh United Buddhists' Forum, formed a human chain in Dhaka, calling upon the Myanmar government to stop ongoing atrocities against Rohingya Muslims. They also expressed concerns for their safety in the light of rumours circulating against them on social media, and a fear of reprisal from Bangladeshi Muslims.⁵ On 29 October 2017 six persons were detained for looting and vandalising a Hindu Durga temple in Manikganj district (United States Department of State 2017a).

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2. <https://www.indiatoday.in/world/story/bangladesh-imam-of-ahmadiyya-attacked-mosque-976174-2017-05-09>
 3. <https://www.dhakatribune.com/bangladesh/2017/06/11/langadu-attack-manufactured-rage/>
 4. <https://bdnews24.com/bangladesh/2017/08/06/rangamati-court-sends-16-to-jail-over-langadu-violence>
 5. <https://www.thedailystar.net/city/rohingya-refugee-crisis-stop-atrocities-bangladesh-buddhists-urge-myanmar-1459282>

According to ASK Bangladesh's annual observation on the human rights situation in Bangladesh, violence against Hindus in the country in 2017 included the attack, looting or destruction of 212 idols, 45 houses and 21 business organisations (ASK 2017: 14). On 10 November 2017, more than 30 Hindu homes were ransacked, looted and set on fire by a mob in Thakarpur village in Rangpur Sadar upazila of Rangpur. The mob that carried out the attack had emerged from a crowd of about 20,000 people from neighbouring villages, which had gathered based on a rumor that a Hindu had put up a Facebook post defaming Islam. In the police action that followed, one person was killed and at least 5 more severely injured. An angry mob later blocked a highway, protesting the police attack.⁶ Two Union Parishad members were also arrested for suspected involvement,⁷ and 53 further arrests were made.⁸ In January 2018 a government engineer confessed in court that he had incited people to attack Hindu homes, leading to the aforementioned Rangpur violence. In the two cases registered in connection to the attack, the police have referred to 159 named and 2000 unidentified perpetrators.⁹

On 20 January 2018, three pastors were assaulted at a gathering in Gopalganj, over disputed property.¹⁰ The National Coordination Committee for Different Religious and Indigenous Organisations – an umbrella group for ethnic and religious minorities – held a rally on 10 March protesting communal attacks and demanding safety and security.¹¹

On 30 March 2018, a large group of people attacked an Ahmadiyya mosque at Jamalpur's Madarganj Upazila. The attack took place after Friday prayers, and left over 20 worshippers injured.¹² On 12 June 2018, five Hindu houses were attacked in Nasirnagar, Brahmanbaria, leaving nine

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6. <https://www.dhakatribune.com/bangladesh/nation/2017/11/10/one-killed-angry-go-ber-serk-rangpur-hindu-village-facebook-status/>
 7. <https://www.dhakatribune.com/bangladesh/crime/2017/11/17/attack-rangpur-hindus-two-members-arrested>
 8. <https://www.dhakatribune.com/bangladesh/nation/2017/11/11/53-arrested-attack-hindu-houses/>
 9. <https://www.tribuneindia.com/news/world/engineer-admits-to-inciting-people-to-attack-hindus-in-bangladesh/531043.html>
 10. <https://www.ucanews.com/news/thugs-beat-up-bangladeshi-pastors-over-disputed-pond/81314>
 11. <https://www.dhakatribune.com/bangladesh/dhaka/2018/03/10/minority-communities-protest-communal-attack-demand-safety>
 12. <https://www.dhakatribune.com/bangladesh/nation/2018/04/11/jamalpur-ahmadiyya-community-living-fear-mosque-attack/>

injured.¹³ On 22 July 2018, a Hindu religious procession, Ulto Rath Yatra, was attacked by a group of locals in Kotalipara Upazila, Gopalganj. Six devotees were injured.

State actors and minorities

On 5 April 2017, Romel Chakma, an indigenous college student and leader of Pahari Chhatra Porishad, Rangamati, was picked up by the army. It was alleged that the army tortured him and he eventually died of the injuries in hospital. Following his death, a day long blockade was called by indigenous students' political groups in Rangamati. The National Human Rights Commission set up a committee to investigate his death.^{14 15 16}

In April 2017, the High Court confirmed the death penalty for two found guilty of killing individuals for allegedly offending Islam. These were part of the nine killings from February 2013 to April 2016 claimed by banned group Ansar Al Islam (United States Department of State 2017a). In 2017, it was also reported that the Ministry of Education had made changes to Bengali language textbooks. Poems and stories from non-Muslim authors were removed, and Islamic content was added to nonreligious subject matter (United States Department of State 2017a).

Bhutan

When it comes to the status of its minorities, Bhutan is opaque to the world. Religious groups can register with the Commission for Religious Organisation to organise, raise funds, conduct outreach or import literature, among other activities. However, since not all groups are registered, very little is known about events affecting minorities. Of the 108,000 Lhotsampas who had fled Bhutan in the 1990s, most have been resettled by the United Nations High Commissioner for Refugees (UNHCR) under a third country resettlement process, with the US resettling 100,000.¹⁷ The remaining

13. <https://www.dhakatribune.com/bangladesh/nation/2018/06/12/five-hindu-households-attacked-in-nasirnagar-9-injured>

14. <https://bdnews24.com/bangladesh/2017/05/02/nhrc-investigating-hill-student-leader-romel-s-death>

15. <https://www.dhakatribune.com/bangladesh/2017/04/21/romel-chakma-death-ppc-declares-blockade-rangamati/>

16. <https://www.thedailystar.net/backpage/police-probing-romels-death-1395517>

17. The country created situations where Lhotsampas, a Nepali-speaking minority, were forced out, in a bid to create a homogenous national identity. See: <https://thediomat.com/2016/09/bhutans-dark-secret-the-lhotshampa-expulsion/>

refugees are to be resettled by the end of 2018.¹⁸ These may be resettled in Nepal itself, though some, who refused third country resettlement, wish to go back to Bhutan. Bhutan itself maintains that it will take back only those who can prove to be Bhutanese.

According to Open Door's World Watch List 2018, Christians in Bhutan continue to face discrimination, with the NGO rating their persecution as 'very high'. Examples include a student who was not allowed to graduate from school due to her religion; a church building locked up and another demolished; a Christian man denied government identification; and Christian farmers who were excluded from the traditional communal harvesting process.¹⁹ It was reported that a make-shift church working in a private residence had to close after receiving threats and warnings from the government for not being registered. It was also reported that non-Buddhist civil servants were forced to resign if they did not participate in Buddhist rites and festivals (United States Department of State 2017b). Of the 96 registered religious groups in the country, only one is non-Buddhist, the Hindu Dharma Samudaya – an umbrella body representing the country's Hindu population.

India

Targeted violence against religious minorities is not new in India. Since the Bharatiya Janata Party (BJP) took power in the centre in 2014, anti-minority violence has steadily risen, both in number of incidents and in geographical spread. Newer forms of violence are also emerging. According to figures released by the Government of India, there was a rise in the number of communal violence incidents in 2017 compared to previous years. 111 persons were killed and 2,384 injured in 822 communal incidents in 2017, compared to 86 persons killed and 2321 gravely injured in 703 incidents in 2016, and 97 persons killed and 2264 injured in 751 incidents in 2015.²⁰ The state that saw the highest number of incidents, claims the report, was Uttar Pradesh, with 44 deaths and 542 persons injured in 195 violence cases. Other states with a high incidence of violence in 2017 included Karnataka (9 killed and 229 injured); Rajasthan (12 killed and 175 injured); West Bengal

18. <http://kathmandupost.ekantipur.com/news/2017-12-23/after-all-these-years.html>

19. Available at: <https://www.opendoorsusa.org/christian-persecution/world-watch-list/bhutan/>

20. <https://www.hindustantimes.com/india-news/nearly-300-killed-in-2-276-communal-violence-incidents-in-2015-17-govt-tells-rs/story-dQwLNGd1NtcvnKE5Ut1HhP.html>

(9 killed and 230 injured); and Gujarat (8 killed and 125 injured); as well as Bihar and Madhya Pradesh (*ibid*).

Muslims suffered the brunt of the violence in these ‘communal violence’ incidents, which are, in fact, targeted mass attacks by militant Hindutva groups themselves or networks established and nurtured by them. 2017 ushered in, in public discourse at least, the age of lynchings, mostly against Muslims in cow-related attacks, mostly carried out by so-called ‘Gau Rakshak Dals’ (cow protection militias), many working in coordination with state forces. IndiaSpend, an online data site, recorded 24 incidents of cow related violence in 2016, with 58 victims, including 8 deaths. Of these, Muslims accounted for 43%, Dalits for 34%, Hindus for 10%, Sikhs for 3%.²¹ In 2017 it recorded 37 incidents of cow-related violence, with 152 victims including 11 deaths. Of these, Muslims accounted for 61%.²² Cow related lynchings appeared to ease off towards the end of 2017, but they have seen a revival in 2018. A civil society study counted 40 deaths by lynching and vigilantism in February 2018, in 30 incidents spread over several states – notably Haryana, Uttar Pradesh and Jharkhand, as well as Rajasthan and West Bengal (Citizens Against Hate 2018a). Five persons have been reported lynched to death in quick succession since May 2018, all in cow related attacks, one each in in Madhya Pradesh and Uttar Pradesh, and three in Jharkhand.

Interfaith couples also faced harassment, with lynchings carried out against so-called ‘love Jihad’ – a purported Muslim conspiracy to lure Hindu women into marriage. Rumours on social media led to killings committed on suspicion of kidnapping and cow slaughter.

Other forms of targeted violence against Muslims have been reported from several states. In March 2018, in a string of targeted mass attacks against Muslims around Ram Navami festival, five persons were reported killed in West Bengal, and scores injured, besides largescale destruction of property and desecration of religious sites across several districts of Bihar, West Bengal and Telangana (Citizens Against Hate 2018b). Similar targeting of Muslims by organised Hindu groups has been reported in Uttar Pradesh and Rajasthan. Small-scale incidence of provocations, threats and attacks by Hindu groups on Muslim communities and their religious sites and practices, as well as opportunistic violence against overtly Muslim peo-

21. <http://lynch.factchecker.in/>

22. <http://lynch.factchecker.in/>

ple, such as madrassa students and maulvis, is increasingly being reported from the states of Jharkhand, Haryana and Uttar Pradesh, among others. State police also seem to be targeting Muslim youth in extrajudicial executions, with Muslims killed disproportionately in ‘fake encounter killings’ in Uttar Pradesh and Haryana (Citizens Against Hate 2018c). Both states are ruled by the BJP, with top political executives overtly espousing anti-Muslim stances.

Anti-minority violence is not limited to the targeting of Muslims, however. According to the Evangelical Fellowship of India (EFI), a Christian human rights documentation and advocacy group, there were over 300 incidents of abuse targeting Christians in India in 2016, an increase from 177 incidents in 2015 (United States Department of State 2017c). The Religious Liberty Commission of the EFI documented at least 351 cases of violence against Christians and churches in 2017 (ibid). The Union of Catholic Asian News, Persecution Relief recorded 736 attacks on Christians in 2017 compared to 348 attacks in 2016 (ibid). This included four murders, 110 ‘physical violence/arrest’ cases, 70 cases of ‘threats and harassment’, 64 occasions when worship was forcibly stopped, and 49 cases of Christians being falsely accused and arrested. Most incidents were reported from southern Tamil Nadu, and from Uttar Pradesh, Chhattisgarh, Maharashtra and Madhya Pradesh, of which the latter four states are ruled by the BJP, and in which the report noted, ‘the Sangh [Hindu nationalist] cadres have free hand, with the police and administration either looking the other way, or complicit’.²³ EFI described 2017 as ‘one of the most traumatic’ years for Indian Christians in a decade, comparing 351 verified incidents of hate crime against Christians in 2017 to 147 in 2014, 177 in 2015, and 134 in the first six months of 2016.²⁴

Police records as well as the claims of the perpetrators trace these instances of targeted violence and efforts at instigations to extremist Hindu groups, among them Rashtriya Swayamsevak Sangh (RSS), Vishwa Hindu Parishad (VHP), Bajrang Dal, and Hindu Yuva Vahini, and their local variants, and notably senior members and foot soldiers of the ruling Bharatiya Janata Party (Citizens Against Hate 2018a and 2018b).

The period under report also saw restrictions on minority rights written into the law. In November 2017, Jharkhand became the 7th state to adopt

23. <https://www.worldwatchmonitor.org/2018/02/2017-one-traumatic-years-indian-christians/>

24. Ibid.

what are euphemistically called Freedom of Religion Acts, provincial level legislations which prevent conversions, in effect restricting the freedom of conscience guaranteed by the Indian constitution.²⁵ While in select states – Arunachal Pradesh and Rajasthan – these laws apply specifically to religious minorities, in practice the laws everywhere restrict minorities' freedom to proselytise. Anti-conversion laws provide easy tools for anti-minority groups, such as VHP and RSS, to target Christians, especially on false charges of forcibly converting people. Recently, soon after taking power in the centre, the BJP was reported to have made an unsuccessful attempt at instigating a nation-wide anti-conversion law. The period also saw state cow protection laws being further beefed up, with punishments made more strict in some states. These laws have been known to create openings for Hindu extremist groups such as Bajrang Dal and VHP to target cattle traders and pastoralists, especially Muslims, resulting in the lynchings rife in the country today (Citizens Against Hate). Together, state anti-conversion and cow protection laws are the jurisprudential teeth of attempts to physically target minorities in India.

The highest court in the land, the Supreme Court of India, and its subsidiary high courts have in the period under report also passed some key orders affecting minorities. These deserve listing here. In August 2016 the Supreme Court declared the practice of unilateral triple talaq followed in the Muslim community as unconstitutional and unIslamic (United States Department of State 2017c). In the same month, the Supreme Court directed the Odisha state government to reinvestigate 315 pending cases from 2008's anti-Christian violence in Kandhamal, which saw some 90 killed and largescale destruction of property. By August 2018, of the 362 trials completed, only 78 had resulted in convictions.²⁶ On 16 September 2016, Mumbai High Court upheld yoga and sun salutation being compulsory in Mumbai schools, not granting interim stay to a petitioner arguing that non-Hindu children were being made to follow Hindu practices (United States Department of State 2017c).

25. The first of these laws were enacted in Odisha (1967), Madhya Pradesh (1968) and Chhattisgarh (1968), to be followed later in Arunachal Pradesh (1978), Gujarat (2003), Rajasthan (2006), and Himachal Pradesh (2006). Tamil Nadu, under a BJP coalition government, adopted the law briefly in 2002, but public opposition forced the government to withdraw in 2004.

26. <https://indianexpress.com/article/india/10-years-after-kandhamal-riots-both-sides-say-they-await-justice-5322057/>

The Supreme Court in April 2018 set aside a High Court order from 2017 that had annulled the marriage of a Hindu girl to a Muslim man because the girl had converted to Islam. The Supreme Court held the right to choose one's partner and one's religion to be a fundamental right.²⁷ On 17 July 2018 the Supreme Court, in the light of cow vigilante cases, passed orders that included a slew of preventive, remedial and punitive measures to deal with mob violence and cow vigilantism, directing state authorities to provide relief to victims and take action against perpetrators as well as complicit state actors.²⁸ The Supreme Court is also supervising the process of updating the National Register of Citizens (NRC) in eastern Assam, to determine the nationality of residents. This exercise, which has involved processing the claims of some 32 million applicants, has already identified some 4 million as ineligible, causing fear and uncertainty in the minds of the excluded, even as an appeals process is underway.

Pakistan

Through 2017–18 Pakistan continued to battle extremism and violence against minorities. Legal provisions such as the country's blasphemy laws continue to be misused to target minorities. According to a recent report by the Centre for Social Justice, 74% of these blasphemy cases were reported from Punjab.²⁹ In 2017 at least 17 individuals were booked under the country's blasphemy laws, compared to 18 new cases in 2016 (United States Department of State 2017d). Through 2016–2018 over 140 Pakistani Shias have 'disappeared', according to community activists.³⁰ The country's national elections in July 2018 elected Imran Khan, leader of the Tehreek-e-Insaf party, as Prime Minister. Imran Khan has defended blasphemy laws. How minorities fare under his watch is yet to be seen.

A snapshot of events related to ethno-religious minorities from January 2017 to August 2018 is provided below. The trends include the following:

- Minorities were the target of violence by non-state groups and discriminatory practices by state law enforcement agencies. Ahmadis, Shias,

27. <https://indianexpress.com/article/india/right-to-marry-supreme-court-hadiya-case-5131055/>

28. <https://www.firstpost.com/india/supreme-court-tells-parliament-to-draft-new-law-on-mob-lynching-condemns-mobocracy-highlights-from-judgment-4758471.html>

29. <https://tribune.com.pk/story/1657005/1-74-blasphemy-cases-pakistan-originate-punjab-reveals-report/>

30. <https://www.bbc.com/news/world-asia-44280552>

Hazaras and Christians suffered the brunt of this.

- Positive legislative changes such as the promulgation of the Hindu Marriage Act 2017 and the amendment to the Christian Divorce Act 1869 sought to protect minorities, especially women, from discrimination and abuse. Other attempts such as the Sindh Criminal Law (Protection of Minorities) Bill failed to pass.

Targeting of minorities by non-state actors

In January 2017 an anti-terrorism court acquitted all 106 accused of being involved in the Joseph Colony attack of March 2013, during which an armed mob torched around 150 houses in a Christian neighbourhood following allegations of blasphemy against a Christian man,³¹ who himself remains on death row following conviction in 2014 (United States Department of State 2017d). On 19 February 2017, a mob stormed into the Christian majority village of Baba Bandook Saen, accusing one of its residents of committing blasphemy.³²

In April 2017 23-year-old journalism student Mashal Khan was killed by a vigilante mob over allegations of blasphemy.³³ An investigation team ordered by the Supreme Court found the blasphemy accusations to be fabricated (United States Commission on International Religious Freedom (USCIRF) 2018). In February 2018 a Pakistani court sentenced one man to death and handed life terms to five others for the murder. 25 others were convicted of lesser offences in the case and 26 people were acquitted.³⁴

On 23 June 2017 at least 85 Shia Muslims died from twin bombings in the northwestern city of Parachinar. A Sunni armed group, Lashkar-e-Jhangvi, claimed responsibility.³⁵ ³⁶ On 22 December 2017 assailants opened fire and killed two Shia Hazaras in Quetta. The victims were coal miners returning to the Mach coal field after a holiday.³⁷

31. <https://tribune.com.pk/story/1310101/mob-violence-106-acquitted-joseph-colony-case/>

32. <https://www.aljazeera.com/news/2018/03/suspect-lahore-blasphemy-case-fighting-life-180303085358736.html>

33. <https://www.dw.com/en/pakistan-journalism-student-latest-victim-of-blasphemy-vigilantes/a-38433834>

34. <https://www.bbc.com/news/world-asia-42970587>

35. <https://www.aljazeera.com/news/2017/06/twin-blasts-kill-dozens-parachinar-market-170623141126819.html>

36. <https://www.dawn.com/news/1341501>

37. <https://www.dawn.com/news/1378358>

At least four persons from one Christian family were killed in an attack in Quetta on 3 April 2018.³⁸ On 15 April at least two Christians were killed when leaving church after Sunday service in Essa Nagri in Quetta.³⁹ Islamic State in Iraq and the Levant claimed to have carried out two gun attacks and bombed a church, all in April 2018.⁴⁰ Such crimes against the community are driving Christians out of Quetta, according to reports.

April 2018 witnessed four targeted attacks on Hazaras. The month began with one killed and another injured when gunmen opened fire on their vehicle in Quetta's Kandahari Bazaar.⁴¹ A shopkeeper was killed in a drive-by shooting in Quetta on 18 April 2018.⁴² Two men from the community were killed and another injured in an attack in Quetta's western bypass area on 22 April 2018.⁴³ On 28 April 2018 unidentified assailants killed two Hazara shopkeepers in Quetta.⁴⁴ These killings led to protests by Hazara community members, led by the Hazara Democratic Party.⁴⁵

At least 20 were killed on 10 July 2018 in a suicide bombing at the Awami National Party's Peshawar campaign event. The Pakistani Taliban claimed responsibility for the attack, which killed politician Haroon Bilour.⁴⁶ On 14 July 2018 a suicide bombing at an election campaign event in Mastung, Balochistan killed at least 149. Islamic State claimed responsibility for the attack.^{47 48} This was the second deadliest militant attack in the country since independence. In another attack claimed by Islamic State, a man blew himself up outside a polling station in Quetta, killing at least 31 people on 25

38. <https://www.aljazeera.com/news/2018/04/killed-attack-christians-pakistan-quetta-180402161157315.html>

39. <https://www.dawn.com/news/1401797>

40. <https://www.telegraph.co.uk/news/2018/04/21/christians-claim-forced-pakistani-city-isil-violence/>

41. <https://www.dawn.com/news/1398907>

42. <https://www.dawn.com/news/1402346>

43. <https://www.dawn.com/news/1403198/two-hazara-men-gunned-down-in-targeted-attack-in-quetta-police>

44. <https://www.hrw.org/news/2018/04/30/pakistans-hazara-community-under-attack>

45. <https://www.dawn.com/news/1404857/govt-talks-with-hazara-protesters-inconclusive>

46. <https://www.aljazeera.com/news/2018/07/suicide-bomber-kills-anp-candidate-supporters-election-rally-180710201101463.html>

47. <https://www.nytimes.com/2018/07/14/world/asia/pakistan-suicide-bombing-election.html>

48. <https://www.bbc.com/news/world-asia-44847295>

July 2018.⁴⁹ On 17 July an artist employed at the National College of Arts in Lahore was killed by his landlord over fake blasphemy charges.⁵⁰

Targeting of minorities by state actors

In January 2017 there was public outcry after five secular social media activists who had criticised the government went missing. Four returned weeks later, with one publicly saying he had been tortured by a state intelligence agency.⁵¹ The fifth activist, Samar Abbas, returned over a year later in March 2018.⁵² In May a Hindu man, Prakash Kumar, was arrested in Hub, Balochistan for alleged blasphemy. A crowd gathered outside the police station to lynch him and was stopped only by police intervention.⁵³ A Christian teenager was arrested in August 2017 in central Punjab province, again over allegations of blasphemy, for burning the Quran.⁵⁴ In September 2017 a court sentenced a man to death, arrested in July 2016 on allegations of sharing blasphemous material via messaging service WhatsApp.⁵⁵ Three Ahmadis were sentenced to death for blasphemy on 12 October 2017 in Sheikhpura, following their arrest in May 2014 for allegedly tearing down religious posters in Bhoiwal, southwest of Lahore. The accused claimed the posters carried anti-Ahmadi slogans. The fourth accused was shot and killed in police custody days after the incident took place.⁵⁶ On 16 May police brought 20 Christians to court in Karachi and charged them for possessing arms and being involved in criminal activities. The families of those arrested said that security forces picked up more than two dozen Christians without any charges from Gulshan-e-Iqbal and other parts of the city.⁵⁷ A 19-year-old Hindu boy was arrested in Tando Allah Yar's Mirwah Gorchani area for allegedly posting blasphemous content on social media on 31 July 2018.⁵⁸

49. <https://www.bbc.com/news/world-asia-44924384>

50. <https://thediplomat.com/2018/08/misuse-of-blasphemy-law-again-on-the-rise-in-pakistan/>

51. <https://www.dw.com/en/pakistans-missing-activists-whats-behind-the-disturbing-phenomenon/a-41754825>

52. <https://tribune.com.pk/story/1654420/1-missing-activist-samar-abbas-returns-home/>

53. <https://indianexpress.com/article/india/hindus-balochs-condemn-arrest-of-hindu-man-in-pakistan-4643049/>

54. <https://www.dw.com/en/pakistan-christian-teen-detained-over-koran-burning/a-40166731>

55. <https://www.theguardian.com/world/2017/sep/16/pakistan-man-sentenced-to-death-for-ridiculing-prophet-muhammad-on-whatsapp>

56. <https://www.aljazeera.com/news/2017/10/ahmadis-sentenced-death-blasphemy-171012081709423.html>

57. <https://www.dw.com/en/police-arrest-dozens-of-christians-in-pakistan/a-43839440>

58. <https://www.pakistantoday.com.pk/2018/08/01/19-year-old-hindu-boy-arrested-for-allegedly-posting-blasphemous-content-online/>

Attempts at legislative or institutional change concerning minorities

The period under report saw some legislative advances affecting the rights of minorities in Pakistan, but it also saw pushback by majoritarian groups. Early 2017 witnessed the passing of The Hindu Marriage Act 2017 – which at long last enables the registration of Hindu marriage, separation and re-marriage, with the minimum age of marriage set at 18 years for both boys and girls – in Punjab, Balochistan and Khyber Pakhtunkhwa provinces.^{59 60} Sindh had already formulated its own Hindu Marriage Law. The new law provides for mechanisms for the registration of Hindu marriages, procedures for the dissolution of marriages and the grounds on which marriages can be dissolved. It also provides for judicial separation, where the marriage remains intact but parties are no longer under obligation to cohabit with each other. Moreover, the legitimacy of children born out of void and voidable Hindu marriages has also been protected.⁶¹

The Sindh Criminal Law (Protection of Minorities) Bill, passed by the Sindh Assembly in 2016, was returned by the Governor in January 2017 following a string of protests.⁶² The bill recommended that change of religion not be recognised until a person was 18 years of age and was seen as a move to protect religious minorities from forced conversions.⁶³ Many women's and human rights groups have been demanding changes, pointing to certain antiquated sections such as marriages solemnised after sunset being illegal and marriage solemnised between person(s) below the age of 18 being admissible under the Christian Marriage Act in force. Furthermore, the Divorce Act specifies six grounds for the dissolution of marriage by a husband, including conversion to another religion, adultery, bigamy and cruelty; whereas a wife may only initiate divorce proceedings if the husband has committed adultery coupled with cruelty.⁶⁴ The process seems to have stalled at present.

59. <https://www.dawn.com/news/1315482>

60. <https://www.thehindu.com/news/international/Pakistan-Senate-passes-landmark-Hindu-marriage-bill/article17324249.ece>

61. <https://indianexpress.com/article/world/pakistan-parliament-passes-landmark-hindu-marriage-bill-4563476/>

62. <https://tribune.com.pk/story/1287146/sindh-governor-refuses-ratify-forced-conversion-bill/>

63. <https://www.thehindu.com/news/international/Sindh-Governor-returns-Minorities-Bill-against-forced-conversion/article17004387.ece>

64. <https://tribune.com.pk/story/1242277/amendments-christian-marriage-laws/>

In February 2017 the National Assembly passed the Criminal Laws (Amendment) Act 2016. The punishment for the offence of ‘deliberately using words to hurt the religious feelings of any person’ has been enhanced from yearlong imprisonment and an unspecified fine to imprisonment extendable to three years and not less than one year, and/or a fine of Rs 500,000. One of the amendments outlines the duties of a police officer to prevent sectarianism and hate, as well as enhanced punishments for officers guilty of violating this duty. A new clause has been inserted into the Anti-Terrorism Act 1997 defining ‘lynching’ and suggesting punishments for it.⁶⁵

In October 2017 the national discourse against Ahmadis was in the lime-light due to amendments to the Election Reform Act of 2017 by a parliament committee. The wording of the oath on the candidates’ nomination form for Muslim candidates, affirming their belief in the finality of the prophethood of Muhammad, was changed from ‘I solemnly swear’ to ‘I declare’, and separate voter lists for Ahmadis were abolished. There were protests from multiple religious and extremist groups who saw this as an attempt to empower the Ahmadi community. The government relented, returning the oath to its original. The crisis escalated, with various Islamist groups launching protests, only ceasing once the government agreed to several demands, including firing the country’s Law Minister (United States Commission on International Religious Freedom (USCIRF) 2018).

In January 2018 more than 1800 Pakistani clerics issued a fatwa against suicide bombings, declaring them to be ‘haram’ or un-Islamic.⁶⁶ The National Assembly on 24th May 2018 passed a constitutional amendment merging the Federally Administered Tribal Area with Khyber Pakhtunkhwa, a move that is considered to mainstream tribal areas.⁶⁷ But violence continued apace. On 14 March 2018 a suicide bombing outside a police checkpoint in Lahore caused at least nine deaths.⁶⁸ The Tehrik-e-Taliban Pakistan claimed responsibility.⁶⁹

65. <https://www.dawn.com/news/1313249>

66. <https://www.rferl.org/a/pakistan-clerics-fatwa-suicide-bombings-unislamic/28978125.html>

67. <https://www.dawn.com/news/1409710/national-assembly-votes-on-kp-fata-merger-bill>

68. https://www.washingtonpost.com/video/world/the-full-speech-that-rm-of-bts-gave-at-the-united-nations/2018/09/24/f2dfc13a-c01d-11e8-9f4f-a1b7af255aa5_video.html?utm_term=.213a91711ab4

69. <https://www.cfr.org/interactives/global-conflict-tracker#!/conflict/islamist-militancy-in-pakistan>

Sri Lanka

Sri Lanka's minorities continue to face attacks and threats to life and livelihood. Even after the end of the civil war, ethnic minorities have continued to face discrimination and violence. Attacks against religious minorities have also remained unreduced. In 2017 alone the National Christian Evangelical Alliance of Sri Lanka documented 97 attacks, and the Sri Lankan Muslim Council reported dozens of violent attacks on mosques and Muslim prayer rooms, especially during Ramzan.⁷⁰ These attacks were notably characterised by a lack of reportage, especially in local media. The police have also been reluctant to lodge complaints against the majority groups perpetrating the violence. Social media plays a significant role in perpetuating rumours and fake news has encouraged the violence. Major incidents in which minority groups were targeted between January 2017 and August 2018 are detailed below.

Violence against ethno-religious minorities

In February 2017 resettled Tamil women were continuously harassed by Sinhalese soldiers stationed at the irrigation building whenever the women went to the tank for water and bathing needs in Vadamunai, Batticaloa.⁷¹ On 17 September 2017 a Christian congregation was injured during an attack by a large Buddhist mob: stones were pelted at a church in an Eastern coastal town by a mob of approximately 150 members. Six members were injured during the onslaught, including two women. The perpetrators then locked the two injured women in the church, holding them hostage. The remaining four who were injured were taken to the hospital. Unable to reach the police on their emergency hotline, the pastor went to the police station and asked the Assistant Superintendent of police to rescue the two women trapped in the church.

On 26 September 2017 extremist Buddhist monks stormed a UNHCR safe house and attacked Rohingya refugees, following the alleged rape of a refugee girl by a policeman the previous month. Alleging that the refugees were Muslim terrorists who killed Buddhist monks in Myanmar, the violent monks urged their mob to smash the premises while the women refugees huddled with their children in fear.⁷² While this was an attack on Rohingya Muslims, it is characteristic of the increasing anti-Muslim violence in Sri Lanka.

70. <https://www.tamilguardian.com/content/attacks-religious-minorities-continue-%E2%80%98unabated%E2%80%99-sri-lanka-says-us-state-department>

71. <https://www.tamilnet.com/art.html?catid=79&artid=38761>

72. http://www.colombopage.com/archive_17B/Sep26_1506438646CH.php

Since being resettled in 2015 in 60 different villages in Batticaloa, Tamil victims of war have been repeatedly harassed. Many of their homes and crops were destroyed by wild elephants but they are yet to receive the meager LKR 20,000 they were promised by government officials. Tamil Net reports: “Tamil families that are dependent on freshwater fishing are unable to withstand Sinhala intruders exploiting their catch. Farmers are robbed off their cattle by Sinhala colonisers.”⁷³

2018 has so far been a dire year for minorities. A Christian funeral service was disrupted by Buddhist villagers on 18 January 2018 in Vaharai, Batticaloa district (National Christian Evangelical Alliance of Sri Lanka (NCEASL) 2018). The mob was against the burial of the deceased in the village cemetery and attacked the police when they arrived at the scene. On 26 February 2018, a Mosque and several Muslim-owned restaurants and vehicles were damaged in Ampara,⁷⁴ as violence broke out when a Muslim youth working at his family’s restaurant was forced to say he had put sterilisation pills in the food of a Sinhalese customer. He was video recorded saying this on a mobile phone and the video was circulated widely on social media.⁷⁵ The establishment was swarmed by a mob, who burned it to the ground. Following this several other Muslim-owned restaurants in the area were attacked, along with a mosque.⁷⁶ The police did not attempt to arrest the perpetrators, nor to stop the violence.^{77 78}

Immediately after the incident the World Health Organisation (WHO) issued a statement strongly condemning the violence and clarifying that sterilisation pills do not exist. This information was not circulated by the media, however, even though the attacks received wide and lengthy media attention both locally and internationally. The perpetrators who later surrendered to the police were granted bail when the court case was called. The matter that was said to be a sterilisation pill was examined by government analysts and found to be a cluster of flour. Almost a month later the doctors’

73. <https://www.tamilnet.com/art.html?catid=13&artid=38116>

74. <http://www.sundayobserver.lk/2018/03/04/news/govt-mulls-special-police-team-probe-ampara-unrest>.

75. <https://www.colombotelegraph.com/index.php/video-anti-muslim-assaults-lump-of-flour-has-snowballed-govt-balks-at-full-disclosure-on-situation/>

76. <http://www.ft.lk/news/Shops--mosque-damaged-in-Ampara/56-650304>

77. <http://www.ft.lk/news/PM-orders-another-inquiry-into-alleged-police-inaction-in-Ampara-incident/56-650570>

78. http://www.island.lk/index.php?page_cat=article-details&page=article-details&code_title=181012

union released a statement stating that sterilisation pills do not exist. This did not receive much publicity either. The video of the Muslim youth continues to be circulated on social media, causing alarm and dismay among Sinhala Buddhists.⁷⁹

Violence against Muslims continued. On 4 March 2018, there were mass attacks on mosques, Muslim-owned businesses, and homes in the Kandy district by Sinhalese Buddhist mobs. They were encouraged by Buddhist monks both in the area and from afar – through social media. Both organised and spontaneous attacks on Muslims took place in the Kandy district when a Sinhalese man succumbed to his injuries after being assaulted by Muslim youths over a traffic dispute. The violence was wide spread, leaving four dead and several injured. Muslim-owned shops and homes, and mosques were burnt to the ground, leaving several homeless and with livelihoods lost. It was reported that the police and Special Task Force (STF) participated in the attacks and that the violence was only brought to an end when the army arrived. The president called for three days of curfew and an island-wide State of Emergency (SoE). The president also imposed an island-wide social media blackout and ordered internet restrictions on all networks for seven days to prevent hate and violence being spread on social media by extremist Sinhalese groups. This large-scale violence received much local and international media attention, including in-depth analytical reports. Facebook agreed to meet with government officials and relevant ministers to discuss how hate groups can be shut down on the network, however Facebook officials could not provide any solutions. While several hundred perpetrators were eventually arrested by the police, many were released days later. Muslims in the area continue to be harassed by their Sinhalese neighbours and monks in the area. Victims of the violence are yet to receive the compensation for damages that was promised to them by the government. The situation remains tense and volatile for the Muslims across the island.

Some 300 Tamil Iranaitivu villagers continued their year-long campaign to have their land – currently occupied by the military forces – returned to them. On 25 April 2018 they sailed to their land despite the military occupation, however the navy showed no signs that their land would be returned. The Tamils continued with their demand. By August 2018, according to

79. <http://www.ft.lk/columns/-Wanda-Pethi---Digakalliya--and-the-violence-in-Ampara/4-651431>

some reports, 100 community members had managed to permanently move back to the island and have begun to rebuild the town.⁸⁰

On 7 May 2018 it was reported that a Sri Lankan attendant on a North-bound train sexually harassed a Tamil woman and racially abused, and attempted to physically attack, male Tamil passengers who tried to intervene.⁸¹ On 11 July it was reported that a Tamil disappearances activist was attacked upon her return from attending the UN Human Rights Council session in Geneva. Thereafter she was harassed by Sri Lanka's Criminal Investigation Department, who visited her home questioning where she had gone and what she had spoken about there.⁸² A civil society attempt to question the impunity of perpetrators was made on 31 May 2016, when Eastern University staff protested against impunity for ethnic violence by Sinhalese students, following continued assaults and harassment of Tamil students and lecturers by Sinhalese students. This protest did not appear in the local media and the violence continued.

In July 2018, the Saleem Masroof Committee submitted its report on proposed amendments to upgrade Quazi Courts, which govern Muslim personal law in the country.⁸³ This once again brought attention to the demand for reforms to the Muslim Marriage and Divorce Act, which, among other things, does not set a legal minimum age for marriage and allows polygamy. The government is taking the issue to be a 'Muslim issue' rather than one involving fundamental rights, especially of Muslim women, who continue to suffer under Quazi Courts.

Section 5 examines effective participation and Section 6 discusses identity and culture. The attempt is to build a baseline on precepts and practices of minority rights in India. Section 7 provides a snapshot of the on-going debates, which have somewhat accelerated in recent years, seeking to re-fashion majority-minority relations in the country; it also discusses secularism with implications for minority rights. The chapter concludes with a set of recommendations for action.

80. <http://www.ft.lk/columns/-Wanda-Pethi-Digakalliya--and-the-violence-in-Ampara/4-651431>

81. <https://www.tamilguardian.com/content/sri-lankan-train-attendant-harasses-tamil-woman-and-racially-abuses-intervening-passengers>

82. <https://www.tamilguardian.com/content/tamil-disappearances-activist-attacked-days-after-cid-harassment>

83. <http://www.dailymirror.lk/article/Muslim-Marriage-and-Divorce-Act-Reforms-154817.html>

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Chapter 3 Bangladesh

Cracks in the Foundation

*Zakir Hossain and Monjurul Islam**

Introduction

Bangladesh is a country of diverse population where Bengali is the major ethno-linguistic group. Other populations we term 'minorities', including those who belong to Indigenous, Adivasi or small ethnic groups, or religious minorities. The latest census (2011) identified that 1.8% of the population are from small ethnic groups. With regard to religion, the census stated that 86% of the population are Muslim, 12% are Hindu, 1% Buddhist, 0.5% Christian and 0.5% 'other'.

The term Adivasi covers the ethnic population that lives primarily in three districts of the Chittagong Hill Tracts: Khagrachori, Bandarban and Rangamati districts. Chakma, Marma, Tripura and Mro are the major ethnic groups in this region. Plain land Adivasi people mainly live in the northern district of Rajshahi and Rangpur Divisions. Santal, Munda and Oraon are the major ethnic groups in this region. The Garo community usually live in Tangail, Mymensingh, Sherpur, and Netrokona districts, while the Khasi, Jaintia and Monipuri communities are indigenous to the Sylhet Region. Some indigenous peoples (IPs) are also found in the southern part of Bangladesh, like the Patuakhali and Sundarbans regions. Some communities, such as the Shias and the Ahmadias, also constitute religious minorities. Though people from the Dalit community and the tea community mostly belong to the Hindu religious community, they remain distinct in the community due to caste-based practices. The Bihari community, who were

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previously known as stranded Pakistanis, is the largest minority group in terms of language (Urdu speaking).

All these minority groups share one common feature: oppression by the dominant major ethnic group. Indigenous peoples are facing slow ethnic cleansing and in many places, especially in the plain land, they have been ejected from their ancestral land. Many elements of the harassment they face are rooted in this eviction from their land. They are also excluded from the socio-economic development of the state and deprived of its benefits. Just a decade ago people from the Dalit and tea community thought that deprivation was their fate. Due to centuries-long stigma derived from untouchability practices they were unable to imagine better employment, education, and access to health etc. Today, however they are organised and succeeding in persuading the state to address their issues. Though the Bihari community have had their citizenship recognised, however, they are still not entitled to socio-economic benefits provided by the state. Besides, society is not yet ready to provide opportunities to this community due to their ancestors' role during the liberation war. Talk of sexual minorities is still taboo in Bangladeshi society. Though both state and non-state actors have shown sympathy and even taken action to help the transgender community, talking about the LGBTQI+ community in general is still unusual, even among the most conscious citizens.

This report intends to cover the socio-economic minorities of Bangladesh. Religious minorities do exist, including Hindus, Buddhists and Ahmadiyas etc. The discrimination they face in access to socio-economic rights and entitlements, however, is in line with the experiences of the mainstream population and inconsequential in comparison to the struggles of socio-economic minorities. These religious groups mostly face discrimination with regard to civil and political rights. This report has therefore focused on the most vulnerable minority within the minority.

Methodology

Secondary literature review was the major source for preparing this report. However, a number of individual interviews and focused group discussions (FGDs) were conducted with Dalit people, linguistic minorities, tea communities and plain land indigenous peoples. Field visits to Dalit colonies, tea communities, and indigenous land – especially the northern districts of Rangpur division – were essential for obtaining practical information for the report.

Status of Indigenous Minorities in Bangladesh

Introduction

Bangladesh is a culturally, ethnically, religiously and linguistically diversified country with approximately 54 ethnic minority groups (Bangladesh Bureau of Statistics 2011: 3) that live in three districts of Chittagong Hill Tracts (CHT) and in the plain land. These indigenous groups have distinct languages, scripts, literature, religions, and cultures. Though the latest national census estimates that there are 1.5 million Indigenous Peoples (IPs) in Bangladesh (1.10% of the national population) (ibid.), IPs and academics claim the true number is closer to 3 million (Kamal 2014).

Indigenous peoples remain among the most persecuted of all minorities, facing discrimination not only on the basis of their religion and ethnicity but also because of their indigenous identity and their socio-economic status (Chakma 2009: 376). Although there are some policy provisions for the socio-economic development of IPs, the implementation is very weak in practice. Even the government's Seventh Five Year Plan (2016–2020) describes the situation of indigenous peoples as follows:

CHT is one of the most disadvantaged and vulnerable regions in the country in terms of almost all major development indicators, such as income, employment, poverty, health, water, sanitation, education, women employment, access to infrastructure and national building institutions, intercommunity confidence, etc. (General Economics Division 2015: 637)

Land Status of Indigenous Peoples

Land grabbing and eviction are the major reasons behind the socio-economic marginalisation of IPs, both in CHT and the plain land. According to a human rights report on indigenous peoples by the Kapaeeng Foundation (2016), in 2016 several land-related incidents throughout the country killed at least six indigenous people and injured 84 both in CHT and the plain land. The land grabbing, led by the state and non-state actors, put the livelihood of thousands of indigenous peoples of the plain and CHT at risk (around 31699 families, 606 of them from the CHT and 31093 families from the plains). Along with the land grabbing, the perpetrators also demolished at least 1208 houses belonging to IPs from the plain lands in various districts of the country.

Land acquisition in the name of development and economic purposes is going unabated in areas populated by IPs. According to a report published by the Kapaeeng Foundation in 2016 (ibid.), approximately 15429.98 acres of land belonging to indigenous peoples were under the process of acquisition at the time, mostly for the establishment of special economic zones, special tourist zones and reserve forests. Around 1216 families were evicted from their traditional land and another 1035 families were under threat of eviction for land acquisition by the state. It was also reported that 17 houses belonging to IPs were destroyed and looted by the land grabbers, which left hundreds of indigenous men physically injured and a reported 37 women sexually assaulted during the vandalising of their houses. The state's response to these incidents is often merely for show, spurring violence against IPs through inaction.

In 2016 IPs experienced brutal violence in a massive attack on Santals during the acquisition of thousands of acres of land. In November 2016 state-backed miscreants led a brutal attack on the Santal community in Gobindaganj Upazila of Gaibandha district to evict them from 1831 acres of land. thousands of houses were destroyed, valuables looted, and crops and plantations damaged. Three Santal men were killed on the spot and dozens more were shot by the police. Around 1200 indigenous families were forced to leave their land. It was reported that police themselves set fire to the houses of indigenous people (Daily Star 2016).

Economic Status of Indigenous Peoples

Land grabbing and related atrocities, along with other forms of oppression, severely affect the socio-economic status of indigenous peoples, since the majority of them depend on land, forests and natural resources. Each year, thousands of indigenous people lose their jhum and mouza land due to encroachment by the state, and thus livelihood opportunities too. The Kapaeeng Foundation's report stated that the livelihood of 80 jhum farming families in Lama Upazila, Bandarban district is under threat, allegedly due to regular obstruction, intimidation and death threats by Lama Rubber Industries Ltd. Moreover, the destruction of crop fields and fruit gardens by the Bengali settlers in CHT increased alarmingly last year. In 2016 Bengali settlers repeatedly attacked and destroyed the fruit gardens of indigenous people in Naniarchar Upazila, Rangamati district, but the state is yet to take any action.

The socio-economic status of most indigenous communities in the plains, particularly in the north-western part of the country, is known

generally to be even worse than that of indigenous communities in the CHT. Incessant land grabbing has led to only 8% of indigenous people having ownership over land in the plain (according to Rabindranath Soren, 2016)¹ Most of these people are employed as sharecroppers – working on other people’s land – or as wage labourers. Though there is a special allocation for IPs of the plain land through the Special Affairs Division (SAD) of the Prime Minister’s office, most IPs are unaware of this.

In the southwest of Bangladesh, around the mangrove forests of the Sunderbans, where shrimp cultivation is widespread, many IPs are displaced from their land forcefully or for nominal compensation. At Amuli Punjee, Kulaura Upazila, Moulavibazar district, land grabbers destroyed more than 4000 betel vines belonging to indigenous people (Deshwara and Eagle 2016b). Recently, implementation of the Land Boundary Agreement 1974 caused a new problem for the indigenous peoples in these areas: a total of 360 acres of land, on which the livelihoods of around 350 indigenous Garo and Khasi people of Pallathol, Barlekha Upazila, Moulavibazar were dependent, was to be transferred to India according to the agreement.

In recent years, the government’s planned Special Economic Zones (SEZ) have posed a new threat to the life and livelihood of peoples, particularly indigenous people. The proposed SEZ in Chandpur, Chunarughat Upazila, Habiganj district has threatened the livelihood of nearly 16,000 tea garden workers, who come from various indigenous and marginalised communities that are dependent on the land (Ahmed 2015). 951 out of 3951 acres are agricultural land, which has been used for the cultivation of rice by tea workers for the last 150 years. Similar attempts have been made in the name of an SEZ at Naharpunji, Sreemangal Upazila where around 700 families from the Khasi community have been living for over 150 years and earning their livelihood by cultivating betel leaf (Deshwara and Eagle 2016a). The demarcation of thousands of acres of land as reserved forest in Madhupur, Tangail district poses a threat to the life and livelihood of indigenous peoples.

Years of destruction of the livelihood opportunities of indigenous peoples eventually resulted in the eruption of famine in the CHT in 2016. The Dhaka Tribune (2016) reported that thousands of people in

1. Shared by Rabindranath Soren, President, Jatio Adivasi Parisad (JAP) (National Indigenous Council) in a public hearing on access to justice for indigenous people of the plain lands, organised by Nagorik Uddyog and Kapaeeng Foundation on 6 December 2016.

Khoimukhipara, Tindu, Sangu, Boro Modak and Remarky were starving due to the shortage of food. Due to poor crop yields they had to depend on potatoes for several months and sometimes even had to pass their days eating leaves from trees (Barua 2012). The encroachment of jhum cultivation land for rubber cultivation and the introduction of hybrid and non-indigenous mango cultivation are considered to be the major reasons behind this famine. Similar incidents were also reported in the Sajek area of Rangamati district at the end of 2016. Though officials claim that there were no hunger-related deaths reported, many families were threatened with starvation and children were the worst sufferers. Many people were complaining that the government and non-governmental organisations were yet to come up with any relief supplies. Local government officials denied ignoring the crisis and tried to reassure people, saying that plans were being drawn up to provide the best possible support to alleviate their suffering (Kapaeng Foundation 2016).

Education Status of Indigenous Peoples

‘We speak Chakma, our language, at home. My family members are educated. But no-one knows how to write in Chakma’ – Napoleon Talukder, student of Notre Dame College (Billah and Niloy 2016).

While the government claims almost 100% enrolment in primary education with an average 20% dropout rate (The World Bank 2016), it seems that the status of indigenous peoples is never counted in these statistics. The dropout rate from primary education in the CHT and Haor areas is higher than in other marginalised areas. While the average enrolment rate in the CHT and Haor areas is 60–70%, the dropout rate is 30–40%. The latest census by the Department of Primary Education shows that the dropout rate is 29% in Bandarban, 23% in Khagrachari and 22% in Rangamati, with the average dropout rate being at 25% in the three hill districts. Though there are no statistics available, enrolment and dropout rates are also alarming in the plain land, according to the indigenous community there.

Reasons behind the high dropout rates in these areas include the distance of travel to school and language barriers. The majority of the primary schools in the CHT do not instruct local students in their respective indigenous mother tongues, which contributes to the huge dropout rates at the primary level. In the three hill districts – Rangamati, Khagrachar and Bandarban – only 125 primary schools out of 1561 have a mother tongue based Multi-Lingual Education (MLE) system at the pre-primary level (Alamgir 2015). In the absence of MLE, hill students are suffering. Children often

find it difficult to understand lessons written and delivered in the Bengali language and dropouts are frequent.

As part of the implementation of the National Education Policy 2010, the government decided in 2013 to introduce mother-tongue based pre-primary education by publishing primary text books in five different indigenous languages – Chakma, Marma, Tripura, Sadri and Garo. However, the government has so far failed to deliver, despite reiterating their commitment to publish textbooks in these languages in 2017. It is important to mention that the Santal language was excluded from the list following a debate over whether the script of the textbooks should be Bengali or roman. Hence the Santal children, despite coming from the largest indigenous community in the plain land, will lose out on the opportunity to learn in their mother language.

Health and Hygiene

Exclusion of indigenous peoples from mainstream society in the plain land has led to poor access to health services and information. The few, Christian missionary run hospitals that do exist are inadequate. In CHT, distance is the major barrier to accessing health services and health-related information. Women are at the highest health risk, especially during child-birth. Malnutrition, anaemia and malaria are the most common diseases in the CHT, to which indigenous women are particularly vulnerable (Waresi 2017). Though many health and welfare services in Bangladesh are provided by both governmental agencies and NGOs, in hill areas these services are few and far between. Government and private health care centres are often made inaccessible to indigenous peoples by irregular and costly transport. As a result, dependency on traditional healers is still high among IPs.

Access to Water and Sanitation

Plain land indigenous people still depend on water from streams, rivers or ponds for drinking and household work. While some members of the community have a shallow tube well for water, landless people are unable to establish tube wells or sanitary latrines. Open defecation still prevails in the plain land indigenous community. In the CHT, access to safe drinking water is difficult due to the topography of the area. The safe water options available are often costly and require specific technical support that is not easily found in the CHT. Many of the paras (villages) continue to use hanging latrines or practise open defecation, increasing the prevalence of faeco-oral and other communicable diseases.

Government Initiatives for Socio-Economic Development of Indigenous Peoples

The Seventh Five Year Plan (2016–2020) of Bangladesh mentioned that heterogeneous groups like indigenous peoples are particularly vulnerable to extreme poverty, natural disasters, and other external factors that may impact their well-being. Likewise, their access to health and nutrition services is often restricted and their education participation and achievement tends to be low. Therefore, the different needs and priorities of these social groups must be considered when planning to eradicate poverty and improve Human Resource Development.

The National Social Security Strategy (NSSS) has several specific programmes for the indigenous [peoples of the Hill Tract. The three major programmes are: allowance for beneficiaries in the Chittagong Hill Tract Areas; food assistance in the Chittagong Hill Tract Area; and Non-Bengali Rehabilitation. The Seventh Five Year Plan says that during the Sixth Five Year Plan (2011-2015) there was an average benefit paid of 1,644 taka per household, but no data was shown. According to the report, in the fiscal year 2011–12 (FY11–12), 170 million BDT was allotted for the rehabilitation of 0.11 million non-Bengali settlers. The Chittagong Food Assistance Programme covers about 0.71 million people, allocating a 2259.00 million taka budget in FY11–12. However, the report also expressed that there was a lack of data availability in this regard.

With regard to the socio-economic development of IPs, the Seventh Five Year Plan aims to guarantee indigenous people their social, political and economic rights; ensure their security and fundamental human rights; and preserve their social and cultural identity. This will only be achieved by providing indigenous people with improved health and education services and promoting their employment, as well as protecting their rights to land and other resources. One of the chief strategies is to fully implement the 1997 Chittagong Hill Tracts (CHT) Peace Accord.² Others include actions to promote the economic empowerment of IPs, improve their quality of life and legally protect them.

2. Signed between representatives of CHT tribes and the Bangladesh Government, guaranteeing rights for local communities in return for cessation of the long-drawn hostilities by armed groups fighting government forces against deprivations faced by CHT tribes, including poor services and loss of land and forest resources.

Implementation of State Laws and Obligations to International Treaties

There are numerous international human rights instruments, national laws and policies that recognise and protect indigenous people's right to land and natural resources.

However, there has been no positive effort from the government of Bangladesh to respect, protect and fulfil of those rights. Land dispossession of indigenous peoples is in contravention of existing and functioning national and international laws, the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and the ILO Convention 107 – which safeguard the individual and collective rights of IPs. The Bangladesh government ratified ILO Convention 107 on Indigenous and Tribal Populations in 1972. It remains reluctant, however to harmonise its national laws and policies in line with the spirit of the convention. Without implementation, therefore, the ratification of ILO Convention 107 in Bangladesh is of little significance. The East Bengal State Acquisition and Tenancy Act, 1950 regulates and forbids the transfer of lands owned by indigenous people to non-indigenous people in the plains without the consent of the government's district officer. However, this is only partially practised in some parts of the plain land.

The Committee on the Rights of the Child considered the fifth periodic report of Bangladesh and in 2015 made the following observations regarding children belonging to minority groups:

The Child Rights Committee is concerned that children from minority groups, especially Dalit children and indigenous children face discrimination and violence and lack access to quality education, particularly education in their mother tongue. The committee is also concerned about the lack of recognition by the state party of the indigenous identity of Adivasi indigenous peoples. In the light of its general comment No. 11 (2009) on indigenous children and their rights under the convention, the committee recommends that the state party '(a) Take all measures necessary to protect minority and indigenous children from discrimination and violence;... (c) Adopt comprehensive measures, including affirmative ones to ensure that minority and indigenous children enjoy all their rights, especially in the areas of health and education' (Committee on the Rights of the Child 2015).

Despite these recommendations, however, no satisfactory initiative has been undertaken by the government with regard to the educational development of indigenous children. As previously mentioned in this report, four years after the government's commitment to publish textbooks in indigenous languages, no such action has materialised.

Present State of Implementation of The CHT Accord

There has been some implementation of the CHT accord, although fundamental aspects of the accord have not yet materialised, even 19 years after it was signed. The provisions that have been implemented are as follows: enactment of the CHT Regional Council Act 1998; amendment of the three Hill District Council Acts in 1998; formulation of the CHT Land Dispute Resolution Commission Act 2001, which was amended in 2016 as per 13-point recommendations; formation of the interim Chittagong Hill Tracts Regional Council (CHTRC) and the Ministry of CHT Affairs; repatriation of Jumma refugees from the Indian state of Tripura; withdrawal of around 100 temporary security camps (contrary to government claims that they withdrew around 200 camps); and formation of the CHT Accord Implementation Committee, the CHT Land Dispute Resolution Commission and the Task Force on Rehabilitation of Returnee Refugees and Internally Displaced Persons (IDPs), etc.

The important provisions that remain unimplemented are as follows:

- a) Legal and effective safeguards to preserve tribal-inhabited areas of the region;
- b) Devolution of powers and functions to the CHTRC and the three Hill District Councils (HDCs), including general administration, law and order, land and land management, policing (local), forest, environment, etc;
- c) Holding of elections to the CHTRC and the three HDCs through formulating Electoral Roll Rules and Election Rules and preparing a voter list with permanent residents of the three hill districts in the CHT;
- d) Resolution of land disputes and cancellation of land leases given to non-residents;
- e) Withdrawal of all temporary security camps and de facto military rule 'Operation Uttoron' (Operation Upliftment) from the CHT as per a time frame to be announced immediately;

- f) Rehabilitation of internally displaced Jumma families and returnee (India-returned) Jumma refugees along with the restitution of their lands and homesteads to them;
- g) Appointment of permanent residents to all posts and services in the CHT with priority to be given to the indigenous Jumma peoples; and
- h) Amendment of all the other laws applicable to the CHT, including the Police Act, Police Regulation and the CHT Regulation, 1900, in conformity with the accord.

The government of Bangladesh claims that the majority of the provisions of the CHT accord have been implemented. However, civil society organisations and indigenous rights organisations have rejected this claim, saying that only one-third of the provisions of the accord (25 provisions out of the 72) have been fully implemented (Kapaeing Foundation 2016). Two-thirds of the provisions of the accord, therefore, including its most critical provisions, remain unimplemented. Civil society, Indigenous People's Organisations (IPOs) and development actors have been urging the government to take the implementation process forward, but there has not been any perceptible change in this regard to satisfy the keen observers.

Status of Dalits and Excluded Communities in Bangladesh

Introduction

It is estimated that there are about 3.5–5.5 million Dalits in Bangladesh (Chowdhury 2009: 2). This community faces multiple forms of discrimination due to their caste and profession. Dalits often live far below the poverty line and have extremely limited access to health services, education and employment. They live in 'colonies' with very poor housing and work almost exclusively in the 'service sector', doing unclean jobs in urban areas such as street sweeping, manual scavenging and burying the dead. They are frequently prevented from entering the homes of non-Dalits, and discriminated against in access to education, public places, decent employment, renting houses or buying land, as well as access to basic services and government entitlements.

Land and Housing

Urban Dalits used to be cleaners or sweepers for the city corporation, railways, autonomous industries, government hospitals or municipality. They

were provided by their employers a small piece of land to live on, without any other civic amenities. Over the course of time the numbers of Dalits increased, but they still had to live within the same land area. Moreover, frequent evictions often force them to move into new housing with even less space.

Dalit colonies are predominantly very old, two or multi-storeyed (in a few cases, especially in the city of Dhaka) buildings. In most cases, a family is allotted a single room of 10x12 feet where they live for generations. Due to population increase, many families have to live in shabby huts inside the colony. Every urban Dalit colony shares a common scenario, including a crowded and clumsy environment, trash everywhere, dilapidated walkways, overflowing drainage systems, stagnant water, and rooms made from plastic and bamboo encroaching the open space. For instance, around five thousand people live at Nazira Bazar Pakistani Colony at Central Aga Sadek Road in Dhaka, which can accommodate a maximum of one thousand people. Electricity is also inadequate and the inhabitants often manage it illegally.

These colonies are often evicted to fulfil the demands of urbanisation. In most cases, only the very minimum requirement for standard housing is maintained during the resettlement of Dalit colonies. In 2013 the government planned to build 1148 flats for sweepers of Dhaka city. In 2015 the city corporation issued a notice to the dwellers of the colony to move out temporarily (with compensation) to allow the construction of the building. Yet among the 2000 Dalit families in the colony, only 150 work for the Dhaka South City Corporation and, if implemented, the project will leave many of the dwellers homeless.

Corruption is also liable for the poor housing facilities faced by Dalits. In 2005 the government allotted around BDT 209 million for the construction of two buildings. Each building was planned to have six floors, with 10 rooms on each floor. The constructor, however, only built two buildings: one with two floors and the other with one floor. One decade later, no initiative has been taken to complete the construction.

In rural and urban areas, many Dalits are landless and they therefore arrange housing on land that is owned either privately or by the government. In most cases, Dalits live in ancestral houses that they have not acquired or bought themselves. In one study (Islam and Parvez 2014) on Dalit communities, 60% of the respondents said that they are not the owner of their house. Caste identity is the main constraint on Dalit land ownership, even if individuals have financial ability. This study (ibid) found that 53.3% of

respondents faced a 'complex situation' while trying to buy land. □30% of respondents said that they would not be able to buy land from a non-Dalit, even if they had the financial ability to do so, because of their caste identity.

Economic Opportunity and Employment

Dalits in Bangladesh usually do some of the most menial, low-paid and dangerous jobs, such as cleaning toilets, sweeping streets, and emptying other people's septic tanks. Parvez and Islam's study (ibid) shows that 43% of the Dalit population live off sweeping and cleaning work. 22% of them are involved in agriculture while labour in tea gardens is the livelihood of 14% of the Dalit population. However, Dalits are no longer secure even in their very 'own' caste-ascribed jobs, as many of these have been taken up by non-Dalits too, destroying what little job security Dalits may previously have enjoyed. This is of grave concern to the urban sweepers who face a greater threat: if one member of a sweeper family is not employed in a city corporation job, the family will no longer be entitled to live in the tiny colony room that they have been living in for generations.

On the other hand, caste-based identity prevents Dalits from undertaking other professions, even when they have skills or education. The aforementioned study (ibid) shows that only 38.4% of Dalits have a secure job, despite the direction given by the Prime Minister that there should be an 80% quota for Dalits in sweeping jobs. The study (ibid) finds that 59% of Dalit employees face discrimination in the workplace due to their caste identity, and 30% are deprived of the privileges of the job, are paid very little, and often face verbal abuse. Lack of investment and loan opportunities from conventional and micro-credit agencies also prevent Dalit and excluded communities from taking up an alternative profession.

Education Status of Dalits

School dropout rates are very high among Dalit children and Dalit boys and girls rarely continue their education beyond primary school. Caste-based discrimination is a significant cause of low school admission and retention of the Dalit children. Dalit children study in a hostile environment, regularly facing verbal abuse, teasing and taunting on the basis of their caste identity. A study by Equity Watch (2014) found that around 26% of the respondents face obstacles in getting admission into non-community schools due to their family and caste identity. In many cases Dalit children have to hide their identity to get admission to schools. The study found that 30% of Dalit students experienced abuse or hatred from their classmates and others, includ-

ing teachers. Moreover, 6.5% of the respondents said they still had to sit on separate benches in school (ibid).

Dalit students are also deprived of educational privileges and entitlements like scholarships and stipends and the opportunity to participate in cultural programmes, sports and other recreational activities. Additionally, early marriage factors in significantly to Dalit girls' backwardness in education. In the above study (ibid), 76% of the respondents said that child marriage is prevailing in their community and girls get married before reaching 18 years of age. Another study shows that only 5.9% of Dalit girls complete secondary level education (Khan and Rowshan 2016).

The government's education programme is supposed to focus on marginalised communities' education, yet it does not have any specific programmes for Dalit children (Equity Watch 2014). Moreover, the challenges in education faced by Dalits are not considered a serious issue in comparison with those faced by other ethnic minorities. Although an affirmative action quota was introduced for Dalit students in public universities, the lack of legal recognition of their identity prevents them from taking up this privilege. During the 2014–15 academic year, many Dalit students were refused a certificate from the Deputy Commissioner since there was no official gazette published recognising 'Dalit' as a separate identity. Consequently, in the 2015–16 academic year, the number of Dalits seeking admission under the quota privilege has significantly reduced (Nagorik Uddyog and BDERM 2015).

Status of Water and Sanitation

In urban areas, Dalit colonies are usually found to be situated around unclean locations, on the periphery of mainstream society, near garbage dumping sites, with overflowing or choked drains, open sewers and a lack of latrines and bathrooms. There, Dalits depend largely on reservoirs for the preservation of water, which are not cleaned regularly, thereby making the water unsafe for direct consumption and increasing the risk of vector-borne diseases. In rural areas, the water crisis is acute due to a lack of water sources as well as prohibition of Dalits from using common water sources due to their caste identity.

Since Dalits do not hold land titles, they are often considered ineligible for the allotment of sanitary latrines by the government. A 2015 study

found that 89% of rural Dalits use shared (common) latrines and 43% of their toilets are hanging latrines. 90% of the respondents used latrines either without a roof or with a broken roof, which restricted their use during the rainy seasons (Equity Watch 2015). The latrines constructed of tin shed and plastic cause serious privacy issues for girls and women, as well as being unhygienic and posing various health hazards. On average, 16 households, or 84 people, use one water point in Dalit colonies in Dhaka city, and 8 households, or 40 people, use one latrine. 21% of Dalit households in rural areas have their own tube wells and 65% share common tube wells. The remaining 14% use surface water for drinking and other purposes. In both rural and urban areas, many Dalit colonies do not have legal water points and are forced to use unauthorised connections. Additionally, even the most fortunate Dalits could not even dream of 20 litres of water per day. This shortage affects women and children most badly.

Health and Hygiene

Some of the worst victims of occupational risk and disease are the cleaners who are employed in 'traditional' waste disposal. They often suffer from long ailments caused by disposing of waste with bare hands and feet, including fever, colds, back pain, stomach ache, gastric problems, skin disease and problems breathing. The environments in which they live and work put them serious health risk.

Dalits face discrimination while attempting to access medical amenities at government, private or even NGO-facilitated centres. Parvez and Islam's study (Islam and Parvez 2014) found that 21% of respondents faced discrimination in getting medication from hospitals; 15% of respondents said that doctors and dispensaries did not provide them treatment and medicine due to their caste identity; 26% said that doctors do not visit Dalit patients at their homes, nor do midwives even help them in 26% of cases. Strikingly, 18% of respondents get advice from nomads who use traditional medication – like Jhar-fuk (medication through chanting) and Tabiz (a pendant in which a written mantra is inserted) – and 16% received consultation from a Kobiraj or Hakim, who render ayurvedic medication. 22% did not go to any kind of physician and treated themselves by buying medicine from pharmacies. 54% of the respondents stated that there were no government hospitals near where they lived.

Government Initiatives for Socio-Economic Development of the Dalit Community

In light of the severe marginalisation of the Dalit community, the socio-economic development programme in which the government has included them is inadequate. It has also seen poor implementation in terms of access for actual Dalits.

Since the 2011-12 fiscal year there has been a specific allocation in the national budget for Dalits: BDT 100 million in 2011-12 fiscal year, 146 million in 2012-13 fiscal year, and 123 million in 2013-14 fiscal year has been allotted in the national budget for the development of the Dalit, Bede and Transgender communities. The Ministry of Social Welfare implemented various programmes under this allocation, separately for the Dalit, Bede and Transgender communities. In the 2014-15 fiscal year around 92,294,000 Taka was spent, including a monthly old age allowance of 400 taka for 10,539 Dalit people, a stipend for 2877 students and skill training for 1050 people. Moreover, 10,000 taka per head was also planned as a rehabilitation grant for 210 trained people. There were 14,676 targeted beneficiaries.³

The Seventh Five Year Plan (2016–2020) identified Dalits as the most economically marginalised and socially excluded group in Bangladesh, with limited social, economic and employment opportunities to blend with the mainstream. It referred to Dalits as ‘missing poor’. The Seven Five Year Plan reaffirms that the government remains committed and highly sensitive to the needs of these marginalised groups and claims that the adoption and eventual implementation of the NSSS will be a considerable step forward for the development of the Dalit population. It has expressed the strategy for Dalits as follows:

The vision of the Government is to erase the discrimination and exploitation faced by Dalit communities in Bangladesh, so that they can take their place as full citizens of the country.

However, there has been no specific programme (except the social safety net programme) taken up according to the plan.

Dalit leaders and community people say they knew little about the social safety net programme, but by strengthening their relationship with the

3. See: <https://msw.gov.bd/site/page/22f31a43-bdab-4613-9fa2-4bb9ab5fe539/Bede,-Dalit,-Harijan>

Department of Welfare, they have gained access to different services. In many instances, however, Dalit people are complaining that most of the beneficiaries were not Dalits. For instance, in Bhola district, the Department of Social Welfare received 2,592,000 for the educational stipend of 63 Dalit students and old age allowance for 580 Dalit people. The government official claimed that the funds were distributed properly, but the general secretary of the Bangladesh Dalit and Excluded Rights Movement (BDERM) said that in the case of the old age allowance for 580 people, no more than 100 were from the Dalit community. He alleged that political influence had acted in the enlistment of beneficiaries under the social safety net programme.

Status of Tea Garden Workers in Bangladesh

Introduction

There are around 360,000 tea workers in Bangladesh (Faisal and Hossain 2016) who are directly involved with 164 tea gardens, while many others are employed as indirect labourers in other sectors related to tea plantation and procurement. Hunger brought them from different parts of the present India, such as Bihar, Odisha, Andhra Pradesh, Madhya Pradesh, Tamil Nadu, West Bengal, Uttar Pradesh etc from 1840 to 1860 and beyond. At first they were engaged in railroad work, forest clearing etc, and they were later engaged in tea gardens. For centuries they have lived a most inhumane life, isolated from the mainstream community and treated as untouchable.

Economic Opportunity and Employment

Tea workers are paid the lowest wage in the labour sector in Bangladesh. In 2016, after long negotiation, the daily wage of tea labourers was fixed at 85 taka. It had been 69 taka since 2013, and before that as low as 32.5 taka (2008). Even this new income is below \$2 per day, however, and therefore be-

Madhabpur tea workers starving, unpaid for 13 weeks

Workers of a tea garden in Madhabpur upazila, Habiganj were left starving in 2016 when they had not been given their wages or rations for 13 weeks. Almost 400 workers – and their 2000 family members – from the Boikunthapur tea garden estate were living on boiled rice extract, mashed tea-leaves and chillies. An official from the tea garden said on condition of anonymity that they were unable to pay the wages because the tea garden had incurred a loss (Daily Star 2016).

low the poverty line (BPL) according to the World Bank. Fringe benefits other than houses include some allowances, attendance incentives, rations, access to cultivable land for production of crops, medical care, provident fund, and pension etc. A combination of ever-growing inflation and wages far below the necessary keeps tea garden workers in a constant food safety crisis.

A labourer is paid 85 taka for a daily target of 20 kg of pruned plant leaves or 16 kg of non-pruned leaves. An extra 2 taka is paid for surplus leaves beyond the target. If a labourer fails to meet his daily target, taka 3.45 to 4.31 (for pruned and non-pruned leaves respectively) is deducted from his daily wage (Masum and Razu 2016). In addition, costs of house rent, rations, medical services, festival bonuses, provident funds, etc are deducted from their daily wage. After the deduction of all service charges a labourer receives around 350 taka a week. This scanty wage is not also paid regularly, with management often delaying payment for various reasons.

One of the alternatives available to tea garden workers to support their families is to cultivate vegetables and other agricultural products around their houses or on land not used for tea plantation, with permission from estate management. In recent times, however, management has often occupied that land for planation and other purposes, posing a threat to the survival of tea labourers.

Land and Housing

Tea labourers generally have no ownership over the land they live on. In other words, they are the largest minority group who do not have any land title. This has made them very vulnerable and dependent on estate management. A tea worker is provided a house of 8x8 to 8x12 feet, which are designed to accommodate four people but are usually inhabited by 8-10 people. They have no separate kitchens and must use the same room for cooking. Some of the workers live with their cattle, goats or other livestock in the same room. Walls are built of clay, bamboo and straw. Workers interested in making the room more inhabitable at their own expense are forbidden to do so. Moreover, they have to leave the house if none of the family members are enlisted as registered workers.

Education Status of Tea Workers

Ensuring the education of the tea workers' children (6–11 years old) is the responsibility of the company or the estate owners. There are very few government schools in the tea gardens. In recent times, some NGOs have been

No land title, no job

In 2016, two members of the tea garden community were denied jobs in the police force for not having any land, despite already having been selected. Colins Rojario and Raju Prasad Kairi from Kamalganj and Kulaura tea gardens, Srimangal sub-district, passed all the tests for the job and were selected. During police verification of their identity, however, no land title was found belonging to their parents or themselves. According to police recruitment policy, either the applicant or their parents must have a land title. After the police verification the two applicants received a letter from the Superintendent of the Police Department of Maulavibazar, detailing their disqualification. The Bangladesh Dalit and Excluded Rights Movement (BDERM) brought this issue to the attention of the media.⁴ Media coverage on this issue sparked the nation's interest. The National Human Rights Commission reacted to the issue and served a Show Cause Notice to the Srimangal Superintendent of Police for violating the constitutional rights of the applicants. The Home Minister also expressed his concern, advocating for the change of this policy. Finally, the two young men were recruited in the police department.

operating informal schools in the tea garden communities. However, the quality of education provided in these schools is a concern. Schools run by tea estates have no skilled teachers or essential learning materials. Some schools have no toilet facilities or drinking water. An overwhelming majority of the children of tea plantation workers drop out of school. Most guardians employ their children gathering animal feed, taking care of younger siblings, or doing household work or petty work in the tea estate, instead of sending them to school. On the other hand, even tea workers' children with Secondary School Certificates (SSC) or Higher Secondary Certificates (HSC) are denied of well-deserved jobs in the estate.

Status of Water and Sanitation

Wells and streams are the major sources of water for tea workers. In Sreemangal Upazila, six tea gardens – Mitinga, Rajhat, Bhurburia, Madhabpur, Alinagar and Shomshernagar – host around 50,000 tea workers and their family members. There is no deep tube well for this vast population. They use shallow tube wells and stream water. In Mitinga, water from the tea garden pond is also used for drinking and household work. The situation becomes worst during the spring (Falgun and Chaitra), when most of the

4. Daily Prothom Alo, 7 February 2016 [online]. Available at: <https://www.prothomalo.com/bangladesh/article/762466>

wells and streams dry up (Islam and Parvez 2014). Moreover, faeces and chemicals used for tea plantation often contaminate stream water during the rainy season and cause various diseases among the tea workers. Tea workers generally use shared latrines that may be broken or lacking a roof, and which in no way meet the criteria of a hygienic latrine. While the country is about to abolish open defecation, it is practised prevalently in the tea garden (Equity Watch 2015).

Health and Medical Facilities:

In most cases, medical centres on the tea estates provide common medicine for all kinds of diseases. According to the Tea Plantation Labour Ordinance of 1962 and the Plantation Rules of 1977, tea estate owners are liable to ensure workers a health service. In reality, this does not exist. Certain chronic diseases, such as gastric and urinary tract infections, chest pain, typhoid, anaemia, tuberculosis and more, are tea workers' lifelong companions. Women workers commonly suffer immeasurable leg and back pain from plucking tea leaves on their feet all the hours of the day and holding baskets on their back. Besides this, they are exposed to harsh weather conditions, pesticides, mosquitoes and other insects, and poisonous snakes while plucking leaves. Tea garden workers will also often attempt to hide their illnesses and continue working with ill health, since they will not be paid if they take leave due to illness.

Government Initiatives for Socio-Economic Development of the Tea Community

Tea workers do not have access to the government social safety net programme allocated to the Dalit community. However, in 2015–16 the Ministry of Social Welfare started a programme for the socio-economic development of the tea community. Under the scheme 20,000 tea workers were provided with food and other supplies. The National Social Security Strategy (NSSS) does not mention any specific programme for the tea community. However, the Sixth Five Year Plan (2011–15) included the issues of tea workers in the strategy saying '...priority will be given to disadvantaged communities in khas land allocation. Tea Garden owners will also be encouraged to assign some land within the estate to their extremely poor workers as a means for them to build their own garden.' However, so far no such progress has been made.

The Tea Plantation Labour Ordinance of 1962 and the Plantation Rules of 1977 contain provisions for providing quality housing, water and

sanitation, health services and education. The Labour Law 2006 specified the wage entitlements of labourers at different levels. Tea estates have not abided by these provisions. Companies generally lease the tea estate land from the government and govern the activities of the estate as per their management policy. According to them, state policies and mechanisms are not applicable to tea estates. Unfortunately, tea labourers generally lack the resources to bargain with the estate for the implementation of these laws, along with other national legal standards, including the constitution.

Status of Sexual Minorities in Bangladesh

Introduction

Sexual minorities in Bangladesh have long been overlooked in the human rights and development discourse. While society extends some sympathy towards the transgender community, the gay, bisexual and intersexual community are completely marginalised. According to the Ministry of Social Welfare, there are about 10,000 transgender people in Bangladesh.⁵ However, human rights organisations claim that the actual number is much higher than the government estimation. There are no statistics at all about the numbers of gay, bisexual and intersex people from the government or from non-government agencies.

Economic Status of LGBT+ People

In general, gay, bisexual and intersex people face few barriers to entering the mainstream job market and accessing economic opportunities, until their sexual identity is recognised. On the other hand, the transgender community faces severe exploitation in terms of economic activities and employment. Excluded and ostracised, people from the transgender community often become involved in sex work or begging to earn their livelihood, among other economic activities, including performing dances and song, blessing new born babies by singing and dancing, and collecting money from shops in markets and passers-by. It has been reported that collecting money from traders and the public in this way has turned into quite a lucrative business, and that some influential transgender leaders therefore turn to violence to ensure their dominance in the various areas of Dhaka city. In 2016 one transgender leader was killed and another was shot in the back in

5. See: <http://www.msw.gov.bd/site/page/a3498c96-c94a-4fba-9518-13497bdfb46f>

disputes over the control of areas and the sharing of collected money (The Daily Star 2016).

Since the 2012–13 fiscal year, the government has taken the initiative to materialise a programme for improving the living standards of the transgender community. The objective of the initiative is to provide scholarships for the children of transgender people; provide training to improve the skills and earning efficiency of transgender people; develop the financial condition of the transgender community and ensure social security; and provide an old-age allowance to those aged 50 and above.⁶

On 10 June 2015 the Bangladesh Central Bank issued a notice to all scheduled banks, notifying them to take steps to include transgender people in small-to-medium enterprise (SME) activities (Daily Star 2015). This initiative is a significant step towards changing the economic status of the transgender community. However, no specific examples of LGBT+ people taking loans for business initiatives are available.

Education Status of Sexual Minorities

As a community, transgender people need a special mechanism for education. This is non-existent in government planning and policies. As a result, many people from this segment of the population are illiterate. In most cases, they are taken away from their family right after birth, and thus they miss vital parts of early education from parents or families. Generally, those who do have the opportunity to be enrolled in formal schools soon drop out due to discrimination, mocking and harassment by the teachers and their fellow students. Growing up amid such exclusion in family and school environments grossly impedes the education and development of any child. ‘Ever since I was in first grade, I was teased by my classmates for my girlish behaviour. Back then, I didn’t even know I was gay and being called gay was quite offensive. I used to get teased, bullied, and was even beaten a few times for my “inappropriate” behaviour.’ – an anonymous gay student (Hossain 2013).

‘The University of Dhaka has included transgender issues in the gender studies course. The Open University of Bangladesh is another university where there could be further inclusion of transgender topics in the academ-

6. Ministry of Social Welfare 2015. See: <http://www.msw.gov.bd/site/page/a3498c96-c94a-4fba-9518-13497bdfb46f/Transgender-People,19>

The travails of gender identity and proof

After the government's recognition of 'transgender' or 'Hijra' as a third gender in 2013, the Ministry of Social Welfare began to attempt to ensure the decent employment of transgender people. In December 2014 the Ministry of Social Welfare invited applications from transgender people for government jobs. However, applicants had a horrible experience throughout the recruiting process. During the interview they were harassed with inappropriate questions about their gender identity and sexuality. In June 2015 dozens of transgender people who had been selected after the initial interview had to submit to a medical examination to prove that they were transgender. It is reported that these medical exams were conducted by non-medical staff such as custodians, who examined and touched the genitals of the applicants while groups of staff and other patients observed and jeered — sometimes in private rooms, sometimes in public spaces. Hospital staff instructed some of the transgender people to return multiple times, over the course of a number of weeks, to undergo additional examinations. Following these abuses at the hospital, photographs of the 12 transgender people were released to online and print media, along with the claim that they were 'really men' who were committing fraud to attain government jobs. Some transgender people reported that the publication of these photos sparked increased harassment from the general public. Following the exposure they have faced harassment while begging and sex work clients have refused to engage with transgender workers (Knight 2016).

ic curriculum', said Mr. Robaet Ferdous, Associate Professor, Department of Mass Communication & Journalism, University of Dhaka, in an advocacy meeting with the National Curriculum and Textbook Board (NTCB) on the incorporation of transgender issues into the national textbook curriculum (Bandhu Social Welfare Society 2016: 25).

Housing and Land Rights

People from the transgender community generally live in slum or brothel areas. They face poor water, sanitation, and other civic facilities in these dwellings. It is near impossible for a transgender person to rent a house in mainstream society. There is no government scheme in place for their rehabilitation. During the eviction of slums or brothels, no steps are taken by the state for the rehabilitation of the transgender community. Shockingly, they are even deprived of burial land or funeral services for members of their community. In many cases, dead bodies are just deposited in the river after death. In these cases, society, religious bodies and the state all fail to ensure basic respect to the departed soul of a human being.

Access to Health and Hygiene:

LGBT+ people face severe discrimination in access to healthcare; they are denied services in both government and private hospitals, and even by private practitioners. Sexual minorities are at a high risk of developing sexually transmitted diseases (STDs) and HIV/AIDS, but they receive no special medical attention. They are also high-risk victims of physical, sexual, economical and emotional violence from the community (Math and Seshadri 2013). Despite all this, the government often erases the existence of LGBT+ people as well as discouraging them in the name of religious and social morality.

Government Initiatives for Socio-Economic Development Of LGBT+ People

Along with the recognition of ‘transgender’ as a third gender, the government has included the transgender community under a social safety net programme for socio-economic development. However, other sexual minorities have remained out of the state initiative’s focus.

Since 2012–13 the government has had a special scheme for the transgender community (along with the Dalit and Bede communities) under the social safety net programme. In 2015-16 the coverage was increased to 64 districts and around 180 million BDT was allocated for allowances, stipends for transgender students, and skill development training. Transgender students have been provided four types of stipend:

- a. 300 BDT at primary level for 856 persons;
- b. 450 BDT at secondary level for 306 persons;
- c. 600 BDT at higher secondary level for 112 persons; and
- d. 1000 BDT at graduation level for 55 persons.

According to the annual report⁷ of the Ministry of Social Welfare (6669 transgender families have benefitted from different schemes under the social safety net programme. However, a detailed breakdown of beneficiaries, location and scheme is not available in the report. The transgender community complained about the lack of publicity by the government about the social safety net programme. Moreover, transgender people have become distrustful of government aid due to consistent humiliation by different actors of society, including state agencies.

7. https://msw.portal.gov.bd/sites/default/files/files/msw.portal.gov.bd/annual_reports/583f-104d_5461_40e3_b131_dcc1651c34d8/Annual%20Report%20MoSW%202015-16.pdf (Bengali version)

The National Social Security Strategy (NSSS) does not mention any programme for sexual minorities. It only emphasises the social protection of HIV/AIDS affected people and households. The Sixth Five Year Plan (2011-2015) envisages a society in which sexual minority groups can live with respect and dignity and enjoy tolerance and social justice. However, its vision only emphasises building an HIV/AIDS free society with zero new infections, zero discrimination and zero deaths.

Legal Safeguards for LGBT+ People: International and National Standards

National Standard

After repeated government statements denying the presence of any LGBT+ people in Bangladesh, a 2013 notification recognised sexual minorities for the first time (BD News 24, 2013). The notice termed transgender a third gender and recommended its inclusion in official documents relating to sex identification. However, LGBT+ and non-binary people are still not recognised under the current legal framework.

Bangladesh is still using a penal code that criminalises same-sex sexual acts (Section 377). Although this section is gender neutral, it is usually assumed to apply only to men. Section 377 attempts to cover a wide range of sexual acts, including homosexual activity. Even though there have been no known cases of deportation, fines or imprisonment under Section 377, the law is often invoked by law enforcers to harass, extort and blackmail LGBT+ people.

Regional and International Human Rights Instruments

While many other countries signed a United Nations (UN) declaration in December 2008 affirming that international human rights should include sexual orientation and gender identity, Bangladesh was one of 57 to sign a counterstatement. The counterstatement expresses serious concerns about granting rights to ‘certain persons on the grounds of their sexual interests and behaviours’ and suggests that the protection of LGBT+ people could lead to the normalisation of paedophilia. Bangladesh still continues to oppose recommendations of a number of international institutions regarding LGBT+ rights. One example was the sixth Asian and Pacific Population Conference held in Bangkok in 2013, at which Bangladesh expressed its reservations about promoting the rights of LGBT+ people. However, Bangladesh is a signatory to the ICCPR (International Convention on Civil and Political rights), ICESCR (International Convention on Economic, Social and

Cultural Rights) and CEDAW (Committee on the Elimination of Discrimination against Women), which are valuable tools to advocate LGBT+ rights. Unfortunately, very few steps have been made to inject the spirit of these treaties into the sphere of domestic law. In 2013, the National Human Rights Commission (NHRC) of Bangladesh submitted a report that argued that it is now time to ensure that all groups, including transgender and intersex people and other gender and sexual minorities, should be protected from discrimination.

Universal Periodic Review Recommendation on the Rights of LGBT+ People

Bangladesh was reviewed for the second cycle of the Universal Periodic Review (UPR) on 29 April 2013. During the session, Chile made a recommendation (131.2) for the repeal of article 377 of the Criminal Code, which criminalises adult consensual sexual acts (UNHCR 2013). This did not enjoy the support of Bangladesh. In favour of rejection, the state's comment was: 'Bangladesh considers that the laws of the land should be in conformity with the prevalent socio-cultural norms and values of the country. Activities subject to the concerned Article in the Penal Code are not a generally accepted norm in the country.' The suggestion on formal approval of homosexual relations was discarded by the Foreign Minister. In the first cycle of the UPR in 2009 Bangladesh had also rejected recommendations to decriminalise consensual same-sex sexual activity (OHCHR 2009). However, the Government of Bangladesh accepted recommendations made during the 2013 UPR to provide human rights training to law enforcement and judicial officers on the protection of (among others) sexual minorities and to work to adopt measures to protect those people from violence.

Status of Urdu Speaking People or 'Biharis'

Introduction

A large number of Urdu-speaking people in Bangladesh are known as 'Biharis', a term that refers to approximately 300,000 non-Bengali, Urdu-speaking Bangladeshis, who are mostly stranded in camps popularly known as 'Geneva Camps' in Bangladesh. There are 116 of these camps in urban settings in 13 regions of Bangladesh (Islamic Relief Bangladesh 2016). The members of this community were previously known as 'Stranded Pakistanis' after the independence of Bangladesh, and until a decade ago they were legally defined as stateless citizens.

These Urdu-speaking Muslim people originated from different ethno-linguistic groups in Bihar and the neighbouring states of British India. Following communal riots during and after the partition of the Indian Subcontinent they migrated from India to East Pakistan. In 1971, during the liberation war of Bangladesh, the Bihari community supported the Pakistani ruler and were involved in the genocide of Bengali civilians. After the emergence of independent Bangladesh, they faced retaliation and were kept for their safety in Red Cross camps in different parts of Bangladesh.

Termed ‘Stranded Pakistanis’, by 1982 approximately 200,000 of them were repatriated to Pakistan (Joshua Project). However, Pakistan later refused to take back any more Bihari people. Following that approximately 300,000 Biharis remained stateless in Bangladesh, until the Supreme Court gave orders on 19 May, 2008 to provide citizenship to the Bihari people who were born after the independence of Bangladesh. Their long period of statelessness, however, severely affected the socio-economic, cultural, and political development of this community.

Economic Opportunities for Linguistic Minorities

The Bihari community have very limited economic opportunity and most of their activities are based within their camp or living quarters. Denied citizenship of Bangladesh, they do not have the opportunity to be employed in the government service or even in the private sector. They generally operate small-scale trade around their camps, including tailoring, dressmaking (often with Karchupi and sequin work), handicrafts, small auto repair, electric shops, metal work, grocery shops, vegetable selling, butchering etc. Many Bihari people also work as weavers, barbers, rickshaw pullers, drivers etc. The Mughlai food – tikka, kebab etc – served by roadside Bihari restaurants is very popular in the cities. It is common within this community that most of the family members, including women and children, are involved in income-generating activities.

Despite having a national identity, we still are not considered for government jobs due to our Geneva Camp address; even private corporations and banks refuse us due to our camp identity. As a result, our people have to work in the informal sector and small-scale trade. Many of us earn our livelihood through day labour – Mohammad Ziauddin, a camp dweller.

A recent study (Islamic Relief Bangladesh 2016) surveyed 395 households in the Bihari community and found that only 0.3% of the total respondents are in government employment while only 3.2% are working for private companies. The survey also found that only 0.1% are operating large businesses, while others are somehow managing on a meagre income and are facing high levels of poverty, even though they are living in municipality/city corporation areas. The study (ibid) revealed that 38% of respondents earn BDT 3,001–6,000 a month while 31% earn BDT 6,001–10,000. Only 3% of respondents are living with an income above BDT 15,000. It should be mentioned that the average national household income per family is BDT 11,479 and the monthly income of the average urban family is BDT 16,475 (HIES 2010, BBS).

Land and Housing

There are no housing schemes for the Bihari peoples other than camps (Geneva camps) in urban areas. There are some fortunate Bihari people who have been able to protect their land or housing from government acquisition. A small number of Biharis live in their own houses or rented houses outside the camp, hiding their Bihari identity. The remaining thousands live in 116 camps across Bangladesh.

The housing situation in these 116 recognised Bihari Camps in Bangladesh is dire and meets no kind of housing standard. In general, houses in the camps are tiny, usually less than 8x10 feet, and host entire families. As they have no living options outside the camp, several generations have to live under the same roof. Most of the dwellers of the camp are provided with only one room. Many of them end up raising their dwelling another one or two floors upwards. The staircases in the buildings are so narrow that inhabitants struggle to climb them. The threat of eviction of camp is of serious concern for camp dwellers, especially in Dhaka city. From 2001 to 2012, nine petitions were filed on behalf of Biharis in various camps, asking the court not to allow any eviction in the camps before rehabilitation.

Education Status of Linguistic Minorities

I remember my first day of school. All the Bengali students were looking at us as if we were strangers and they were whispering to each other that we are Bihari and that we live in dirty camps... We were marginalised in the classroom and we had to sit in a separate row. – Mohammad Khalid, a member of the Urdu-speaking community in Dhaka.

Poverty and discrimination prevent most Bihari camp dwellers from accessing education. Many families do not have ability to bear educational expenses, so they engage their children in labour instead. Moreover, the social stigma of being 'Bihari' and the identity of living in camps has also limited their educational opportunity. However, interest in education has grown among the younger generation and many can now be found studying at the undergraduate and postgraduate levels, despite their camp address and social identity. The study (ibid) on Bihari communities living in different enclaves shows that 65.3% respondents said their children go to school. Strikingly, however, about 80% of these respondents said that their children dropped-out of school. The major reason identified in the study for dropping out from education is the involvement of children in labour, along with the pejorative attitude of students and teachers towards Biharis.

Health and Hygiene Status

Extreme overcrowding, unsanitary toilets, water clogging, broken drainage systems etc have contributed to a very unhealthy environment in the camps. Fevers, colds and waterborne diseases are especially common among the camp dwellers. The aforementioned study (ibid) found that 74.7% of respondents get medical treatment by buying medicine from the pharmacy while only 17% go to a medical practitioner or hospital. 6% of the respondents shared that they faced discrimination while getting treatment from government hospitals or buying medicine from pharmacies, due to their Bihari identity. 30% of the respondents shared that doctors did not attend to patients in the camp, even in times of emergency. With regard to the camp dwellers' reproductive health, the findings of the study (ibid) revealed that women in the camp usually give birth to their children at home. Only 37% of the households shared that they go to a government hospital during childbirth. 31% of the respondents stated that the camp dwellers do not get post-natal services in the camp from any doctor or nurse.

Water and Sanitation

There are only 265 toilets for a population of 30,000 in Geneva Camp at Mohammadpur, Dhaka. Most of them are dirty and nearly 50% are out of order. On average, each toilet is used by 100 people. A growing trend in Geneva Camp is for families to build their own private toilets, but due to the congested living conditions, few have the space to do this inside their homes. Likewise, there is a scarcity of water points in the Geneva camp. There is one water pump in each sector of the camp and only the larger sectors have more than one. This public water point is used for drainage, bathing,

washing clothes, and more. The dwellers often have to stand in queue to collect water from the water point. Unclean water infects Bihari children with water-borne diseases, and urinary tract infections are common in women and girls. Waste water created while cooking is typically dumped directly into the alleyways or into the infrequent above-ground drains, while solid food waste is disposed of in intermittently available trash bins or informal piles (Sholder 2011).

Government Initiatives for Socio-Economic Development of Linguistic Minorities

For the poorer and more vulnerable segments of the population, especially for marginalised and excluded groups, the Bangladesh government has introduced the Social Safety Net Programme, through which different kind of services are provided to these groups. However, 'Bihari' communities are carefully excluded from these services, due to their camp identity. The IRB study shows that, among the respondents, 97% never have access to the government social safety net programme, nor to any other services. 45% of the respondents shared that they knew about vulnerable group development (VGD) and vulnerable group feeding (VGF) cards and allowances for widows, lactating mothers and the elderly, while the rest of them had never heard of these services.

Camp dwellers that require government services face obstacles due to their Bihari identity and, in some cases, they even face outright refusal to provide services. In recent years in Dhaka the government rejected 53 applications for birth registration due to various reasons, including a lack of proof of residency (many cannot use electricity bills as proof of residence because they have no individual electricity connection) and internal instructions not to issue birth certificates to 'non-Bengalis'. However, other city governments have issued birth certificates to almost all applications by camp dwellers. This shows the lack of enforcement of the 2008 Supreme Court decision by some government officials. In the case of passport applications, many were rejected on the grounds of lack of residential address; 'camp addresses' are not considered proper residential addresses. The governmental officials also say that they have written instructions not to issue passports to the Biharis. However, even after obtaining an official document from the Home Ministry indicating that Biharis are qualified to secure passports, some applicants still failed to have their passport applications approved.

The Supreme Court of Bangladesh confirmed that Biharis are citizens of Bangladesh in 2008; in the landmark decision of *Md. Sadaqat Khan and others v Chief Election Commissioner (Writ Petition No: 10129 of 2007)*, the High Court Division reaffirmed that all members of the Urdu-speaking community were nationals of Bangladesh in accordance with its laws and directed the Election Commission to enrol the petitioners and other Urdu-speaking people who want to be enrolled in the electoral rolls and give them National Identity Cards accordingly, without any further delay. The Election Commission very swiftly issued National Identity Cards to any member of the Urdu-speaking community who met the legal and administrative requirements.

Situation of Rohingya Refugees in Bangladesh

Introduction

There are two Rohingya Camps in Bangladesh, led by the United Nations High Commissioner for Refugees (UNHCR) and controlled by the Bangladesh government: Kutupalong and Nayapara in Cox's Bazar. 32,878 registered Rohingyas, along with their 5,000 unregistered children, live in these two refugee camps. Besides these, about 17,000 unregistered Rohingyas have been living in the makeshift Leda camp since 2008, and another 35,000 unregistered Rohingyas live at Kutupalong camp at Teknaf, Cox's Bazar. A total of 300,000 Rohingyas live without registration in the district, since the government banned registration for Rohingyas in 2005 (OHCHR 2013: 2).

It is estimated that of the total number of Rohingya refugees, only 12% are registered and the remainder live in different parts of Cox's Bazar, Bandarban and Chittagong district. Many of them are also scattered in other parts of the country or are integrated with the mainstream population. The swathes of unregistered Rohingyas are considered illegal and live in fear of police arrest, abuse and want for food and other basic needs. Even those living in the UNHCR camps fall victim to various types of oppression by local gangs. This untold suffering contributes to their status as one of the most persecuted groups in the world (International Labour Association).

Rohingyas in Bangladesh are deprived of basic food, education, medical care and livelihood, and they live an utterly unsecured and vulnerable life. Even the inhabitants of the registered camps are living in a miserable situ-

ation as they do not have humanitarian aid of any kind. As the Bangladesh government is not a party to the 1951 Refugee Convention or its 1967 Protocol, nor to the 1954 and 1961 Statelessness Conventions, it feels less obliged to provide fundamental rights to refugees. There is no national legislation to guide the prevention and reduction of statelessness or the protection of stateless persons (OHCHR 2013: 2).

Access to Food, Education, Health Care and Other Services

The movement of Rohingyas is restricted, and this means that they have limited access to education and health services. Refugees outside the camps do not have access to refugee status determination and are subject to arrest and deportation. Children of refugees are not eligible for birth registration. The Rohingya refugees are provided with basic food, medical services, education etc by UNHCR, but recently these services have been inadequate. Those living in unregistered camps live with scarcity of food, shelter, water and sanitation. Besides this, they are often victims of physical assault, police arrest, rape, sexual assault etc. Children remain the most vulnerable among the Rohingya people. In the two registered camps, UNHCR provides education up to primary level, but secondary education is not provided. Meanwhile, an entire generation of refugee children have grown up in the camps with no means to achieve self-reliance and no hope for the future. With no right to higher education and no permission to work in mainstream society, they spend their days without purpose. This lost generation is a wasted, latent talent that holds very little hope of contributing to the improvement of the world outside the camp (Isaacs 2016).

Government restrictions on NGO activities also affect access to food, health and education services. For example, Muslim Aid, UK has had to stop its operations with the Rohingya people due to government control. At present MSF-Holland (Médecins Sans Frontières/Doctors Without Borders) is working for the refugees and local population, providing basic health care by running a clinic and supervising the health condition of Rohingya refugees in the camp. Still, there is no security for the refugees in either camp and no regular supply of food items, sanitation and water. Malnutrition is at an alarming level among the Rohingya. A lack of tube wells in the makeshift camp forces the inhabitants to depend on unclean water from canals and ponds, which increases the risk of disease among them. Women often have to collect water from hillside streams and face sexual assault by the Bengali villagers. Sanitation is totally absent in the camps; even the kacha

Profile of a vulnerable minority: Dalits in Bangladesh

Introduction

Discrimination based on social strata and deprivation along the lines of caste, descent and profession has a long history in Bangladesh. Dalits face a major part of this deprivation. Discrimination based on caste and untouchability is associated with the lives of Dalit people to such a great extent that they remain the most backward community with regard to socio-economic development.

Who are Dalits?

There is no disaggregated data available on the Dalit population. Some have estimated that there are about 3.5–5.5 million Dalits in Bangladesh (Chowdhury 2009: 2), others that there are 5.5 to 6.5 million Dalits (3–4% of the total population) (Islam and Parvez 2013). Traditionally, Dalit people are involved in jobs that are considered menial by society, such as sweeping, cleaning etc. They are viewed by society through the lens of their work and their descent and are considered untouchable, which limits their socio-economic development. Their standard of living, in both rural and urban areas, demonstrates their deprivation, as well as the state's wilful ignorance of their condition.

There are three broad categories of Dalits in Bangladesh:

- i) Bengali Dalits, who live in villages all over Bangladesh. These people are the part of the mainstream rural community but are identified as Dalit due to the work they do – traditionally considered menial by society. This group includes people from communities such as: Rishi, Rabidas, Muchi, Majhi, Jaladas, Paroi, Kaiputro (Kawra), Beara, Nikari, Shikari, Swarnaker, Kapali, Kumor/ Kulal, Kuar, Sutradhar, Karmakar, Hari, Goala, Chamar, Bauri, Suri, Mali, Jogi, Bhuimali, Shiali, Kaibarta, Kahar, Keshra, Dholak, Nalua, Dhani, Napit, Bagol, Basar, Bajonder, Buno, Dai, Dhopa, Pandrakshatria (Pod), Patni, Fasua, Shahjee, Meso, Kotal, Bhuputra, Bhagobene, Chandal (Charal), Antoj, Namashudro, Dhangor, Mathor;
- ii) Urban Dalits, who migrated (or were forced to move) from India to what was previously East Bengal. Though this migration began in 1605, during the Mughal period, a considerable number of Dalits migrated between 1835 and 1940, during the British colonial period. They were brought by the British colonial rulers to do menial jobs such as sweeping, clearing sewage, and working in tea plantations and railway stations. They include the following groups: Bashpore, Sabari, Dom, Domar, Harijan, Masuwara, Mushaheries, Methor, Maithal, Balmiki, Lalbegi, Pasi, Sweeper, Mala, Madiga, Magaiya, Raut, Hela/Hadi, Saberi, Chakali, Dewali, Kanpuri, Telegu, Madraji; and

Contd...

Sura Khatun's painful life in the refugee camp

Sura Khatun (56) runs a grocery shop in the Leda makeshift camp area. She also lives in the same camp in a tiny room. 'Living outside your own home is always hard,' says Sura, 'and when eleven members of a family live in a 10 x 7 ft. room, you can easily understand the situation. My husband is ill. My two young sons work outside the camp area. One is a day labourer and the other is a restaurant waiter. We are united. Besides these, we have two other sons. They eat separately with their family members, but we live in the same room! We have three daughters. Our eldest daughter was married in Myanmar, another is living with her husband in this camp and the youngest one lives with her husband in a village outside the camp area. I don't want to go back to Myanmar. And why should I? The Myanmar Army and Border Guard Police (BGP) are torturing women and killing innocent children and Rohingya men every day. Living in the refugee camp is miserable, but at least we are safe here.' (Roy 2016)

Report of Independent Experts and Special Rapporteurs on Rohingya Refugees

- Independent experts on extreme poverty and on water and sanitation noted that despite improvements in the conditions of the camps, registered refugees do not fully enjoy freedom of movement, the right to work or the right to education, which leaves them extremely vulnerable to abuse and exploitation.
- The Special Rapporteur on extreme poverty called on Bangladesh to prioritize improving the situation of the Rohingya refugees; finalize its refugee policy and take measures to reinstate the resettlement programme, and encouraged the Government to seek out resettlement options that prioritise and protect the rights and interests of refugees
- In 2010, the special rapporteurs on health, on migrants, on food and on racism sent a joint communication to the Government drawing attention to allegations received regarding the situation of unregistered Rohingya asylum seekers, refugees and migrants. According to reports received, some 220,000 unregistered Rohingyas were not permitted to receive official relief and were reportedly victims of violence and attempted deportation by both state and non-state actors.

(makeshift) toilets have to be shared by hundreds of camp dwellers. Dehydration, diarrhoea, fever, pneumonia, coughing and skin disease are frequent among the camp dwellers. Due to regular Border Guards Bangladesh (BGB) monitoring of local clinics, Rohingya refugees even avoid getting

... Profile of vulnerable minority continued ...

iii) Muslim Dalits, who can also be found across the country. Though as a religion Islam does not recognise any division based on caste or creed, in the socioeconomic and cultural context of South Asia some Muslim communities are considered inferior to others based on their occupation. These are groups like Jola, Tati, Tele, Kolu, Kulu, Behara, Hajam, Bede, Bainna Bede, Darji, Mazi/Khottra, Kasai etc.

Discrimination faced by Dalits

The lives of Dalits are particularly harsh, due to the practice of caste discrimination. Dalits are frequently prevented from entering the homes of non-Dalits or even public places, and the majority of them live in extreme poverty. Traditional jobs for Dalits are usually part of the informal sector and they are badly paid and exploited.

According to Parvez and Islam (2014), the monthly income of 42% of Dalit families is between 3000 and 6000 taka; 18% earn below 3000 BDT; 17% earn 6000 to 9000 BDT; and 12% families earn 9000 to 12,000 BDT. Only 11% of Dalit families earn more than 12,000 taka (BDT) monthly. Despite their skills, educated Dalits often remain trapped in their traditional professions due to various social and economic factors, instituted by dominant social actors, thus remaining confined to a state of chronic poverty. Hence, caste-based identity impedes them from switching to decent professions, even when they have skills or education.

The caste and untouchability issues surrounding Dalit people also affect their access to education and other development indicators. Parvez and Islam (2014) show in their study that among enrolled (72%) children in primary schools, around 63% dropped out due to caste-based discrimination, among other reasons. The study also found that only 12.5% of Dalit children are studying at secondary level, 4.3% at higher secondary level and 1.9% Dalit students at under-graduation and graduation level. Dalit girls also often face sexual and psychological harassment in educational institutions, which discourages them from attending school or college. Khan and Rowshan's recent study (2016) showed that only 5.9% of Dalit girls completed secondary level education.

Dalits are discriminated against in access to education, decent employment, renting houses and buying land, as well as to basic services and entitlements from the government. Mainstream development paradigms have overlooked their existence as special communities with special needs, and indicators assessing development have rarely taken Dalits into consideration. For example, maternal mortality rates are higher amongst Dalit women and levels of education are far lower in Dalit communities. Despite this, there is no official recognition that specific groups, like Dalits are particularly vulnerable and deserve special protection and access. As a minority group, they are excluded at every level.

medical treatment out of fear of detainment or deportation. The houses in the camps fulfil no standard of living, and rainwater often floods the camps. During summer the camp dwellers cannot cope with the heat, while in the winter they have no warm clothes or supplies such as quilts or blankets to tackle the cold (Medecins Sans Frontieres 2017).

Government Initiatives

The Bangladesh government is not a party to the 1951 Refugee Convention or its 1967 Protocol, nor to the 1954 and 1961 Statelessness Conventions. Nonetheless, for three decades Bangladesh has been hosting more than half a million Rohingya refugees, respecting their international human rights obligation. Since 2012, however, the government has resisted the influx of Rohingyas and has deported many of them to their countries of origin. Still, under an agreement with UNHCR, the government has been hosting approximately 29,000 refugees in two refugee camps in Cox's Bazar district, with a total expenditure of \$47.5 million per year.⁸ Despite repeated recommendations from the international community to provide human rights and basic privileges to Rohingya refugees, the government has imposed restrictions on UNHCR with regard to registering unregistered refugees and providing assistance to them. Even the activities of NGOs are restricted by the constant threat from the government. The Bangladesh government has denied these allegations and has stated that Rohingyas are enjoying the privileges to which they are entitled as refugees.⁹ Recently the government has planned to relocate the two legal camps in to 'Thengar Char', an island in the bay of Bengal (Lahiri and Yanofsky 2017). This island has been newly formed out of silt and has 30,000 acres of land. However, it is feared that this may leave Rohingya people exposed to further disaster, as most of the island is under water during high tide and vulnerable to the impact of climate change.

Recommendations

Indigenous Peoples

- The Chittagong Hill Tracts Peace Accord should be implemented effectively. The government should come up with a specific timeline for

8. See: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G13/107/07/PDF/G1310707.pdf?OpenElement>

9. See: Bangladesh national report, UPR 2nd cycle.

Good practice case study:

Sahebganj-Bagdafarm Land Recovery Movement Committee: A movement for recovering land of the people

The Sahebganj-Bagdafarm Land Recovery Movement Committee has become an iconic movement for both the indigenous Santal community and the Bengali people to recover their ancestral land from the government-backed perpetrators that took it, including the Administration of Rangpur (Mahimaganj) Sugar Mill Corporation; a local MP, Abul Kalam Azad; and Shakil Alam Bulbul, Chairman, Sapmara Union Council.

Background of the Movement

In the name of Rangpur (Mahimaganj) Sugar Mills Ltd, what was then the East Pakistan government acquired 1842.30 acres of land in 1962 from indigenous and Bengali people, evicting 15 indigenous peoples and five Bengali villages, including Sapmara, Madarpur, Narangabad and Chakarahimpur mouza under Gobindaganj upazila, Gaibandha district.

The agreement drawn between the government and the affected families clearly mentions that the land would be returned to the original owners if the land was used for any purpose other than the cultivation of sugarcane. In this scenario, according to clause 5 of the contract, the government would take back the acquired land from the Pakistan Industrial Corporation and return it to the original land owners. However, the sugarcane cultivation was interrupted several times, and in March 2004 production finally stopped due to mismanagement, corruption and loss. After 1982 the Sugar Mills Authority leased out the property to influential individuals and racketeers for the cultivation of rice, wheat, corn, tobacco, potatoes, mustard etc, instead of sugar cane. Under the circumstances, the poor indigenous and Bengali owners demanded several times that the government return the 1842.30 acres of land, due to the breach of the agreement between the government and the Sugar Mills authority.

The Demand for their Ancestral Land

Since 2004, indigenous peoples and Bengalis have been demanding the land be returned, alleging that the authorities violated the contract by allowing the cultivation of crops other than sugarcane and leasing out parts of the land to influential people.

On 5 March 2014 the affected people organised the 'Sahebganj-Bagdafarm Land Recovery Movement Committee'. The committee was formed by the affected people of the area. Mr. Sahjahan Ali Prodhann from Sapmara village was the pioneer of the movement and served as the president from the beginning. Filimon Buskey remains the General Secretary of the movement.

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proper and speedy implementation of the accord. Resolution of land disputes by amending the contradictory provisions of the CHT Land Disputes Resolution Commission Act 2001, in line with the CHT Accord;

- ILO-convention 169 (the Indigenous and Tribal Peoples Convention) should be ratified. The government should take appropriate measures for the effective implementation of ILO Convention 107, the State Acquisition and Tenancy Act 1950 and other laws and policies related to indigenous peoples;
- The government should end the forced eviction of indigenous peoples for land acquisition in the name of special economic zones, reserved forest, military bases, national/eco-parks, tourism complexes, development projects and government establishments;
- Measures should be undertaken for the restitution of the land of indigenous peoples in the plains and a separate land commission should be formed. Traditional land rights, including the individual and collective rights of indigenous peoples, must be recognised and respected, as envisaged in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and ILO-convention 169;
- Schools in remote areas should be ensured, with adequate facilities and quality teachers. Textbooks should be published in the languages of indigenous communities;
- Health coverage should be increased among indigenous peoples. Health centres with available materials and doctors in remote areas; and
- The food security and livelihood of indigenous peoples should be ensured by protecting agricultural practices (eg jhum cultivation) and excluding cultivable land from acquisition by the government for development projects and other purposes.

Dalits and Socially Excluded Minorities

- Disaggregated data on the basis of caste and gender should be made mandatory in the collection of basic statistics regarding all major socio-economic and political aspects of life;
- Participation of Dalit children in primary education should be ensured through campaigns, raising awareness, increased educational scholarship/stipends and other facilities;
- Formulate and implement special administrative measures by the Ministry of Education and University Grants Commission to ensure a mandatory quota system for Dalits in all public and private educational

... Good practice case study continued ...

In 2015 the committee organised a huge gathering in the premises of Sahebganj High School, in the presence of members of parliament. In response to the committee's plea, the district administration conducted an investigation and reported that the acquired land was being used for the cultivation of other crops instead of sugarcane. Since then, the Sahebganj-Bagdafarm Land Recovery Movement Committee has been increasing its movement to recover lands. In December 2015 they organised another huge gathering at the Bagdafarm area, demanding the return of land to its original owners. They also held a press conference at Dhaka to organise civil society and human rights activists around their demands. On 10 April 2016, the committee organised a long march and walked 32 kilometres from Katarmore, Bagdafarm to Shaeed Minar, Gaibandha district. After the march they submitted a memorandum to the Deputy Commissioner of Gaibandha to return the land to its owners, since the agreement was violated by the Sugar Mill Authority. Around 50,000 indigenous people, including 10,000 Bengalis, participated in the march. The administration again investigated the issue and found that the land was not being used for sugarcane cultivation. However, they proposed that the government build an Export Processing Zone on the conflicted land, instead of returning it to the affected indigenous people and Bengalis who were the original owners.

On 30 June 2016 the Sahebganj-Bagdafarm Land Recovery Movement Committee organised a gathering in observation of Santal Rebellion Day, with the participation of around 6000 indigenous people and Bengalis. During the gathering they decided that they would recover their land themselves. The next day they entered the land, raised houses and started living and cultivating. The committee helped to raise two thousand houses. On 12 July 2016, the mill authority tried to evict these people, but they put up a strong resistance and protected their land. The committee helped to establish schools, water and sanitary facilities in the reoccupied land.

As the long deprived indigenous peoples and Bengalis were settling down on their ancestral land, a massive attack was carried out on 6 November 2016 by the Sugar Mill authority, accompanied by law enforcement agencies and local goons. Three Santal men were killed on the spot, 30 were severely injured, and 200 houses were burnt. Moreover, more than 1200 families fled the area, following widespread looting, vandalism and arson attacks on their houses. A false case was lodged against 42 named indigenous Santals and Bengali farmers, as well as more than 400 other unknown villagers, at the Gobindaganj police station. The injured were arrested from hospitals. This incident resulted in huge criticism, both at home and abroad. Civil society groups, human rights activists, political parties, and the National Human Rights Commission expressed their solidarity with the affected people

Contd...

institutes at the primary, secondary and tertiary levels along with other government privileges like stipends and scholarships, etc;

- The draft 'Anti-discrimination Act' to address untouchability and discrimination-based work and descent should be enacted. The state should undertake an effective initiative to ensure the full implementation of the International Convention on the Elimination of All Forms of Racial Discrimination;
- Both temporary and permanent removal of Dalits from their land or ancestral colonies without provision of proper rehabilitation should be stopped. Khas land should be allotted to Dalit and excluded communities on a priority basis. Khas lands allotted to Dalits should not be transferable to non-Dalits under any circumstances;
- Coverage by the social safety net programme should be increased for Dalit and excluded communities and discriminatory-free access should be ensured to the beneficiaries of these schemes. Strong monitoring also should be in place to prevent corruption and access to this service by non-Dalits; and
- Decent employment and discriminatory-free workplaces should be ensured for Dalits. Alternatives to traditional employment opportunities must also be established for Dalits. Implementation of the Prime Minister's a quota of 80% for Dalits in sweeping and cleaning positions in government and autonomous bodies should be ensured.

Tea Labourers

- Application of state laws and policies must be ensured in tea estates, rather than only the company's own rules and guidelines;
- Steps must be taken to increase the wages of tea labourers as per the labour laws of the country and considering inflation and other concerns;
- Both registered and non-registered workers should be provided with adequate and quality housing, water and sanitation, education, and health services. Adequate, quality rations with nutritious ingredients should be provided;
- Steps should be taken to provide land titles to tea workers through distribution of khas land; and
- Skill development training should be provided to the workers and their family members along with flexible loan facilities, so that they can enter into alternative professions.

... Good practice case study continued ...

and demanded the return of the land to the original owners. However, the government ignored the demands and thousands of indigenous people and Bengalis in the area remain homeless, without food, education, or medicine. Besides this, they regularly face harassment by the police and local Bengali perpetrators. Since the incident of November 2016, the Sahebganj-Bagdafarm Land Recovery Movement Committee has been trying to unite the people to stick to their rightful demand, as well as providing shelter, food and education to the affected people. At the same time they have been fighting a legal battle in the court for the affected people and to punish the perpetrators. They dream that one day the rightful claim of the affected Indigenous Peoples and Bengalis will be fulfilled. This is the biggest movement around the land of IPs and Bengalis since the Santal Rebellion of the British era (30 June 1855).

The Future of the Movement

At present the Sugar Mill authority has occupied all the disputed land and fenced around it so that people cannot enter. Police have not withdrawn the cases lodged against the affected people and many of them are still hiding to avoid arrest. On the other hand, the affected Bengalis and IPs lodged a case against 33 people for torching their homes, evicting them from their land, and murder, but police only arrested one of the accused.

The Sahebganj-Bagdafarm Land Recovery Movement is still fighting to realise their demands, while simultaneously helping the rehabilitation of the victims, despite the decrease in assistance from civil society and rights-based organisations. The committee has established some temporary shelter houses for the affected people as well as raised a school for the children. At the national level, they have connected with a good number of lawyers who are supporting the case in the supreme court as well as in local courts. They are still providing support to those who received bullet injuries during the conflict. The committee is also still holding on to their demand for the ancestral land occupied by the Rangpur Sugar Mill. Despite this, the government is terming these rightful owners 'landless' poor people and is trying to rehabilitate them on abandoned land.

Sexual Minorities

- Initiative should be taken to repeal Article 377 of the Criminal Code, which criminalises adult consensual sexual acts;
- Steps should be taken to grow awareness on LGBT+ issues among law enforcement agencies, government officials and wider society. Special

training should be provided to law enforcement agencies about the rights of LGBT+ people and how to treat them;

- Discrimination-free access to education should be ensured for transgender people. School environments should be friendly to transgender people;
- A special chapter on sexual education should be incorporated into textbooks. The rights of LGBT+ people should be reflected positively in this; and
- The government should accept the UPR's recommendations regarding recognition of LGBT+ people.

Linguistic Minorities

- Necessary action should be undertaken by the government to remove all legal and other barriers and ensure equal access to all public services for every citizen of Bangladesh;
- The government should make camps liveable by repairing old dwellings and providing suitable water and sanitation facilities;
- Small-scale and craft industries should be supported through provision of flexible finance, market promoting, skill building and training etc;
- Enrolment in primary education should be ensured for all children, school environments should be improved and educational institutes should have a discrimination and stigma free environment;
- High Court orders with regard to the rights of linguistic minorities as citizens should be implemented effectively. There should be no obstacle to obtaining government documents like passports, trade licenses, birth certificates, national identity cards etc; and
- Bihari people should be brought under social safety net programmes to ensure their equal access to allowances for widows and the elderly, VGD and VGS cards, educational stipends for children, skill building and training etc.

Rohingya Community

- The Bangladesh government should ratify the 1951 Refugee Convention and sign its protocol to ensure access for Rohingya people seeking asylum and strengthen refugee status determination procedures, without any kind of discrimination;
- The government should take steps to establish legislation and procedures to allow access to procedures determining refugee status to all

refugee children and their families, as well as to provide them with birth registration, security, and access to education and health-care services;

- The government also should ensure that refugees, after taking refuge in Bangladesh, are not detained, prosecuted or punished solely for their method of arrival in Bangladesh; and
- The government should allow all international aid agencies, including UNHCR and the International Red Crescent Society (IRCS), and NGOs to provide aid to refugees.

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Chapter 4

Bhutan

An Uneasy Mosaic

Saroj K. Nepal

Introduction

The Kingdom of Bhutan is sandwiched between India and China. Excavated artefacts like stone tools and weapons suggest that Bhutan existed as early as 2000 B.C. It is a small country and was in the past among the least known countries in the region, in part due to self-imposed isolation. Bhutan has never been colonised. Its modern history commenced from 1907 after the first King of Bhutan, Ugyen Wangchuck, consolidated the country under monarchical rule. In 2008, Bhutan adopted the Constitution of Bhutan, following which Bhutan became a constitutional monarchy. Since 2008, Bhutan has held two rounds of democratic elections. The third one is due in 2018.

In the course of history, different peoples settled in different regions, populating Bhutan. These peoples are the ethno-linguistic groups who currently inhabit the country. This paper maps the different ethno-linguistic groups in Bhutan and examines minority issues faced by minority groups in the country.

Methodology

The primary method for data collection and for the preparation of this report has been secondary data review, collation and analysis. Information was mostly downloaded from websites of various agencies and other documentation was searched and extracted from the web. Secondary statistics in Bhutan on topics of interest to this report are scarce and, where they are available, they are not shared in the public domain.

To supplement the information collected, in-depth interviews were conducted with key persons representing the *Lhotsampa* ethnic group and Christians. It was not possible to conduct focus group discussions since the

issue of human rights is a sensitive topic in Bhutan and people are cautious about discussing human rights in groups. Besides, any survey activity has to be endorsed by the government, and potential subjects of the study will only comply with prior written approvals, physically produced on request when they are approached for interviews.

Limitations

This paper has been written in the context of data limitations. Data is either not available or, if it is available, not shared in the public domain. Further, human rights are not an issue that the government is comfortable discussing on a regular basis. For this reason, it is challenging to collect primary data. A limited number of interviews were therefore conducted with only a few representatives of minority groups.

The Ethnic Mosaic of Bhutan

Mapping the diverse groups of people inhabiting Bhutan is necessary to establish the ethnic mosaic of Bhutan and to correct the misperception of outsiders that Bhutan comprises a homogenous Buddhist population. In this report, ethnic groups shall be identified based on ethno-lingual differences and geographical residence. Ethnic groups have not been mapped until now. However, the state authority (Dzongkha Development Commission) and internationally acclaimed linguists (among others, George van Driem) have carried out language surveys. This report has taken inspiration from the work of van Driem.

Ethnic groups are social groups with a shared culture such as language, customs and institutions. Ethnicity can no longer be qualified by race based on genetic constitution. Taking this as the point of departure, there are several ethnic groups in Bhutan. While some differ in the languages they speak, others have cultures that are distinct from the others. Whether others consider them different and whether they also consider themselves different from the others is a useful basis for identifying ethnic groups in the country.

Western Bhutan comprises the districts of Thimphu, Paro, Punakha, Chukha, Gasa, Wangdue Phodrang and Haa. The Ngalongpas of Tibetan descent are in the majority in these districts. The Ngalongpas came to Bhutan in the 8th and 9th centuries along with the Drukpa Kagyu Buddhism missionaries from Ralung in Tibet. Ngalongpas speak Dzongkha, which is now the national language of Bhutan. The intonation of Dzongkha spoken in the western districts of western Bhutan can vary but it is essentially the

same language. The Ngalong follow Drukpa Kagyu Buddhism. The Ngalong speakers constitute an estimated 21.13% of the total population of Bhutan – around 160,000 speakers.

There are also other ethnic groups in western Bhutan. In the northern areas, in Gasa district, there are people from Laya called Layaps who are highland pastoralists and speak a dialect similar to Dzongkha. The GNH Survey 2015 (Center for Bhutan Studies and GNH Research 2015) estimates that 0.25% of the population speaks Layapkha. The Layaps have a distinctive way of life. The women wear a unique dress. In Wangdue Phodrang district, there are several small groups – such as those living in Phobjikha, Rukubji and Sephu – who speak Hoen kha (also called La kha) (0.02% of the population), and semi-nomadic people who speak Brokkat. The small groups of people who live in a few villages in Ada Rukha and who originally spoke Olekha are called Oleps. Until a few years ago, there was only one woman in the village who spoke Olekha. Oleps share a common language and way of life with the Monpas of Trongsa in the Black Mountain region. The Black mountain region extends from Wangdue Phodrang to Trongsa and Zhemgang districts. The Lhop are an ethnic group from Samtse district in southwestern Bhutan. People of Nepali origin called Lhotsampas inhabit the southern areas of Chukha district.

The central Bhutan region comprises the districts of Trongsa, Bumthang and Zhemgang. The borders of Zhemgang district extend to the south of Bhutan. This region was populated around the 1st millennium BC – long before the Ngalongs came to Bhutan. The people of Bumthang are called Bumthaps and speak Bumthang kha. The GNH Survey 2015 estimates that 2.89% of the population speaks Bumthangkha. In Bumthang district there is a small group of people living in the Dur area who are pastoralists and who speak a dialect called Bjobikha, which is closely related to Tibetan.

There are several ethno-linguistic groups in Trongsa district. People from villages in Tangsibji county and Taktsi Yuesa village under Trongsa village speak Hoenkha, also called Nyenkha and Nga ked. The GNH Survey 2015 estimates that 1.70% of the population speaks this language. The people living in Nubi Gewog, Trongsa speak a Bumthangkha dialect called Nubi Choetoe, but some writers have placed this dialect under the Hoenkha group. In Trongsa district, the people living in areas to the east of the Mangdichhu river all speak Khengkha, the predominant language spoken under Zhemgang district. A people called the Monpas live in three villages under Langthel county in the Black Mountains; they speak Monkha and depend

on a mixed farming system, depending on agriculture and largely on the forests for their livelihoods. The GNH survey estimates that 0.19% of the population of Bhutan speaks Monkha. There is a small population of Monpas in Reti village, Korphu county. There are also some Lhotsampas living in Reti village.

The predominant ethnic populations of Zhemgang district are Khengpas, who speak Khengkha. The GNH survey estimates that 8.05% of the population of Bhutan speaks this language. There are small groups of people, such as the Monpas, living in Berti village, Trong county and Sharchokpas in Dogar country in southern Zhemgang. The inhabitants of the central region generally follow the Nyingma Buddhist religion.

The eastern Bhutan region comprises the districts of Trashigang, Mongar, Lhuentse, Trashiyangtse, Pemagatshel and Samdrupjongkhar. The majority ethnic group in eastern Bhutan are the Sharchokpa people, who came around 2000 years ago. They speak a language called Sharchokpa or Tsangla kha and follow the Nyingma Buddhism religion. The GNH Survey 2015 estimates that 33.72% of the population of Bhutan speaks Tsangla. This makes them the largest ethno-linguistic group in Bhutan.

Trashigang has populations of the Brokpa people in Merag, Sakten and Phongme counties. Brokpas are pastoralists who rear yak and sheep, speak a distinct language called Brokkat and have a unique traditional dress and social customs. The GNH Survey 2015 estimates that 0.16% of the population speaks Brokkat. There are Choecha Ngacha speakers living in some villages in Bartsam, Bidung and Shongphu counties as well. There are a few Brahmi-lo (Dakpakha) speaking households living in Thangrong village, Phongmey county. The majority of the population, however, speaks Tsangla.

In Mongar district, besides the majority Sharchokpa people, there are also populations of people speaking Choecha Ngacha (also called Kurmedkha), a language related to Dzongkha and spoken by people living along the lower Kuri chu river in Tsakaling, Saleng and Tsamang counties. The GNH Survey 2015 estimates that 2.95% of the population speaks this language. In the southern part of Mongar, the people in Gongdue county speak Gongdue kha, a language not related to any language of Bhutan. The GNH Survey 2015 estimates that 0.36% of the population speaks this language. A small Khengkha-speaking group live in a village in Narang county, Mongar, while all the people living in Silambi county, Mongar speak Khengkha. The people of Chhali county speak Chhalikha; a dialect considered a mixture of several

Bhutanese languages. The GNH Survey 2015 estimates that 0.30% of the population speaks Chhalikha.

The people in Lhuentse district speak Chocha Ngacha – a dialect related to Dzongkha – and another dialect called Zhakat (also called Kurtoed kha) – a dialect of Bumthang kha. The GNH Survey 2015 estimates that 2.93% of the population speaks this language. The people of Khoma county in Lhuentse speak Dzala kha (also called Khoma kha), which is also spoken in the northern part of Trashiyangtse district. The GNH Survey 2015 estimates that 1.22% of the population speaks Chocha Ngacha.

In Trashiyangtse district there are groups of people speaking Dzala kha in Yangtse and Bomdeling counties. Choecha Ngacha is spoken by people living in Tongphu Zhangtsen county and some populations in Yangtse and Khamdang counties. A small population in a few villages under Tongphu Zhangtsen also speaks Khengkha. Dakpa kha (also called Brahmi lo) is spoken by the entire population of Thoedso county and some villages under Khamdang county. The GNH Survey 2015 estimates that 0.61% of the population speaks Dakpakha. Populations in Khamdang, Ramjar and Yalang counties speak Tsangla.

The language spoken by all people living in Pemagatshel is Tsangla. In Samdrupjongkhar district, the majority of the population speak Tsangla, but in the southern part of the district there are Lhotsampa people speaking Lhotsamkha, who live in Samrang, Pemathang, Langchenphu and Phuen-shothang counties.

The southern region comprises the districts of Samtse, Sarpang, Tsirang and Dagana. The people living in these districts are predominantly of Nepali origin, are called Lhotsampas (people of the southern border), and are mostly Hindus. They speak Lhotsamkha or Nepali. The GNH Survey 2015 estimates that 18.69% of the population speaks Lhotsamkha. The Lhotsampa, however, are not a homogeneous population; there are several sub-ethnic groups of people such as the Tamang, Rai, Limbu, Gurung, Ghalley, Magar, Newar (Pradhan), Lepcha, Sunwar, Sherpa, Giri, Bahuns, Chhetris, Kami, Darjee and Sarki, who all fall under the broad term Lhotsampa. Many of these sub-ethnic groups have their own languages and their own social customs. There are also Lhotsamkha-speaking people to be found in the southern region of Chukha district. In Dagana, besides Lhotsamkha, Dzongkha is spoken in most of the northern counties. There are also Khengkha speaking people in Drujeyang county.

Samtse district has a group of people called the Lhops (also called Doya) living in Jigme, Singye and Wangchuk villages in Dopuchen county and in Taba and Dramtoey villages, Tading county. The Lhops are considered indigenous – the first people who inhabited Bhutan. They have their own language, Lhokpukha, unique dress, social customs, and they follow an animist religion. The GNH Survey 2015 estimates that 0.13% of the population speaks Lhokpukha. A small group of Adivasis (indigenous people) with a socio-cultural affinity to the Adivasi population of West Bengal live in the counties of Ugentse, Chengmari, Yoeseltse and Tashichoeling. The Adivasis have their own language, called Kurukh, and their own social customs. Samtse district also has a small Lepcha population. 0.15% of the total population of Bhutan speaks Lepchakha.

A small population of Monpas can also be found in Chungshing village in Jigmechholing county, Sarpang district. In the mid-1990s people from other parts of the country were resettled in the southern region after they received land grants under the resettlement programme. The ethnic composition of southern Bhutan has therefore become more diverse than before, with an estimated 10–20%, as observed, now comprising of re-settlers from other parts of the country.

After the annexation of Tibet by the Chinese in 1959, Tibetans fled their country and many settled as refugees in Bhutan, mainly in areas such as Hongtsho and Begana, close to Thimphu. A few Tibetan families live in other districts, mainly in the urban areas of Trongsa, Bumthang and Trashiyangtse. In the 1970s Tibetans were given the choice to accept Bhutanese citizenship, which many accepted. Those who chose not to were allowed to stay as special residents. Tibetans speak a language called Boekha. The GNH Survey 2015 estimates that 0.25% of the population speaks Boekha.

The first National Population and Housing Census in Bhutan was conducted in 2005. The next census is long overdue and was conducted recently, in June 2017. The National & Population Housing Census 2005 Report contains data disaggregated by district, county, sex and a number of other variables. Ethnicity was not a data item in the census protocol, so statistics on population by ethnic group is not available. However, language spoken by respondents featured in the Census of 2017. Rough estimates (eg Khan & Rahman (2009)) show the Ngalong population to be around 15%, the Shar-chokpa population to be 50% and the Lhotsampa population to be around 30–35%.

In light of the above analysis of the many ethno-linguistic groups in Bhutan, it seems that Khan & Rahman (2009) have subsumed the many small ethnic groups discussed above under these three major ethnic groups of Bhutan. It is possible to establish a more accurate picture of the situation of ethnic groups in the country if data on ethnicity were to be collected and made accessible. This could then be supplemented with a survey to fill in data and information on ethnic groups where there are gaps. As it is, it is difficult to obtain such data because it is not available or not accessible in the public domain.

Minorities and their Rights

Among the many definitions as to what constitutes a ‘minority’, the most accepted definition is that of the Special Rapporteur on Prevention of Discrimination and Protection of Minorities:

A group numerically inferior to the rest of the population of a State, in a non-dominant position, whose members – being nationals of the state – possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and maintain, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language. (Capotorti, 1977: 98)

In opposition to Capotorti’s definition, some have argued that numerical inferiority is not sufficient to label a group as a minority (Panikkar 2005). Rather, it is incumbent on certain groups’ feelings and experience of being discriminated against. Further, the social, economic and political positioning of groups can be analysed to determine power dynamics and their relative position in society. The question of minority groups in Bhutan can be explored using Panikkar’s formulation of experience of discrimination. This can entail delving into the different ethno-linguistic groups; examining whether they perceive their own identity as being the same or different from others; examining the development record in Bhutan; and finally exploring the recent history of ethnic issues, which had been brewing for decades, but which erupted into a movement in 1990 involving Lhotsampas in Bhutan.

If we define an ethnic group as a group that is considered to be different by others and also considers themselves to be different, then we can aggregate people into four broad ethnic groups in Bhutan from the many ethno-linguistic groups described above. The first are the Ngalongpas of western Bhutan; the second are the Sharchokpas of Eastern Bhutan; third are the Lhotsampas of southern Bhutan and lastly the Bumthangpa–Kheng-

pa people of central Bhutan.¹ Many authors writing about ethnic groups in Bhutan tend to categorize people into the first three ethnic groups and include the Bumthangpa–Khengpa people under the Sharchogpa people.

As mentioned in the section above, there are some groups who are considered to be the indigenous people of Bhutan, such as the Monpas of the Black Mountains and the Lhops of southwestern Bhutan. These groups live in remote areas and until a few decades ago were not mainstreamed into development. As a result, the areas these groups live in have remained backward, which in turn affects the socio-economic status of these marginalized groups. This is in spite of the balanced development programmes that the government has commissioned to ensure equitable regional development throughout the country. However, under the initiatives of the government, which are supplemented by NGOs, many development programmes have been launched in the areas inhabited by these people. As a consequence, there is rapid development, but the cost is the dilution of a traditional way of life of these groups. There are a few other pastoralist groups living in the remote alpine regions of the country, such as the Brokpa, the Layaps, Lunaps and the Brokkat and Lakha-speaking people, who face similar challenges. However, this does not make them ‘minorities’ if we apply the definition adopted in this report. The fact alone that their culture and traditions may be at risk, without the added element of domination by another ethnic group, does not qualify them as a ‘minority’, since this risk is more development-related.

The Ngalong of western Bhutan are numerically fewer than the Sharchokpas of eastern Bhutan and the Lhotsampas of southern Bhutan. However, they are politically ascendant and form the most dominant ethnic group in Bhutan. The reasons for their dominance can be traced back throughout history to when the first incursions of Buddhist missionaries from Tibet were directed to western Bhutan. They were thus the first people to embrace Buddhism, whence the term *Nga* (first), *long* (rise) came into usage – the first to ‘rise from the darkness’. The higher exposure of the Ngalong to Buddhism and religious practice compared to other ethnic groups had therefore already created a sense of superiority over other groups.

The second reason for the dominance of the Ngalong is that when Bhutan was a country of minor fiefdoms that were frequently at war with each

1. The Bumthang and Kheng people share a common language but they may consider themselves different from each other.

other, Jigme Namgyal from Kurtoe in Lhuentse in the east defeated all the contesting chieftains of eastern Bhutan and marched onto Trongsa to consolidate his power and establish his political base there, in order to become the most powerful political entity in Bhutan. It was his son, however, Ugyen Wangchuck, who fought against all the warring overlords of western Bhutan and unified the country under his rule. In 1907, he was crowned the first King of Bhutan of the Wangchuck dynasty ruling from western Bhutan, namely from two capitals – Thimphu and Punakha. Western Bhutan thus became the centre of political power and the Ngalongs, by extension, also became politically powerful, owing to their proximity to the seat of royalty and officialdom. This is also the reason behind Ngalongkha being adopted as the national language – now called Dzongkha or ‘the language spoken in the Dzong’.

The third reason, connected with the second, is that the districts of western Bhutan, namely Thimphu, Paro and Punakha, in the early years received most of the development assistance, due to which the value of the land served by these developmental facilities increased significantly, compared to other districts in the country. As the assets that the Ngalong owned, namely land, appreciated significantly, the Ngalong also became more economically powerful.

The Sharchokpas are numerically the largest ethnic group. They inhabit the six districts of the eastern region. Sharchokpas are also found in many other districts, where they have migrated for work or residence. The non-Sharchokpa people of the districts of Lhuentse, Trashigang, Mongar and Trashiyangtse (ethno-linguistic groups) also consider themselves Sharchokpas in an attempt to assume a regional identity. The people of Trongsa, Bumthang and Kheng, residing east of Pelala were also considered as peoples of Sharchog Khorlo Tsibgye (Eight Spokes of the Wheel of Eastern Bhutan) and in earlier times were considered Sharchokpas, though Sharchokpas may not consider them so (Gyeltshen 2004). What distinguishes Sharchokpas from the Ngalongpas is that the Sharchokpas have a separate language and follow the Nyingmapa sect of Mahayana Buddhism, while the Ngalongs follow the Kagyupa sect of Mahayana Buddhism. The Drukpa Kagyu sect of Mahayana Buddhism is the official religion of Bhutan. The Sharchokpas have their own customs. They also prefer to marry from within their own ethnic group, though marriage to people from other ethnic groups also occurs. Sharchokpas, though the most numerous group, are neither a dominant group nor a minority. For that matter, no ethnic group in Bhutan is in the absolute majority; each one constitutes less than 50% of the total population.

The Lhotsampa are the only ethnic group in Bhutan practising a non-Buddhist culture, and the only ones who speak Nepali, an Indo-Aryan language (called Lhotsamkha in Bhutan). The Lhotsampas came to Bhutan in the 1870s, mainly from the middle hills and the lowland Terai of eastern and central Nepal. Thereafter, they migrated to Bhutan at various points in history. In southern Bhutan they found a landscape similar to the one they had left behind in Nepal, so they rapidly adapted to their new home. They cleared jungles for habitation, dug irrigation canals, terraced land for growing paddy and cultivated cash crops such as orange, betel, cardamom and ginger. They grew and harvested a variety of agricultural crops from the fertile soil. For many years, Lhotsampas were the only cash-paying taxpayers in Bhutan, while people from other regions paid their tax in kind.

As for the circumstances leading to the migration of Lhotsampas from Nepal, there are several theories. A Bhutanese historian, Phuntsho (2013), states that Lhotsampas were recruited from Nepal as labourers to extract lumber from the forests of southern Bhutan. According to anecdotal evidence, however, the Bhutanese government resettled the Lhotsampas in the hot, humid, malaria-infested forests of Southern Bhutan. Bhutanese residing in more temperate regions Bhutan avoided living in the South in those days. The twin objectives of opening up the south to habitation were to create a buffer with the southern neighbour, India, and to open up the forests for the economic extraction of timber, crops and other produce.

Mapping of Minorities

According to Capotorti's definition of minorities, only the Lhotsampas can be considered a minority group in Bhutan. They have a history of being discriminated against in Bhutanese society. Their marginal situation became more overt and more pronounced from the late 1980s up until 2008. The year 2008 was significant in that democracy was introduced to the country. The advent of democracy was probably more significant for the Lhotsampas than for any other ethnic group in Bhutan in terms of conferment of rights. Before 2008 the Lhotsampas' social, economic and political rights had been systematically curtailed.

In the late 1980s the government advocated and implemented a 'One Nation One People' policy, which was essentially an acculturation project. It focused on rolling back certain cultural endowments, such as the teaching of the Nepali language in schools; enforcing a countrywide dress code; and removing Lhotsamkha (Nepali) as one of the languages used in the national parliament. The government also ceased the integration policy wherein

they had been providing cash incentives for inter-marriage between ethnic Lhotsampas and members of other ethnic groups. Further, the government started the national citizenship census exercise, wherein people were required to prove their registration and residence in Bhutan before 1958. As a result, many people who could not show proof became non-nationals overnight, even though many had been born and raised in Bhutan.

There were political demonstrations, some of which turned violent, in various parts of southern Bhutan in September 1990. Following this, the government militarised southern Bhutan. There were anecdotal reports of villagers being harassed by the local administrations and the military. The result was an exodus of Lhotsampas to the refugee camps in eastern Nepal. Concurrently, the government imposed the requirement for a security clearance for recruitment in government jobs, promotions of civil servants, training and studies, business licences, passports for international travel and admission of children in schools. The certificate was commonly called a 'police clearance' because citizens had to apply to the Royal Bhutan Police, who then conducted a review of documents and registers maintained at the district level. If any family member of the applicant had participated in the demonstrations of 1990 or had a record of family members being imprisoned, the clearance was denied to all family members, including the applicant, though they themselves were innocent. This instrument was sufficient to marginalise the Lhotsampas economically, politically and socially. Most families of Lhotsampa ethnicity were affected. Thus began almost two decades of suffering for the Lhotsampa people of Bhutan. Many families were divided, with some family members resident in the refugee camps in Nepal and some within Bhutan. Schools and medical facilities in southern Bhutan were closed down and all development activities in the southern districts ceased after anti-government miscreants who left the country returned and vandalised facilities. Thus, the majority of innocent Lhotsampa, stereotyped as anti-nationals, underwent harrowing experiences of public shaming and deprivation of their rights.

There were no avenues for Lhotsampas to advocate for their rights, since they had already been labeled anti-national. Many were arrested arbitrarily, detained and tortured in prison. This was because there were no legal frameworks assuring individual rights. Southern Bhutan was in a state of emergency. Intimidation, harassment and perpetration of violence by the local state machinery against Lhotsampas in the country were common. By decree of parliament, more than 200 civil servants were terminated from the civil service on the grounds that they had family members in the refugee

camps in eastern Nepal. The dismissal letters issued by the Royal Civil Service Commission cited 'in the interest of public service' as the reason for the dismissal of the Lhotsampas.

After 2008, with the enactment of the Constitution of Bhutan and introduction of a constitutional monarchy, access to rights for Lhotsampas, as for all the citizens of Bhutan, was guaranteed. As such, Lhotsampas are now treated equally before the law and can invoke their rights, and overt discrimination has decreased.

The provisions of the constitution provide a framework within which no citizen or institution can overtly discriminate against other citizens. After the constitution was endorsed in 2008, Lhotsampas no longer had difficulty in obtaining the documents they needed. Consequently, children were readily accepted into schools. Lhotsampa applicants for higher studies in professional occupations and college graduates could obtain opportunities for tertiary studies and jobs based on merit. Civil servants availed promotions based on performance evaluations by supervisors and training opportunities based on their needs. Lhotsampas aspiring to start up businesses could easily obtain licences. It was no longer problematic for Lhotsampas to avail travel documents such as passports to travel abroad. In short, Lhotsampas seemingly were not discriminated any longer.

Lhotsampas: After Democracy

It is not easy to identify and distinguish if and how Lhotsampas are being discriminated against since 2008. Data disaggregated by ethnicity is not available. The recourse adopted here, therefore, is to fill this gap with information from in-depth conversations with Lhotsampas serving in government and operating businesses, as well as several other categories of people, including students and youth.

Lhotsampa civil servants still feel a sense of insecurity, especially with regard to performance appraisals by their supervisors. Some also felt that they did not get the recognition they deserved, compared to colleagues from other ethnic groups, who they felt sometimes enjoyed more favour from supervisors. Therefore, they feel a sense of nepotism practised on ethnic lines. For similar reasons, some felt that Lhotsampa civil servants could not aspire for senior executive posts, since the ministries did not nominate them, even though they felt they fulfilled all the criteria. Many businesses also recruit people based on family and ethnic affiliations. Some Lhotsampa students

felt deprived because not all the criteria for selection for further studies were favourable towards them.

Religious Minorities

Buddhism is the state religion of Bhutan. Hinduism is accepted in the country because Hindus are free to practice their religion. While being represented in the Council for Religious Organizations, Hindus have also received state support for the construction of temples in some parts of the country, including Thimphu, the capital city.

A few Muslim families are also reportedly living in Samtse district, but like the Adivasis they are a very small group and are therefore overlooked.

Christians are a religious minority in Bhutan who adhere to several denominations of Christianity, such as Roman Catholic, Protestant and Pentecostal, among others. The exact number of Christians cannot be determined, owing to a lack of data. It is observed that the number of conversions to Christianity is on an upward trend. This may be the reason that Christians are not always looked upon in a positive light.

Although the Constitution of Bhutan, 2008 allows the freedom to practise any faith, Christians have not been allowed to legally register themselves as a religious organisation under the Religious Organisations Act, 2007. Only Buddhists and Hindus are members of the Council for Religious Organisations. There have been reports of instances of harassment of Christians, especially in rural areas. Christians across the country have not been given the permission or the means to construct a church, though Buddhists and Hindus continue to enjoy state patronage and funds for establishing temples across the country. Christians therefore congregate in private houses to worship. Christians have also not been allocated a proper place for burial of their dead, though they continually request that such a place be allocated by the government. Reports indicate that Christians are looked upon with suspicion, as potential proselytisers and converters. According to the Constitution of Bhutan 2008, proselytisation is banned. The Penal Code of Bhutan has provisions to penalise people who forcefully convert people to other faiths.

People from Low Castes

Lhotsampas are mostly Hindus. As in neighbouring countries, such as India and Nepal, the Hindus of Bhutan also practice the caste system.

However, there is no dowry system. Bhutan is a secular state and the laws do not espouse caste differentiation. On the other hand, constitutional provisions are unclear about the prohibition of caste discrimination because caste is not specifically mentioned as a category. Lhotsampas are caste conscious and observe purity and pollution aspects prescribed by the caste system. Though caste practices are not followed as stringently as in the past, discrimination based on caste is very much a reality in rural southern Bhutan.

In the case of marriage, people from different castes often observe endogamy to maintain 'purity'. There was a case in 2016, which garnered media attention, wherein a man from a low caste married a woman from a higher caste. The people marrying were ostracised ceremoniously, as the bride's parents symbolically expelled their daughter from the higher caste to a lower one. When the person from the lower caste filed a case in court, the case was dismissed on the grounds that it was not within the mandate and purview of the court to settle such cases. That such cases do not come to the attention of the media regularly does not imply that these do not happen on a regular basis. Events such as these demonstrate that low caste people face discrimination not only from higher caste Lhotsampas but also from the legal system. People who are both ethnically Lhotsampa and from a low caste are positioned in an intersectional category, rendering them open to a double burden of discrimination.

Constitution and Law

The Constitution of Bhutan 2008 does not recognise 'minorities', as evidenced by an absence of specific provisions discussing minorities and their rights in the constitution. The constitution states that 'all persons are equal before the law and are entitled to the equal and effective protection of the law'. Further, the constitution stipulates that no person can be discriminated against on the grounds of race, sex, language, religion, politics etc. Likewise, there is no other legislation dealing with minorities.

Therefore, there is no official policy or position on minorities in Bhutan. The provisions for equal treatment before the law and non-discrimination of people based on their differences suggest that the law does not differentiate people by minority status. This implies, therefore, that while all are equal before the law, minorities are not even recognised by the law, and therefore have little opportunity to have their issues legally addressed, even if they are not prevented from approaching the courts to voice their grievances.

There are legislative provisions for non-discrimination, but these tend to overlook the needs of minorities. Therefore, there is a justification for overarching legislation for the protection of minorities. This is because membership of the social category 'minority' may change over time and context. A group that is a minority today may cease to be one once they have realised their rights, and another social group may become a minority. Whichever group becomes a minority will need protection and the best means for this is to ensure that protection of minority rights is enshrined in legislation.

Parliamentary Committees

There are two committees in parliament, namely the Social and Economic Committee and the Human Rights Committee, which are identifying and discussing issues of concern. However, it is difficult to tell if these committees are active and responsive to the issues that everyday people and minorities face. Further, there are no reports of their work in the public domain.

Civil Society Organisations

The Civil Society Organisations Act was enforced in 2007, and CSOs started formal registration in 2010 after the Rules and Regulations of the Act were endorsed. Currently, there are 50 CSOs in Bhutan. However, none of the CSOs registered work in the area of human rights and advocacy for human rights. This reflects that the type of CSOs that are being registered are the ones supplementing and complementing efforts in service delivery, or mutual benefit organisations. There is a clear lack of human rights advocacy CSOs in Bhutan.

While the Civil Society Act establishes the rationale for civil society and legitimises the existence and operation of civil society organisations (CSO), it is weak in the area of facilitating advocacy work by CSOs for its target groups and constituents. There have been on-going discussions among CSOs and the government on the need to amend provisions that empower the CSO Authority to approve the CSO registration applications of organisations that have applied to advocate and address emerging social issues.

Religious freedom

The Constitution of Bhutan (2008), while designating Buddhism as the spiritual heritage of the nation, confers the right to follow any religion. Proselytization, however, is banned. The penal code categorises coercion or inducement to convert as a misdemeanour, which is punishable with a

sentence of three years in prison. Further, the law prohibits oral or written communication that promotes enmity between religious groups. Violations are punishable by up to three years in prison.

The Penal Code of Bhutan (2004) also criminalised promoting civil unrest by advocating religious abhorrence, disturbing public tranquillity, or committing an act that is prejudicial to the maintenance of harmony between religious groups, stipulating a penalty of five to nine years in prison.

Religious groups are required to register with the government. Without registration, a religious organisation is not recognised by the government and will not enjoy rights to organise publicly, own property, accept money, conduct outreach activities, import literature, or hold worship services. The law permits the government to ‘avoid breaches of the peace’ by requiring licences for public assembly, prohibiting assembly in designated areas, and imposing curfews. Religious organisations considered a threat to the spiritual heritage of the country are prohibited from registering. Some years ago, a group of Lhotsampa people from the Kirat sub-group (consisting of Rai and Subba ethnicity) applied to register themselves as a Kirat Dharma group with the organisation. Their application was turned down.

An eight-member board of the Commission for Religious Organisations defines the structure of religious institutions, enforces the prohibition on religious leaders running in secular elections, and monitors religious fundraising activities. The Commission for Religious Organisations is required to ‘ensure that religious institutions and personalities promote the spiritual heritage of the country’ by developing a society ‘rooted in Buddhist ethos’.

Further, religious groups are required to acquire government approval to construct temples. All religious buildings are subject to legal requirements to adhere to traditional Bhutanese architectural standards. Religious organisations are prohibited from being involved in political activity. Ordained members of the clergy, irrespective of religion and including the sizable population of Buddhist monks, are barred from political activities.

The Role of ICRC in Bhutan

Up to 2008 the government received periodic visits from the International Committee of the Red Cross to monitor the condition of prisons and treatment of prisoners detained on political grounds. Based on their observations, the government would receive recommendations from the ICRC.

Over the years, such visits have had a beneficial impact on the condition of prisons and prisoners in Bhutan.

Life and security

The Constitution of Bhutan (2008) guarantees all citizens the right to life, liberty and security of persons. The constitution also entrusts to the state the responsibility to provide security in the event of sickness and disability or lack of adequate means of livelihood for reasons beyond one's control. Before the constitution came into force, there were reports of people going missing if they criticised the government or came into conflict with authority. Since 2008 such incidents have not been commonly heard of. There are now laws in place that people must be produced within 48 hours to be charged in court for crimes they are alleged to have committed, but this was not the case before. People used to languish in detention for extensive and indefinite periods of time, without access to legal aid for redress and due process of law.

There have been a few cases of kidnapping in southern Bhutan in the last few years. Most of them occurred in Sarpang district. The kidnappers are alleged to be from across the border in India. Kidnappers were encouraged to continue their activities after a lukewarm response from security personnel on both sides of the border – in India and Bhutan – to investigating the kidnappings. The limited security arrangements in place at the southern borders are insufficient to quell future attempts at kidnappings and other crimes.

Efforts are underway to implement the existing rules that guarantee security of person. Much can be done to ensure a rapid response in times of violence against individuals, and to provide legal aid and settle cases for crimes committed against people.

As with so many aspects of life in Bhutan, data is scarce. Either such data are not collected or, if collected, such data are not made available for public consumption. Hence, data on such disappearances are mostly not shared in the public domain. One only hears about these cases on the grapevine. For instance, no one heard about the two Christian pastors who were sentenced to four years of imprisonment in 2014 on the grounds of illegal receipt of unauthorised funds from abroad and unauthorised assembly of people for viewing of a documentary. This was reported in the Religious Freedom Report (US State Department 2015). The pastors were released on bail in 2015, only after paying fines. In 2017 the Royal Bhutan Police have posted pho-

tographs on their website of 29 missing persons. It is possible that some of these missing persons are those absconding from the law.

Participation

The constitution guarantees as a fundamental right the right to equal access and opportunity to join the public service and to practise any lawful trade, profession or vocation.

In terms of the participation of Lhotsampas in institutions, electoral events and bureaucracy, much has changed over the years. For instance, before the 1990s there were a substantial number of Lhotsampas who were recruited to the civil service and the armed forces. Between 1990 and 2008 this number decreased because many could not produce documents such as security clearances for the application process. Besides this, taking Lhotsampas into the armed forces may have been perceived as a risk to national security.

Since 2008 many Lhotsampas now enter service based on merit and not ethnicity. However, even now there are no Lhotsampas occupying senior executive posts. While the ruling governments try to balance out the ministerial portfolios based on regions and ethnicity, there are comparatively few Lhotsampa executives. There are two Lhotsampa ministers in the current ruling government. Among members of parliament, there are six who are from the Lhotsampa ethnic group out of a total of 47 currently representing their constituencies in the National Assembly (parliament). From the total 25 members of the National Council, only two are Lhotsampas. In the previous government there was only one serving Lhotsampa minister. There are no Lhotsampas in the post of secretary, which is the highest executive position in the civil service. There are around half a dozen Lhotsampas serving as directors or commissioners. There is only one Lhotsampa District Administrator (Dzongda) in a total of 20 districts. In terms of local government, 40 of the 205 County Executive Officers (Gups) are of Lhotsampa ethnicity. There are only a few Drangpons (judges) of Lhotsampa ethnicity in the judiciary. Since the language of the court in Bhutan is Dzongkha, the national language of Bhutan, most Lhotsampas are overlooked when it comes to nominations for the post of judge.

All adult citizens in Bhutan are eligible to cast their vote at the time of elections. Since 2008 Lhotsampas have not been discriminated against in terms of their right to cast their vote. However, it is estimated that there more than 10,000 persons of Lhotsampa ethnicity who as yet are not

Profile of a vulnerable community:

LGBT+ Community in Bhutan

The LGBT+ community is an emerging entity in Bhutan. Though homosexuality among men has always been known of, for example among monks and in prisons, gay women were unacknowledged until recently. It was only a few years ago that LGBT+ people began to gain some attention in the media and consequently in society. The issues of LGBT+ people are still emerging because only a few have come out and declared their status; many have not, fearing societal stigmatisation and discrimination. There are currently 92 LGBT+ people who are registered members of an informal organisation called Rainbow Bhutan: Celebrating Diversity. The UNDP estimates there to be more; through mapping and size estimation helped by forthcoming individuals, they estimate that there are 9,105 men who have sex with men in Bhutan. Similar estimates regarding other members of the LGBT+ community are not available.

LGBT+ people are stigmatised in society. A commonly held perception about LGBT+ people is that they are abnormal. Due to this, most LGBT+ people in Bhutan are afraid to declare their sexuality. This discriminative attitude also translates to derogatory name calling and both physical and sexual violence towards LGBT+ people in Bhutan. Legislation is strongly biased towards LGBT+ people in Bhutan; Article 213 in Chapter 14 of the Penal Code of Bhutan states: 'A defendant shall be guilty of the offence of unnatural sex if the defendant engages in sodomy or any other sexual conduct that is against the order of nature.' Classified as a crime, same-sex sexual intercourse is punishable by a prison sentence from one month up to a year. As a result, LGBT+ people are compelled to exist as a 'hidden population' for fear of

Contd...

citizens. Many could not vote in the last elections in 2013 and many may not exercise this right in 2018, during Bhutan's third round of democratic elections. Besides the inability to vote, Lhotsampas without citizenship documents face immense difficulties travelling abroad and seeking jobs. In fact, they face many difficulties asserting their self-determination for a better and more fulfilling life in Bhutan. There have been efforts by the Department of Census and Immigration to collect data and information to establish the status of Lhotsampas without citizenship. However, as per constitutional provisions, His Majesty, the King of Bhutan holds the prerogative to award citizenship. Several batches of people received citizenship in the last couple of years from His Majesty, the King. There are still people in Bhutan still without citizenship. It is reported that more than 8,000 persons have now received citizenship from His Majesty, the King. It is not known how many of these recipients were Lhotsampas.

The constitution categorises all Lhotsampas as ‘citizens by registration’, implying that they were only conferred citizenship in 1958 because either they or their parents were domiciled in Bhutan and registered in the records of the government.

Culture and Identity

The constitution entrusts the state to preserve, protect and promote the cultural heritage of the country by conserving and encouraging research on local arts, custom, knowledge and culture, to encourage free participation in the cultural life of the community. Further, the constitution permits the enactment of legislation necessary to advance the cause if it leads to the cultural enrichment of Bhutanese society. One of the domains of the Gross National Happiness framework is cultural diversity, but the government and GNH advocates did not, until recently, pursue the promotion of cultural diversity and resilience in the country. It is very difficult to identify any work on language or other cultural studies done on the Lhotsampa culture.

As described in earlier sections, Lhotsampas have a distinct culture, which gives them an identity built on their language, religion, customs, traditions and the feeling of being Lhotsampa. The period between 1990 and 2008 was a time when Lhotsampas could not practise their culture as desired. Although the right to practise religion, language and other aspects of culture is now being exercised, certain aspects of cultural deprivation still exist. For example, with the withdrawal of the Nepali language in schools, it is now taught in only two *Pathshalas* in southern Bhutan. The Nepali language is in a state of decay and decline in Bhutan. The current generation of Lhotsampa children cannot read and write in their own language any longer because there is no formal support for its teaching in schools. Parents could teach their children at home but many parents themselves are deficient in the written language. There is a concurrent stress on promoting the national language, Dzongkha, which suggests that the relegation of minority languages could lead to the assimilation of minority groups to the dominant culture within a few generations.

All Bhutanese citizens are expected to wear the national dress – the *gho* for men and the *kira* for women – when visiting government institutions and temples and when attending official functions. Otherwise, people are free to wear their ethnic dress. There is no objection to Lhotsampas wearing their ethnic dress during festivals and while participating in cultural programmes like music and dance. In official functions such as the National

... ... *Profile of a vulnerable community continued ...*

arrest or being blackmailed on the grounds of this law. As a small society where visibility can become pronounced, many LGBT+ people fear being in the spotlight and having to experience the stigmatisation that accompanies being the subject of talk and gossip.

In the last decade, there has been a shift in the strength of the group's self-mobilisation, as well as wide-ranging support from prominent personalities in Bhutanese society, which has been captured by the media. Some LGBT+ people have set up and are operating websites. In recent years several LGBT+ people have declared their sexuality in public. Media coverage has been increasing, through news articles, television interviews and posts on social media. LGBT+ people are participating in international and regional conferences and symposia to share their work in Bhutan. Article 213 of the Penal Code has been discussed occasionally in parliament with regard to its discrimination against a sexual minority, but no serious attempts have yet been made to amend the law. On the other hand, there have never been any convictions under the law. Donors both within the country and outside have been providing financial support for events to create public awareness and to enhance the visibility and acceptance of LGBT+ people in Bhutan.

Though the LGBT+ movement has started, therefore, it is still weak. No studies have yet been conducted to assess economic discrimination against LGBT+ people as a group, but they remain vulnerable to societal and legislative discrimination as well as to Sexually Transmitted Infections and HIV/AIDS. Education and awareness among the general public, as well as amendments to the law, will be determining factors for societal acceptance of LGBT+ people in Bhutan.

Day (17 December), a few Lhotsampa dances feature in the cultural programme. Schools also feature some Lhotsampa cultural entries such as songs and dances in their cultural programmes.

Non-discrimination and Equality (Socio-economic Rights)

Under the Principles of State Policy in the Constitution of Bhutan (2008), there are several clauses guaranteeing socio-economic rights for all citizens. The first fundamental right enshrined in the constitution is that 'all persons shall have the right to life, liberty and security of person and shall not be deprived of such rights except in accordance with due process of law.' Also, article 8 states that 'inequalities of income and concentration of wealth will

be minimised’, while article 11 entrusts the state with the ‘responsibility to ensure all citizens secure an adequate livelihood, and for this if people are not capable, to institute capacity through the right to work, vocational guidance and training.’ Further, article 14 ensures ‘the right to fair and reasonable remuneration for one’s work.’

The socio-economic situation of the Lhotsampas has particularly improved after the discontinuation of discriminatory procedures. Many Lhotsampas joined the private sector as employees in business firms or started their own, mostly small businesses. This was not necessarily due to any desire for a career in business. Many were compelled to enter the private sector because government jobs were not accessible to Lhotsampas who had been denied the Security Clearance Certificate. This is also the reason that a large number of Lhotsampas currently subsisting in the small-scale retail business sector. Earlier, a crime committed by a family member, whether alleged or convicted, was used to implicate all other family members when they applied for a Security Clearance Certificate. Currently, security clearances are issued on an individual basis and no adverse records of erring family members are transferred.

Income

The discussion on income is addressed indirectly mainly because of the dearth of data and information. The approach adopted here is to ascertain economic status, here meaning poverty, by districts in Bhutan. The Poverty Analysis Report 2012 (National Statistical Bureau 2012) shows that while poverty rates in majority-Lhotsampa districts such as Tsirang and Sarpang are mid-range, the districts of Dagana and Samtse have higher rates of poverty. In fact, Samtse has among the highest poverty rates in the country. Of the total population of poor people in the country in 2012, 17% resided in Samtse. Likewise, Samtse had the highest proportion of poor and subsistence poor households. Reasons for high poverty rates in Samtse include the protracted period of closure of development works from the 1990s, as well as its high population and inaccessibility – to reach Samtse, travellers used to have to go through India. The road connecting Samtse in southern Bhutan with other places along the border has only recently been completed.

Employment

The Constitution of Bhutan guarantees Bhutanese citizens the right to practise any lawful trade, profession or vocation. The constitution also states that Bhutanese citizens shall have the right to equal pay for work of equal value.

**Good practice case study:
The Tarayana Foundation**

The Tarayana Foundation was founded in 2003 by Her Majesty the Queen Mother and launched by His Majesty the King. It was registered as a civil society organisation and has the status of a public benefit organisation. It is governed by a board of directors and guided by an executive committee, while its operations are executed by a Secretariat. The main objective of the Tarayana Foundation is to uplift and enhance the lives of vulnerable individuals and communities in Bhutan. Since 2003 the foundation has grown significantly – in strength of staff, in resources, and in the diverse programmes and activities that it implements among the poorest and most vulnerable sections of the country. It is one of the few CSOs that have partnered with the government for many development programmes, facilitated by their deep reach into the villages and their ability to respond rapidly and effectively to address community-level and community-articulated development needs.

The Lhops (also called Doya) are a small ethnic group living in four to five villages in the southwestern district of Samtse, among the foothills of southern Bhutan. They are considered to be the indigenous people of Bhutan. The Lhops have a distinct language, religion and culture, and follow unique customs and traditions. Owing to their isolation and voicelessness, they have been left out of the development process and face a quality of life much lower than that of neighbouring communities. High infant mortality; disease; poor sanitation and hygiene practices; low economic capacity due to unsophisticated farming technology; and few economic opportunities all make this ethnic group very vulnerable.

Since 2005 the Tarayana Foundation has been working in the Lhop communities of Jigme, Singye, Wangchuk, Taba and Ramtoed, using a multi-pronged approach to address the development needs of the Lhops. In the area of education and capacity building, the foundation has been sponsoring children to study in schools by paying for their school uniforms, meal and travel allowances, and nominal fees paid to the school. It has also

Contd...

The Ministry of Labour & Human Resources carries out regular Labour Force Surveys, so data from the last ten years is available. Though data is not segregated by ethnicity, the data is again approached indirectly here by examining the incidence of unemployment by district – mainly in the southern districts. It must be clarified here that the gross population counts in the southern districts also include people of other ethnicities residing in the district. However, since more than 80% of the population in the southern districts are Lhotsampas, for the sake of comparison and discussion, the commentary will

consider these southern districts (Dagana, Tsirang, Sarpang and Samtse) as the ones inhabited by Lhotsampas in the southern districts.

A review of statistics shows that in 2014 four districts with predominantly Lhotsampa populations – namely Dagana, Tsirang, Sarpang and Samtse – together contained 1,376 of the total number of unemployed people in the country (9,174), which is 15% of the total. This is a decrease from previous years; in 2012 this number went as high as 25%. Data on the number of Lhotsampas employed by the government are not available. The number of Lhotsampas in the private and business sector is also not available, but it is observed that many Lhotsampas joined the business sector after the 1990s, as is evident in the number of small businesses, such as restaurants and retail shops, that are owned and operated by Lhotsampas.

Land and property

The Land Act (2007) specifically mentions that the Royal family, individuals, families, government institutions, NGOs and religious organisations in Bhutan are authorised to own land.

The Constitution of Bhutan bestows to all Bhutanese citizens the right to own property. They are, however, barred from selling or transferring land or any immovable property to persons who are not citizens of Bhutan, except in keeping with laws enacted by parliament. Further, the constitution protects the right to property by acquisition or requisition, except for public purpose, and on payment of fair compensation in accordance with the provisions of the law.

Land is dear to all Bhutanese people. Only citizens can own land in Bhutan. Non-nationals are not permitted to hold land within Bhutan. The sole prerogative to grant land to Bhutanese people lies with His Majesty, the King of Bhutan. Many people with marginal or no land have been and continue to be granted land. There have been several resettlement programmes; the ones in the mid-1990s in the southern districts took place en masse, with settlers from throughout the country occupying the land of Lhotsampas who had left Bhutan for refugee camps. Officials from the government, the army or their relatives were allotted the best land. Many recipients of prime land were not necessarily landless. Further, periodic land measurements revealed that the land of many Bhutanese people was in excess of what was reflected in the land documents. Now, either the excess land of people from other parts of the country has been regularised

...Good practice case study continued...

provided scholarships for the tertiary education of a Lhop girl studying in India. The foundation has also invested in enhancing the capacity of Lhop people – mainly women – by training them in a range of skills, including house building, commercial and organic farming practices, tailoring and cloth weaving from nettles for women, and paper-making. By enhancing economic opportunities for Lhop people, the foundation has facilitated the forming of production groups for growing and marketing farm products such as cardamom, orange and vegetables. It has also provided microloans for small business activities. Self-help groups have also been formed in the communities to enhance participation in enterprise. Over 50 houses have been constructed thanks to facilitation and provision of CGI roofing material by the foundation. To enhance social cohesion, the foundation has organised the ‘Doya Way of Life Festival’ to create awareness of this little-known group. They have also established a Doya Community Radio to increase the dissemination of information in the communities.

Though the foundation has worked intensively with the Lhop people, it has also faced challenges in the process, mainly posed by the isolated nature of the communities and rugged terrain, which make service delivery difficult. Further, many programmes require behavioural changes on the part of the Lhop people; these take time and should not be forced on the Lhops. In spite of these challenges, much progress has been made; the Lhops are on their way to finding a place in the country’s development initiatives and many of the development issues that have confronted them so far are being addressed. All this has led to the Lhop people living a more wholesome and dignified life in the remote areas in which they live. One important lesson that can be learned from this case study is that challenges such as these can be overcome if all agencies involved in the development process, including organisations such as the Tarayana Foundation, and other stakeholders, such as government entities and the Lhop people themselves, all collectively contribute to the timely mobilisation of resources, constant communication, and reciprocal appreciation.

and made legal holding, or those with excess land have been allowed to re-purchase excess land.

Lhotsampa citizens, like other ethnic groups in the country, are free to purchase land and settle down in any part of the country. Lhotsampas, mainly those working away from their parents, have moved out from their traditional homeland in southern Bhutan and settled down in other parts of the country, including in Thimphu, the capital city of Bhutan. Many villagers from southern Bhutan migrated to urban centres in the 1990s, when it

was no longer secure to stay in their villages. While many returned, some have continued to live in urban areas having found new vocations.

Health

The Constitution of Bhutan (2008) entrusts to the state the responsibility to provide free access to basic public health services providing both modern and traditional medicines. Also, the state is to endeavour to provide security in the event of sickness and disability or lack of adequate means of livelihood for reasons beyond one's control.

The health needs of the Bhutanese population are met through a tiered system of health facilities at the capital, district and county levels. This network of health facilities provides both preventive and curative services to all citizens, free of cost. For diseases that cannot be treated within the country due to lack of expertise or equipment, patients are referred to India for treatment at the government's cost. There are no distinctions in access and treatment, no matter what the citizen's ethnicity. Even people from India working on projects and private construction avail medical treatment and care free of cost, just like the rest of the Bhutanese population.

The southern districts together have six (19%) of the total number of hospitals and 42 (20%) county-based Basic Health Units. As such, the distribution of health facilities is as sufficient for catering to the population of each health facility's jurisdiction as it is in other parts of the country.

Education

The Constitution of Bhutan (2008) entrusts to the state the responsibility of providing education for the purpose of improving and increasing the knowledge, values and skills of the entire population, with education being directed towards the full development of the human personality. Furthermore, the state is to provide free education to all children of school-going age, up to the 10th standard, and to ensure that technical and professional education is made generally available and that higher education is equally accessible to all on the basis of merit.

Primary education (up to class 10) is free for all citizens. The four districts inhabited by Lhotsampas have 117 (19%) schools out of a total of 620 schools in the country. Of the total 117 schools in southern Bhutan, 41 schools do not have road access, i.e. they are located in remote areas and are not connected with roads of any kind. School admission is no longer a

problem for Lhotsampa children, as long as they fulfil the age requirements (minimum six years of age). Samtse is one of the least reached districts in the country and is the cause of high rates of poverty in the country. Samtse is the district with the highest proportion of schools with student-teacher ratio more than 24 (the maximum class size) suggesting that schools may be inadequate or teachers may not be enough to distribute to all districts in the country.

Conclusion and Recommendations

Bhutan is a mosaic of different ethnic groups, with around 21 different groups, identified mainly on linguistic profiles built from linguistic studies carried out in Bhutan. The number of ethnic groups, however, is provisional and can benefit from a more comprehensive study on ethnicity in Bhutan. The absence of any legislation in Bhutan on minorities as a category and their issues, including in the Constitution of Bhutan (2008), does not suggest that there are no minorities and that they do not have issues. Bhutan's recent history, particularly from the late 1980s to 2008, has seen a turbulent political period revolving around citizenship, rights and ethnicity, mainly concerning the Lhotsampas of southern Bhutan. The groups that currently face the most discrimination, therefore, are Christians and Lhotsampas. However, this discrimination often takes more subtle forms.

The following recommendations are proposed:

- A comprehensive study, including field research, is required to identify the various ethnic groups in the country so that the nuances of ethnicity might be documented and that groups who are distinct in their own right might not be agglomerated with other dominant ethnic groups, as is the case now. The outcome of such a study would be a useful contribution to the mapping of ethnic groups and hence the exploration of an important component of Bhutan's cultural heritage;
- The committees in the Bhutanese Parliament constituted to address social and economic issues need to be sensitised. Agencies should advocate and lobby with parliamentarians to encourage them in turn to advocate for legislation on minorities and minority issues;
- Minority issues are relevant and important to the Bhutanese context. Minorities and their issues need to be discussed and legislation enacted to ensure their protection. It is also necessary to bring about amendments to other legislation, namely the Civil Society Organisations Act (2007), to permit the registration of civil society organisations with

strong advocacy roles and to give CSOs more freedom to do advocacy work;

- There is no civil society organisation as yet registered to advocate for human rights in Bhutan. Now is the time for an entity such as this to apply, and for the government to approve its registration. Human rights advocates would be able to work towards protecting the rights of all the citizens of Bhutan and preventing discrimination; and
- It is recommended that data disaggregated by ethnicity be collected and made available in the public domain. Furthermore, public access to census data –which could be made dependent on researchers justifying their need for the data sets – would be most useful for social research.

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Chapter 5 India

Unable to Protect; Reluctant to Promote

*M. Sajjad Hassan**

Introduction

Worsening Condition of Minorities in India

India has traditionally enjoyed much international goodwill for its working democracy, secular values, and tolerance, all of which have a direct bearing on the freedoms and rights of its minorities. Lately, however, it has been the subject of much negative attention. The most recent edition of the Social Progress Index ranked India a dismal 104 (out of 128) on discrimination and violence against minorities (Social Progress Imperative 2018). A 2017 Pew Research Center Analysis of 198 countries ranked India as fourth worst in the world for religious intolerance, trailing only behind Syria, Nigeria and Iraq.¹ The US Commission on International Religious Freedom, in its 2017 reports, noted that ‘in 2016, religious tolerance and religious freedom conditions continued to deteriorate in India’.² These are worrying developments in India’s record on minority rights.

In this chapter we examine India’s record specifically on the socio-economic rights of minorities, to examine trends and patterns. In doing this, we use the framework of the Human Rights Indicators to systematically unpack and examine commitments and efforts by state parties, to understand and explain minority outcomes (United Nations, 2006, 2012;

* The writer is associated with Misaal Foundation. He gratefully acknowledges the research assistance provided by Shahnaaz Khan and Sneha Chandna.

1. ‘India is the fourth-worst country in the world for religious violence’, 14 April 2017. <https://qz.com/959802/india-is-the-fourth-worst-country-in-the-world-for-religious-violence/>
2. Available at: www.uscirf.gov/sites/default/files/India.2017.pdf

Equality and Human Rights Commission, 2015). We first define who minorities are in India's context. We then briefly survey the literature on the condition of India's minorities in terms of socio-economic conditions, including poverty; employment; health and nutrition; and education, to try to understand outcomes for minorities (Section 2), following this up with a quick scan of literature to try to understand the poor outcomes (Section 3). In Section 4 we look at India's commitment to minority rights, based on a reading of the Constitution, case laws and India's ratification of relevant International treaties. Section 5 examines India's efforts to provide for minorities – programmes and schemes put in place to close the gap, and resources targeted – and how they work. In Section 6, we conclude our discussion on understanding the missing links, examining this particularly in today's context, with heightened violence against minorities and the impact that this is having on minority wellbeing. We conclude with a set of recommendations.

Who are India's Minorities?

To answer that question, one must follow the developing policy agenda for minorities.

The term 'minorities' occurs only occasionally in the Constitution and is not defined: in Articles 29 and 30, which are grouped as the educational and cultural rights of 'linguistic, religious and cultural minorities' and are included under part IV of the Constitution as fundamental rights; and Article 350B, which relates specifically to linguistic minorities. These provisions guarantee certain rights to minorities.

- Article 29 protects the interests of minorities, defined as any section of citizens having a distinct language, script or culture of its own, and their right to conserve the same. It also mandates that there should be no discrimination on the grounds of religion, race, caste, or language in admissions to schools maintained by the state.
- Article 30 mandates that (i) all minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice. It also mandates that (ii) there shall be no discrimination by the state in granting aid to educational institutions on the grounds that it is under the management of a minority, whether based on religion or language.
- Article 350B provides for the appointment of a special officer for linguistic minorities by the president.

In 1992, faced with demands to better provide for minorities, and in the context of the UN Minority Declaration (December 1992), which required member states to take active measures to protect and promote the rights of minorities, the Government of India enacted the National Commission for Minorities Act (1992) and set up the National Commission for Minorities. In 1993, as part of the measures, the government conferred minority status to Muslims, Christians, Sikhs, Buddhists and Zoroastrians/Parsis – all religious minorities. This was applicable at the national level. Jains were added to the list in 2014. The Supreme Court of India, in *TMA Pai Foundation & Ors. v State of Karnataka & Ors.* (2002), held that ‘minority’, particularly in relation to Article 30 of the Constitution, is determinable at the state level, not nationally.

This lack of clear definition has led to multiple interpretations and has created confusion. Not all minority religious groups are officially recognised as such. Jewish people, numbering about 4,000 in all nationally, have minority status at the state level in Maharashtra, but are not nationally recognised as minorities.³ On the other hand, a Public Interest Litigation in the Supreme Court is seeking recognition of Hindus as a religious minority in eight states of India where they are in the numerical minority.⁴ This matter has been referred by the court to the National Commission for Minorities (NCM) for examination. Separately, The NCM chairman has been reported in the press as having favoured Kashmiri Pandits, a religious minority in Jammu & Kashmir, by giving them minority status.⁵

At the same time, groups that are traditionally sects of Hindu religion have also been demanding and obtaining separate minority status. Jains gained recognition as a separate minority group at the national level in 2014. Recently, Lingayats in Karnataka state have been making similar

3. ‘For India’s Jewish Community, Wait for Minority Status Continues’. The Wire. 28 July 2017 <https://thewire.in/162251/for-jewish-community-in-india-wait-for-minority-status-continues/>

4. ‘SC declines plea to declare Hindus as minority in eight states’. Time of India. 10 November 2017 <https://timesofindia.indiatimes.com/india/sc-declines-plea-to-declare-hindus-as-minority-in-eight-states/articleshow/61589757.cms>

5. ‘Kashmiri Pandits should get Minority community Status, says NCM Chairman, Gairul Hasan Rizvi.’ First Post. 13 June 2017. <http://www.firstpost.com/india/kashmiri-pandits-should-get-minority-community-status-says-ncm-chairman-gairul-hasan-rizvi-3594687.html>

demands, claiming that if Buddhists, Sikhs and Jains can be recognised as separate communities, Lingayats should be too.⁶

Notably, India's Constitution also does not define the term Hindu, the majority religious grouping, but it does allude to a definition. Article 25 on freedom of conscience et al (Explanation II, sub clause (b) of clause (2) regards throwing open Hindu religious institutions to all classes and sections of Hindus⁷) deems that 'reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jain or Buddhist religion...'.⁸ The Constitution also defines to whom 'Hindu Law' applies. For example, the Hindu Marriage Act of 1955, in Section 2, stipulates that the act applies to:

- (a) any person who is a Hindu by religion in any of its forms and developments, including a Virashaiva, a Lingayat or a follower of the Brahmo, Prarthana or Arya Samaj;
- (b) any person who is a Buddhist, Jain or Sikh by religion; and
- (c) any other person domiciled in the territories to which this act extends who is not a Muslim, Christian, Parsi or Jew by religion.⁹

There are other groups in India which are not recognised as minorities under Indian law, but qualify as such based on international jurisprudence, as defined by both the UN Minorities Declaration (1992) and the UN Indigenous Peoples Declaration (2007). These are the groups known under Indian law as Scheduled Castes (also known as Dalits, meaning 'the broken

6. '30 seers demand minority religion status for Lingayat community'. *The Hindu*, 11 August 2017. www.thehindu.com/news/national/karnataka/30-seers-demand-minority-religion-status-for-lingayat-community/article19467734.ece

7. This Constitutional provision is remarkable, as it connotes that even as a multi-faith state, India seems to be concerned about the social welfare of only one religion (Hinduism) and its religious institutions.

8. This provision, in a similar way to other 'Hindu law', including the Hindu Succession Act (1956), Hindu Marriage Act (1955), Hindu Adoptions and Maintenance Act (1956), and Hindu Minority and Guardianship Act (1956), by its grouping of Buddhism, Sikhism and Jainism with Hinduism is viewed as forcing legal assimilation of these minority religions into Hinduism, and thus as discriminatory.

9. This last also implies that Hindu is the residual category – anyone not Muslim, Christian, Parsi or Jew, is Hindu.

10. These categories find mention in the Constitution in Article 15, providing for reservation in educational institutions for socially and educationally backward classes; Article 16, providing for reservation in government jobs for any backward class not adequately represented and for weaker sections (Article 46, mandating the promotion of educational and economic interests, and protection from social injustice and exploitation).

people’); Scheduled Tribes (Adivasis, the ‘original inhabitants’) and Backward Classes.¹⁰ Scheduled Castes, Scheduled Tribes and Backward Classes are not minorities within the meaning of Articles 29 or 30.

The focus of our report is religious minorities, which together make up over 19% of India’s population (2011 census). These, officially recognised nationally, are Muslims, Christians, Buddhist, Sikhs, Parsis and Jains. We take a special interest in intersectionality, whereby some religious minorities are also linguistic minorities, ethnic minorities, or from indigenous or Dalit communities. Women and girls among these minorities bear a large burden of the disadvantages experienced on the whole (see Table 1). We have a special interest in the condition of these minorities within religious minorities – caste and gender, particularly.

Table 1. India’s religious minorities

	Muslim	Christian	Sikh	Buddhist	Jain	Zoara- strian
Population	172,245,158	27,819,588	20,833,116	8,442,972	4,451,753	
% of all-India	14.23	2.30	1.72	0.70	0.37	n/a

Source: 2011 Census.

How do minorities perform on socio-economic rights?

While assessing how socio-economic rights have been provided, we will first look at outcomes for religious minorities in terms of key indicators of development and/or lack thereof: poverty, employment, health and nutrition, and education, among others. This will help us understand how equality works for minorities at the impact level.

The Data Challenge

The first barrier to this pursuit is statistical – standardised data, disaggregated by religious group for the range of socio-economic indicators, is not available in India. The government usually does not share census data (headcount) for religion in a transparent manner.¹¹ For example, the

11. ‘Why governments are afraid of statistical data’. Live Mint. Himanshu. 22 July 2015. <https://www.livemint.com/Opinion/LqJvVX3Q94H3b6Gapkvlel/Why-governments-are-afraid-of-statistical-data.html>

2011 data on religion was released only in late 2015, and did not include cross-tabulated data correlating religion and socio-economic indicators.¹²

In the place of standardised disaggregated data, we have survey reports, mostly on outcome indicators. These are the National Sample Survey Organisation (NSSO) 61st round consumer expenditure data (2004–05); the NSSO 68th round data (2011–12) examining employment and unemployment; and the National Family Health Survey (NFHS). These datasets will be the basis of much of our discussions and our argument. We also use socio-economic surveys of Minority Concentrated Districts (MCDs) by the Indian Council of Social Science Research (ICSSR) (2008). Besides these, some states have commissioned specific minority-focused studies, a good example being the survey report on the socio-economic status of Muslims in Bihar, commissioned by the Bihar Minorities Commission (2002). We make use of studies such as these, where helpful.

Data on efforts by the government varies. There is some public policy data, mostly at an all-India level, documenting efforts mostly by the national government, such as the Kundu Committee report (Government of India 2014), although the Sachar Committee report (Government of India 2006) provided many state-level breakdowns too, as well as case studies and research reports. Most of these reports, as well as the data they use, are also not up to date. Data on efforts at providing for minorities, especially policies and programmes, and financials – budget allocation, releases and spending – are fragmented and out of date. These are very scarce at state level, where much of the welfare provisioning takes place. This was a clear challenge for this report.

Poverty

Poverty indices for different religious groups (what percentage of the population of the group lives below the official poverty line) show variations for rural and urban areas.

Table 2 shows that, overall, poverty incidence was 28.29 in rural areas and 25.62 in urban. Poverty incidence among specific religious groups shows much variation. In rural areas, it was highest amongst Buddhists. It was also high among Zoroastrians and Muslims. In urban areas, it was the

12. 'The dumbing down of data'. Kumar, Vikas. The Hoot. 16 September 2015. <http://www.thehoot.org/research/media-monitoring/the-dumbing-down-of-data-8917>

Table 2. Poverty incidences across religious communities

Religious groups	Rural	Urban
Buddhist	40.59	28.62
Christian	16.21	12.47
Hindu	28.90	23.35
Jain	2.59	2.57
Muslim	29.26	41.38
Other	36.02	22.91
Sikh	5.00	6.08
Zoroastrian	35.42	10.74
All groups	28.29	25.62

Source: Thorat (2013: 16) based on NSSO Consumer Expenditure (2004-05).

highest among Muslims by a wide margin, compared to the next group – Buddhists. Overall, Hindus, the dominant group in the country, do much better than many of the minorities on poverty incidences.¹³

Another way to look at the poverty trend is to see the share of religion in the overall population of poor people (Table 3). All minority groups did poorly on this count, being in higher number among the poor than their population would warrant. However, the figure that stands out is the disproportionately high share of Muslims among the poor in urban areas. This marginalisation of Muslims overall, and specifically in urban areas, is a running theme in our study of poverty trends in the country.¹⁴

13. According to the Sachar Committee report, poverty among Muslims in 2004–05 stood at 31%, just under that for SCs/STs (at 35%). This was more pronounced in urban areas, where nearly half of all Muslims (44%) counted amongst the poorest, compared to the national average of 29%. In rural areas too, Muslims lagged behind the national average poverty ratio – 33%, against 28% overall. The significantly high urban poverty among Muslims is reported also by the India Human Development Report (HDR), using NSS 2007–08 data, at 23%, compared to 13% for Hindus as a whole. (Government of India 2011: 4).

14. Other indicators of poverty show similar trends. Mean per capita consumption expenditure (MPCE), another measure of economic well-being, was low for Muslims and Buddhists. Buddhists had the lowest MPCE in rural areas at Rs 506.26 (against the national average of Rs 558.71) with Muslims not far above; in urban areas, Muslims did significantly worse than other groups at Rs 776.50 (against the national average of Rs 1,052.36) (Thorat 2013: 19).

Table 3. Share of the poor (in all-India poor)

Religious groups	Rural		Urban	
	Population (2001 Census)	The Poor (NSSO, 2004-05)	Population (2001 census)	The Poor (NSSO, 2004-05)
Buddhist	0.77	0.89	0.66	1.07
Christian	1.14	2.81	2.14	2.86
Hindu	85.52	79.99	82.33	75.60
Jain	0.01	1.10	0.14	1.12
Muslim	11.78	12.93	11.96	17.26
Other	0.43	0.09	0.81	0.22
Sikh	0.34	2.12	1.90	1.79
Zoroastrian	0.01	0.07	NA	NA

Source: Thorat (2013: 16).

Research can tell us that much of the problem stems from poor access for minorities such as Muslims and Buddhists to productive livelihood opportunities. The relative deprivation of Muslims and Buddhists was evident in their ownership of assets as well – the access index of asset ownership across social groups was the lowest for SCs and across religious communities for Muslims in 2002–03 (Government of India 2011: 6)

The picture that emerges is of minority groups doing worse than the majority community, as well as vast differences between minority groups as well, with Muslims and (neo) Buddhists (officially categorised mostly as SCs) worse off than others. The Sachar Committee, tasked with examining deprivation among the country’s Muslims, found that Muslims in Uttar Pradesh, Bihar, Assam and West Bengal constituted the poorest sections of India’s population, along with SCs and STs. These were also the states where the most Muslims lived. Their report also found that poverty among Muslims in 2004-05 stood at 31%, just under that of SCs/STs (at 35%). This was more pronounced in urban areas, where nearly half of all Muslims (44%) were counted amongst the poorest, compared to the national average poverty ratio of 29%, meaning the percentage of the national urban population that are below the poverty line. Muslims also lagged behind the national average poverty ratio in rural areas: 33% of Muslims in rural areas were below poverty line compared to only 28 % of the national population in rural areas. Other reports like the India Human Development Report show similar trends (Government of India 2011: 4): the India-HDR, using

Table 4. Poverty levels of Dalits among religious groups

	Rural	Urban
Buddhists	45.9	28.9
Christians	30.1	32.3
Hindus	37.7	40.9
Muslims	39.6	46.8
Sikhs	7.6	24.8
All Dalits	36.8	39.8

Source: Deshpande (2008: 28, 29), based on NSSO (2004-05).

NSS 2007-08 data, found significantly high urban poverty among Muslims – 23%, compared to 13% for Hindus.

Notably, it is Dalits who make up the bulk of the poor within each religious group. Table 4 confirms that poverty trends for religious groups as a whole are reflected in poverty trends for the Dalits among them. This applies as much to Muslims and Christians as it does to Hindus, Sikhs and Buddhists. Even so, communities within Muslim and Christian religious groups with origins similar to Hindu Dalits – the poorest of the poor – are not categorised as Scheduled Caste: Article 341 (3) of the Constitution prevents non-Hindus (interpreted in Indian jurisprudence as those following ‘non-indigenous’ faiths – Islam, Christianity, Judaism) from being conferred Scheduled Caste status, thus depriving them of a range of affirmative action policies and priority coverage under anti-poverty schemes. This failure of the state is one of the clearest examples of discrimination in law against sections of religious minorities.

Employment

The workforce participation rate (WPR) measures the population that are participating in the national workforce across the different categories. Among the major religious groups, WPR in 2004–05 (based on Employment/Unemployment Survey, NSSO 61st round, 2004-05) was the highest among Zoroastrians in urban areas and among Buddhists in rural areas. The WPR of Hindus, Christians and Sikhs was comparable, ranging from 34 to 37% in urban areas, but was lower for Muslims, at close to 32% in both urban and rural areas (Thorat 2013: 24). As Arjun Sengupta’s report on workers in the unorganised sector shows, most Muslims in the workforce are in the unorganised sector (Government of India 2007a). Organised sector participation, again based on NSSO 61st round survey (both in the

public and private sectors) was lowest for Muslims, out of all religious groups.

In the public sector, according to data collected by the Sachar Committee (Government of India 2006), Muslims represent only 4.9% of all employees (in central and state governments). Their representation in state public sector undertakings (PSU) was 10.8%, only slightly better than in central PSUs – 3.3% (Government of India 2006: 165). Overall public sector employment data showed better representation of Muslims at the lower rungs than at higher managerial levels; in university jobs, especially non-teaching; and in clerical positions at the postal department and the railways.

Health and Nutrition

We turn now to look at the health and nutritional status of marginalised sections, particularly children and women, across religious groups. When it comes to children's health, we take two measures as evidence – nutritional status and level of immunisation. The health of pregnant women is measured by the place of delivery. Data confirms that while it is true that overall health indicators (outcome – IMR, U5MR, MMR) are improving, and that over time these indicators for marginalised groups like SCs/STs and Muslims are converging with the national average (Government of India 2011: 8); process indicators such as the immunisation rate, institutional deliveries and contraception prevalence rates are less robust, especially when it comes to excluded groups. When it comes to input indicators (public investment in health, as well as availability of health facilities and human resources, access to sanitation, safe drinking water and the like), according to NHFS III data (2005-06), Muslims and other marginalised groups face the most problems. STs and Muslims had the highest total fertility rate (TFR); only one-third of Muslim and SC women had institutional deliveries; only around 50% of Muslim, SC and ST women received three or more antenatal care (ANC) visits (Government of India 2011: 10).

Table 5 provides a snapshot of child immunisation status across religious groups. It is clear that access for Muslims to essential services that potentially impact health well-being is limited, with particularly poor rates for *Bacillus Calmette–Guérin* (BCG), which targets tuberculosis, and the combined diphtheria, pertussis (whooping cough), and tetanus vaccine (DPT).

Similarly, the percent distribution of live births by place of delivery and percentage delivered in a health facility (Table 6) is a good measure of ac-

Table 5. Child immunization across religions

Religious Groups	BCG	DPT			Measles	All basic vaccinations	No vaccinations	% with a vaccination card seen
		1	2	3				
Hindu	79.6	77.5	67.9	56.4	60.0	44.4	4.4	37.4
Muslim	69.7	66.9	58.3	47.8	49.6	36.3	7.3	36.4
Christian	82.1	81.6	76.3	65.1	68.0	56.3	9.4	44.0
Sikh	90.4	88.6	86.2	76.9	80.2	67.3	6.6	46.0
Buddhist	98.5	94.1	75.6	58.0	96.0	50.9	0.7	39.1
Others	69.3	75.3	53.8	42.3	41.4	27.2	7.9	25.8

Source: Thorat (2013: 39), based on NFHS – III.

cess (and awareness) among communities to health facilities and good health practices. Here too, the statistics were bad for Muslims, with only 33% live births in a health facility as compared to 39% for Hindus and much higher figures for other groups. (NFHS III, 2005-06, data)

Finally, malnutrition is an indicator of chronic hunger, which is critically linked to people's health status. As we know, India fares badly on this count. The incidences of children suffering from anaemia and stunting, and female malnutrition were above the national average among Muslims, particularly in Uttar Pradesh, Bihar, and other states with a high concentration of Muslims. While female malnutrition has been reducing over time at the national level, it is increasing for Muslims (data between 1998-99 and 2005-06) (Government of India 2011: 8). Table 8 shows the status of child malnutrition across religious groups, providing data on the percentage of children under five years old classified as malnourished according to two anthropometric indices of nutritional status: height-for-age and weight-for-age. Minority groups, particularly Muslims and Buddhists, do particularly poorly across the two measures.

Education

Poverty and education have a well-established correlation. To find out the relative performance of religious groups on this count we take three measures – literacy rate, school attendance and education level. As is clear (Table 8, based on 2001 census), there were wide variations across religious groups on these counts. Jains and Christians had the highest literacy rates, much higher than Hindus as a whole. Again, Muslims ended up at the bottom.

The variances in school attendance were similar (Table 9) with just over 42% Muslim boys and 37.52% Muslim girls between 6 and 14 years old attending school, according to the NSSO survey (2004-05). Jains and Christians were in the lead here too, ahead of the majority Hindus.

According to Census 2001, Muslims were the least literate among all religious communities. An NSSO survey (2007-08) further confirmed that a high proportion of Muslims are illiterate. This proportion was on par with that of SCs/STs and higher than that of OBCs. Muslim women were amongst the most illiterate sections of society (47.3% illiterate), comparable to SC/ST women (53.2%). A substantial proportion of Muslims – 18% male and 15.4% female – had attained only primary education. Meanwhile

Table 6. Place of delivery

	Public sector	NGO	Private	Own home	Parents	Other	In a health facility
Hindus	18.4	0.5	20.3	50.9	9.3	0.4	39.1
Muslims	15.4	0.3	17.3	56.7	9.6	0.5	33.0
Christians	23.6	0.9	28.9	42.0	3.8	0.7	53.4
Sikhs	15.1	1.2	42.0	32.3	9.2	0.1	58.3
Buddhists	37.2	0.2	21.3	23.4	17.2	0.6	58.8
Jains	30.9	2.6	59.6	4.1	2.8	0	93.1

Source: Thorat (2013: 33), based on NFHS –III.

Table 7. Child nutrition levels across religions

Religious group	Height-for-age-status		Weight-for-age-status	
	Chronically malnourished	Severely malnourished	Chronically malnourished	Severely malnourished
Hindus	23.4	48.0	16.1	43.2
Muslims	26.2	50.3	15.6	41.8
Christians	17.9	39.0	8.7	29.7
Sikhs	13.4	29.8	7.8	22.0
Buddhists	23.2	56.1	14.7	39.2
Jains	5.9	31.2	6.6	24.0
Others	34.0	58.5	35.4	62.7

Source: Thorat, (2013: 41), based on NFHS –III (2005-06).

Table 8. Literacy rates

Religious groups	Person	Male	Female
Hindus	54.92	64.22	44.92
Muslims	48.05	54.99	40.63
Christians	69.45	72.76	66.17
Sikhs	60.56	65.03	55.56
Buddhists	62.16	71.05	52.83
Jains	84.09	86.67	81.35
Others	38.57	49.78	27.27
All Religions	54.51	63.24	45.15

Source: Thorat, (2013: 3–4), based on Census of India 2001

at the higher levels — upper primary and above — the proportion of Muslim children was significantly lower than children from other groups, including SCs. Most seriously, the incidence of ‘out-of-school’ children was the highest among Muslims, out of all social groups (Fazal 2013a: 6).

The main concern with regard to education for Muslims remains low retention rates, which lead to dropouts and poor transition as children progress through the school system. A government fact-finding report, using data from 2011–12, found that Muslim children constituted 16.6% of the total national enrolment in Grade I, but that this declined to 8.4% at Grade VIII (Government of India 2013: 11), leading the report to conclude, ‘...transition to upper primary stage is one of the major bottlenecks in the education of Muslim children.’ (ibid: 14). Table 11 confirms this. The other concern is girls’ education, with only a minuscule proportion of Muslim girls having completed secondary and graduate education (ibid: 5).

The data shows a varied picture of education among India’s religious minorities. While some are doing better than the national average, Muslims especially are lagging behind on almost all fronts. Apart from low literacy and access to higher education, only 0.44% have technical or non-technical diplomas, only 4.44% were educated to the higher secondary level and 6.33% to the matriculation level. The highest number of literate people in the Muslim community are educated to the primary level (16.08%), followed by 14.32% at below primary level and 9.73% at the middle school level (Times of India, 2016). These numbers are comparable to educational figures for Scheduled Castes and Scheduled Tribes.

Estimates by the United Nations suggest that 17.8 million children — including 34% of children with disabilities — do not attend school. Dalit, Adivasi and Muslim children, and children from female-headed households are particularly vulnerable to educational exclusion (United Nations 2017). In 2008, the UN Committee on Economic Social Cultural Rights (CESCR) expressed concern that the wide disparity in enrolment and drop-out rates in primary schools continued to persist, particularly affecting girls and children from Muslim, SC and ST communities. CESCR urged India to take further initiatives to eliminate child marriage and child labour, especially among school-aged children, and to target disadvantaged and marginalized groups in particular (ibid).

According to the HDR (Government of India 2011), number of out-of-school children is related to poverty. The report found that financial con-

Table 9. School attendance (6–14 years old)

Religious group	Male	Female
Jain	54.68	57.20
Christian	52.22	47.14
Buddhist	49.82	46.43
Sikh	47.83	44.34
Hindu	46.76	39.74
Other	43.10	39.30
Muslim	42.27	37.52
Zoroastrian	41.55	34.31

Source: Thorat, (2013: 7–8) based on NSSO, 61st round, 2004–05.

Table 10. : Education levels (Males, 7 years old and above)

	Illiterate	Literate without formal edu.	Literate but below primary	Primary	Middle	Secondary and above	Graduate & above
Hindus	26.66	36.75	18.91	9.23	4.81	0.52	3.12
Muslims	30.12	43.19	16.34	6.13	2.49	0.24	1.49
Christians	15.26	36.26	25.08	11.85	5.72	2.28	3.54
Sikhs	27.10	35.43	14.48	13.54	6.19	0.74	2.51
Jains	11.63	25.72	20.58	24.07	8.53	0.34	9.13
Buddhists	16.60	38.07	24.19	11.73	6.33	0.25	2.82
Zoroastrians	17.28	27.57	0	27.57	0	0	27.57

Source: Thorat, (2013: 13), based on NSSO (2004-05).

The situation seems to have endured (Table 11).

Table 11. : Education levels (Males, 7 years old and above)

	Illiterate	Graduates
Hindus	36.4	5.98
Muslims	42.72	2.75
Christians	25.66	8.84
Sikhs	32.49	6.39
Jains	14.00	25.65
Buddhists	28.17	6.17
Parsis	–	–
National	–	8.15

Source: *The Hindu* (2016), based on Census 2011.

straints are the main barrier to continuation of education, forcing children into child labour. In 2007-8 this was higher among Muslims (3%) than the national average (2.4%). Involvement of Muslims in traditional occupations (weaving carpets and working with glass, locks and brassware, among other things), which attract child labour due to the old technology they use, has been a factor here. Overall, the literacy problem among Muslims is the worst in Uttar Pradesh, Bihar and West Bengal (Government of India 2011: 229).

Why is the Outcome for Minorities Poor – Especially for Muslims?

Muslims, the largest minority in India, who make up 14.2 % of India's 1.25 billion population (2011 census), come out pretty much at the bottom of most socio-economic indices, even a decade after the high-level government probe (Prime Minister's High Level Committee on Social, Economic and Educational status of Muslim Community in India, known popularly as the Sachar committee – Government of India, 2006) into their historical disadvantages led to a clutch of policy actions. The condition seems to endure.¹⁵

The Sachar report, exploring the situation of Muslims, concluded that structural factors – such as economic circumstances of households, educational status of parents, and local levels of development – play a major role in inhibiting parents' willingness to educate their children (Government of India 2006: 58). Regarding poor representation in public sector employment, the Sachar report noted the general perception among Muslims that discrimination against them – in procedures (such as unhelpful eligibility criteria), practices (unrepresentative selection boards), and a general sense of discrimination in selection processes – is a result of an absence of Muslims in positions of authority to raise their voice for them. This, the report noted, hints at a lack of any concerted focus by governments for Muslim development, as well as prejudice against them, leading to the denial of Muslims' rightful share of services, even in grade IV positions. These are positions where high qualifications are not required (ibid: 20-21).

Access for Muslims to public services and development programmes, especially the many beneficiary-oriented schemes, and those that offer

15. 'Untouched by economic growth: One in 4 beggars in India a Muslim, reveals census', Zia Haq. 30 July 2016. <https://www.hindustantimes.com/india-news/untouched-by-economic-growth-destitution-illiteracy-hurt-india-s-muslims/story-Lz5HhyiffkPxZ4pu5gT85N.html>

Box 1: Religious groups and socio-economic deprivation

Group	
Buddhist	<p>The poverty level in this community is the highest among the four notified minority communities (NMCs) (30%). Almost 72% of Buddhists do not possess any operational landholdings. There is large migration to urban areas in the casual labour market. The rate of urbanisation among the community is comparatively high (38%). Further, the work participation rate is highest among Buddhist women (41%). Since most of them are entering into the casual labour market, their situation remains vulnerable. The educational level of this community is the poorest. Only 6% of Buddhists are graduates. Poor educational levels prevent them from accessing regular employment.</p> <p>87% of the 8.4 million Buddhists in India are converts — mostly they are Dalits. These converts have better literacy rates than their Hindu Dalit counterparts. Furthermore, female literacy among Buddhists, at 74.04%, is higher than the national average of female literacy 64.63%.¹⁶</p>
Christian	<p>Christians are the largest NMC other than Muslims. 33.1% of the total Christian population is made up of general population (upper caste), 32.8% Scheduled Tribes, and 25.5% people from Other Backward Classes. Only 8.3% of Christians are from Scheduled Caste groups. Poverty level among Christians is relatively low (11%), and landless population is 55%, which is low compared to other communities.</p> <p>The rate of urbanisation among Christians is 34%. Christian literacy and educational levels are relatively higher than in other communities (except for Parsis). The male-female gap in literacy is also lower. This enables them to enter into regular employment in higher proportions. Even the rate of self-employment among Christians is high. The rate of casual employment among Christians is 23%, which is lower than the national average but higher than that of Sikhs.</p>
Sikh	<p>Sikhs record a relatively low poverty level (5%). The community is constituted by 46.4% general population, 31.1% people from Scheduled Castes, and 21.8% people from Other Backward Classes. It has the largest proportion of self-employed workers (63.65%).</p> <p>The educational level among Sikh women is higher than among the men. Nearly 16% of Sikh women are graduates, which is the highest among all the communities.</p>
Parsi	<p>Parsi community is predominantly urban-based, with only a very small proportion residing in rural areas. The community has achieved universal literacy and higher education is also pursued extensively by both men and women. Work participation rates are also generally higher in urban areas, not only for men but for Parsi women too (33% for Parsis overall). Given the higher educational qualifications, it is to be expected that the urban regular workforce among the community is the highest (59%) of all the four NMCs.</p>

Source: Rustago et al (2008).

16. 'Conversion To Buddhism Has Brought Literacy, Gender Equality And Well-Being To Dalits', 1 July 2017. <http://archive.indiaspend.com/cover-story/conversion-to-buddhism-has-brought-literacy-gender-equality-and-well-being-to-dalits-18224>.

direct and sizeable benefits to the poor, was reported as being poor (ibid: 178). These include housing, livelihood and employment programmes, in rural as well as urban areas; health and nutrition schemes; social security schemes, such as pensions; maternity and other benefits etc. The case of access to civic amenities and infrastructure is similar. Muslims are being increasingly ghettoised and forced into slums, where the provision of services is extremely poor – missing health centres, Anganwadis, and schools; ill-kept roads; lack of piped water and sanitation; poor electricity coverage; poor availability of banks for credit provision. Staff shortages in these places, or at least staff absence, combined with negative attitudes among staff posted there, result in the overall poor working of those services for the inhabitants of the slums. There is also little effort to track and measure the quality of services, resulting in poor outcomes.

The perception among Muslims about poor access and uptake is that poor awareness about these programmes is to blame, as well as widespread discrimination in the provision of services; such as when Muslims are hindered, rather than facilitated, in getting their caste certificates to avail scheme benefits (Government of India 2006: 23-24). People also attributed the poor reach of the services for Muslims to the low participation of Muslims in the political process, especially at the local level, in panchayats and block samitis (ibid: 188).

Discrimination emerges in many of these accounts as the principal explanatory factor. According to Amitabh Kundu, an academic who has studied minority development efforts in India closely, these failures point to discrimination. Another minority rights observer, Rowena Robinson, notes, ‘these facts regarding education, health, physical and financial infrastructure and health facilities indicate a distinct and disturbing bias in public service provisioning in Muslim concentration areas’ (Robinson 2008).

This conclusion is also confirmed by poll data. A Gallup survey in 2010-2011¹⁷ revealed that a third (32%) of the country’s Muslims were ‘suffering’, compared to 23% of Hindus and 15% of the rest of the religious sects¹⁸

17. Based on nationally representative studies (relying on face to face interviews) conducted in 2010 and 2011 with a total of 9,518 Indians, including 1,197 Muslim Indians.

18. Gallup classifies respondents as ‘thriving’, ‘struggling’, or ‘suffering’ according to how they rate their current and future lives on a ladder scale with steps numbered from 0 to 10, based on the Cantril Self-Anchoring Striving Scale. See: <https://news.gallup.com/poll/157079/muslims-india-confident-democracy-despite-economic-educational-challenges.aspx>

(Gallup, 2012). The survey revealed that this was down to their poor economic and educational conditions. Muslims were found to be less likely (51%) than Hindus (63%) and others (66%) to be satisfied with their standard of living. It is revealing that although Muslims were as likely as other groups to show confidence in tenets of democracy, freedoms and equality, they expressed less confidence in some of the key national institutions, particularly, the government (only 49% of Muslims said they were confident, to 60% of Hindus) and — notably — the judiciary (68%, to 75% for Hindus and 91% the rest), validating the perceived discrimination theory.

The Sachar report used the framework of identity, security and equity, to explain the multidimensional nature of Muslim exclusion. In essence, it showed that problems faced by Muslims related to a combination of identity, security and equity related concerns — and that these three overlap and feed into each other in myriad ways, to create the lived experiences of exclusion faced by Muslim communities (Government of India 2006: 11). To take an example, the Muslim *identity* of Muslim youth makes it increasingly difficult for them to find a room to rent in mixed habitation settlements or to land a job in a private company. Frequent and periodic targeted violence against Muslims and discriminatory actions by the police contribute to poor *security*, which places the youth, in this case, in a constant state of siege, resulting in poor mobility and a lack of ability to access education opportunities, especially by girls (ibid: 14). Exclusion, of course, most directly impacts what are called *equity* concerns. In the case of education, for example, school infrastructure is poor in Muslim centred areas, and the quality of education is poor too, including insensitive text books, low perceived benefits from education, and poverty preventing children from fully utilising available opportunities (ibid: 15).

Providing for Minorities: Question of *Commitment*

In the following section, we explore India's commitment to providing for its minorities. This is gleaned from provisions in the Constitution, case laws and judgements, and ratification of international treaties. First, we look at overall equality and anti-discrimination provisions in the Constitution, and how courts have interpreted them. This is followed by specific commitments on individual thematic areas.

Constitutional Guarantees

Socio-economic rights in the Indian Constitution are mostly incorporated as directive principles of state policy. These are not directly enforceable, unlike civil and political rights, but are intended merely to serve as guidance for government policy. However, over time the Indian Supreme Court has incrementally made many of these directive principles justiciable by reading them into the right to life and personal liberty under Article 21 of the Constitution. Specifically, it has helped to protect certain economic and social rights, including the right to adequate nutrition, clothing and shelter, the right to medical facilities, the right to earn a livelihood, and environmental rights.

There is an impressive array of socio-economic rights written into law in India. These include:

- The National Food Security Act, 2013, which provides subsidised food grains to almost two thirds of India's 1.2 billion population. The act includes flagship programmes such as the Public Distribution System (PDS), for provision of subsidised food grain to the poor; the Mid-Day Meal programme (MDM), for free school meals; Integrated Child Development Services (ICDS), a package of interventions for health and nutrition support to mothers and infants; and pensions programmes for the elderly and infirm. Each one of these programmes serves the largest numbers of beneficiaries in its category, anywhere in the world;
- The Right to Education Act, 2009, which guarantees free and compulsory education for children between 6 and 14 years old;
- The Unorganised Workers' Social Security Act, 2008, which provides for the social security and welfare of unorganised workers (meaning home-based workers, self-employed workers or daily-wage workers);
- The Maintenance and Welfare of Parents and Senior Citizens Act, 2007;
- The National Rural Employment Guarantee Act, 2005, a labour law and social security measure that aims to guarantee the 'right to work'. It aims to enhance livelihood security in rural areas by providing at least 100 days of wage employment in a financial year to every household whose adult members volunteer to do unskilled manual work;
- The Child and Adolescent Labour (Prohibition and Regulation) Act of 1986 (2016), which prohibits the employment of a child (below 14 years) in any employment, including as domestic help, and of adolescents (below 18 years) in hazardous occupations and processes;

- The Persons with Disability (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995; and
- The Minimum Wages Act 1948, which sets the minimum wages that must be paid to skilled and unskilled labourers.

These laws are expected to apply universally to all citizens, including minorities, although there may be specific eligibility qualifications under specific laws. Since data on the uptake of these laws and their impact is not disaggregated by religion, however, it is difficult to know how these laws have worked in practice for minorities. Most such laws and related programmes do report uptake and impact by caste category and gender, but none by religious affiliation.

The Indian Constitution also has strong provisions against discrimination and to eliminate inequality. These include provisions for equality (Article 14, and Article 16 (1) [2]) and non-discrimination (Article 15[1] [2]). The Constitution also makes it the state's duty to eliminate inequalities (Article 38 [2]) and promote the educational and economic interests of weaker sections (Article 46). More concretely, the law authorises the state to make special provisions for the economic advancement of socially and educationally backward classes (Article 15 [4]) and to make reservations in appointments for backward sections (Article 16 [4]).

International Obligations

India has adopted the United Nations Minority Declaration, 1992. This includes, on the specific subject of socio-economic rights, the following provisions:

“Persons belonging to minorities may exercise their rights, including those set forth in the present Declaration, individually as well as in community with other members of their group, *without any discrimination*” – Article 3(1);

“*No disadvantage* shall result for any person belonging to a minority....” – Article 3(2); and

“States should consider appropriate measures so that persons belonging to minorities *may participate fully* in the economic progress and development in their country” – Article 4(5).

Additionally, India is signatory to most international human rights treaties (Box 2). Equality and non-discrimination provisions are at the core of each of these international instruments.

Even so, equality provisions in the Constitution as well as India's having ratified international treaties have failed to prevent the socio-economic marginalisation of sections of minorities. As we saw in the catalogue of outcome indicators, not all groups fare equally. Muslims in particular do very poorly. Rural Buddhists and sections of Sikhs (both predominantly SCs), Christians (many STs), and Muslims, particularly urban based, form the bulk of these marginalised minority groups.

India's Lack of Non-discrimination Law

Part of the problem lies in how Constitutional guarantees have been operationalised into domestic law. The subject of non-discrimination is a good example of the gap between Constitutional guarantees and extant law, especially as it impacts minorities and other vulnerable groups. Articles 15 (1) and 16 (2) promise non-discrimination in employment, but this has not resulted in legislative action; furthermore, the guarantee is not extended to private and non-state spheres. Atrocities against SCs and STs are the exception.¹⁹ Article 17 prohibits 'untouchability'. Article 46 enjoins upon the state *to protect SCs and STs (and other vulnerable sections of society) from social injustice and exploitation*. The Protection of Civil Rights Act 1955, operationalises the untouchability prohibition into law, creating offences. The Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act 1989, the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Rules 1995, and the Act's amendment in 2015 take this forward, and are the bulwark of the anti-discrimination regime, aimed at safeguarding the rights of SCs and STs. Unfortunately, they do not cover religious minorities, particularly Muslims and Christians, as we will see below.

The UN Commission on Economic Social and Cultural Rights (CESCR), in a recent hearing on India, was deeply concerned that, despite the Constitutional guarantee of non-discrimination as well as the criminal law provisions punishing acts of discrimination, 'widespread and, often, socially accepted discrimination, harassment and/or violence persisted against members of certain disadvantaged and marginalized groups, including women, scheduled castes and tribes, indigenous peoples, the urban poor,

19. Given the presence of instruments such as the SC ST (Prevention of Atrocities) Act, 2015.

Box 2: International human rights based treaties ratified by India

Treaty	Year
Universal Declaration of Human rights, 1948	1948
International Covenant on Economic, Social and Cultural Rights - ICESCR (1966) (especially Article 2(2) on non-discrimination)	1979
International Convention on Elimination of All Forms of Racial Discrimination (ICERD), 1965	1968
Convention on Elimination of All Forms of Discrimination against Women (CEDW), 1979	1993
Convention on the Rights of the Child (CRC), 1989	1992 (acceded)
Optional protocol to CRC, on involvement of children in armed conflicts, 2000	2005
Optional protocol to the CRC on the sale of children, child prostitution and pornography, 2000	2005
Convention on the Rights of Persons with Disabilities (CRPD), 2006	2007
Forced Labour Convention, 1930	1954
Abolition of Forced Labour Convention, 1957 (# 105)	2000
Equal Remuneration Convention, 1951 (# 100)	1958
ILO 111 Discrimination (Employment and Occupation) Convention, 1958	1960
ILO 169 Convention concerning Indigenous and Tribal Peoples 1989	–

Source: NHRC: *A Handbook on International Human Rights Conventions*.

informal sector workers, internally displaced persons, *religious minorities such as the Muslim population*, persons with disabilities and persons living with HIV/AIDS'. (United Nations 2017a)

While noting the significant role played by the Supreme Court of India in interpreting the Constitution with a view to achieving justiciability of economic, social and cultural rights, CESCR recommended that India take the necessary legal measures to give full effect to the International Covenant on Economic Social and Cultural (ICESCR) in domestic law.

CESCR also recommended that India strengthen enforcement of existing legal prohibitions on discrimination and consider enacting comprehensive anti-discrimination legislation, specifically prohibiting discrimination in employment, social security, housing, health care and education. CESCR also urged India to step up efforts to remove obstacles faced by victims of discrimination when seeking redress through the courts (United Nations: 2017).

The Negative Discrimination within Positive Discrimination

Another problem is that religious minorities – particularly Muslims and Christians, deemed ‘non-indigenous faiths’ – have not been extended the benefit of affirmative action contained in policy for ‘reservations’ in jobs and educational institutions, and in access to services and social security benefits. Indeed, discrimination against Muslims and Christians is written in the law, with Dalits within these religious groups denied inclusion under the SC category. A review of the regime of affirmative action, called ‘reservations’ in India, will be instructive.

The Constitutional provision for affirmative action is contained in Article 46, which mandates the state to promote the educational and economic interests of weaker sections of society, in particular SC and STs, and protect them from social injustice and exploitation. Articles 341 and 342 include the list of castes and tribes entitled to such provisions. These are the Scheduled Castes and Scheduled Tribes. As a consequence of this provision, a policy of compensatory discrimination via reserved positions has been implemented both at the national and state levels in the allocation of educational institution places and public service appointments. This accounts for 23 % of all such places. Constitutional (SC) Order, 1950 restricts SC status only to Hindu groups.²¹ Muslims and Christians of similar origin have been excluded from the benefit.²² The 1950 order is widely felt to be inconsistent with Articles 14, 15, 16 and 25 of the Constitution, which guarantee equality of opportunity and freedom of conscience and protect citizens from discrimination by the state on the grounds of religion, caste or creed (Government of India 2006). There is no such restriction to inclusion in the ST list. However, Muslim representation in the ST list is minuscule (according to 1991 Census, 0.25% of total ST population). On the other hand, Christians are widely represented.

The Constitution also defined another group, ‘socially and educationally backward classes’, as worthy of affirmative action, as mentioned in Article 15 (4) and Article 16 (4) of the Constitution, as well as Article 340 (1); the latter empowers the state to appoint a commission to investigate the

21. Based on the 1936 Imperial (SC) Order that rejected SC status to Christians and Buddhists of similar origin. The 1950 order has been amended twice, in 1956 and 1990, to include Sikhs and neo Buddhists, respectively, within the category.

22. Under the claim, against empirical evidence, that the caste system exists only among Hindus (and other ‘indigenous’ religions – Sikhism, Buddhism and Jainism).

Box 3: Anti-discrimination and Equality Bill, 2016

Rohith Vemula's tragic suicide²³ has put the need for anti-discrimination legislation back on the map. India is among the few regimes with a Constitutional commitment to a liberal democracy that nevertheless lack a comprehensive, multi-ground, antidiscrimination legislation. The Bhopal Declaration issued in 2002, seeking to chart a new course for Dalits, welcomed 'winds of change the world over' towards inclusion and diversity and against discrimination. A conversation on the need and shape of an anti-discrimination law began after the Sachar Committee recommended it in 2006. While the UPA government did briefly consider setting up an Equal Opportunity Commission, the idea was quietly buried. Anti-discrimination law remains a key demand of groups representing women; gay, lesbian, and transgender people; and persons living with disability. The policy debate on an anti-discrimination law has been going on for about a decade. It is hoped that the existence of a draft bill will give concrete shape to this conversation and draw attention to details. The Anti-discrimination and Equality Bill, 2016 is one such effort. It is based on extensive conversations with various activists and academics over a period of two years, including at a workshop organised by the Alternative Law Forum in Bangalore in 2014. An earlier version of the draft was discussed at a workshop organised by the Centre for Policy Research, Delhi, in December 2015. It was given its current form by the researchers in the office of Dr. Shashi Tharoor MP.

Highlights of this bill:

- The bill creates civil liability for acts of discrimination;
- Discrimination includes direct discrimination, indirect discrimination, harassment, victimisation and aggravated discrimination;
- Aggravated discrimination includes boycott, segregation and discriminatory violence;
- In addition to these general concepts, the Central Equality Commission has the power to issue sector-wise and group-specific guidelines to characterise certain types of acts as one or another form of discrimination;
- The duty to refrain from discrimination applies not only to public authorities and private persons performing a public function but also to public and private employers, landlords, traders and service providers;
- The duty on these persons includes the duty to institute an internal complaints mechanism;
- Everyone has a duty to refrain from aggravated discrimination;
- The protection against discrimination is generally equally available to dominant as well as disadvantaged groups and to majorities as well as minorities: to men as well as women, Hindus as well as Muslims, Brahmins as well as Dalits;
- This equal protection does not affect the validity of affirmative action and diversification measures to benefit disadvantaged groups;
- Public authorities and private persons performing public functions have a diversification duty to progressively increase the participation of substantially excluded disadvantaged groups;
- Public authorities have a duty to give due regard to the need to eliminate discrimination;
- If the internal complaints mechanism fails to deliver, State Equality Commissions have the main responsibility for civil enforcement;
- A permanent and independent Central Equality Commission, acting along with State Equality Commissions, has the responsibility to promote the objectives of the Bill and aid its implementation; and
- Protection orders against aggravated discrimination may be obtained from the Magistrate's court.

Source: Tarunabh Khaitan, Personal communication. (Also the anti-discrimination bill project at <https://sites.google.com/site/tarunabh/Home/discrimination-law>).

23. Rohit Vemula was a Dalit student leader in Hyderabad University, who for his radical politics was hounded by university authorities and right-wing Hindu groups, resulting in his committing suicide on 17 January 2016.

condition of socially and educationally backward classes. A report by the Mandal Commission, which was set up under this provision, was adopted in 1991, seeing the launch of reservations for Other Backward Classes (OBC). The report identified 3743 separate OBC communities, comprising 54.4% of the country's population, and recommended quotas for them in public sector jobs and educational institutions, totalling 27 % of all such positions. Minority religious groups are included in this list – 82 Muslim groups, identified using a mix of caste/occupation and poverty criteria. These include the 'untouchable' *Arzal*²⁴ along with middle occupation *Ajlaf* groups.²⁵ The former, akin to Hindu SCs but excluded by law from the SC list, must compete with more advanced OBC groups, and remain the principal losers of the affirmative action regime of the country.

Provinces have an older history of their own affirmative action instruments for backward classes, compared to the centre. There is also great variance in how minority groups have benefited from them. Kerala and Karnataka have – based on their historically more nuanced system of affirmative action – covered all Muslim and Christians within their state OBC lists, as a separate group. Andhra Pradesh and Manipur have carved out separate quotas for Muslims within their OBC quota. In Tamil Nadu, 95 % of Muslims are included within the OBC category. Bihar has created separate OBC and Most Backward Class (MBC) lists, and the majority of Muslim groups have been included in the MBC category. These measures have facilitated the inclusion of most Muslims within the OBC category in these states. Notable exceptions are West Bengal and Assam, where only a minuscule population of Muslims is included, with the overwhelming majority falling in the general category, thus depriving deserving members of the benefits of reservation (Government of India 2006).

Consequent to the Constitutional (SC) Order, 1950, successive governments and courts have refused to extend the affirmative action provisions of the Constitution to religious minorities. A UN report noted, 'Dalit Muslims and Christians from the Scheduled Caste category – suffering equal levels of social and economic exclusion – have been excluded, thus depriving them of the extensive and elaborate regime of compensation' (United Nations:

24. Constituting groups such as *halalkhors*, *helas*, *lalbegis* or *bhangis* (scavengers), *dhobis* (washermen), *nais* or *hajjams* (barbers), *chiks* (butchers), *faqirs* (beggars) etc, being converts from untouchable/'unclean' occupational castes, akin to Hindu SCs.

25. Constituting *momins* or *julahas* (weavers), *darzi* or *idiris* (tailors), and *rayeens* or *kunjars* (vegetable sellers), being converts from 'clean' occupational castes, and whose Hindu counterparts are included in OBC list.

Profile of a vulnerable minority: Stateless in Assam

Monowara Bewa is a widowed mother of two, who used to work as a cook for a school in Kokrajhar district in lower Assam. She moved to her father's ancestral village in the same district after her husband's demise. Born and raised in Kokrajhar district, India, she has school records up to Class IV with her parents' names. Her father's name is recorded in consecutive voter lists and the 1951 National Register of Citizens (NRC) and consecutive Electoral Registers. Despite all this, Monowara is languishing in a Detention Centre in Kokrajhar, Assam, arrested on the claim that she is an illegal migrant. The lives of her two children stand destroyed, with her own stuck in limbo.

The home of another school cook has seen a similar story.¹ In Assam's Dhুবri district, Jaibun Khatun's life came to a standstill on 30 July 2018 when her son Haidar Ali Khan was not included in the draft National Register of Citizens. On Indian Independence Day, 2017, Haidar swam in what was neck deep water for him to stand beside the Indian flag, his right hand raised in salute. The image of Haidar, his friend Jiarul, and two teachers, went viral on social media; but the mark of deference and patriotism, along with his linkage and legacy data, were not enough to qualify Haidar as an Indian. The rest of his family, including his brother and sister, found their names in the draft.

Background to the National Register of Citizens (NRC)

These are two of the four million people whose names have been excluded from the National Register of Citizens – a government of Assam undertaking. Assam is a state in India's Northeast that lies along the Brahmaputra river valley, to the south of Eastern Himalayas. It shares an international border with Bhutan and Bangladesh. Politically, the state has a tumultuous history of identity-based politics and ethno-nationalism. A part of this was focussed on those considered illegal migrants or infiltrators, along Assam's international borders. The Assam Accord, signed in 1985, which ended a six year long agitation, mandated that foreigners who entered the state post 24 March 1971 would be identified and deported.² This date was selected to signal a wave of refugee migration from Bangladesh during its war with Pakistan.³

1. 'Assam Boy, In Viral Video Saluting Flag, Not In Citizens' List: Teacher', 16 August 2018. <https://www.ndtv.com/cities/boy-who-saluted-national-flag-in-flood-water-not-in-assam-citizens-list-1901078>
2. 'THE SPECTRE OF CITIZENSHIP: HISTORY & POLITICS OF NRC IN ASSAM' 23 January 2018. <http://raiot.in/the-spectre-of-citizenship-history-politics-of-nrc-in-assam/>
3. 'The citizenry test: Assam NRC explained' 31 July 2018. <https://www.thehindu.com/news/national/other-states/the-citizenry-test-assam-nrc-explained/article24560028.ece>

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2017). This includes protection from hate crime and violence, and discrimination (under the SC ST Prevention of Atrocities Act, 2015); inclusion in reservation schemes in educational institutions and public sector employment; and preferential treatment in access to universal services and social security benefits. As evidence demonstrates (Table 4 above), Dalit (SC) Muslim and Christians are as deprived as Dalit Hindus, Sikhs and Buddhists, and excluding them from accessing benefits designed for uplifting Dalit people is clearly discriminatory.

Various UN mechanisms have highlighted this anomaly:

- The UN Committee on the Elimination of Racial Discrimination (CERD) recommended restoring the eligibility for affirmative action benefits of all members of SC and ST that have converted to another religion;
- The UN Special Rapporteur on Freedom of Religion or Belief recommended in 2009 that SC status be delinked from the individual's religious affiliation (United Nations 2017a);
- The UN Special Rapporteur on Executions noted with concern that the SC ST (Prevention of Atrocities) Act of 1989 had not incorporated Dalit Muslims and Christians into the definition of SC and ST and recommended that the legislation be reviewed to extend the definition; and
- The UN Special Rapporteur on Minority Issues highlighted in 2016 this exclusion of Dalits who had converted or were born and raised within non-Hindu religious communities, such as the Dalit Muslim and Christian communities (United Nations 2017a).

Efforts by Christian and Muslim groups and civil society to correct the anomaly have only seen successive governments drag their feet, providing lame justifications for keeping Muslims and Christians out of the category. A 2004 PIL in the Supreme Court on the subject has yet to result in any judicial outcome. A central minister recently revealed the hostility with which the current Hindu-majoritarian BJP ruled government considers the idea, when he announced that the government was opposed to granting SC category to minority communities (i.e. Muslims and Christians), as that would encourage conversion (from Hinduism to these faiths).²⁶ It is to be noted that the Indian Constitution guarantees to every citizen freedom of religion, to 'profess, practice and propagate religion' of one's choice (Article 25).

26. 'SC status to Dalit Muslims, Christians will encourage conversion', Deccan Herald. 15 February 2016. <http://www.deccanherald.com/content/529072/sc-status-dalit-muslims-christians.html>

... Profile of a vulnerable minority continued ...

The issue, however, continued to remain contentious and, after prolonged litigations, the Supreme Court ordered an update of the NRC in the state, last updated in 1951. This update would strike off anyone unable to prove their residence in Assam before the March 1971 cut-off date. In parallel, since 1997, the Election Commission had started marking people as D-voters, or 'doubtful' voters. By 31st December 2017, about 244,144 persons had been declared as such.⁴ These individuals were then tried by the police.⁵ D-Voters and Reference Cases are referred to Foreigners Tribunals (FT), established under the Foreigners (Tribunal) Order, 1964. FT has so far declared 90,206 persons as foreigners. In the case of the rest, proceedings are still underway. 'Declared foreigners' have no voting rights and are denied access to welfare schemes.

Six detention centres in Assam house the declared foreigners. They hold 961 detainees – detained like convicted prisoners, but without any rights, including parole. All detainees suffer indefinite incarceration – no foreign governments accept them. Manowara is in one such detention camp, run in a makeshift fashion inside jail premises.

Proving citizenship

The draft NRC, published on 30 July 2018, deems 4,070,707 persons as ineligible, rendering them potentially stateless if they are unable to prove citizenship during the second chance they have to furnish papers, as part of the claims and objection process –, currently underway. According to a Supreme Court monitored process, definitive proof of citizenship is through providing one of the 15 legacy documents (evidence of the citizenship of a person the applicant claims as her legacy person) and a 'link document', that provides linkage between the applicant and the legacy person.

These documents, however, are difficult to present for migrants and women, among others. Even if they are available, small errors in spellings of names or villages render them useless. In Monowara's case, for example, while she does have the requisite documents, her father's name has been spelt differently in the different documents she possesses – something not uncommon for non-English names transcribed in English. These documents are Monowara's only link with her paternal village and her only way to prove her descent, and so she languishes, separated from her family, due to

4. 'Declared Illegal Citizens, Uncertain Future Lies Ahead For 'D-Voters' in Assam' 31 July 2018. <https://www.news18.com/news/india/declared-illegal-citizens-uncertain-future-lies-ahead-for-d-voters-in-assam-1829169.html>

5. Assam Legislative Assembly Debates, Unstarred Question no. 734. Date: 26-03-2018

Contd...

The irony of the government itself undermining the Constitution clearly did not dawn on the minister.

Notably, India has not ratified some operative international instruments for redress of grievances, foreclosing the option for individuals and groups affected by discriminatory laws and practices to access international forums of adjudication. At the same time, national mechanisms for grievance redressal, such as could be provided through the National Commission for Minorities,²⁷ for example, but also others, have not delivered, especially on issues of socio-economic rights of minorities.

Backing Words with Action? The Poor *effort* on Minority Rights

In this section, we examine ‘efforts’ by the state to deliver on commitments, in order to understand how commitments made are followed through with actions, and how states provide for minorities’ socio-economic development. Here we look at, among other things, policies, programmes, budgets, and structures put in place, to try to understand if they square up, and what weaknesses there might be for delivering on minority commitments, as well as the wider policy space in the country for minority welfare.

Programme Performance and Minorities

We begin with a 2015 study by Misaal on the working of flagship anti-poverty programmes for Muslims, based on a survey of 10,724 families (collected by the National Confederation of Dalit Organisations (NACDOR) as part of a micro-level study) in three poor districts in the northern part of the state of Uttar Pradesh—Badayun, Sharawasti and Mirzapur. The study demonstrated the extremely poor working of many of the flagship anti-poverty programmes for Muslims, at least in the three focus districts. The report concluded:

27. Established with the following remit: (i) Evaluate the progress of the development of minorities under the Union and States; (ii) Monitor the working of the safeguards provided for minorities in the Constitution, and national and state law; (iii) Make recommendations for the effective implementation of safeguards for the protection of the interests of minorities; (iv) Look into specific complaints regarding deprivation of rights and safeguards of the minorities and take up such matters with the appropriate authorities (v) Also carry out studies and research on discrimination against minorities, and for socio-economic and educational development of minorities; and recommend measures to central and state governments.

... Profile of a vulnerable minority continued ...

typographical errors. For Haidar, his mother claims to have submitted the Legacy document, but though his siblings were adjudged Indians, Haidar has been left out, for reasons unknown to the family.

Married women – especially those with limited or no schooling and those married early – have been especially vulnerable to the process, as they do not have documents linking them to their paternal house. In their husband's villages they do not have identification documents such as marriage certificates or voter IDs, with many marriages not being registered. Many of them submitted Gram Panchayat certificates as proof of residence. The Supreme Court in a judgement on this asked for rigorous verification of these certificates for 'original inhabitants' of Assam. This has led to complaints from amongst Bengali-speaking applicants that they are being discriminated against. Widows like Monowara who return to their paternal village also continue facing problems with their citizenship claims rejected.

Many stories of those left out of the draft show confusion, pain and suffering. Bir Bahadur Thapa, a Kargil war veteran, has not made the list. Babul Das, a teacher conducting verifications for NRC found his name excluded from the draft. Moinal Mollah was declared a foreigner and sent to a detention camp until the Supreme Court intervened, ordering a fresh trial, which found him to be an Indian. He has not found his name included in the draft NRC either.⁶

The final NRC, to be published at an unspecified date, will have the names of all verified as Indians. What will eventually happen to those left out of the final NRC is not clear. Presumably they will be referred to the Foreigners' Tribunals, for determining their citizenship. However, it is anybody's guess what the outcome of that process will be. The entire process seems to have become geared towards declaring as many Bengali-speakers foreigners as possible – especially Muslims. So far 33 persons excluded from the draft NRC have been reported to have committed suicide out of desperation.⁷

Assam's tryst with immigrants, especially Bengali-speaking Muslims, saw the tragedy of the Nellie massacre of 1983, where over 2000 persons, all Bengali Muslims, were murdered in a single day. The community continues to remain vulnerable – easy targets for the 'foreigner' label. Many Bengali-origin Muslims in Assam reside in the *chars* – the riverine islands of Brahmaputra and its tributaries. Frequent floods lead to annual cycle of displacement, resulting in many migrating to newer locations, where they are looked at suspiciously. Frequent displacement also means they lack adequate

5. 'Left Out Of Assam's List, Soldier, Teacher, Farmer Demand Answers', August 22 2018. <https://www.ndtv.com/india-news/left-out-from-assams-list-soldier-teacher-farmer-demand-answers-1904143>

6. '33rd Suicide Victim of D Voter in Assam: NRC', 16 November 2018.

Contd...

Box 4: International human rights treaties not ratified by India

International convention on the protection of the rights of all migrants and families, 1990
Optional Protocol to the ICESCR, 2008 – recognises the competence of CESCR to receive and consider complaints from individuals or groups within its jurisdiction.
Optional protocol to the CEDAW, 1999 – recognises the competence of CEDAW to receive and consider complaints from individuals or groups within its jurisdiction.
Optional protocol to CRPD, 2006 – recognises the competence of CRPD to receive and consider complaints from individuals or groups within its jurisdiction.
Core ILO Conventions not ratified by India
Freedom of Association and Freedom of the Right to Organise Convention, 1948 (# 87)
Right to Organise and Collective Bargaining Convention, 1949 (# 98)
Minimum Age Convention, 1973 (# 138)
Worst Forms of Child Labour Convention, 1999 (# 182)

Source: NHRC: *a Handbook on International Human Rights Conventions*

- i. While we already know that Muslims are poorly serviced, what is somewhat new is the realisation, from this survey data, that anti-poverty programmes work so badly for Muslims, much more so than they do for other excluded groups – Hindu Dalits, in this case (Misaal 2015: 46);
- ii. Education: Muslim children’s access to education is problematic. Almost a quarter of children had not been enrolled in schools; the quality of Mid-day Meal (MDM) provided was poor and unpredictable. Books and uniforms bypass many; scholarships seemed to have almost entirely failed; and support services – safe drinking water and clean toilets – are not provided;
- iii. National Rural Employment Guarantee Scheme (NREGS): there were various problems with the working of NREGS: awareness about the scheme was poor; half of all respondents had not been allocated work, despite having applied; and more than half had not received payments within the stipulated time period. Malpractices abounded, eg entries in job cards, were, as a matter of practice, not made;
- iv. Water and sanitation services work poorly for Muslims, with a majority claiming they had no access to safe drinking water; handpumps take much longer than stipulated to be repaired; and sanitation staff are mostly not available;
- v. The Public Distribution System (PDS) does work for Muslims, with only 9% of respondents claiming they receive rations regularly. An overwhelming section of pensioner respondents claim they receive payments very late. 82% of respondents said their children had not been registered within the stipulated 21 days; and

... Profile of a vulnerable minority continued ...

documents, important for proving their nationality.⁸ Already attacked as ‘illegal immigrants’, many continue to languish in detention camps, in indefinite incarceration.

Instilling discrimination in citizenship

The Bharatiya Janata Party government ruling in the Centre is attempting to pass the Citizenship (Amendment) Bill 2016. This amendment to the Citizenship Act 1955 would allow Hindus, Sikhs, Buddhists, Jains, Parsis, Christians from India’s neighbourhood, especially from Bangladesh, Afghanistan and Pakistan, to apply for Indian citizenship.⁹ The Amendment relaxes the residence condition for naturalisation for these minorities from Muslim majority countries from the current 11 years to 6 years. In 2015 and 2016, exemptions were made to the Foreigners Act 1946 and Passport (Entry into India) Act 1920 to allow persons from these backgrounds indefinite residence in India if they arrived before 31 December 2014. Making laws that differentiate between faiths, these legislations and rules run the risk of being discriminatory in a purportedly secular country. The proposed amendment to the Citizenship Act 1955 has implications for the NRC process. It is signalling to Hindus excluded from the NRC that they might still have a chance for naturalisation – something that Muslims would be denied.

8. ‘How Assam’s Supreme Court-mandated NRC project is targeting and detaining Bengali Muslims, breaking families’ 2 July 2018. <http://www.caravanmagazine.in/politics/assam-supreme-court-nrc-muslim-families-breaking-detention>

9. ‘Advertising Simply Put: Why Citizenship Bill disturbs Assam’, 19 May 2018. <https://indianexpress.com/article/explained/simply-put-why-citizenship-bill-disturbs-assam-5176741/>

- vi. Integrated Child Development Services (ICDS): dismal working in Muslim pockets. This takes various forms and is driven by multiple factors – many Anganwadis (child care centres) do not open at all; there is poor awareness about core services; the health component in particular is problematic, with large exclusions from TT, Hepatitis B and Vitamin A dosage, and from immunisation.

What causes such poor outcomes for Muslims? Evidence shows that programmes for the poor work poorly in India, especially in Uttar Pradesh and other northern states. This is also the case for Muslims. But for multiple programmes to work so poorly for a section of the poor, there must be factors that go beyond the general, and we must also look at specific causes affecting the reach of these schemes for the specific group – Muslims, in

this case. We contend that such complete failure can only be the outcome of failures of the state, both to ensure programmes reach minorities equally (ie measures to prevent discrimination in provisioning), as well as the failure to target the poorest Muslim groups proactively, through affirmative action. None of the schemes covered – all flagship programmes of the central government, with elaborate reach, budgets and structures – has given a thought institutionally to their reach to the poorest Muslims. There is no data collected, disaggregated by religious groups, that would help capture the poor delivery for the group. There is little planning to improve scheme performance among social groups defined by religious identity, and little targeting of implementation keeping these in mind.

This is so because the weaknesses at the policy level for religious minorities in India – the absence of robust anti-discrimination measures and weak promotional/affirmative action efforts – are carried through at the programmatic level too. All that exists for ‘targeting’ religious minorities are a handful of schemes implemented by the central Ministry of Minority Affairs, including scholarships and schemes for the modernisation of madrasas; the Multi-sectoral Development Programme (MSDP), aimed at enhancing infrastructure investment in minority concentrated areas; and the Prime Minister’s new 15 point programme, which claims to ensure adequate spending on minority groups under flagship programmes. Unlike efforts for SCs, STs, women, and in some cases people with disabilities, who see more robust targeting measures, targeting of religious minorities is shallow – mere window dressing.

Minorities and the Narrow Policy Space

The Sachar Committee report broke new ground in public discourse on the deprivation of the Muslim community in the country. By collating and analysing considerable empirical evidence, perhaps for the first time in independent India, and by using official data sources, the report shifted the public debate on the conditions of Muslims from one based on perceptions and rhetoric (that denied the deprivation faced by the poorest Muslims) to one that was evidence-based, thus establishing Muslims as a legitimate subject of public policy (Government of India 2006: 2). The Sachar Committee report led to the government declaring a package of measures for, surprisingly, all religious minorities, not just Muslims, containing affirmative action measures; special development initiatives; enhanced access to credit and education opportunities; social inclusion measures; and efforts for better sensitisation of government functionaries on minority issues (Government

of India 2009). Though modest by comparison with the size of the problem, the policy interventions seemed like a good start.

Four years after the Sachar Committee report an assessment of the working of these ‘minority’ schemes, especially for Muslims, based on qualitative research in three districts with large Muslim populations, revealed serious drawbacks in their working – principally the Multi-Sectoral Development Programme (MsDP), the 15 Point Programme and the Scholarship Schemes. These were traced to a combination of factors: poor design of so-called flagships programmes for minority development; the poor resourcing of the programmes, resulting in them being little more than symbolic gestures; and a weak institutional environment that prevents robust implementation – the last including weak structures and processes, and poor capacities of implementing agencies, combined with a pervasive inability on the part of those agencies to connect purposefully with Muslim groups and communities (Centre for Equity Studies 2011: 40). The CES report, pointing to the tentative nature of these interventions, noted how ‘... diffidence at policy level to clearly focus on Muslims and their deprivations translates into active reluctance by implementing agencies on the ground, to target Muslims and the drivers of their deprivations...’ (ibid: 41).

A more recent analysis confirms this assessment. The first official evaluation of the working of programmes set up on the recommendation of the Sachar report (Post-Sachar Evaluation Committee, 2014, popularly called Kundu Committee) concluded that not a great deal had changed since these measures were introduced in 2006. The findings of the Kundu report include:

- (i) Schemes under the PM’s 15-point programme and MsDP were area development schemes, with little targeted focus on minority communities. Barring the odd exception, such as scholarship schemes, there was little attempt to specifically target minority communities through clear operational plans and beneficiary lists;
- (ii) Connected to this is the problem of sound data. Except a very rapid baseline survey of the minority concentrated districts (MCDs), ‘there has not been any systematic assessment of the development deficits in MCDs and determination of the target under different schemes.’ There seemed to be no clear plan or roadmap, with targets and allocations fluctuating year on year. Furthermore, the lack of availability in several of the schemes of local data disaggregated by religious group constrained the assessment of the effectiveness of the schemes for different communities;

- (iii) There was a lack of institutional mechanisms and implementation staff at the state, district and block levels. Further, among the existing staff, in many of the states a large proportion lacked motivation. There was also no effective evaluation of any programme; and
- (iv) Plans and financial allocations were modest in relation to the deprivation of the minorities, especially Muslims, and for some of the schemes this meagre amount had not been fully utilised, showing a lack of zeal and coordination among officials and agencies (Government of India 2014: 152–153).

Minority Provisioning on the Cheap: The Question of Resources

Recent data on the working of minority schemes, including at the state level, provides further evidence of poor effort, particularly since the current Hindu right wing Bharatiya Janata Party (BJP) government took power. A report published by the Centre for Social Justice (2017) examined the 2017–18 central budget and its minority-specific schemes (implemented at the centre principally by Ministry of Minority Affairs (MoMA); Ministry of Human Resource development (MoHRD); and Ministry of Civil Aviation (MoCA)) on multiple counts, specifically (i) allocation of resources and their adequacy; (ii) distribution of resources across different sectors; and (iii) fund utilisation. We first look at schemes implemented by central government departments.

The report revealed direct allocation of only 0.21% of the union budget for minorities (Table 12). Minorities make up 19.32% of the national population. Clearly, minority welfare is not high on the government's agenda. The volume of support is too limited to be of much help to minorities, faced with such serious problems. Overall, the offering is very modest. Almost half of the investment was devoted to education, particularly scholarship schemes (pre- and post-matric, and merit-cum-means); Maulana Azad fellowship; and free coaching and allied schemes. Because the allocation was based on 2001 data, the report concluded, it was too low with respect to the need. The 2017–18 budget failed to increase the allocation accordingly (ibid: 14). The Parliament's Standing Committee on Social Justice and Empowerment (2015–16) had recommended the need for a demand-led model of allocating resources for scholarship schemes, rather than an allocation-based model. This was rejected by the government (ibid: 14). Data on targets and achievements (Table 13) reveals that whilst the level of allocation for scholarship schemes has remained consistent over the years, achievement has dropped drastically, forcing one to conclude that there is

Good practice case study:
**Extra-judicial Execution Victim Families’
 Association Manipur (EEVFAM)**

On 11 July 2009 a group of widows and mothers of those killed in extra judicial killings in the state of Manipur came together with some civil society activists and lawyers to talk about their pain and loss. The meeting was a culmination of over a decade of work, and eventually led to the birth of EEV-FAM – Extra-judicial Execution Victim Families’ Association Manipur. The acronym sounds like the local word for bloodstain – capturing the trauma and suffering of the grieving families and their struggle for elusive justice.

Manipur – A ‘disturbed region’

Manipur is a state in India’s Northeast, with a long history of trade and migration with Southeast Asia and China, and a shared international border with Myanmar. The state has three main ethnic groups: Meitei, Naga and Zo (also known as Kuki, Chin, or Mizo) (Ngaihte 2013). 2011 census figures show that the state’s Scheduled Caste population is 3.8% and the Scheduled Tribe population 35.1%. The state has seen its share of insurgency, leading to it being declared a ‘disturbed area’ and to the imposition of the Armed Forces (Special Powers Act) in 1980.¹ The act gives armed forces extraordinary powers, including immunity from legal action, and the licence to shoot to kill and arrest people without obtaining warrants. The Act has long being criticised for violating human rights, though it continues to be applicable in states like Assam, Nagaland, Jammu & Kashmir, and parts of Arunachal Pradesh.² In 2014, it was withdrawn from 7 assembly constituencies in Manipur’s capital, Imphal, but it continues in the rest of the state.

A committee set up by the Prime Minister in 2004, called the Jeevan Reddy Committee, unambiguously recommended repealing the law, calling it ‘too sketchy, too bald and quite inadequate in several particulars’. The committee further observed that the act ‘has become a symbol of oppression, an object of hate and an instrument of discrimination and high-handedness’.³ The act as an instrument of discrimination was further highlighted by the UN’s Committee on Elimination of Racial Discrimination categorically urging the Government of India to repeal the law in 2007 (Loitongbam 2009). Neither

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1. ‘The AFSPA and Manipur: 10 key points’, 9 August 2016. <https://timesofindia.indiatimes.com/the-afspa-and-manipur-10-key-points/listshow/53613784.cms>
 2. ‘What is AFSPA, and where is it in force?’ 23 April 2018. <https://www.thehindu.com/news/national/what-is-afspa-and-where-is-it-in-force/article23648102.ece>
 3. ‘Repeal Armed Forces Act: official panel’, 8 October 2006. <https://www.thehindu.com/todays-paper/repeal-armed-forces-act-official-panel/article18485943.ece>

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Table 12. Allocations for minority schemes (Rs crores)

Year	MoMA	MoCA	MHRD	Total
2017-18	4195	200	120	4515
2016-17	3827	450	120	4397

Source: Centre for Social Justice (2017: 12).

Table 13. Allocations for minority schemes (Rs crores)

		2014–15	2015–16	2016–17
Pre-matric scholarship	Financial target	1130.00	1040.10	931.00
	Financial achievement	1128.81	906.22	584.90
Post-matric scholarship	Financial target	598.50	580.10	550.00
	Financial achievement	501.11	385.72	275.76
Merit-cum-means based scholarship	Financial target	335.00	335.00	395.00
	Financial achievement	381.27	357.98	218.60

Source: <http://www.minorityaffairs.gov.in/sites/default/files/Schemes.pdf>.

something of a tacit rule in the implementation, to starve these schemes of resources.

The other education schemes for minorities are implemented by the Ministry of Human Resources Development (MoHRD), viz. Scheme for Providing Quality Education in Madrasas (SPQEM) and Scheme for Infrastructure Development in Minority Institutions (IDMI). The budget for both schemes was slashed in half in the last budget (2016–17), and this has not been undone for the 2017–18 budget.²⁸

What of access of minorities to universal programmes? Budgetary analysis of the 15 Point Programme – by far the major policy response to poor minority wellbeing – is a good indicator of progress in the central government’s efforts on the subject. The 15 Point Programme was envisaged as an exercise in minority budgeting, to ensure a certain percentage of allocation on universal programmes was earmarked for minorities. This requirement for minority budgeting, however, is largely notional, without there being

28. The other minority scheme is MsDP, aimed at improving infrastructure in minority concentrated districts – those with more than 25% of their population belonging to religious minorities. The main concern here is poor physical progress – so even while 80% of the 12th plan budget under MsDP is reported to have been spent, actual physical progress on the ground was a problem (Centre for Social Justice 2017: 15).

... Good practice case study continued ...

recommendation has been accepted by successive Indian governments to date. The leaders of Manipur's struggle against extra judicial killings and the AFSPA include long-standing human rights defenders Babloo Loitongbam, Irom Sharmila, Renu Takhellambam, and the victims' families challenging state impunity and demanding justice.

EEVFAM – the initial years

The movement took its roots in 2000, with an independent people's commission set up to look into the long-term human rights impact of prolonged imposition of AFSPA in the region. Former Bombay High Court judge Justice H. Suresh highlighted that sanction to kill can never be Constitutional. A group called FIDAM was formed – Families of Involuntarily Disappeared Association Manipur – looking for a solution to the ever-growing problem of disappearances. FIDAM, with its acronym meaning 'ideal' in Manipuri, started filing habeas corpus petitions in the court on behalf of families of disappeared persons. This ensured that individual families could escape reprisal, while also demanding accountability and seeking justice. Resultantly, the phenomenon of disappearances reduced.

However, encounters remained largely unchallenged. A week after the inquiry commission completed its report, security forces killed 10 civilians, in what came to be known as the Malom massacre, November 2000. This was the catalyst prompting Irom Sharmila to begin her 16-year-long hunger strike, demanding AFSPA be repealed.

When the brother of a young electronic engineer shot by security forces became exasperated at the lack of remedies and state response to these wanton murders, the meeting of 11 July came about, less as a solution and more as a cathartic exercise. These fortnightly meetings became a place for these grieving families, most of them young widows, to build a support structure around them, and find a sense of community. The group brought validation that what happened to them was not right, and that their husbands or sons were not criminals. Pertinent issues such as their right to inheritance and their children's right to education were discussed. Towards economic independence and sustenance, Self Help Groups (SHG) were formed, beginning with a small loan of Rs. 5000, for these women to engage in trading, fishery, weaving, or anything else towards income generation. The first round of the SHG saw a 100% return. These women were then given Rs. 10,000. The early 50 beneficiaries became the nucleus of this successful model. The money is used by the beneficiary as per her choice and convenience to improve their lives; such as running grocery shops, weaving, farming, running clothes businesses or making washing detergent, according to Neena Ningombam,

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any specific targeting of minority beneficiaries. The absence of effort to collect data disaggregated by religious group comes in the way of any attempts at specific targeting (ibid: 10). In contrast, central ministries and state governments routinely plan specific spending on women and SC and STs – referred to as the Gender Budget, SC Sub-plan and ST Sub-plan – and append reports on this spending to their budget proposals and reports. And whilst there are various problems with allocation and implementation for all deprived groups (women, SC and ST), planning and reporting spending by group provides policy-based data and creates an opportunity for constructive debate on how programmes work for specific deprived groups. In the absence of data, and indeed effort, nothing like this exists for religious minorities.

The 15 Point Programme was introduced to improve the education, employment skill development, living conditions and security of minorities by bringing them under an overarching programme, to enable greater programmatic focus on minorities. Clearly that objective was never operationalised. The Centre for Social Justice report reveals there are various flaws with the working of the programme. Firstly, there is very poor knowledge about the 15 Point Programme among minority groups. Of greater concern, the report found that awareness among duty bearers – the providers and functionaries – was also low (ibid: 30). Many field staff in key departments showed little awareness. With the duty bearers unaware and unable to take action, the chances of the programme being promoted and implemented well are very poor. This is all ten years after the 15 point programme was introduced – more than enough time for teething problems to have been resolved.

A more fundamental flaw, the study revealed, was institutional. There was a lack of effective detailing of the budget and breaking down of targets, so as to reach the neediest minorities. There were no instructions or guidance issued by sponsoring ministries and therefore no monitoring of the implementation of these by the departments. Adding to the problem was, of course, the absence of data disaggregated by religion (ibid: 33). The report concludes on a sombre note:

‘poor performance (in minority welfare) visible in the official statistics is an outcome of poor awareness among target groups and no clear instructions to the duty bearers, structural issues in the implementation mechanism of the schemes, and the near absent monitoring system’ (ibid: 28).

... Good practice case study continued ...

founding member and widow of an extra judicial killing victim.⁴ Economic independence gave these women the strength and voice to live with dignity within their communities and avoid further deprivation and abuse, as well as to be able to stand up and fight for justice.

Bringing the issue to the centre stage

In March 2012 the UN Special Rapporteur on extrajudicial, summary or arbitrary executions visited India. The group led 70 mothers and widows of those killed in extrajudicial executions or ‘encounters’ in Manipur to meet him. Not wanting to let this opportunity pass, a group of 16 civil society organisations sat together, sharing notes and information, preparing a memorandum listing 1528 cases of extrajudicial killings in the state from 1979 to 2012. The Special Rapporteur’s report mentioned ‘evidence gathered confirmed the use of so-called ‘fake encounters’ in certain parts of the country... Moreover, in the North Eastern States, and Jammu and Kashmir the armed forces have wide powers to employ lethal force.’ The Special Rapporteur further stressed ‘The main difficulty in my view has been these high levels of impunity’.⁵

Bolstered by the Special Rapporteur’s acknowledgment of the problem, and the high number shown by the memorandum that had been published as a report, the group decided to file a Public Interest Litigation (PIL) in the Supreme Court of India. To avoid reprisal for the families, EEVFAM was created to be the first petitioner in the case, with Human Rights Alert being the co-petitioner. There were obstacles even while registering the group; the registrar asked that they change the name as it was antinational. The group was eventually registered as a trust.

The Supreme Court appointed a commission to look into the veracity of six randomly selected cases of the 1528 mentioned in the PIL. The commission found that none of the six were genuine encounters, with all killed being innocent civilians with no criminal history.⁶ Following this report, the court in 2016 has asked the petitioner EEVFAM to verify all 1528 cases and see if the families are willing to pursue justice.

A long road still ahead

Preparing for the long haul, the group set up a temporary office at the Manipur Bar Association, taking depositions and affidavits pursuant to the

4. See: <https://www.countercurrents.org/ningombam300912.htm>

5. ‘India: Concern expressed about extrajudicial executions’ 30 March 2012. <https://newsarchive.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=12031&LangID=E>

6. See: <http://www.hrln.org/hrln/criminal-justice/reports/1501-santosh-hegde-commission-submits-report-on-manipur-extra-judicial-killings.html>

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Over the past years, under the current BJP rule, the very modest minority provisions are also being rolled back. One example of this is the public reporting of outcome data of minority programmes. The Centre for Social Justice study reported that data on outcomes on the Ministry of Minority Affairs website is not updated regularly. Data on the ICDS, schools, and other aspects as not been updated in a year. Data on recruitment in government employment and on communal violence has not been updated since 2015. Data on the rehabilitation of victims of communal violence, the report notes, has never been reported (ibid: 26).

States of Denial: Minority Provisioning at Sub-national Level

Having examined efforts at the central level, it will now be useful to delve into the states of India. The Centre for Social Justice study analysed 2017–18 budgets for minority welfare in seven states – Gujarat, Jharkhand, Karnataka, Madhya Pradesh, Odisha, Telangana, and West Bengal. The questions explored were the same as with the central government, viz. adequacy, distribution and utilisation. The findings are noteworthy.

Table 14 demonstrates that the lowest allocation of budgetary resources to minority specific schemes, as well as the lowest percentage of total state budget allocated, was in Gujarat (Rs. 51 crores and 0.029%, respectively) and the highest was in West Bengal (Rs. 3470 crores and 1.9%). West Bengal, Telangana and Karnataka stand out as the states most committed to minority welfare. With Karnataka's very high rate of utilisation of budgetary allocations, it stands as the leader in backing its minority welfare commitment with resources and actions (ibid: 23). These are exceptional stories of the commitment to providing for minorities, in a sea of neglect. Overall, the policy space for minority welfare in India is very limited. States like Gujarat and Madhya Pradesh, both Hindu right-wing BJP ruled for many years, were revealed as hostile even to minority concerns. As the report notes:

‘Their economic development model (preferred by BJP ruled states) is presented as universal and not vulnerability specific. And majoritarian compulsions drive much of their agenda, and this compulsion does not allow them to be seen as being too accommodating to minority needs.’ (Centre for Social Justice 2017: 64)

These are states that have gone to great lengths to uphold their non-minority stance. All provinces are required by law to have minority com-

... Good practice case study continued ...

court's directive. Around 900 families responded, with 655 of these being part of the original PIL. The cases were divided into 7 categories, ranging from those found to be fake encounters by the Government of Manipur's Commission of Enquiry, to those in which the families had no witnesses or written complaint but were quite certain an encounter had taken place. In July 2017 the court took the first three categories, including 87 victims, and handed them over for enquiry to the Central Board of Investigation. This investigation is still ongoing, with the sluggish investigation called into question by the group.⁷

For both the group and the victims' families, the road to justice continues, with decades gone by. Both have seen respites and reprisals. Keeping morale high has been a continuous effort. For the families, some of whom have decided not to perform last rites till justice is served, everyday life needs to continue along with their battle to know the truth of what happened to a loved one. Babloo Loitongbam recalls that during the Supreme Court appointed Justice Hegde Commission, a mother of one of the victims said she was so relieved to know that her son was killed by the first bullet of the AK47 that hit him and did not live to suffer the other 14 bullets.

This truth coming out is the first step of the transitional justice EEVFAM is working towards. They are hoping the process will now move to identifying the kingpins – those giving the orders – and bring them to account. Though the lives lost can never be repaid, the state owes it to the victims' families to provide them with restitution. Genuine closure can only be achieved with an apology by the state and a guarantee that this will never be repeated. Security itself needs to be reformed to be security for the citizens – for their protection. Finally, the Armed Forces Special Powers Act must be repealed to lift the veil of immunity.

EEVFAM is continuously charting a course of challenging the Indian state through its Constitutional and democratic processes. Their experience is unique and exemplary for attempting to carve a road for similar civil society efforts demanding justice and equal treatment for all, including minorities. Babloo Loitongbam emphasises that state institutions are much more sophisticated and there is a lot of scope for availing support from international human rights diplomacy and advocacy.

Key challenges have been sustaining morale as justice takes its long road; political pressure rendering their advocacy efforts in vain; and every successive government's false promises. Finances also took a hit, with partnering

7. 'Protest against sluggish CBI probe' 18 July 2018. <https://www.telegraphindia.com/states/north-east/protest-against-sluggish-cbi-probe-245679>

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Table 14. Allocation of resources for minority welfare in states (2017–18)

State	% share of minority specific allocation in state budget	Share of minority population in state population	Utilisation as % of allocation
Gujarat	0.029	11.30	23
MP	0.039	08.15	43
Odissa	0.057	05.04	18
Jharkhand	0.150	18.27	60
West Bengal	1.900	28.18	60
Telangana	0.830	12.68	20
Karnataka	1.170	15.72	120
Central Govt.	0.195	19.32	100

Source: Centre for Social Justice (2017: 19).

missions. According to the MoMA, however, many BJP ruled states have not set these up yet.²⁹ Many states have not established minority welfare departments either. These include Gujarat and Haryana, which have established elaborate structures and systems – ministries, departments, autonomous commissions and police task forces, all with large budgets – for the protection of cows (considered holy by a section of Hindus), but see no reason to follow the law in establishing minority commissions as institutions to protect and promote the rights of their minority citizens. As mentioned above, Gujarat’s was also one of the lowest allocations of resources for minority specific programmes. Furthermore, throughout the three years in which the report examined budgets, the allocation decreased sharply, year on year, demonstrating a hardening stance.³⁰

Minority Protection in an Age of Majoritarian Upsurge

Traditionally, the BJP has played down the need for targeted public policy to uplift Muslims. It has consistently rejected the Sachar Committee and Ranganath Mishra Committee reports and their policy recommendations, both of which suggested increased investment in social and economic capital to overcome barriers that persist for Muslims and minorities. As soon

29. See: <http://pib.nic.in/newsite/PrintRelease.aspx?relid=155028>

30. ‘Gujarat’s allocation for minorities is ten times lower than Karnataka; it is 0.029% of state budget: Rehnuma report.’ Counterview. 4 December 2017. <https://www.counterview.net/2017/12/gujarats-allocation-for-minorities-is.html>

... Good practice case study continued ...

NGOs having their FCRA⁸ permissions revoked, and even the group's efforts branded a foreign conspiracy. Families grew fatigued with the system and not all have come forward for the depositions. There is also a recent Public Interest Litigation filed by 350 army personnel, which the Supreme Court has admitted, challenging the registration of FIRs against them for operations in areas where AFSPA is enforced.⁹ For EEVFAM these are the rough edges of democracy, which need the efforts of civil society and citizens to be smoothed; the ebb and flow of successes and challenges. It becomes key to strengthen voices socially and economically, so they are able to stand up and demand justice.

Sustaining any grassroots process takes time and energy. EEVFAM sees justice as a cyclical process, understanding setbacks to be a part of the process and awaiting opportunities to move forward. Most of their energy is spent on supporting the victims, acknowledging their spirit with empathy and understanding. If the grassroots processes of justice are sustained, eventually institutions will respond. The group now awaits results of their long-drawn struggle, aware that the road does not end there.

8. Foreign Contribution Regulation Act 1976, for non-government organisations receiving foreign funding. See: <http://www.fcra.co.in/>

9. 'SC to hear plea of 300 army personnel, Manipur Police commandos challenging FIR against them in AFSPA enforced areas' 14 August 2018. <https://www.firstpost.com/india/sc-to-hear-plea-of-300-army-personnel-manipur-police-commandos-challenging-fir-against-them-in-afspa-enforced-areas-4961711.html>

as the BJP took power in the centre in 2014, the union minister in charge of MoMA, Najma Heptullah, went on record saying that Muslims were not minorities 'by any stretch of the imagination'. Indeed, as reported by the press, 'on her first day in office, Heptullah appeared determined to reorient the ministry by playing down its role in welfare of Muslims....'.³¹ Vishwa Hindu Parishad, a denominational group close to the BJP, has been demanding the scrapping of the central Ministry of Minority Affairs and the National Commission for Minorities (NCM), in response to NCM's opening a helpline for Muslims targeted by recent rise in hate crime, claiming the helpline encouraged separatism.³² This was despite the new look NCM has

31. 'Muslims are not minorities, Parsis are: Najma Heptullah' Times of India. 28 May 2014. <https://timesofindia.indiatimes.com/india/Muslims-are-not-minorities-Parsis-are-Najma-Heptullah/articleshow/35651799.cms>

32. 'VHP demands scrapping of Ministry of Minority Affairs; says Muslim helpline will create separatism'. Firstpost, 27 June 2017. <http://www.firstpost.com/india/vhp-demands-scrapping-of-ministry-of-minority-affairs-says-muslim-helpline-will-create-separatism-3747825.html>

acquired, and what many believe is partisan character, with its chairman a former General Secretary of the BJP Minority Cell and two of its members active BJP members.³³

Alongside all this, the modest gains of recent years in strengthening minority rights protection and promotion regimes are being rolled back. On the recommendations of the Expert Group on Equal Opportunities Commission (EOC, 2008), the union cabinet had in 2014 approved the proposal to set up EOC through an act of Parliament. The new government has since sent the proposal down for consultation, and no decision has been taken since. The fate of the Diversity Index, which was recommended by a separate Expert Group set up by the previous Congress government for the purpose – has been similar. A third, related decision, regarding setting up the national data bank, has also floundered. Newspapers reported recently that a lack of staff meant the national data bank could not take off.³⁴ Finally, the Assessment and Monitoring Authority, created under the Planning Commission as a home for developing and tracking data on marginalisation, has also been wound up, in light of objections by its successor Niti Ayog to being saddled with the agency.

The case of Uttar Pradesh – India’s largest state, with a 19% Muslim population share – is instructive. The BJP took power in Uttar Pradesh in March 2017. In state elections that were run on an Islamophobic campaign, the BJP did not field a single Muslim candidate among the 403 seats it contested to the state assembly.³⁵ On assuming charge, the government – led by Yogi Adityanath, a Hindu cleric accused in multiple cases of inciting and leading hate violence against Muslims and other minorities – abolished the previous state government’s policy of prioritising minorities in 20% of beneficiaries of (universal) social welfare schemes. This policy had applied

33. ‘New minority panel chief, 2 of 4 members belong to BJP’. The Indian Express. 25 May 2017. <http://indianexpress.com/article/india/new-minority-panel-chief-2-of-4-members-belong-to-bjp-4672554/>

34. ‘Min of Finance urged to create posts under IT category to make minority data bank fully functional’ 12 Dec 2016 - http://www.business-standard.com/article/pti-stories/create-posts-to-make-minority-data-bank-fully-functional-116121200657_1.html

35. ‘Why We Should Worry That The BJP Doesn’t Have A Single Muslim Candidate In UP’. Sanjay Jha, 14 February 2017. http://www.huffingtonpost.in/sanjay-jha-/why-we-should-worry-that-the-bjp-doesnt-have-a-single-muslim-ca_a_21713576/

to some 86 schemes of the Social Welfare and Rural Development departments of the state government.³⁶

A series of policy actions in the state – particularly the arbitrary shutting down of meat shops, thus affecting the meat supply chain business that employs a very large section of Muslims – have had the effect of adversely affecting the livelihoods of large sections of Muslims.³⁷ Soon after Adityanath took office, UP state administration came down heavily on meat shops all over the state, sealing those that did not have all the licenses. Whilst this was a noble effort, the vehemence with which the action was enforced – in a sector that has hitherto largely been unregulated – and Adityanath’s reputation of being hardline Hindutva, gave the lie to the government’s claim of just regulating the retail meat sector and introducing health and hygiene measures. No due process was followed, outlets were neither given time to set their house in order nor given notice before summary closure actions. According to a representative of the Jamiatul Qureish, the body representing meat retailers, ‘our business are being destroyed and we are being hanged without a court hearing’.³⁸ A similar crackdown against the largely Muslim-dominated meat supply chain has been taken by BJP governments in the states of Haryana and Maharashtra. At the same time, cow-related lynchings in these same states, and the largescale vigilante anti-Muslim mobilisation surrounding them, have affected transport and trade in cattle, and hence the large labour force dependent on the supply chain and retail – all Muslim dominated.³⁹

36. ‘Yogi Adityanath to end minority reservation in Govt. schemes.’ *India Matters*, 23 May 2017. <http://mattersindia.com/2017/05/yogi-adityanath-to-end-minority-reservation-in-govt-schemes/>

37. ‘Meat traders, butchers in UP say “livelihoods have been affected”’. *Indian Express*. 13 September 2017. <http://indianexpress.com/article/india/meat-traders-butchers-in-uttar-pradesh-say-livelihood-has-been-affected-4840947/>. ‘Beef Ban and the deprivation of livelihoods’. *India Resists*, 31 April, 2016.

38. ‘BJP punishing Muslims’, 27 March 2017. http://www.business-standard.com/article/current-affairs/bjp-punishing-muslims-up-s-crackdown-has-meat-industry-panicked-scared-117032700180_1.html

39. “Emboldened by Modi’s ascent, India’s cow vigilantes deny Muslims their livelihoods”. *Reuters*. 6 November 2017. <https://www.reuters.com/investigates/special-report/india-politics-religion-cows/>

Conclusion: Mobilising Anti-minority Violence, Reinforcing Deprivation

Hasan et al. point to the paradox of the Sachar committee having firmly succeeded in reconstructing the Muslim community as “developmental subjects of the state, rather than as a religious and cultural community”, but this not having undone “the continuing failure (of the state) to enlarge the scope of state intervention and budgetary allocation to reverse (Muslim) deprivation” (2013: 242-243). This, then, is the central failure of policy making for minorities in India – the inability to see Muslims and other deprived minorities as a legitimate subject of development and, by extension, of affirmative action policies.

There have been many attempts by policy bodies to get the government to sharpen the Muslim focus of its ‘minority’ programmes, including under political dispensations of the past, which are not considered to have been hostile, as is the case now. However, these have not yielded any results, showing how entrenched the opposition is. In 2012 the National Advisory Council to the Prime Minister, in its memorandum on Muslim rights, asked for the government to sharpen its Muslim focus. The standing committee of the central government’s Ministry of Social Justice and Empowerment severely criticised the performance of the government on minority welfare, making the point that the Ministry of Minority Affairs was not addressing the roots of the problem highlighted in the Sachar report (ibid: 247). Nevertheless, moves proposing the establishment of a Diversity Commission and Equal Opportunities Commission, made by the government’s own Expert Group on Diversity Index to equalise opportunities, turned out to be non-starters for want of adequate political support; and proposals for a minority sub-plan, along the lines of the Tribal Sub-plan and SC Special Plan, were shot down by the Planning Commission, who argued that this would communalise the planning process, again citing Constitutional hurdles (op. cit.).

The reluctance of policy makers to concede safeguards for Muslim and other deprived minorities continues. This is despite clear evidence now that Muslims, at least the poorer among them, are falling behind the rest of the population on all counts of development and need support. While SCs and STs face very weak implementation of social policies regarding safeguards and affirmative action, in the case of Muslims, effective policies and safeguards for improvement are lacking in themselves. There is ample evidence emerging that points to safeguards and affirmative action policies for SCs and STs re-

sulting in improved outcomes for the groups, whereas the absence of similar safeguards for Muslims means equally marginalised sections among the latter are either catching up very slowly or not at all (Gayer et al 2013: 3, 316.)

A closer look at our material reveals a more sinister design, beyond the old story of poor effort for minorities. The evident limited policy commitment for religious minorities has clear implications for the access of the poorest minorities, specifically Muslims, to entitlements and services on the ground. Evidence points to discrimination in public provision of services to Muslims, as well as market discrimination (in relation to employment), with both formal and informal structures perpetuating the exclusion (Hasan et al 2013: 9). There is a rich body of evidence pointing to the discrimination against Muslims in job market, even more than against Dalits; in the private sector, and particularly in the public sector (Attewell et al 2007; Jeffrey 2010; Basant 2012).

Trivedi's recent case study on Muslim development experiences at multiple sites across the country (2013) makes the same argument, but also advances the argument to report that communal polarisation in Barabanki district (Uttar Pradesh), combined with poor hold of Muslims over political/bureaucratic power there, enables discrimination by frontline state agents (eg school teachers and panchayat workers) against poor Muslims, forcing most Muslims to withdraw their wards from government schools and join madrasas, which are not particularly effective centres of learning. The study demonstrates that, on the other hand, the absence of communal polarisation along with the presence of Muslim Anganwadi workers and ASHA (village level health) workers in Murshidabad (West Bengal) and Katiyar (Bihar) districts enables the Muslim community in those locations to access services better, while keeping the services relatively approachable to Muslims (Trivedi 2013: 233). The author concludes, 'it is this communal character that induces discrimination in the form of social welfare schemes not reaching the Muslims' (ibid: 235). The dominant power structures (in Barabanki, in this case) use the communal card to monopolise bureaucratic and political power (panchayat elections) and that impacts the provision of services to poor Muslims.

Other observers confirm this thesis of communal polarisation being a prime factor in discrimination by the state and its actors against Muslims, impacting the ability of Muslims to access rights and services equitably. Looking at the condition of Muslims across multiple cities, Gayer & Jaffrolet (2012) found that it was the absence (or presence) of communal

violence (keeping other factors constant) that determined much of the resilience of Muslim communities (cosmopolitanism) in the peaceful cases (in Khozhikode and Bangalore, as opposed to Ahmedabad and Lucknow) – in the latter case they argue that the resulting ghettoisation of Muslims was a consequence of organised violence, ‘and only secondly of economic marginalisation or discrimination in the housing market’ (ibid: 325). These conclusions echo those of the Sachar report on differences in service quality for Muslims in a violence-prone Lucknow, compared to peaceful southern cities.

Poor outcomes for Muslims and other minorities are not just about poor resource allocation, programme design and implementation, but they are crucially about how service providers weigh their options based on local context and take decisions, either facilitating or inhibiting provisioning for citizens. In areas with heightened communal mobilisation and recurring violence, ie where society is polarised along religious lines, programmes work very poorly for Muslims, due to discriminatory choices that service providers make at the frontline. As the evidence cited above shows, this heightened polarisation is an anomaly, with only specific areas in the country having a history of communal polarisation. As society continues to become increasingly polarised, pockets hostile to Muslims have expanded. These are areas where Muslims suffer more direct forms of discrimination in accessing public services, benefits and opportunities.

Today, with the Hindu nationalist BJP gaining ground everywhere, using a model of growth that favours polarising society along religious lines – indeed often using violence strategically and instrumentally to divide the electorate and consolidate Hindu support behind it – Muslims face the real prospect of suffering not only violence at the hands of majoritarian mobs, but also increased discrimination at the hands of duty bearers, potentially resulting in complete exclusion from basic services, jobs and opportunities, and hence more concentrated forms of deprivation. The prospects of Muslims becoming India’s ‘second-class citizens’ are increasingly real.

Recommendations

For state parties

Commitments

- Enact anti-discrimination legislation

- Establish equality commission
- Enact hate crime legislation
- Include Muslim and Christian Dalits within the definition of SCs for affirmative action policies, and under the purview of the SC ST Prevention of Atrocities Act, 2005.

Efforts

- Crack down on communal mobilisation
- Ensure greater allocation to minority programmes, with more directed to key needs; and better utilisation, implementation and monitoring;
- Recognise 15 Point Programme as a useful vehicle for improving access to universal programmes. Bring further programmes/schemes under its purview and improve implementation;
- Create minority sub-plan/minority budgeting, and provide breakdowns
- Collect programme management data, disaggregated by religious groups
- Increase allocation for scholarships, not fixing any targets, demand determining quantum; or fix allocation on 2011 census figures (rather than older one currently)
- Ensure transparency in implementation of minority schemes – 15 Point Programme and others.

International community

- Encourage India to deliver on its promises to minorities;
- Encourage India to confirm all UN human rights conventions;
- Encourage India to make use of UN resources on human/minority rights protection and promotion, including lesson learnings;
- Call India to account on specific violations of minority rights; and
- Ensure greater visibility of India and current key minority concerns in India at the UN and other public events and discussions.

Civil society

- Create awareness among the public of programmes and opportunities for minorities; and for all, where minorities could also partake;
- Ensure better documentation and tracking of programme performance and discrimination, as well as of hate violence

- Encourage better engagement with the policy community, through better advocacy; and
- Ensure greater engagement with parliament and state assemblies.

Minority groups

- There is a need for greater mobilisation on rights, entitlements and opportunities;
- A need for platforms and alliances on core issues, and linkages to platforms of other groups/campaigns that could help; and
- A need for better capacity of activists, and state and national level formations, to make use of opportunities, deliver projects, report violations and mobilise and advocate for rights.

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Chapter 6 Pakistan

Striving for Realisation or Hitting Dead-Ends?

*Sahar Ahmed**

Introduction

Pakistan ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR) in 2008 and committed itself to implementing the covenant in letter and spirit by incorporating these rights in its constitution and legal system; as well as to respecting, protecting and fulfilling all its international obligations. Unfortunately, even after eight years, Pakistan is yet to make any significant progress in effectively implementing these rights. Without these two essential steps, no country can progress towards the realisation of economic, social and cultural (ESC) rights and make living conditions better for its millions.

In Article 2.1 of the ICESCR, it is clearly mentioned that state parties have obligations to incorporate these rights into the domestic legal system through appropriate legislation. There are two legal models of incorporating these rights into the domestic jurisprudence – one is the doctrine of incorporation (monist) and the other is the doctrine of transformation (dualist). Pakistan follows a dualistic model system, so it is obligatory for Islamabad to recognise ESC (economic, social and cultural) rights within the constitution and they should be made part of the first chapter, which deals with fundamental rights, in order to make them more effective. However, with the passage of the 18th Amendment, a new window of opportunity has been

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opened, as now provincial assemblies can also legislate directly to include ESC rights in their respective jurisprudence.

In recent years, Pakistan has registered modest economic growth, low inflation and price stability (Government of Pakistan 2016). Despite this, an estimated 29.5% of the population lives below the poverty line (ibid: 284–5). The situation is more alarming when other socio-economic indicators are looked at. 38.8% of people in Pakistan are ‘multi-dimensionally’ poor (Government of Pakistan and UNDP 2016: 15), meaning that 38.8% of people are deprived in at least one-third of the indicators under education (years of schooling, school attendance, and educational quality), health (access to health facilities, immunisation, ante-natal care, and assisted delivery), and living standards (water, sanitation, walls, overcrowding, electricity, cooking fuel, assets, and land/livestock ownership in rural areas).¹

Multidimensional poverty also varies significantly across regions. For example, it stands at 74% in the Federally Administered Tribal Areas (FATA) and 71.2% in Balochistan, compared to 31.4% in Punjab (Government of Pakistan and UNDP 2016: iv, 15–16).

According to the National Nutrition Survey, around 58% of households are food insecure in Pakistan (Government of Pakistan 2011: 22). It is estimated that 44% of children in the country are stunted or too short for their age (UNICEF 2015: 7).² In Pakistan, the percentage of stunting happens to be higher among children whose mothers were not able to complete their schooling than among those whose mothers have completed at least 10 years of education (ibid: 14).³ Stunting varies across regions, with the highest prevalence found in FATA (58%), followed by Balochistan (52%) (ibid: 15).

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1. The concept of multidimensional poverty and multidimensional poverty index (MPI) is based on the Alkire Foster method developed by Sabina Alkire and James Foster of Oxford Poverty and Human Development Initiative. See Oxford Poverty and Human Development Initiative, available at: <http://www.ophi.org.uk/research/multidimensional-poverty/alkire-foster-method/>
 2. Stunting is an outcome of malnutrition and repeated infections, and slows down cognitive development in children under two years of age. For an overview, see World Health Organisation (2014). *Global Nutrition Targets 2025: Stunting Policy Brief*. Available at: http://www.who.int/nutrition/topics/globaltargets_stunting_policybrief.pdf
 3. See also Arif, G.M. et al (2012). ‘Child Malnutrition in Pakistan: Trends and Determinants’, Working Paper, July 2012. Islamabad: Pakistan Institute of Development Economics. p. 9.

Provincial and federal assemblies have recently adopted new laws against domestic violence, so-called ‘honour’ crimes, and child labour.⁴ However, there remain significant gaps in the legal recognition and protection of several covenant rights. Women, children, religious minorities, refugees, and lesbian, gay, bisexual, transgender and intersex (LGBTQI) persons continue to face barriers in the realisation of their rights.

This report focuses on religious minorities within Pakistan, as a specific disadvantaged class or category of people (as so defined by the state), and the challenges unique to them.

Disclaimer Regarding Data Presented

On 15 March 2015, after a long delay, Pakistan began conducting its fifth population census. The last population census had been held in 1998. The United Nations Committee on Economic, Social and Cultural Rights (CESCR) has emphasised the importance of ‘reliable’ and ‘disaggregated’ data to the implementation of the International Covenant on Economic, Social and Cultural Rights, especially in relation to poverty eradication (CESCR 2001: paragraph 13). This census was finally completed in 2017 with a provisional report of the results released.⁵ However, as of yet, there has been no publication of a complete collation of the breakdown of the results to reflect updated numbers of religious minorities.⁶ Therefore, despite the census having taken place just last year, the numbers being presented in this report are, unfortunately, still grossly out of date. In the absence of current census data, economic and social planning risks turning into guesswork. In Pakistan, the census plays an important role in delimiting electoral constituencies, distributing resources to the provinces under the National Finance Commission award, and allocating provincial quotas for recruitments in the federal bureaucracy⁷ (hence, the cynicism in questioning the reason for holding the breakdown of results back).

4. See, for example, The Sindh Child Marriages Restraint Act, 2014; the Domestic Violence (Prevention and Protection) Act, 2013 (Sindh Act No. XX of 2013); the Khyber Pakhtunkhwa Prohibition of Employment of Children Act, 2015; the Balochistan Protection Against Harassment of Women at Work Place Act, 2016; and the Criminal Law (Amendment) (Offences in the Name or on the Pretext of Honour) Act, 2016

5. <http://www.pbscensus.gov.pk/>

Therefore, whilst this report makes every effort to present the status quo with as much accuracy as possible, there will be discrepancies that will fully come to light very soon, once the updated census numbers are released.

Furthermore, whilst every care has been taken to present a comprehensive and detailed account of the persecution and discrimination faced by the many different religious minority communities of Pakistan, certain academic and research liberties have been taken vis à vis the incidents reported and the communities highlighted. This in no way takes away from the experiences of communities not discussed herein nor from the tragedy of each incidence of violence or persecution.

Overview of Religious Communities

The situation for many religious communities in Pakistan has become increasingly harsh in recent years. Communities such as Hindus, Christians and Ahmadis have long faced challenges to 'belonging' in Pakistani society and fully participating in the political life of country, and, despite some signs of progress, according to reports on the ground the situation for minorities continues to deteriorate. According to the annual ranking of Peoples under Threat, produced by Minority Rights Group International (MRG) since 2008, Pakistan has consistently been one of the top 10 countries where the 'large-scale violence' is greatest. The environment in which minorities find themselves is characterised by hate speech, frequent invocation of blasphemy laws and increasingly violent attacks on places of worship. This oppressive environment has made it increasingly difficult for many religious communities to live securely and free from danger in places where they have often spent the majority of their lives. As a result, they are regularly pushed to relocate to safer environs in the country or abroad.

In illuminating the precarious situation faced by many religious communities in Pakistan, it is crucial to avoid stereotypical portrayals of a country which is too easily characterised in over-simplistic terms as 'Islamic' or 'Islamist'. Pakistan is a pluralistic society with myriad religious and ethno-linguistic identities. This diversity has been shaped by ongoing demographic changes throughout its existence. Broadly, however, the pro-

6. 'Minorities demand inclusion in census report', 16 January 2018. <https://www.pakistan-today.com.pk/2018/01/16/minorities-demand-inclusion-in-census-report/>

7. Pursuant to Article 51 (3) and Article 160 (2) of the Constitution of the Islamic Republic of Pakistan.

portion of religious minorities in relation to the overall population has drastically declined. The upheaval wrought by partition in 1947 saw an outflow of Hindus and an inflow of Muslims from India. In subsequent decades, but particularly from the 1980s onward, migration has changed the composition of Pakistani society, and many members of minority communities have fled Pakistan to escape persecution and pursue better economic prospects abroad. In Baluchistan, for instance, a spate of recent abductions and murders targeting minority members has contributed to migration among these groups.

A sense of exclusionary nationalism has also developed in Pakistan, and this has had dire effects on the status and rights of many religious groups in the country. Islam is, of course, not monolithic, and growing emphasis on a particular understanding of 'Muslimness' has severe repercussions not only for non-Muslims but also for intra-Muslim ideological divides and the resulting efforts to identify 'enemies from within' (Malik 2002: 7). In addition to the divide between Sunni and Shi'a Muslims, there are further notable subdivisions within Sunni Islam, primarily between Barelvi and Deobandi strands, which are perceived by hardliners to be at odds with one another. Consequently, in many aspects Shi'a Muslims share a common experience of discrimination, persecution, and violence with other marginalised religious communities in the country. In addition, although there are other smaller religious groups in Pakistan, including Sikhs, Parsis, Zikris, Bahais, Buddhists and Kalasha, the largest and most prominent minority religious groups are Hindus, Christians and Ahmadis. This report will focus particularly on these groups. The following is a brief overview of the situation faced by each of these groups.

Ahmadis

The Ahmadi community in Pakistan comprises approximately 0.22% of the population, according to the country's last national census, conducted in 1998. However, Ahmadi population statistics are especially contested. While the community is officially numbered at

less than half a million, other sources estimate it at 600,000 and even into the millions (UNHCR 2012: 20). They are relatively well-educated as a group and many make their home in Rabwah, Punjab district. While Ahmadis consider themselves to be Muslims rather than a non-Muslim minority group, they are regarded by many representatives of dominant Islamic groups as heretics and are legally prohibited from declaring themselves

Muslims. They are unable to exercise their right to vote because, in order to do so, they must declare themselves non-Muslims, which they are unwilling to do. The marginalisation and persecution of Ahmadis has reached extreme levels in recent years, and Ahmadis are now the target of a 'sustained and vicious hate campaign' (HRCP 2014).

Ahmadis live in constant fear of harassment or assault either to themselves or their homes, workplaces and places of worship. For example, in December 2012 suspected militants desecrated 120 Ahmadi gravestones in Lahore,⁸ while in March 2013 an Ahmadi family in Kasur was brutally attacked in their home by local clerics after they allegedly refused to convert to Sunni Islam.⁹ Later in 2013 a vigilante group forcibly expelled an Ahmadi family from their business premises in an attempt to thwart the production of the Ahmadi-run magazine, *The Weekly Lahore*.¹⁰ In July the same year, at the onset of Ramadan, a group of Sunnis assaulted Ahmadis in Fatehpur, Gujrat, after which they attempted to assert ownership rights over the Ahmadi place of worship.¹¹

This hostility has been accompanied by a marked increase in targeted killings of Ahmadis. In a particularly severe incident on 28 May 2010, 94 people were massacred when gunmen attacked two Ahmadi mosques in Lahore (Human Rights Watch 2010). Successive governments have failed to prosecute injustices or provide meaningful protection to Ahmadis. While Ahmadis are frequently sentenced for various dubious charges of blasphemy, the state has repeatedly failed to bring to justice those responsible for numerous attacks against members of the community, including a mob attack on 27 July 2014 on a small Ahmadi settlement that resulted in the deaths of two children and their grandmother (Amnesty International 2014).

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8. Yusuf, H., 'Ahmadis, a special target of discrimination in Pakistan', *The New York Times*, 6 December 2012. <https://latitude.blogs.nytimes.com/2012/12/06/ahmadis-a-special-target-of-discrimination-in-pakistan/>
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 10. Tanveer, R., 'Ahmadi-owned magazine's office under siege', *Express Tribune*, 14 June 2013. <https://tribune.com.pk/story/562923/ahmadi-owned-magazines-office-under-siege/>
 11. Tanveer, R., 'Dispossession: Ahmadis banished from place of worship', *Express Tribune*, 31 July 2013. <https://tribune.com.pk/story/584181/dispossession-ahmedis-banished-from-place-of-worship-lahore-city/>

Christians

Unlike many Hindus and Sikhs who emigrated to India at the time of partition, Christians for the most part remained in newly-founded Pakistan (Bharadwaj et al. 2008). According to the 1998 Census, Christians make up approximately 1.59% of Pakistan's total population (Government of Pakistan 1998). In fact, the exact number is unknown and estimates range from less than 2 million to as many as 3 million (Immigration and Research Board of Canada 2013). There are Christian communities in Khyber Pakhtunkhwa province, including around 70,000 in Peshawar, but the bulk of Pakistani Christians live in Karachi, Lahore, Faisalabad, and numerous small communities in Punjab (BBC 2013).

While Christians in Pakistan are overwhelmingly poor – working in menial jobs as cleaners, labourers and farmhands – there are notable exceptions. More than any other non-Muslim religious group, Christians have made significant contributions to social sector development in Pakistan, evident in the building of educational institutions, hospitals and health facilities throughout the country (Rais 2007: 122). Yet, like other religious minorities, Christians have faced discrimination and victimisation throughout Pakistan's history. This is evident, for instance, in the nationalisation of Christian properties and institutions under Zulfikar Ali Bhutto (1971–7). Still largely unaddressed, this has resulted in a loss of control over the very educational and health institutions the Christian community has built (Karim 2014).

Since 2001 violence and discrimination against Christians has increased. Seen as connected to the 'West' due to their faith, Christians have at times been scapegoated for the US-led invasion of Afghanistan, as well as the immense human suffering seen as a consequence of interventions in other countries with large Muslim populations (Malik 2002: 22). Violence has not abated in recent years, with an unprecedented suicide attack on a Christian church in September 2013. In what was also the largest attack against the Christian community in the country's history, suicide bombers massacred more than 100 people at the All Saints Church in Peshawar as the service was ending.¹² Prior to this, over 100 Christian homes were destroyed by two large mob attacks against Christian communities in Punjab in March and April 2013 (ibid). Other cases of violence perpetrated against Christians include land-grabbing in rural areas; abductions, forced conver-

sion and marriage of women; and the vandalising and torching of homes and churches. In addition, many Pakistani Christians have been convicted of blasphemy under the country's repressive laws.

Hindus

Hindus in Pakistan account for approximately 1.85% of the country's population according to the 1998 Census (Government of Pakistan 1998) – amounting to less than 2.5 million people. However, as with other minority groups, these figures are regarded by community organisations to be unreliable and out of date. The Pakistan Hindu Council, for instance, has estimated that the total Hindu population now exceeds 7 million.¹³ Of this group, approximately 94% inhabit the province of Sindh, with more than half of Sindhi Hindus concentrated in the south-east district of Tharparkar, bordering India. The remainder of Pakistan's Hindu population reside in small pockets of Punjab, as well as Baluchistan and Khyber Pakhtunkhwa provinces (ibid).

Since 1947, levels of animosity towards Hindus have correlated closely with the vicissitudes of Indo-Pakistani relations (Malik 2002). Issues and tensions on the international level have fed into the characterisation and targeting of Pakistani Hindus as foreign agents. Widespread violence perpetrated against Hindus flared, for instance, in the form of large-scale killings, desecration of temples, and the kidnapping and rape of women during the Indo-Pakistani wars of 1947–8, 1965 and 1971. The destruction of the Babri Mosque in India in December 1992 also led to reprisals against Hindus in Pakistan (ibid).

In recent years Hindus have remained not just a target of suspicion, but also severely discriminated against and persecuted in numerous ways. Hindu marriages, for instance, are not recognised or registered under Pakistani law, thus allowing for police to make accusations of adultery and demand extortion payments.¹⁴ There have been many recent reported cases of Hindu women being kidnapped and forced to convert to Islam before being coerced into marriages with Muslim men (USCIRF 2014). Desecration of places of worship and burial sites has persisted as well: in October and

12. While official estimates and news coverage put the death toll at around 85 people, minority communities claim that the actual numbers were much higher.

Pakistan Hindu Council, <http://www.pakistanhinducouncil.org/hindupopulation.asp>.

13. The News International, 'Pakistani law doesn't recognise Hindu, Sikh marriages', 20 February 2013

December 2013 angry mobs in Badin district, Sindh, dug up Hindu graves and disinterred the bodies (ibid). Due to mounting threats of violence and poor economic conditions, in April 2013 approximately 500 Hindus reportedly left Pakistan in the hopes of finding safety and security in India (ibid). There had also been an alarming rise in attacks on Hindu temples in 2014. According to the non-governmental organisation (NGO) Life for All, there were five attacks in March alone – the most violent month in terms of attacks on Hindus in two decades (ibid).

Shi'as

Although technically not a religious minority *per se* due to their official legal status as Muslims, the Shi'a have effectively been relegated to the status of a very large and prominent minority due to the extremely high levels of violence and persecution they have increasingly faced over the past decade.

Shi'a account for approximately 10–15% of the Muslim population of Pakistan (CIA).¹⁵ They include a number of different ethnic groups and can be found throughout the country. Among them, the most vulnerable is the sizeable Hazara population in Quetta, due to their ethnicity. Pakistani Shi'a are represented in all walks of life, but in many cases have succeeded in playing prominent roles in Pakistan's cultural sphere and attaining influential, high-profile positions. Though as Muslims they are free from certain restrictions affecting other religious groups, Shi'a are still regarded as apostates by some extremist Sunni groups and individuals. As a result, many face regular hostility from extremists and public calls for members to be killed (Mihlar 2014: 1).

However, there was relatively little strife between Sunni and Shi'a groups until, under General Zia ul Haq, a radical, exclusionary brand of Wahhabism was welcomed into Pakistan.¹⁷ In response to the perceived intent of post-revolutionary Iran to export Shi'a Islam to Pakistan and beyond, Zia tightened ties with Saudi Arabia and soon presided over the widespread dissemination of extremist Sunni ideology through sermons, in madrassas,

14. The News International, 'Pakistani law doesn't recognise Hindu, Sikh marriages', 20 February 2013.

15. See Central Intelligence Agency (CIA), *The World Factbook*, available online at: <https://www.cia.gov/library/publications/the-world-factbook/geos/pk.html>

16. See 'The Wahhabisation of Pakistan', 27 June 2008 <https://www.theguardian.com/commentisfree/2008/jun/27/middleeast.pakistan>; and 'The sectarian state', 1 December 2013. http://tns.thenews.com.pk/the-sectarian-state/#.W_ZA65NLgWo

and via other channels. In 2011 militants sent an open letter to the Shi'a community in Quetta, which numbers around 600,000 people, stating that 'all Shias are worthy of killing' and their intention to 'make Pakistan their graveyard' (Mir 2011).

These statements have been accompanied by a systematic campaign of violence directed towards the community in Pakistan, including Shi'a professionals, officials and pilgrims travelling to and from holy sites and festivals. Between 1999 and 2003, around 600 Shi'a were killed as a result of extremist violence and, in this span of time, approximately 500 Shi'a doctors fled the country as a result of the assassination of more than 50 of their colleagues in Karachi alone. The targeting of Shi'a professionals by militant groups continues to the present day, and in recent years these attacks have been especially bloody. Bombings carried out by militants and terrorist organisations have targeted social gatherings and crowded Shi'a areas with near impunity. There have been no meaningful crackdowns or investigations into the perpetrators of this violence, and police have generally been unable to stop attacks when they occur (USCIRF 2014: 76).

Recent incidents include an attack in August 2012 when 25 Shi'a from Gilgit-Baltistan were forced off a bus travelling from Rawalpindi and summarily executed on the basis of the ID cards they were carrying.¹⁷ In January 2013 a suicide attack followed by a car bomb in the same location killed a total of 91 people in Quetta. The following month, another bomb in Quetta's Hazara Town left another 110 dead. In March of the same year, two explosions outside a Shi'a mosque in Karachi killed at least 50 people. Another 30 people were killed in a further suicide attack in June outside a mosque in Hazara Town. Similar incidents have occurred consistently since, including a very high-profile suicide attack in January of 2014 on a busload of Shi'a pilgrims, which left at least 22 dead.

Legal and Institutional Discrimination Against Minority Religious Communities

Since the early days of its existence Pakistan has seen the implementation

17. 'Shias killed in Gilgit sectarian attack', 16 August 2012. <https://www.bbc.com/news/world-asia-19280339>

of various policies, constitutional amendments and pieces of legislation that promote the discrimination of religious minorities in the country. This discriminatory legislation, which ascribes an inferior status to religious minorities at an institutional level, severely impacts the daily lives of members of religious minorities and limits their role in the Pakistani polity. This is despite the fact that Pakistan has either signed or ratified various international agreements guaranteeing freedom of religion and protection from persecution.

However, a significant gap remains between formal ratification and implementation. The failure to incorporate these conventions into domestic legislation has resulted in their frequent violation, as well as a variety of legal gaps with regard to the protection of religious freedom in Pakistan. For example, the Second Amendment to the Constitution of Pakistan, which designates Ahmadis as a 'non-Muslim minority', as well as Ordinance XX, undermine a legal

framework that would allow all Pakistanis to enjoy freedom of religious belief by violating key aspects of the aforementioned conventions, such as Article 18 of the International Covenant on Civil and Political Rights (ICCPR), which emphasises a person's 'freedom to have or to adopt a religion or belief of his choice' and to 'manifest his religion or belief in worship, observance, practice, and teaching' in public or private. Legal and institutional gaps such as these contribute to the marginalisation of certain religious minorities, particularly Ahmadis, and are exacerbated by prejudice within the judiciary towards these groups (Amnesty International 2012).

A more detailed account of the infringement of Pakistan's religious minorities' civil and political rights is available in the South Asia State of Minorities Report 2016, and therefore an in-depth analysis of the discrimination, persecution, and violence faced by them is outside the parameters of this report. This report aims to be more expansive, and hence, moving beyond a state-centric analysis to look at socio-economic and culture factors, will point out how prejudice and discrimination against certain religious communities, including some Muslims, has become ingrained within Pakistani society. Pakistan's Shi'a, for example, while exempt from much of the formal legal discrimination affecting Ahmadis, Christians or Hindus, are nevertheless subjected to comparable levels of prejudice and violence. Beyond discriminatory laws and constitutional injunctions, religious minorities in Pakistan encounter discrimination in a variety of public spaces on a daily basis, including school, work, local neighbourhoods and the

media. Graffiti and banners on city walls, voices from the loudspeakers of mosques, popular television programmes, and even children's textbooks carry messages that incite hatred towards minorities. Stereotypes of religious minorities also deeply impact minorities' interactions with the Muslim majority: for example, because of negative associations Christians are often restricted from drinking water from the same source as Muslims.¹⁸

The socio-economic challenges that come with this discrimination also affect the daily lives of religious minorities in Pakistan who are often relegated to living in decrepit conditions in slums such as 'French Colony' in Islamabad. In this sense, the exclusionary nationalism that has been promoted in Pakistan over the years is deeply connected to the lives of Hindus, Christians, Ahmadis and other religious groups, who are 'othered' through a variety of everyday practices. Increasingly, this discrimination has been accompanied by widespread violence that impacts on the lives of marginalised religious groups in profound ways. The situation is particularly deplorable for those who confront discrimination on multiple levels such as the Hazara Shi'a community, whose freedom of mobility and security have been heavily restricted due to the threat of sectarian violence. Mounting sectarian violence against Shi'a, as well as discrimination against religious groups who until recently had managed to escape systematic targeting, such as Ismaili Muslims, points to the growth of an even more exclusionary form of nationalism based on a very specific understanding of 'Muslimness'. As a result, these groups are socially excluded, and the space ceded for them to practise their religions or achieve scholastic and economic success remains extremely limited.

The Challenges of Intersectional Discrimination

Discrimination against religious minorities in Pakistan manifests in myriad forms, ranging from restrictions on political participation and limited economic opportunities to outright violence. These different forms of discrimination do not operate in isolation, but rather work together and reinforce one another. It follows that religious discrimination does not function separately from other systems of oppression that take hold in Pakistan, but alongside them. For this reason, members of different religious groups, as

17. See 'Justifying the killing of Christians', 25 September 2013. <https://tribune.com.pk/story/609239/justifying-the-killing-of-christians/> and Beall 2006: 81–7.

well as members of the same religious group, may experience discrimination in different ways depending on other factors such as gender, class or ethnicity. Groups such as Scheduled Caste Hindu women suffer from multiple and intersectional forms of discrimination that affect their lives in profound ways. In comparison, the discrimination encountered by religious minorities belonging to the elite and urban middle class is somewhat mild, and the inclusion of these minorities in positions of power within politics, the economy, or the military has often been used to deflect criticism from the blatant religious discrimination that pervades the country. Yet it is important to note that members of this relatively privileged group are few and even they do not have immunity from discriminatory structures, which prevent them from enjoying full citizenship rights (Shaun 2012: 197).

With regard to the different systems of oppression that operate in Pakistan, gender-based discrimination is particularly severe, as highlighted by the Global Gender Gap Index for 2013. Measuring 'relative gaps' between men and women in areas including education, health, economics, and politics, this ranking placed Pakistan second to last out of the 136 countries assessed (World Economic Forum 2013). It is therefore unsurprising that minority women – who encounter multiple and intersectional discrimination – find themselves in a particularly dire situation.

Incorporation of Covenant (ICESCR) Rights in Domestic Law

The Constitution of Pakistan does not include all economic, social and cultural rights under the chapter on 'Fundamental Rights', meaning not all are enforceable in court. Article 11 of the constitution prohibits 'slavery' and 'forced labour.' The same article forbids the employment of 'a child before the age of fourteen years' in 'any factory or mine or any other hazardous employment.' The constitution guarantees 'freedom of assembly' (Article 16), 'freedom of association' (Article 17), and 'freedom of business, trade and profession' (Article 18). The 18th constitutional amendment, adopted by the parliament in 2010, added to the catalogue of rights 'the right to have access to information in all matters of public importance' (Article 19A) and the right to education 'for all children up to 16 years of age' (Article 25A).

Chapter 2 of the constitution outlines the 'Principles of Policy' (Articles 29–40), which call upon the state to 'make provision for the just and humane conditions of work; to provide necessities of life such as food, clothing,

housing, education and medical relief; and ‘to reduce disparity in income and earnings.’ While the ‘Principles of Policy’ have persuasive value and have been used to develop the substantive content of fundamental rights, they are not directly enforceable in the courts.¹⁹ The Supreme Court, under the former Chief Justice Iftikhar Chaudhary (2005–13), made extensive use of its ‘original jurisdiction’ under Article 184(3) of the constitution to initiate suo moto proceedings on a range of human rights issues, particularly health and environment (Qazi 2015: 321). For example, in a series of cases, the Supreme Court ordered the government to prevent the contamination of drinking water and the dumping of solid waste in various parts of the country.²⁰ The court, however, did not develop reasoned jurisprudence on economic, social and cultural rights.²¹ As a result, the judgements have limited value as precedents today. Furthermore, references to international human rights law have been extremely rare in Pakistan’s domestic case-law.

Constitutional rights, as yet, do not extend to the Federally Administered Tribal Areas (FATA). Earlier this year, the National Assembly passed a bill that approved the merger of FATA with Khyber Pakhtunkhwa, thereby extending all constitutional rights to the region, but this has not taken effect yet and implementation will take place over a five-year transition period.²² The government has yet to clarify whether it intends to introduce the constitutional amendment extending ‘Fundamental Rights’ to the people of FATA during the five-year transition period or at the end of it (Government of Pakistan 2016a: 42).

The National Commission for Human Rights was established in May 2015 with the appointment of its chairperson and members. The commis-

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19. CESCR (2016) paragraph 1; In some cases, dating back mostly to the 1980s and 1990s, Pakistan’s courts read the “Principles of Policy” into the guarantees of “Fundamental Rights”. See, for example, *Shehla Zia v WAPDA*, PLD 1994 SC 693; *Pakistan Chest Foundation v Government of Pakistan*, 1997 CLC 1379; *Benazir Bhutto v Federation of Pakistan*, PLD 1988 SC 416; and *Benazir Bhutto v President of Pakistan*, PLD 1998 SC 388.
 20. See, for example, *Suo Motu Case No. 14/2007* (Polluted water in Dera Ghazi Khan); *Suo Motu Case No. 10/2010* (Contamination of Machar Lake); *Suo Motu Case No. 13/2010* (Supply of contaminated water to Rawalpindi from Rawal Dam); and *Suo Motu Case No. 18/2009* (Dumping of solid waste by Safina Sugar Mills on Sargodha-Chiniot road).
 21. The Court also turned controversial by involving itself too closely in public policy and removing an elected prime minister (Yusuf Raza Gilani) from office for “contempt of court” on 19 June 2012.
 22. ‘National Assembly green-lights Fata-KP merger by passing ‘historic’ bill’, 24 May 2018. <https://www.dawn.com/news/1409710> and Beall 2006: 81–7.

sion has the power to take *suo moto* action on cases of violation of human rights. The commission does not have the power to investigate violations of human rights by the military and intelligence agencies directly.²³

The Status of Socio-Economic Rights in Pakistan

The Right to Work and Trade Union Rights – Articles 6–8 of the ICESCR

The concept of the right to work entails that people have a human right to work and to engage in productive employment and that they should not be prohibited from doing so. The right to work is enshrined in the Universal Declaration of Human Rights and in the International Covenant on Economic, Social and Cultural Rights, where the right to work emphasises economic, social and cultural development.

The Constitution of Pakistan provides a range of provisions with regards to workers' rights in Part II: 'Fundamental Rights and Principles of Policy':

- Article 11 prohibits all forms of slavery, forced labour and child labour;
- Article 17 provides for a fundamental right to exercise the freedom of association and the right to form unions;
- Article 18 describes the right of its citizens to enter upon any lawful profession or occupation and to conduct any lawful trade or business;
- Article 25 lays down the right to equality before the law and prohibition of discrimination on the grounds of sex alone; and
- Article 37(e) makes provision for securing just and humane conditions of work, ensuring that children and women are not employed in vocations unsuited to their age or sex, and for maternity benefits for women in employment.

Pakistan has ratified 36 ILO conventions (of which 33 are in force), including conventions on the freedom of association and protection of the right to organise; the right to organise and collective bargaining; abolition of forced labour; equal remuneration; minimum age; the worst forms of

23. According to Section 14 of the National Commission for Human Rights Act, 2012, the commission can only seek a report from the federal government or make recommendations to it in relation to 'complaints of human rights violations by members of the armed forces.'

child labour; and against discrimination (employment and occupation).

The main laws that deal with industrial relations; employment and service conditions; occupational health and safety; wages/remunerations; and social safety nets/social security are:

- Industrial Relations Act 2012
- Factories Act 1934
- The Shops and Establishment Ordinance 1969
- The Workmen's Compensation Act 1923
- Bonded Labour System (Abolition) Act 1992
- The Minimum Wages Ordinance 1961
- The Payment of Wages Act 1936
- The Industrial & Commercial Employment (standing orders) Ordinance 1968
- Protection against Harassment of Women at Workplace Act 2010.

The promotion and implementation of the right to work and decent work should be a significant priority for the government, who should be creating employment opportunities that are productive; that provide fair wages; and that ensure occupational safety and health and a mechanism of social protection, in an effort to achieve equitable, inclusive and sustainable development and reduce poverty.

The overall unemployment rate in Pakistan has decreased slightly in recent years. According to official figures, it currently stands at 5.9% (Government of Pakistan 2016: 11). However, the unemployment rate is significantly higher in cities (8%) compared to rural areas (5%) (ibid: 209²⁴). Industrial development in urban Pakistan has not kept pace with the rising population as migrants from the rural areas are also moving to cities. Research suggests that the internal migration is at least partly linked to environmental stress, including climate-related crop failures and water scarcity (Leadership for Environment and Development (LEAD) Pakistan 2014: 17–28). Despite experiencing high levels of internal migration, Pakistan does not have a

24. See also CESCR (2016). *List of issues in relation to the initial report of Pakistan*. Available at: <https://www.refworld.org/docid/5881e6904.html>

‘migration policy’. A policy framework, consistent with human rights, is required in the context of rural to urban migration, not only to fulfil the right to work but also to ensure that other covenant rights, such as the right to an adequate standard of living, are respected.

In the absence of appropriate planning, those migrating to cities sometimes have to live in informal settlements in hazardous locations without proper access to drinking water and healthcare facilities (ibid: 36). In recent times, Pashtuns from FATA and Khyber Pakhtunkhwa province, who make up a large proportion of internal migrants, have alleged experiencing discrimination from private employers, making it harder for them to access work.²⁵ These allegations surfaced after the authorities blamed Afghans – and people belonging to Pakistan’s predominantly Pashtun northwest region – for certain terrorist attacks against civilians that took place in early 2017.²⁶ In February 2017 the police in various cities of Punjab province reportedly put individuals from FATA under surveillance.²⁷ On 21 February 2017 a traders’ association in Lahore circulated a notice asking Pashtun traders to report to the police for security clearance.²⁸

Latest figures indicate that the formal sector employs just 27.4% of the total labour force (Government of Pakistan 2016: 208). Outside agriculture, most Pakistanis work in the informal sector of the economy, which is largely unregulated, and they have no access to social security, health benefits, or occupational safety. The Factories Act, 1934, which governs the working conditions of industrial labour, only applies to companies employing 10 or more workers.²⁹ Labour inspection remains weak and is absent in the informal sector (Pakistan Institute of Labour Education & Research (PILER) 2015: 22–38). According to a 2015 ILO assessment, there were only 547 labour inspectors in the country, out of whom only three were women (ibid:

25. ‘HRCP condemns “racial profiling of Pashtuns by Punjab govt officials”’, 27 February 2017. <https://www.dawn.com/news/1317344>; Pakistan’s Pashtun Profiling’, 1 March 2017. <https://thediplomat.com/2017/03/pakistans-pashtun-profiling/>

26. ‘Why Pakistan associates terrorism with Pashtuns and Afghans’, 20 March 2017. <http://www.dw.com/en/why-pakistan-associates-terrorism-with-pashtuns-and-afghans/a-38024338>

27. ‘People of FATA origin put under surveillance in Pindi division’, 22 February 2017. <https://www.dawn.com/news/1316244>. See also, ‘Labourers in Islamabad feel stigma of being Pashtuns’, 28 February 2017. <https://www.dawn.com/news/1317514>.

28. ‘Pakistan’s Pashtun Profiling’, 1 March 2017. <https://thediplomat.com/2017/03/pakistans-pashtun-profiling/>

29. The Factories Act, 1934, clause 2(j).

65). In recent years, Pakistan has experienced many workplace accidents in the garment and ship-breaking industries. Around three hundred workers were killed when a fire broke out at a textile factory in Karachi's Baldia Town in September 2012.³⁰ In November 2015 a four-storey factory building collapsed in Lahore's Sunder Industrial Estate, killing 39 workers. Over 30 workers were killed in multiple accidents at Gadani ship-breaking yards on the Balochistan coast in November 2016 and January 2017.³¹

As noted by the Committee, bonded labour continues to exist in Pakistan, particularly in agriculture and the brick kilns industry (CESCR 2016: paragraph 13). The practice is rooted in unequal land ownership patterns, and disproportionately affects certain caste and ethnic groups. In Sindh province, a majority of agricultural and brick kiln workers who are in debt-bondage are Hindus from so-called 'lower' castes. Christians and Afghan migrants make up a sizeable proportion of those who work in brick kilns in Punjab and Khyber Pakhtunkhwa (Qureshi and Khan 2016: xv). Bonded labour was formally banned in Pakistan in 1992 through the Bonded Labour Abolition Act, 1992, which made forcing anyone to work in bondage a crime punishable with imprisonment for a term extending up to five years.³² The Human Rights Commission of Pakistan and other NGOs have since successfully used the law to secure freedom for a number of bonded labourers (Society for the Protection of the Rights of the Child (SPARC) 2015: 47–9). However, employers are rarely punished as required under the 1992 law due to a myriad of reasons, including but not limited to many judges in the lower courts often being unaware of the provisions of the Bonded Labour Abolition Act (Qazalbash 2016: 1–22). However, many of the reasons are more insidious and corrupt than a mere lack of knowledge, with countless reports of the police being complicit in protecting employers in exchange for bribes (*ibid*: 19; Solidarity Centre 2014: 13). Since the employers tend to be economically and politically powerful, they easily evade justice. The situation is further exacerbated as limited access to institutional credit and an absence of alternative livelihoods continues to push workers into a cycle of debt bondage and poverty, despite the law seemingly being on their side. There have been many reports of, in the rare case the judicial system works in their favour, bonded labourers who have been set

30. 'More than 300 killed in Pakistani Factory Fires', 12 September 2012. <http://www.nytimes.com/2012/09/13/world/asia/hundreds-die-in-factory-fires-in-pakistan.html>

31. 'The Wasteland: The Ugly Side of Gaddani's Ship-breaking Industry', 12 January 2017. <http://herald.dawn.com/news/1153615>.

32. The Bonded Labour Abolition Act, 1992, Sections 11 and 12.

free by the courts returning to their former 'employers' when they fail to find other work (Menski 2000: 106–132).

Procurement law in Pakistan does not oblige commercial and public sector entities to ensure that their suppliers adhere to human rights standards, including the prohibition of forced labour.³³ According to an assessment conducted in Sindh and Punjab provinces, local government departments procure bricks without screening whether suppliers use bonded labour (Solidarity Centre 2014: 13–14).

Following the passage of the 18th Constitutional Amendment, provinces have enacted new industrial relations laws. The new laws, patterned on the previous legislation at the federal level, have excluded workers in the informal economy (including domestic and home-based workers) from the right to form and join trade unions.³⁴

With 949 registered unions in the entire country, only around 3% of Pakistan's workforce is currently unionised (PILER 2015: 37). Businesses have increasingly resorted to hiring contract workers, which allows them to dilute the power of trade unions and escape paying pensions and employment benefits.

The situation is even more dire in the context of religious minorities. Religious minorities in Pakistan are largely confined to low-wage, menial employment, with little opportunity to improve their socio-economic position. There are, of course, members of religious minorities who do hold influential positions, but a glass ceiling remains, and the socio-economic ladder is much more difficult to climb. This is in large part a consequence of the limited educational opportunities available to minorities, particularly women, and other forms of institutionalised discrimination. For instance, although 5% of jobs are legally required to be filled by religious minorities, as per a law passed in 2009, these measures are not always followed. For example, in a recent case, Sargodha University ignored this quota, leading

33. See Public Procurement Regulatory Authority Ordinance, 2002; Pakistan Public Procurement Rules, 2004; The Balochistan Public Procurement Regulatory Authority Act No. VIII of 2009; The Punjab Procurement Regulatory Authority Act, 2009; Sindh Public Procurement Act, 2009; and Khyber Pakhtunkhwa Public Procurement Regulatory Authority Act, 2012.

34. The Sindh Industrial Relations Act, 2013; the Punjab Industrial Act, 2012; the Balochistan Industrial Relations Act XIII, 2010; and the Khyber Pakhtunkhwa Industrial Relations Act, 2010.

35. '5% minority quota in university recruitment a must', 23 May 2013.

a Christian political representative to appeal against the school.³⁵ Bonded labour remains common in the country, as highlighted by the Global Slavery Index 2013, which ranked Pakistan as the third worst place in the world for forced labour and debt bondage. Scheduled Caste Hindus are especially vulnerable to these practices (Walk Free Foundation 2013). Similarly, significant numbers of Christians residing in Sindh and Punjab work as bonded labourers in areas such as carpet-weaving and the brick kiln industry. This situation is often closely intertwined with inequalities between religious minorities and the Muslim majority.

Bonded labour is widely condemned as a form of modern-day slavery, as those who are consigned to this form of work are effectively kept in captivity, with little freedom of movement, and often encounter physical abuse. As a consequence of the interest rates that landowners apply to these loans, coupled with extremely low wages for their work, bonded labourers experience extreme difficulty escaping their debt, which is often passed on between generations.³⁶ Although the majority of bonded labour is found in rural Sindh, similar conditions plague those who work in the brickmaking sector in Punjab. Despite the aforementioned legislation against bonded labour in Pakistan, developed in the early 1990s, which has helped bring about the release of some individuals from these conditions, it remains a significant problem in the country. According to recent estimates by the Asian Development Bank, approximately 1.8 million people are in bonded labour across the country, although some estimates are higher (US Department of State 2012).

Beyond this, Hindus and Christians in cities often take on menial work, such as low-level sanitary jobs, that Muslims are generally unwilling to do. A large number of Christians, for example, are occupied as street sweepers, and this work feeds into negative stereotypes. This social stigmatisation reinforces their economic marginalisation, undermining their ability to access even basic livelihoods as a result.

The workplace also serves as yet another site in which gender discrimination is widespread, particularly towards minority women. According to the Asian Human Rights Commission (AHRC), a large proportion of Hindu and Christian women in cities are employed as scavengers or sanitary work-

36. 'The Australian tycoon who wants Pakistan to free its slaves in return for coal', 27 January 2014, <http://time.com/1788/the-australian-tycoon-who-wants-pakistan-to-free-its-slaves-in-return-for-coal/>

ers, on very low wages and without basic labour protections. In some rural areas, the situation is compounded by feudal power structures. In Sindh, for instance, many Hindu women work in slave-like conditions as bonded labourers to local ‘owners’ (AHRC 2010). The combination of economic marginalisation, gender discrimination and religious exclusion means that young minority women are particularly vulnerable to extreme abuse from their employers.

The Right to Social Security and Adequate Standard of Living – Articles 9–11 of the ICESCR

The right to ‘social security and social insurance’ acquires added urgency in Pakistan given that 39% of its population lives in multidimensional poverty (Government of Pakistan and UNDP: 9–11, 15). As the Committee has explained: ‘Social security, through its redistributive character, plays an important role in poverty reduction and alleviation, preventing social exclusion and promoting social inclusion’ (CESCR 2008: paragraph 3). Historically, social security programmes in Pakistan have suffered from poor coverage and design errors. For example, the pension scheme under the Employees Old Age Benefits Institution (EOBI) does not cover agricultural and informal sector workers, thus bypassing the majority of Pakistan’s workforce. According to one estimate, only 3.1% of individuals in the working age population (15–64 years) are active contributors to the scheme (CESCR 2016: paragraph 15; ILO 2014: 275). The other contributory benefits scheme, known as the Workers’ Welfare Fund (WWF), similarly has low coverage.

The Benazir Income Support Programme (BISP), Pakistan’s flagship social safety programme, was launched in 2008. Through the BISP, the government pays unconditional cash transfers (currently set at 1,500 rupees or US \$15 a month) to eligible families based on a “poverty scorecard”.³⁷ The BISP also offers health insurance to its beneficiaries (*Waseela-e-Sehat*), provides vocational training opportunities (*Waseela-e-Rozgar*), and access to interest-free financial support (*Waseela-e-Haq*). The BISP has had a ‘discernible effect in reducing poverty’ based on the poverty line.³⁸ However, the programme has not improved education and health outcomes in a significant manner (Mumtaz and Whiteford 2017: 16–38, 21). Though the cash

37. The poverty scorecard is based on a range of indicators, such as the household size, education status, agricultural landholding, housing and toilet facilities, and livestock ownership.

38. ‘Overview – Benazir Income Support Program’, available at: <http://bisp.gov.pk/overview/>

transfers are helping the poorest households survive, the monthly amount (US \$15) is not enough to help break the cycle of multidimensional poverty. For that to happen, there is a need to improve the coverage of other social protection programmes, and education and health services. To its credit, the programme focuses on women. However, it does not ‘give special attention’ to some of the other groups ‘who traditionally face difficulties’ in exercising the right to social security, as outlined by the committee. These include: ‘persons working in the informal economy, sick or injured workers, people with disabilities, older persons, children and adult dependents, domestic workers, homeworkers, minority groups, refugees, asylum-seekers, internally displaced persons, returnees, non-nationals, prisoners and detainees’ (CESCR 2008: paragraph 31). For the purposes of our analysis, it is religious minorities that are once again excluded from an essential social security programme.

In relation to article 11 of the covenant (‘an adequate standard of living’), ‘the right to food’ and ‘the right to water’ remain key areas of concern given Pakistan’s agrarian economy and its vulnerability to climate change. These rights are also linked to the right to health (article 12) and have serious implications for the wellbeing of women and children (article 10).

The Constitution of the Islamic Republic of Pakistan has directive principles that contribute to the realisation of the right to adequate food. Article 38(d) of the Constitution of Pakistan ensures provision of basic necessities of life, including food, for the citizens of Pakistan. It says: ‘The State shall provide basic necessities of life, such as food, clothing, housing, education and medical relief, for all citizens, irrespective of sex, caste, creed or race, as are permanently or temporarily unable to earn their livelihood on account of infirmity, sickness or unemployment’ (Food and Agriculture Organisation: 1998). The 18th constitutional amendment in 2010 has involved the devolution of 17 subjects to the provinces, including the food and agriculture sector. Now the provinces are being given more powers in order to bring services away from the central government and closer to the people.

The federal Ministry of National Food Security and Research was set up on October 26, 2011 because after the adoption of the 18th Amendment, some functions listed in the federal legislative list related to the Ministry were retained at the federal level, and keeping in view the importance of food security and better execution of related functions. According to a notification issued by the Cabinet Division, the new ministry includes economic coordination and planning in respect of food; import and export of food

grains and food stuff, including import and export of food grains; coordination with aid/assistance agencies with respect to the food sector, and PARC and other federal agriculture research organisations; the import and standardisation of plant protection-pesticides; and aerial spray and plant quarantine.³⁹

To address the unprecedented hunger and malnourishment in the country, the newly established Ministry of National Food Security and Research (MNFSR) launched a 'National Zero Hunger Action Plan' in March 2012. The program is a five-year plan that aims to reach a total of 61 million food insecure people across the country, with a total cost of 16 billion USD. The World Food Programme (WFP) and MNFSR have also signed an agreement, under which some 500,000 metric tons of wheat, donated by the government of Pakistan, will be converted by WFP into nutritious food commodities that will be used to combat hunger among the most vulnerable sections of society – particularly malnourished children, pregnant women and primary school children.

The programme also features what it calls a 'School Feed programme' and is establishing 'Zero Hunger Shops' in 45 extremely food insecure districts in Pakistan, in order to try and tackle food insecurity through schools and local markets. Some of the other salient interventions of the Zero Hunger Plan include:

- Support to food-insecure households,
- Cash and food support in disaster-hit areas,
- Expansion of farm outputs and market access,
- Targeted social safety nets,
- Rationalisation of market prices of food commodities,
- Improved nutritious quality of food intake (fortified food),
- Diversification of food,
- Food processing industry even at community level,
- Food and nutrition awareness and education programmes,
- Food security surveillance,

39. See www.mnfsr.gov.pk

- Research for food policy and production, quality improvement, storage and distribution; and
- Enhanced coordination among various federal and provincial ministries, and public-private-civil society partnerships (Sustainable Development Policy Institute 2012).

The State also adopted the 'Pakistan Vision 2025' policy framework in 2014. Food security and nutrition are among its important seven pillars.

The government has initiated programmes focused on short term results, including food stamps and safety net schemes (eg BISP, Watan cards, funds under Zakat & Ushar (both Islamic taxes) etc). Pakistan is a signatory to the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Universal Declaration of Human Rights (UDHR), Article 25(1) of which ensures the right to food for everyone.

The right to water and sanitation is not specifically mentioned in Article 11 of the ICESCR under 'adequate standard of living', but it is considered an integral part of the right. Article 11, paragraph 1 of the covenant specifies a number of rights emanating from, and indispensable for, the realisation of the right to an adequate standard of living, 'including adequate food, clothing and housing'. The use of the word 'including' indicates that this group of rights was not intended to be exhaustive. The right to water clearly falls within the category of guarantees essential for securing an adequate standard of living, particularly since it is one of the most fundamental conditions for survival. Moreover, the committee has previously recognised that water is a human right contained in General Comment No. 6 (CESCR 1995).

The right to water is also inextricably related to the right to the highest attainable standard of health (Article 12, paragraph 1) and the rights to adequate housing and adequate food (Article 11, paragraph 1). The right should also be seen in conjunction with other rights enshrined in the International Bill of Human Rights, foremost amongst them the right to life and human dignity (CESCR 2003).

The right to water also obliges states to prevent the contamination of water with harmful elements such as industrial waste, as well as freedom from the arbitrary disconnection of water.

The provision of water is recognised under Article 38 of the constitution

Profile of a vulnerable minority: The Hazara Shias of Pakistan

Who are the Hazaras and what kind of persecution do they face?

The Hazaras constitute a distinct ethno-religious group – historically persecuted on both ethnic and religious grounds – that live predominantly in Afghanistan, Pakistan and Iran. The Hazara population is estimated to be between 8 to 10 million, although no official statistics have been gathered so far. For more than a century, the Hazaras have repeatedly experienced human rights violations. In Pakistan, the Hazara population (estimated to be between 0.5 and 0.6 million –although this is an outdated number as Pakistan held its first census in 2017 after almost two decades, the results of which have not yet been disclosed in their entirety) is largely concentrated in Quetta city, the provincial capital of the South-western restive and insurgency-riddled province of Baluchistan.¹ The population in Quetta have been living in two separate and distinct areas called Alamdar Road and Hazara Town. The perpetual attacks on the members of the community have compelled the community to live their lives in an ‘open jail’ (Hazara Town stretching to only 4 square kilometres). In the last few years, hundreds of government civil servants, students and entrepreneurs from the Hazara community have abandoned their jobs, studies and businesses for security reasons.² Their facial features, which have been termed the ‘fault in their faces’ by a senior officer from Baluchistan, easily distinguish them from the rest of local population and they are thus easily targeted (ibid).

Over the course of the past 15 years, more than 1,500 Hazaras have been killed and over 3,500 wounded in a series of 190 attacks across Pakistan (ibid).³ In fact, the most recent numbers collated in a report released by the National Commission for Human Rights (NCHR) in February 2018 stated that 509 members of Hazara community were killed and 627 injured in various incidents of terrorism in Quetta during the last five years.⁴ The NCHR report, titled ‘Understanding the Agonies of Ethnic Hazaras’, lists the attacks on the Hazara community from January 2012 to December 2017, based on the data shared by the Balochistan home department (NCHR

1. Who Are the Hazara? 5 October 2015. <http://tribune.com.pk/story/267225/who-are-the-hazara/>
2. For more details see the Hope report (a non profitable organisation based in USA): <http://www.hazara.net/HOPE/>
3. See also: ‘The Forgotten Victims of Terror’, 4 September 2014. http://www.huffingtonpost.co.uk/john-denham/nato-summit-afghanistan_b_5765136.html
4. ‘509 Hazaras killed in terror-related incidents during last five years in Quetta: NCHR report’, 20 March 2018. <https://www.dawn.com/news/1396273>

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of Pakistan under Principles of Policy; the same article that deals with other necessities of life. Article 38 recognises that the state shall provide the basic necessities of life to all citizens and water is included in that.⁴⁰ The National Drinking Water Policy (NDWP), 2009 formally recognises that safe drinking water is a fundamental human right and that the provision of drinking water is a constitutional responsibility of provincial governments.

The provincial governments are slow to respond to this basic right. There also remains a lot to be done for the regulation of the performance of the municipal bodies in this regard, which results in the violation of the right to water in Pakistan. Governance of water on the local scale has remained under municipal councils or corporations, and district administrations are meant to deal with it. But this two-tiered division of governance has been woefully ineffective due to political infighting, which has left the provincial local governmental system either stagnant or, in many cases, simply non-existent.

A recent study by the Pakistan Council of Research in Water Resources (PCRWR) states that only 72% of the water supply schemes were reported to be functional, of which 84% supplied water not suitable for human consumption.⁴¹ Water facilities in Pakistan suffer from contamination mostly due to leakage of water supply pipes, and pollutants entering from the sewerage pipes due to improper distribution. There have been several studies undertaken to ascertain the effect of this contamination:

- A UNICEF report highlighted that contaminated water contributes to 40% deaths in Pakistan;⁴²
- A study by the World Bank found that less than 8% of urban wastewater is treated (World Bank 2005); and
- A study by the Ayub Agricultural Research Institute suggests that over 65% of agricultural land in Punjab is now uncultivable due to the use of contaminated water to cultivate the land.

The UNDP's development advocate shared that 27.2 million Pakistanis still do not have access to safe water. In the face of this crisis the government has failed to respond adequately. Furthermore, due to the fragmented in-

40. With the Eighteenth Amendment, the issue of water was devolved from a federal concern to a provincial issue.

42. '84pc of population lacks access to safe drinking water'. <https://www.dawn.com/news/1319157>

... Profile of a vulnerable minority continued ...

2018). Shockingly, all the aforementioned deaths took place in Quetta city alone. The regional head of the Hazara Democratic Party (HDP) places the figure much higher.

These attacks have included assassinations, suicide bombings, rocket shelling, and targeting Hazara public gathering places such as hotels and sports clubs to maximise their fatalities. There have been instances where Hazara passengers have been identified on public transport and taken off for mass executions.

The individuals and groups responsible for the systematic killing of the Hazaras are known to the Pakistani state institutions. Indeed, Lashkari Jangavi, Ahle Sunnat Wa Jamait and Jaish ul Islam have been accepting responsibility for these attacks on Hazaras. Nonetheless, not a single culprit has been charged and brought to justice so far. In many cases, the individuals and groups responsible for massacres have enjoyed government and community protection (Human Rights Watch 2014). Their terrorist activities against the Hazaras still continue uninterrupted, especially in Quetta city, the provincial capital of Balochistan, Pakistan.

The numerous attacks on Quetta's Shia Hazara have had a profound impact on the social, cultural, and economic life of the community. Since 2012, Quetta's Hazara have been compelled to limit their activities to the Hazara-dominated neighbourhoods of Marriabad and Hazara Town. As a result, they face increasing economic hardship, little safe access to education, and severe limits on their freedom of movement.

Challenges and Migration

The NCHR report reveals that Quetta has become 'a prison for them, everyone tries to escape if they get an opportunity' (NCHR 2018). The unceasing violence has created a perpetual sense of despondence and fear within the community, forcing large numbers of young Hazara to migrate internally and out of Pakistan. Many have sought asylum in Australia, Indonesia, the U.K., the U.S.A., and different parts of Europe. This creates a unique situation for organisations seeking to work to alleviate the problems faced by the community. Faced with what can only be called an exodus of sorts, many NGOs have struggled to get cooperation from the Hazaras left behind as the youth are desperate to leave and to eventually have the rest of their families follow them. When the primary aim of a community becomes to leave, working on rehabilitation and progression on the ground becomes increasingly hard. Furthermore, the ever-volatile security situation in Balochistan makes mobilisation extremely difficult, with little to no support being offered by

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stitutional structure for water management and the lack of a national water policy, Pakistan is moving from being a water stressed to a water scarce country.

In 2016 the water sector under the Public Sector Development Programme of the federal budget was allocated PKR 33 billion, compared to the previous year's allocation of PKR 31 billion. These funds are released in phases over the project completion stages, with back-to-back budgetary allocations. Much of this funding is invested in the construction of large and small dams, lining of water courses, and flood dispersal structures. Due to a sharp increase in population and climate-driven environmental changes, along with growing industrial demand, there has been a great focus on water conservation projects, where the provincial governments' demand for funds exceeds the budgetary supply. The budget allocation for the water sector has significantly reduced over the years from PKR 70 billion to PKR 31 billion, whereas the demand has risen to PKR 150 billion.⁴³ In 2015 the Sindh Irrigation Department demanded PKR 12 billion against its allocation of PKR 8.6 billion for the year.⁴⁴

It is estimated that one million acre-feet (MAF) of water generates \$600 million worth of economic benefits and that Pakistan, due to a shortage of storage capacity, has wasted about \$18 billion annually for the last 40 years by not using over 30 MAF, which eventually flows into the sea, notwithstanding environmental flows to the sea.

The right to water can be extended to irrigation water. Over 95% of all ground and surface water is used for irrigation in Pakistan. While the irrigation system suffers from inequitable distribution among and within the provinces, it is estimated that up to 40% of water used for irrigation is wasted while irrigating the fields.⁴⁵ Groundwater quality is deteriorating rapidly as well. This issue should be given top priority.

Since 1995 the country has suffered recurrent droughts and floods. As a result, Pakistan ranks among the ten countries that are most affected by extreme weather events on the Global Climate Risk Index (German Watch

43. Only 25pc of allocated budget released for water & power sector' <https://nation.com.pk/16-Feb-2017/only-25pc-of-allocated-budget-released-for-water-power-sector>

44. 'More funds likely for water conservation', 8 June 2015. <https://www.dawn.com/news/1186764>

45. 'Enormous waste of water', 13 June 2016. <https://www.dawn.com/news/1264520>

... Profile of a vulnerable minority continued ...

security forces (who many argue have the harder task of maintaining law and order in the province – a claim others refute by citing security and intelligence forces' heavy-handedness with Baloch nationalists and dissidents, which is presented as the main catalyst to the unrest in the province).

Road Ahead

Under international law, the Pakistani government is ultimately responsible for the lives and well-being of its population. Internationally recognised human rights set out in core human rights instruments guarantee all people equal and inalienable rights by virtue of their inherent human dignity. Under these instruments, the state, as the primary duty holder, has an obligation to uphold these rights. This includes not only preventing and punishing human rights violations by government officials and agents, but also protecting communities from criminal acts committed by non-state actors such as Lashkar-e-Jhangvi. Pakistan is party to the International Covenant on Civil and Political Rights (ICCPR), one of the core international human rights treaties. The Human Rights Committee, the international expert body that monitors compliance with the ICCPR, has observed that a state's failure to 'take appropriate measures or to exercise due diligence to prevent, punish, investigate or redress the harm caused by such acts by private persons or entities' itself constitutes a violation of the ICCPR (UN Human Rights Committee 2004: paragraph 8). Similarly, the UN special rapporteur on extrajudicial, summary, or arbitrary executions has observed that 'once a pattern [of killing] becomes clear in which the response of the Government is clearly inadequate, its responsibility under international human rights law becomes applicable. Through its inaction the Government confers a degree of impunity upon the killers' (Alston 2004: paragraph 72).

Therefore, it is absolutely imperative that the Pakistani government take action against the leadership of sectarian terrorist outfits that have been committing these acts of violence against not just the Hazara but all religious minorities within the country. The government – and one hopes that the new government following the forthcoming election in July 2018 will have stronger political will than the current and previous subsequent governments – must establish an independent federal commission to investigate, recommend criminal prosecutions, and publicly report on sectarian killings in Balochistan. Furthermore, the government must immediately remove from service any administrative or security personnel implicated in sectarian attacks or who failed to investigate and arrest alleged perpetrators of such attacks.

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2017). In the 2015–16 fiscal year, agriculture, which provides employment to 42% of the country's workforce, recorded a negative growth of minus 0.19%. Extreme weather accounted for a drop in the production of cotton, rice, and other crops, underscoring the potentially negative impact of climate change on the right to work and food (Government of Pakistan 2016: 1–2). There is also a nexus between food insecurity and the country's inequitable water economy. Large land-owners monopolise the dwindling water resources; small farmers find it difficult to access water for subsistence food crops (Oxfam GB 2010).⁴⁶

There is now serious concern across both domestic and international sectors that ground water sources are depleting fast in Pakistan as a result of years of excessive pumping.⁴⁷ Women and girls, especially in the arid regions of Sindh, Balochistan and Southern Punjab, have to travel long distances every day to draw water for household use. The burden of fetching water affects women's health, and often prevents girls from attending school (Oxfam GB 2012: 29).

Pakistan needs to direct investments toward renewable energy and climate-sensitive development. The government has yet to move in that direction. For example, under its flagship infrastructure development project – the China Pakistan Economic Corridor (CPEC) – the government plans to build new power plants over the next six years, which will run on imported and locally mined coal.⁴⁸

The fact that there is close to no disaggregated data with regard to religious minority communities is extremely telling and is worth noting. While we can wait for the numbers from the census to be released, there is no questioning that many minorities who are living in abject poverty and who tend to be on the margins of society due to their non-Muslim status are being impacted by the lack of social security and poor living standards (particularly water, food, and housing) at more extreme levels than members of the majority. There can be nothing achieved, nor measures implemented without full knowledge of exactly how many people from various commu-

46. Oxfam GB, 2010. Migration, Water Stress, and Climate Change in the Indus Delta. Unpublished.

47. For an overview, see The World Bank, *Pakistan's Water Economy: Running Dry* (Karachi, OUP 2006)

48. For details, see Government of Pakistan, 'CPEC- Energy Power Projects', available at <http://cpec.gov.pk/energy>.

... Profile of a vulnerable minority continued ...

No progress for the socio-economic development of the Hazaras can possibly take place whilst there is an active threat to their lives. Till the security situation in Quetta improves, the Hazaras will continue to be relegated to the fringes of society, both socially and economically, and to be forced to look towards what they perceive to be salvation and freedom in the form of asylum outside the country, thereby having to abandon their homes and their lives in Pakistan.

nities are being negatively affected, as they sit at that unique and troubling intersection of abject poverty and minority status.

The Right to Health – Article 12 of the ICESCR

The Constitution of Pakistan does not explicitly recognise the Right to Health; however, following the 18th Amendment to the Constitution (for devolution of power from federal to provincial ministries), a series of amendments have been introduced: health is now regarded as a provincial subject, enabling each province to administer health departments according to their needs. This is considered a progressive step, for better outreach and administration of healthcare.

The right to health is widely considered under the realm of the fundamental rights – specifically the right to life – guaranteed to the citizens of Pakistan under the Pakistan Constitution: ‘No person shall be deprived of life or liberty, save in accordance with law (Article 9)’. The right to health is implicit in the right to life. It is the economic, social and cultural right to a universal minimum standard of health, to which all individuals are entitled.

Public health spending, an important indicator of the state party’s commitment to implementation of the right to health, currently stands at 0.45% of the GDP. This level of spending is low compared to many other middle and low income countries. People in Pakistan rely on private healthcare, which many find difficult to afford (Hafeez 2014). At the national level, lack of access to health facilities is the largest contributor to multidimensional poverty after deprivations in education (Government of Pakistan and UNDP 2016: 18). Women and girls in Pakistan have poor access to necessary reproductive health services. The Maternal Mortality Ratio (MMR) has reduced from 297 per 100,000 live births in 2007 to its current level of 170 per 100,000 live births (Mahhabul Haq Centre 2016: 16; National Institute of

Population Studies 2008: 177). As the government has acknowledged, however, the MMR in Pakistan 'is still very high as compared to the other countries in the region' (Government of Pakistan 2016: 193). Approximately 40% of pregnant women do not receive skilled prenatal care or full protection against tetanus (Government of Pakistan 2015a: 258–61). The coverage of prenatal care varies noticeably across regions and sub-regions (ibid: 258–61). Delays in seeking medical care for complications during pregnancy are common due to lack of transport and family support, and the non-availability of essential services at health facilities.⁴⁹ Women often do not have access to skilled birth attendants, which leads to unsafe deliveries and health risks for women, including preventable injuries and health conditions, like obstetric fistula (UN General Assembly 2008). Women who develop obstetric fistula sometimes face isolation and stigmatisation because they are abandoned by their husbands and rejected by communities. An estimated 5000 cases of fistula occur in Pakistan every year.⁵⁰

The domestic legal framework on abortion continues to be restrictive. According to Section 338 of the Pakistan Penal Code, as amended in 1997 to 'bring it in conformity' with Islamic teachings, 'Whoever causes a woman with child whose organs have not been formed, to miscarry, if such miscarriage is not caused in good faith for the purpose of saving the life of the woman or providing necessary treatment to her, is said to cause 'Isqat-i-Haml' (abortion)'.⁵¹ The punishment is set at 'three years if the abortion is performed by the woman's consent, otherwise a maximum of ten years'.⁵² Though the law does not specify a gestational limit, Islamic scholars tend to believe that foetal organs are developed by the fourth month of gestation (Shapiro 2014: 483–494). Thus, abortion would be legal as 'necessary treatment' if carried out in 'good faith' up to the end of the fourth month of pregnancy. That marks some improvement on the previous law, which allowed for abortion only to save the life of the pregnant woman. However, abortion remains criminalised in several circumstances, including in cases of an unwanted pregnancy as a result of rape, sexual assault or incest; in case of

49. For recent empirical evidence, see Qureshi R. N. et al (2016). 'Healthcare seeking behaviours in pregnancy in rural Sindh, Pakistan: A qualitative study', *Reproductive Health*, 2016, Volume 13 (Supplement 1).

50. 'Up to 5000 fistula cases surface in Pakistan every year', 23 May 2015.

51. Section 338 and sub-sections 338A, 338B and 338C of the penal code were initially amended in 1991 through a presidential ordinance. The parliament adopted the necessary statutory amendments in 1997. See Criminal Law (Amendment Act) 1997, available at: http://www.na.gov.pk/uploads/documents/1324604341_299.pdf

52. 338A, Pakistan Penal Code, 1860.

Good practice case study: The Grief Directory

What is The Grief Directory?

The inception and the formulation for the idea of The Grief Directory (TGD), was a deeply personal endeavour for the women at the helm of this initiative – Dr Fatima Ali Haider, one half of the duo behind TGD, has herself been a victim of the terrorism and sectarian violence that has plagued Pakistan for the better part of the last two decades. Following the target killing of her husband and eleven-year old son in February 2013, Dr Haider found herself reeling from the tragedy and overwhelmed with grief. There was no appropriate support available for the families of victims of terror attacks and/or survivors of terror attacks, either from the state or private providers of mental health care. In the event that there were mechanisms of support available, there was no information on how to access them. In fact, access to information proved to be the biggest challenge. This led to what the founders of TGD call the ‘bridge of compassion’, which in many ways was a practical embodiment of that very idea – a dispassionate and professional provision of compassion, support, and a pooling of resources. Under the oversight and management of Dr Fatima Ali Haider and Dr Narmeen Altaf Hamid, both medical professionals, TGD came to life.

TGD formally started functioning in January 2015 with the aim of matching the needs of affected families with those professionals, organisations, and individuals who were willing and able to provide support. This support ranged from financial (preferably in kind), to medical, psychological, legal, and administrative. It involved working with banks, insurance companies, the police, and government organisations. Providing help also took the form of emotional support which could include sharing a meal, attending a special occasion or lending a listening ear; simple things which were no less important. Help was given without distinguishing between faiths or sects. TGD aimed to use compassion and empathy to promote unity where violence was dividing. Early on in this endeavour though, it became apparent that the scale of the problem was far bigger than had been anticipated. Accessible and systematic support systems could not be provided through working on an individual basis alone. Simultaneous efforts had to be made to build institutional mechanisms of support as well. This tied in to an acknowledgment on the part of TGD that most victims and survivors of terror attacks also happen to belong to already marginalised and persecuted minority communities, who due to their religious and/or ethnic identities, also find themselves in compromised circumstances with regard to their socio-economic rights. By finding themselves in situations including but not limited

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foetal impairment; or after the fourth month of pregnancy, unless there is a risk to the woman's life. Additionally, healthcare professionals lack awareness of the law. Some women for whom the pregnancy amounts to a serious health risk are turned away by health facilities (Sathar et al 2013).⁵³ This, together with poverty, leads women to opt for unsafe abortions conducted by unskilled practitioners (Gilani and Azeem 2005: 412–15). At least 5.6% of maternal deaths in Pakistan occur due to abortion-related complications.⁵⁴

Furthermore, transgender individuals – many of whom work as commercial sex workers – continue to face discrimination in accessing health services in Pakistan. In May 2016, Alisha, who worked with an activist group called Transgender Alliance, was allegedly shot by a disgruntled customer. Alisha died from her wounds at a Peshawar hospital after the doctors ignored her and refused to admit her either to the male or the female ward.⁵⁵

Religious minorities face similar difficulties in accessing proper health care. Whilst it is difficult to present data as to exactly how members of minority communities are able to realise their right to health in Pakistan, there is ample anecdotal evidence of the discrimination they face. There are frequent reports of Pakistani Christians working as sanitary workers (jobs reserved for low caste Christians and Hindus as they are considered too dirty for or 'beneath' Muslims) who are denied emergency medical care or basic health care in hospitals due to being 'filthy'.⁵⁶ There are also frequent reports of Christians and Hindus being violently attacked in hospitals for touching 'clean' medical supplies implicitly understood to be only for Muslims.⁵⁷ Furthermore, following the tragic twin terrorist attacks on Ahmadi mosques in Lahore in 2010, when the victims were rushed for emergency medical care to Jinnah Hospital (a public hospital), doctors and medical staff were hesitant to treat them out of fear for their own lives (not unfounded, as the same night terrorists did attack Jinnah Hospital and the wing where victims and

53. See also, 'Resorting to unsafe abortion for family planning', 25 September 2016. <https://www.dawn.com/news/1285965>

54. '5.6% of maternal deaths in Pakistan attributed to abortion-related complications', 12 March 2015. <https://www.dawn.com/news/1168938>

55. 'Transgender Alisha succumbs to wounds at Peshawar hospital', 25 May 2016. <https://www.dawn.com/news/1260559>.

56. 'The last hours of a Christian sanitary worker in Pakistan', 11 June 2017. <https://www.scss.tcd.ie/~spillab/BBC/Original/The%20last%20hours%20of%20a%20Christian%20sanitary%20worker%20in%20Pakistan%20-%20BBC%20News.html>

57. 'The last hours of a Christian sanitary worker in Pakistan', 11 June 2017. <https://www.scss.tcd.ie/~spillab/BBC/Original/The%20last%20hours%20of%20a%20Christian%20sanitary%20worker%20in%20Pakistan%20-%20BBC%20News.html>

... Good practice case study continued ...

to where the primary breadwinner of the family had been killed in a terror attack, they found their living standards worsened and their difficulties exacerbated. Thus, over time the goal of TGD evolved to include more awareness raising about the needs of such families, doing advocacy for them, and ultimately working towards a centralised system at the national level where families could receive efficient, comprehensive, and compassionate support.

Work so far

In the past two years TGD has carried out a number of projects, which include establishing a support network of health practitioners in Peshawar, running a summer internship that has been converted into a year round program, collaborating with Shaheed Foundation on establishing a network of health professionals in Punjab, Khyber Pakhtunkhwa, and Balochistan, and setting up a health fund in Quetta.

In January 2017, in collaboration with the Centre for Public Policy and Governance (CPPG), FC College, Lahore, TGD held its first annual five-day conference, titled 'An Initiative For The Sufferers of Political Violence In Pakistan'. The trainer and lead facilitator for the event was Professor Marie Breen Smyth, a professor at the department of Conflict Resolution, McCormick School of Global Governance, Massachusetts University, USA. The conference took a three-pronged approach to discuss and explore the support mechanisms required by families of victims and survivors of political violence. The first three days focused on the training of mental health professionals, followed by a one-day seminar for researchers and academics interested in working in this field. A policy dialogue took place on the last day with the representatives of various government organisations and state actors discussing ways to implement institutional mechanisms of support.

In November 2017 TGD conducted a workshop at the University of Lahore as part of the first South Asian Regional Child Rights Conference. The key speaker was Dr. Karen Olness, Professor of Paediatrics, Global Health and Diseases at Case Western Reserve University in Colorado, Ohio, USA. Participants were a diverse group comprising educationists, human rights workers, parents, affected children and healthcare professionals. The objective of the workshop was to identify the issues that children who have suffered loss, particularly loss related to political violence, face and to see how the various stakeholders can better support them.

In April 2018 a workshop was held at the Centre for Public Policy and Governance to look at the feasibility of starting a Trauma/Healing Centre, which is one step closer to the main objective of TGD. This workshop was facilitated by a group of Korean doctors who gave presentations as well as the commitment to collaborate in this initiative in the future. A working group has

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survivors of the mosque attacks were being treated).⁵⁸

The example of the attack on Jinnah Hospital presents a unique situation in which the discrimination being faced by Ahmadis in need of dire medical attention is not perpetuated by their economic status (or their caste, as in the case of Christians and Hindus), and is thereby a result purely of their religious identity. This is interesting and presents a particularly challenging situation in which even financial and class-based privilege does not protect religious minorities from facing violence and discrimination in being able to access adequate and pressing medical care.

The Right to Education – Articles 13–14

It is worth noting that access to schooling has increased in Pakistan. However, at 53%, the Net Enrolment Ratio (NER) for girls is still lower than for boys (60%) (Government of Pakistan 2016: 171). Of all the provinces, the NER for girls is lowest in Balochistan at 35%. The gender gap in enrolment has narrowed to some extent in Sindh and Punjab (*ibid*: 170–71). There are noticeable regional variations in access to schooling for girls across regions (CESCR 1999). Except for Punjab and the capital Islamabad, all provinces continue to have far fewer middle and secondary schools for girls than for boys. FATA and Balochistan are particularly disadvantaged in the availability of quality educational facilities. Less than 10% of primary schools in Balochistan and 30% in FATA have drinking water for pupils (CESCR 2016: paragraph 29). Half of the middle schools in Balochistan and FATA do not have toilets (Government of Pakistan 2015: 158–60). FATA and Balochistan feature at the bottom of district education rankings based on access, attainment, literacy and gender parity (Alif Ailaan and SDPI 2016). The regions that have the lowest enrolment for girls (Balochistan, FATA and Khyber Pakhtunkhwa) also have significantly lower percentages of female teachers (Government of Pakistan 2015: 107–8, 110). Textbooks contain stereotypes of women and some religious minorities (Hazirullah and Christina Skelton 2013: 183–194).

In recent years, non-state groups have attacked school buildings and targeted students and teachers in many parts of the country, including in Balochistan, Punjab, FATA and Khyber Pakhtunkhwa (Human Rights Watch 2017). The brutal attack by Taliban gunmen on the Army Public School in Peshawar in 2014 created an atmosphere of insecurity among chil-

⁵⁸ 'Jinnah Hospital attack mastermind arrested', 22 July 2010. <https://tribune.com.pk/story/29560/mastermind-of-jinnah-hospital-attack-uncovered/>

... Good practice case study continued ...

been formed which is following up on the discussions in the workshop and endeavouring to give them practical shape.

TGD is currently working with Rescue 1122 emergency services in Lahore, where a team of psychologists is providing psychological assessment and counselling services to a hundred first responders in one of their main stations. This is a pilot project and from the extremely positive response it is garnering, it is likely that the service will be replicated in other stations and cities as well.

Another project that is in its initial stages is an e-Health initiative for the Hazara community in Quetta, Balochistan. This will provide much needed health services to this persecuted community and promote inter-sect and inter-provincial harmony.

What makes this inspirational?

TGD has been providing what are clearly essential and much-needed services to victims of political and terror-related violence, but their most ground-breaking venture is the aforementioned e-Health initiative for Quetta's Hazaras.

The Hazaras are an ethnic group native to the region of Hazarajat in central Afghanistan. They make up the third largest ethnic group in Afghanistan. They also make up a significant minority group in Pakistan, largely living in the city of Quetta.

The Hazaras find themselves particularly vulnerable to attack because of their distinctive facial features and Shia religious affiliation. More than 500 have been killed in attacks since 2008, but their precarious position is particularly reflected in the increasing percentage of Hazaras among all Shia victims of sectarian attack.

The half-million members of the Hazara community in Quetta live in fear, compelled to restrict their movements, leading to economic hardship and curtailed access to health, education and employment. This oppressive situation has prompted large numbers of Hazaras to flee Pakistan for refuge in other countries.

This forced isolation and ghettoization has had a severe negative impact on the emotional and physical health, as well as employment and financial status, of the vulnerable people of this community. The women are per force doubly marginalised. Because of the risky security situation, it is difficult for outsiders to offer support, but with technological progress, there can be innovative ways to reach out and help, which is exactly where the TGD steps in.

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dren, parents and teachers, which still persists. More recently, on 20 June 2016, the Taliban targeted Bacha Khan University in Charsadda (Khyber Pakhtunkhwa province), killing at least 21 people, most of them students.⁵⁹

Another major area of concern is a lack of integration into mainstream schooling for children living with disabilities in Pakistan (CESCR 1999: paragraph 6). Official education statistics in Pakistan do not incorporate data on children with disabilities.⁶⁰ Enrolment, drop-out, and transition rates are not compiled separately for such children (ibid). It is not known how many children with mental and physical disabilities are currently out of school. Lack of disaggregated data and research impedes the development of effective policies to promote inclusive and quality education. Except a few donor-supported projects, school buildings in Pakistan do not have ramps, support bars or other disability-friendly facilities (UNICEF 2003).

Since the insertion of the right to education in the constitution, all four provinces have introduced laws 'guaranteeing' the right to 'free and compulsory education'. This is a positive step forward. However, the provincial laws have certain shortcomings. For example, under the laws enacted in the capital Islamabad, Balochistan and Sindh, parents face fines for failing to send their children to school.⁶¹ However, the laws do not stipulate minimum basic facilities within schools, such as drinking water and toilets, and do not ensure schools are accessible for children with disabilities (Pakistan Coalition for Education 2015: 37–50).

This problematic situation appears to be even more complicated when looking at the specific issues that religious minorities confront with regard to education in the country. In terms of barriers to education, the situation varies for different religious minorities, depending on factors such as class, gender and geographic location, as well as the religious group that they belong to. Given that economic position and gender are two of the key factors determining the access an individual has to education in the country, poor women from minority communities tend to face some of the greatest challenges. For example, recent surveys have pointed out that, in the same community, illiteracy rates for Scheduled Caste Hindu women and men were

59. 'APS mastermind claims responsibility for Charsada varsity attack, 21 killed', 21 January 2016. <https://www.dawn.com/news/1234200>

60. See for example, GoP (2015). *Pakistan Education Statistics 2013-14*.

61. The Balochistan Compulsory Education Act, 2014 (Section 8); Right to Free and Compulsory Education Act, 2012 (Section 8); The Sindh Right of Children to Free and Compulsory Education Act, 2013 (Section 8).

... Good practice case study continued ...

The e-Health project is modelled around remote service provision, whereby women in the community are to be provided health information, advice and consultations via internet, with referrals to local facilities for medicines and inpatient care. The system will work with local community workers, an online resource facility and a local referral centre. The project envisages beneficiaries at multiple levels:

The primary beneficiaries will be the women of the Hazara community. They will get information, consultations and support at their door-step or within their community.

The secondary beneficiaries will be the community workers who will be selected from within the community, trained and paid a stipend (albeit a nominal one at this stage). They will learn skills and be able to contribute to their communities.

Whilst beginning with health, the access that this system provides to the women could also potentially trickle to other aspects of the community, whereby the youth and men will also be enabled to access e-resources in other areas, thus empowering the community as a whole.

This project, or rather any of the work the TGD does, is not without challenges. Apart from the obvious financial constraints that all grassroots level social mobility providers face, the TGD also faces an added security risk due to the sensitive nature of their work. Working so closely with heavily persecuted groups like the Hazaras puts the TGD, its volunteers and its affiliates at direct risk of violence from sectarian terrorist organisations. Furthermore, due to the fact that much of the TGD's work involves working with state-operated services, eg emergency first responders, they also have to contend with governmental bureaucracy and the inevitable pushbacks that non-governmental organisations in such situations face. However, it is exactly this tenacity and resilience that the TGD embodies, deeply rooted in their own violent origins, that allows them to continue working for the rehabilitation of the most marginalised and persecuted.

Whilst responsibility of this rehabilitation lies with the state, the TGD utilising its expertise and networks in the state's absence is an excellent example of how grassroots organisation and mobilisation can successfully work towards the efficient and effective provision of essential socio-economic services.

87% and 63.5% respectively, while the literacy rate for in the country overall was approximately 58% for women and 35% for men (Shah 2007: 74).

Growing violence in the country has also reportedly affected the ability of some Muslims to access education, especially those such as Hazara Shi'a in Baluchistan.⁶² For example, an attack in Quetta by a female suicide bomber on a bus carrying students of Sardar Bahadur Khan Women's University in June 2013, followed by another suicide bomb in the hospital where the injured were being treated, left 14 students dead and also killed four nurses.

Even those religious communities that do have the opportunity to receive an education face challenges. This is in large part a result of historical processes which have significantly impacted how education is approached in Pakistan, including the nationalisation of schools under Zulfikar Ali Bhutto, followed by efforts to 'Islamise' the curricula under Zia. Given that Article 22 of the constitution stipulates that those attending educational institutions will not be obligated 'to receive religious instruction, or take part in any religious ceremony ... if [it] relates to a religion other than his own', non-Muslim students are not officially required to study Islam. However, because non-Muslim students are not commonly given an alternative and receive extra credits for taking Islamiyat or Islamic Studies, they are often induced or forced outright to take these classes by their teachers.⁶³

Beyond challenging the constitution, this pressure also leads to the vulnerability of religious minority students. Indeed, there have been cases where non-Muslim students have been severely punished for seemingly minor errors in the current education system. For example, in September 2011, after a Christian student misspelt a word in a response to a question about a religiously-inspired poem in an Urdu exam, she was expelled from school and her mother was forced to transfer jobs.⁶⁴ Although education was devolved to the provincial level in 2010, similar issues persist. Recent studies have pointed out that textbooks – particularly those used in classes such as social studies, civics, Urdu and English – contain a 'distorted presentation of national history, insensitivity to the existing religious diversity

62. 'Only those who are above the age of 21 should be allowed to change religion', 30 December 2012. <https://tribune.com.pk/story/486423/only-those-who-are-above-the-age-of-21-should-be-allowed-to-change-religion/>

63. 'Textbook biases show when Muslim students ask non-Muslim high achievers to convert', 19 March 2013. <https://tribune.com.pk/story/522886/textbook-biases-show-when-muslim-students-ask-non-muslim-high-achievers-to-convert/>; 'Teaching hatred – a glimpse into Pakistan's education system', 20 August 2014. <https://www.hafsite.org/media/pr/teaching-hatred-glimpse-pakistan-education-system-2012-2013>

64. 'Girl accused of blasphemy for spelling error', 25 September 2011. <https://tribune.com.pk/story/259907/girl-accused-of-blasphemy-for-a-spelling-error/>

in Pakistan, views encouraging prejudice, bigotry and discrimination towards fellow citizens, women, religious minorities and other nations, and a glorification of war as well as an incitement to militancy and violence' (Thombani 2010: 33).⁶⁵ As a result, these textbooks and the curricula more broadly have been both 'nationalised' and 'Islamised' in a way that portrays Pakistan as 'a Muslim country for Muslims alone', thereby erasing the role religious minorities have had in Pakistani society and promoting discriminatory attitudes towards them (ibid: 34).

Although the government officially recognised this as a problem in 2006 and efforts to adopt new education policies have been made in recent years, a 2013 report by the National Commission for Justice and Peace (NCJP), focused on Punjab and Sindh, points to the fact that discriminatory content in school syllabuses has not only remained in place, but in some cases even increased (NCJP 2013). Similarly, there continue to be calls to further ostracise religious minorities in school curricula. For example, in September 2013 an influential cleric expressed that additional information about Ahmadis should be included in curricula in an effort to further institutionalise their discrimination.⁶⁶

Although the content of textbooks has rightfully been a key area of focus in recent years, it is also important to look at the role of teachers in educational institutions. Teachers in public schools have been slightly more ambivalent with regard to religious minorities and tolerance in the classroom. While some teachers do promote more inclusive ideas and respect for religious minorities, a significant proportion of educators themselves harbour acrimonious views regarding religious minorities (Hussain et al. 2011). Teachers from religious minority groups are also not immune to the discrimination encountered by students. Although a detailed discussion of madrassas (religious schools) is outside the ambit of this report, it is important to note that very similar issues persist with regard to the curricula and teaching in these institutions, although the context is different because religious minorities do not attend them. Despite the purported acceleration of efforts to regulate madrassas over the last decade or so, these measures have not been successfully realised. Recently, the government has launched a 'National Plan of Action to Accelerate Education-Related MDGs [Millennium Development Goals]' for 2013–16, but the impact of this plan to promote a more inclusive and tolerant education system remains to be seen. There is also an important role for educators and the wider community to foster greater cooperation between students of different faiths.

Conclusion

2017–18 has been an important period for Pakistan, not only in terms of being held accountable for its international human rights commitments but also for the increased scrutiny it has been facing in the lead up to the 2018 Elections, held earlier this year. In November 2017 Pakistan had its third Universal Periodic Review before the United Nations Human Rights Council, where it presented its national report and answered questions raised by the international community. The outcome of the UPR found Pakistan to have insufficiently addressed the concerns of the working group. Furthermore, earlier in the year, Pakistan also presented its initial report to the Committee on Economic, Social and Cultural Rights, upon which the committee noted certain positive aspects in the report – limited to the ratification of multiple international human rights treaties and the passing of certain domestic legislation in lieu of this. However, there were far more issues of concern than there was cause to praise the country. Pakistan appears to be failing in its commitments to uphold the socio-economic rights of its citizens across the board. The country is facing a severe water shortage and people are facing abject poverty on unprecedented levels. In such a situation, making a case for the specific provision of these rights for its religious minorities appears to many within the country as singling out communities when all citizens are suffering. However, as has been seen through the course of this report, the socio-economic conditions of religious minorities in Pakistan are significantly worse than those of the majority, and the effects of intersectional disadvantage go on to further compound and exacerbate the living conditions of very specific sub-sets within those communities as well – for example, women belonging to minority religious communities. The fact that these communities also face the threat of violence on a daily basis makes it increasingly hard for them to be able to demand the realisation of their international and constitutional human rights.

Pakistan needs to do better to protect its most vulnerable. If it cannot provide adequate security to protect them, their places of worship, and their right to practise their faiths with freedom, from the violence perpetrated against them by non-state actors, it needs at the very least to provide mechanisms of support for them to actualise their rights to an adequate standard of living.

Recommendations

1. Pakistan needs to take all necessary measures to ensure that ICESCR rights are fully incorporated into its domestic legal order with a constitutional rank equal to that of civil and political rights, and to ensure that all these rights are applied by the domestic courts at all levels;
2. Pakistan must ensure that constitutional protections are extended to FATA at the earliest, and that people in the tribal region have equal access to judicial remedies for violations of their rights;
3. Pakistan should ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights;
4. Pakistan must produce the results of the latest census with disaggregated data for religious minorities at the federal, provincial, and territorial levels, so that measures can be taken to ensure appropriate fulfilment of the socio-economic rights of the members of such communities;
5. Pakistan must consider revising articles 25–27 of the constitution, with a view to ensuring that the constitution prohibits discrimination on all grounds; adopt comprehensive anti-discrimination legislation prohibiting all direct, indirect, and multiple forms of discrimination, on any ground; and provide for effective remedies for victims of discrimination, including through judicial and administrative proceedings;
6. Pakistan must carry out a study on the situation of the ‘scheduled castes’ or Dalits (within both Christian and Hindu communities), with the participation of the members of that community and of relevant experts, which should include information on the situation of Dalits in the country, including relevant statistical data;
7. Pakistan must take effective measures, such as awareness-raising campaigns, to eradicate stigma and prejudice against members of the ‘scheduled castes’ or Dalits, and to combat discrimination against them, particularly in the employment and education sectors;
8. Pakistan must take effective measures to facilitate increased employment quotas in the public sector for religious minorities, taking into consideration their share of the total population, and must fully implement the quotas;
9. Pakistan must make every effort to increase public expenditure in the health sector and strengthen it with a view to providing free, quality basic health services to all, including disadvantaged and marginalised individuals from religious minority communities;

10. Pakistan must intensify its efforts to ensure that all children enjoy, without discrimination, the right to education, which will empower children, particularly those who are disadvantaged and marginalised, to lift themselves out of poverty and obtain the means to participate fully in their communities and national life;
11. Pakistan must reform legislation that disadvantages minorities immediately, such as sections 298-B and 298-C of the Pakistan Penal Code, which restrict religious groups from freely practising their faith. Clauses 295-B and 295-C on blasphemy should be reformed in the short term to prevent their continued abuse, with improved evidence thresholds, the immediate removal of the death penalty, the introduction of prison sentences for those guilty of false accusations, compensation for victims, and the clarification of imprecise terminology;
12. Pakistan must address hate speech by implementing current legislation and introducing new measures. It needs to develop a clear definition of what constitutes hate speech in the media and enforce legislation that designates hate speech a crime, namely section 153-A of the PPC. It needs to work with the Pakistan Electronic Media Regulative Authority in order to monitor hate speech online;
13. Pakistan must end religious discrimination in schools and madrassas. There needs to be a review and removal of textbooks and curricula that endorse discrimination against minorities. Authorities should engage in teacher training in order to increase faculty knowledge of the issues that religious minorities face, and develop educational materials and syllabuses to encourage learning about Pakistan's diverse society;
14. Pakistan must bring an end to bonded labour, enforce the legal prohibition on bonded labour, and help those who are subject to this form of outlawed exploitation find alternative employment, with particular reference to the challenges that marginalised minorities face in escaping the practice; and
15. Pakistan must take steps to ensure that existing social security systems cover all persons, including members of religious minority communities who are working in the informal economy.

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Chapter 7 Sri Lanka

Examining the Weave

*The Law and Society Trust**

Introduction

Minorities in Sri Lanka are typically classified along reductive ethno-religious lines, identifying as Sinhalese (74.9%), Tamil (15.3%), Sri Lankan Moor (9.3%), and other minority groups (0.5%), including Dutch-Burgher, Malay, Sri Lankan Chetty, and indigenous groups such as the Veddhas (Sri Lanka Department of Census and Statistics 2012). The religious classifications are Buddhist (70.1% of the population), Hindu (12.6%), Islam (9.7%), Roman Catholic (6.2%), and other groups accounting for 1.4%. Since the overlap of ethnic and religious identities is so strong, such classifications are arguably reductive and fail to capture the contentious issue – especially patterns of discrimination, which occur between and across these classification lines. Moreover, although the Constitution prohibits discrimination based on caste and descent, and on the surface such discrimination isn't visible, in practice the caste system is a part of the consciousness of the population, with a reported 90% (Silva et al 2009) recognising it to some extent, and the system coming into play especially with regard to employment (Minority Rights Group International 2017: paragraph 3). Livelihood, caste, heritage, and gender all inform the non-visible classifications adopted by communities (ibid.: paragraph 4), resulting in further intersectional discrimination of minority persons.

This chapter seeks to capture these dynamics through the discussion of intersections of class and political relations, access to entitlements,

* Law and Society Trust (LST), Colombo, is a legal research and advocacy organisation promoting legal reforms for access to justice, justiciability of rights and public accountability. Widya Kumarasinghe, the writer is thankful to Dinushika Dissanayake, the former Executive Director of LST, for her input and contribution; and to Azra Jiffry, Uda Deshapriya, Megara Tegal and the research team at LST for their notes and contributions. Earlier versions of this chapter were designed by the then Head of Research, Vijay Nagaraj, who sadly passed away in August 2017. The writer and team at LST remember him with warmth and gratitude.

the public's ethnicised narratives pertaining to economic power and resources, and the link between these dynamics and violence.

The chapter was primarily informed by secondary material due to constraints on time. It draws quantitative data from the Household Income and Expenditure and Labour Force surveys, and, wherever relevant, also includes discussion of relevant laws, jurisprudence, policies, and regulations.

Commitments towards protecting the socio-economic rights of minorities

Constitutional, International and Policy Commitments

In 2016 the Parliament of Sri Lanka formed a Constitutional Assembly for the purpose of drafting a new Constitution with a comprehensive Bill of Rights. The sub-committee on fundamental rights affirmed the positive consideration given to socio-economic rights as justiciable rights in the constitution, noting in addition that these recommendations were also included in the Constitutional Bill and proposals of 2009.¹ The sub-committee report recommended a series of rights to this effect, including the right to education, the right to health, and social rights such as the right to clean water and sanitation, sufficient food and nutrition, adequate housing and shelter, appropriate social protection, and decent employment. The Public Representations Committee (PRC) of the Constitutional Assembly is presently discussing the reports of six such sub committees.

In January 2017 Sri Lanka also adopted the National Human Rights Action Plan (NHRAP) for 2017–2021, which contains a chapter on economic, social, and cultural rights.

The Constitution of Sri Lanka (adopted in 1978 and amended up to 2015) pledges to eradicate illiteracy and ensure that all persons have the right to universal and equal education at all levels. The Education Ordinance of 1939 provides the framework on equality in education, and the Education Act of 1945 introduced free education and instruction in the mother language from pre-school to university level (CESCR 2017: 1). The Regulation

1. The reports of sub-committees can be found at http://english.constitutionalassembly.lk/index.php?option=com_content&view=article&id=126:interim-report&catid=9:uncategorised&Itemid=437

on Compulsory Education (1997) was enforced to ensure that children aged 5–14 attend school (ibid: 1). However, these provisions do not award legal rights or protections within the Constitution, and are therefore not enforceable in a court or tribunal.

In 2016 the government of Sri Lanka also adopted a National Plan of Action (NPA) for the socio-economic development of the upcountry Tamil/Malaiyaha Makkal community for 2016–2020, particularly addressing housing, including establishing 56,000 individual houses with land ownership; water supply and sanitation; health and nutrition; primary and secondary education; skills development and vocational training; and improving the governance systems around this community. The Estate Health Infrastructure Project 2015–2017 also made budgetary allocations to improve hospitals in areas predominantly populated by the upcountry Tamil community.

The criminalisation of same-sex sexual relationships between consenting adults under sections 365 and 365a of the Sri Lanka Penal Code² remains the foremost discrimination affecting LGBT+ persons in Sri Lanka. While there have been no convictions under this section since 1948,³ it has the effect of perpetuating harassment, violence and discrimination towards LGBT+ individuals.

Article 12 (2) of the present Constitution stipulates 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’. This list is clearly not exhaustive and could include sexual orientation as a ground for non-discrimination. Additionally, the sub-committee on Fundamental Rights of the Constitutional Assembly suggested a formulation including ‘sexual orientation’ as a ground on which arbitrary discrimination cannot occur.⁴ Moreover,

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2. Section 365 refers to ‘carnal intercourse against the order of nature’ (which is widely understood to apply to same-sex sexual acts) and section 365a criminalises ‘any act of gross indecency with another person’.
 3. With the exception of one case, where the Supreme Court upheld the conviction on the grounds of the law but treated the convicted person’s sentence as suspended in acknowledgement of the private nature of the act. See: http://www.supremecourt.lk/images/documents/sc_appeal_32_11.pdf
 4. ‘No person shall be arbitrarily discriminated against on any ground including race, gender, sex, sexual orientation, gender identity, maternity, marital status, parental status, caste, ethnic or social origin, age, disability, religion, conscience or belief, political or other opinion, culture, language, place of birth or place of residence.

the abovementioned NHRAP 2017–2021, adopted by the GoSL in January 2017, also recommended that the Penal Offences be reviewed to ‘ensure that they are in compliance with international human rights standards and bring legislation where necessary’.

‘Gross indecency’ in section 365a is not defined by the law or in common law but is understood to target acts of affection or sexual acts between two individuals of the same sex. The term being open to interpretation by police officers, judges and prosecutors has allowed abuse of this section (Equal Ground and Center for International Human Rights (CIHR) of Northwestern Pritzker School of Law 2017), extending to incidents of sexual abuse being committed by police officers themselves (ibid: 4).

Section 399 of the Penal Code, which makes it a criminal offence to ‘cheat by personation’, is often used by the police to harass LGBTIQ persons, especially transgender individuals (Human Rights Watch 2016: 16). Further, the Vagrants Ordinance, which prohibits soliciting or committing acts of ‘gross indecency,’ or being ‘incorrigible rogues’ gaining ‘illicit or unnatural intercourse,’ while mostly used to arrest and harass women engaging in sex work, is also engaged to target LGBTIQ individuals (Equal Ground and Center for International Human Rights (CIHR) of Northwestern Pritzker School of Law 2017: 3).

Sri Lanka’s Performance on Socio-economic Rights with Respect to Minorities

Assessing Efforts Using Data – a Difficulty

The domination of a political and civil rights narrative has effectively left out socio-economic rights-based assessment of statistics. The non-existence of this data hides existing violations of socio-economic rights along ethno-religious lines, which in turn has limited the understanding of the ethno-religious tensions that emerge from time to time, causing them to be attributed solely to ethnicity and religion.

Health

Health statistics with regard to ethnic minorities are not available in Sri Lanka. Deductions must be made through general health indicators, including the availability of health personnel and infrastructure at the district level. The districts specifically identified in this chapter are those with a higher

density of minorities. These same districts were also most significantly affected by the civil war.

Maternal and Infant Mortality and Health

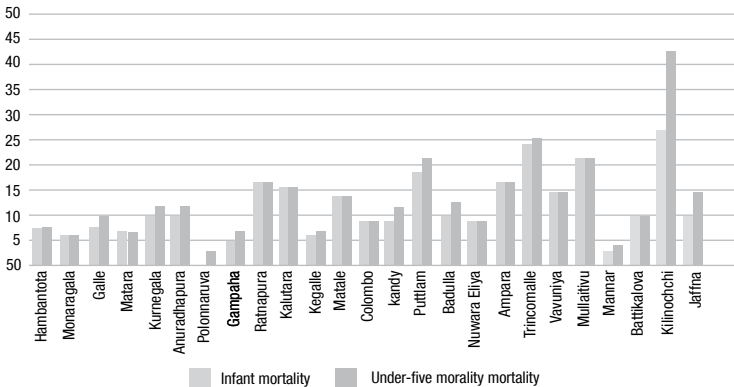
The topics of maternal and infant health and of nutrition offer particularly insightful perspectives on the health status of minorities, especially given that national indices in this area are a great source of pride to the Sri Lankan state.

Although Sri Lanka’s overall health indices have improved, districts with high numbers of minorities demonstrated the highest infant, maternal, and related mortality rates in 2016.

The Sri Lanka Demographic and Health Survey of 2016 (SLDHS) reported the highest rate of under-five mortality in the Kilinochchi district at 44 per 1000 live births in the ten years prior to SLDHS 2016, followed by Trincomalee, Mullativu, and Puttlam at a mortality rate of 26, 22, and 22 per 1000 live births respectively (Department of Census and Statistics 2016). The highest infant mortality rates were reported in same districts: Kilinochchi (28 per 1000 live births), Trincomalee (25), Mullaitivu (22) and Puttlam (19) (Figure 1).

Statistics considered by sector of residence reflect that the estates, where a majority of the population are Tamils of Indian origin/Malaiyaha

Figure 1: Infant mortality rate and under-five mortality rate by district



(Data source: Demographic and Health Survey of 2016)

Malkal origin, have a higher under-five mortality rate (15 per 1000 live births) than urban or rural areas (11 and 12 respectively) (Figure 2). However, these rates have declined by nearly half in the estate and rural sectors since the SLDHS in 2006/2007.⁵

Additionally, the level of education of the mother also demonstrated an effect on these indices (Figure 3).

The under-five mortality rate is higher for mothers with education only up to Grade 5 (14 per 1000 births) than mothers with higher education (6 per 1000 births). The poorest households reported a higher rate of mortality than the richest households (17 and 9 per 1000 births).

Disparities in Resource and Health Personnel Allocation

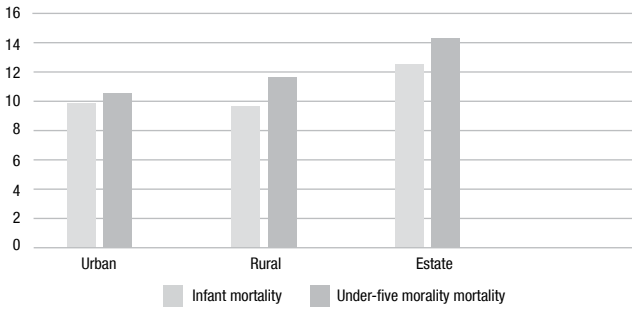
These indices may be explained by the distribution of health personnel in these districts, particularly with respect to preventive services concerning maternal care. The highest number of medical officers per 100,000 population is in the Colombo district (Figure 4) (Ministry of Health 2015: 6–7).

Medical officers appointed centrally through the ‘Line Ministry’ are not present in Vavunia, Mannar, Kilinochchi and Mullaitivu, and these districts consequently report the lowest district-wise presence of medical officers: 130 officers in Vavunia, 83 in Mannar, 88 in Kilinochchi and only 64 in Mullaitivu (ibid: 6). A similar trend is demonstrated in the distribution of nursing staff as well, with the same districts also having the lowest numbers of provincial nursing staff – 188 in Vavunia, 150 in Mannar, 65 in Killinochchi, and 44 in Mullaitivu (Figure 5) (ibid: 9)

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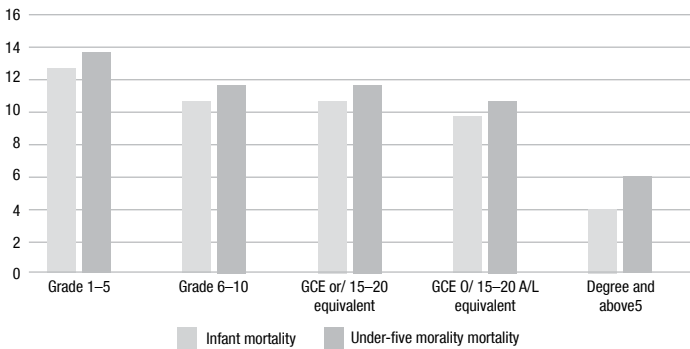
5. The SLDHS reported an under-five mortality rate of 33 per 1000 live births in the estate sector and 23 per 1000 in the rural sector in 2006/2007 (Department of Census and Statistics 2007: 106).

Figure 2: Infant mortality rate and under-five mortality rate by sector of residence



(Data source: Demographic and Health Survey of 2016)

Figure 3: Infant mortality rate and under-five mortality rate by mother's education level



(Data source: Demographic and Health Survey of 2016)

The lowest numbers of public health midwives are documented in Mullaitivu (51), Kilinochchi (60), Vavunia (90) and Mannar (108). The lowest numbers of public health inspectors are documented in Nuwara Eliya (28), Killinochchi (17), Mullativu (18), Mannar (21), Vavunia (22) (Figure 6).

A case study: Health in situations of direct exposure to the civil war

A study by the Family Health Bureau and the Ministry of Health (2009) on the health conditions of people internally displaced by the civil war is able to offer data on a particular ethnic minority, and on a population of people

directly exposed to the civil war. The families studied were originally from Mullaitivu and Killinochchi districts, and then resettled in Trincomalee and Vavuniya districts (ibid: 9). In the early phases of evacuation in May 2009 the level of mortality was 0.7 per 10,000 persons per day; by June 2009 this reduced to 0.5 per 10,000. For reference, according to Sphere Project guidelines, the baseline for mortality in emergency situations in South East Asia is 0.25 per 10,000 per day, and the emergency threshold is 0.5 per 10,000 per day (ibid: 7).

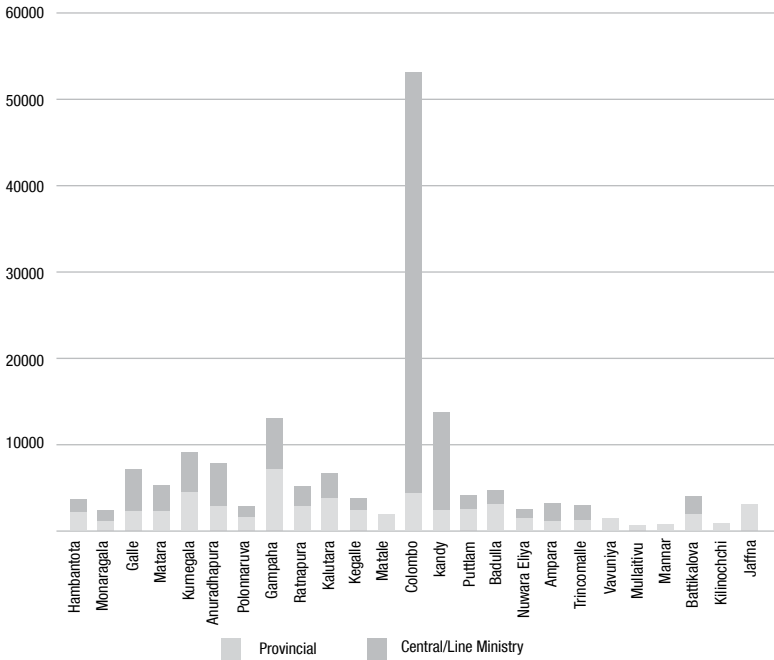
An interesting pattern was found when analysing the ages of children against a monthly age distribution between March and December 2009: there was an increase in infants conceived during the August to September period, which was the most peaceful time in the nine month period (March to July was the most volatile due to evacuation, and resettlement began in October, unsettling the population for a second time during this period). This data suggests that people are more likely to reproduce when they are settled (ibid: 31).

The study also found that the overall dependency ratio of 65.2% among the war-affected sample population was much higher than the national average of 55.1% (ibid: 19).⁶ The ratio reflects the burden that has to be assumed by the working population to provide for the needs of the dependent population. Sri Lanka is enjoying a demographic window in which it is experiencing the lowest dependency ratio in its history; however, the study population demonstrated a relatively high ratio, explained by the loss of lives in the productive population as a result of the war.

An alarming one fifth of infants (19%) in the study population were born underweight, out of which 4% were severely underweight (ibid: 32). Low birth weight poses a critical risk to child survival and development. Furthermore, 48.9% of infants studied were found to be anaemic (ibid: 34). An uncontrolled flow of formula feeds distributed to welfare villages was a major concern among healthcare workers due to the health risks it poses during infancy. Despite a special campaign to discourage the use of formula feeds, 33.9% of infants were formula fed in the early months of infancy. The prevalence of malnutrition in children was 35.6% in May 2009; this was brought down to 23.9% by August 2009 through the joint nutrition rehabilitation interventions of the Ministry of Health and UNICEF.

6. The dependency ratio is the ratio of dependent population (0–14 years and 65 years and over) to working (productive) age population (15–65 years).

Figure 4: Distribution of Medical Officers by District



(Data source: Human Resource Profile – Ministry of Health 2015)

Food Security and Nutrition

Sri Lanka demonstrates alarming statistics in food security and nutrition, with an estimated 5.2 million people considered undernourished (World Food Programme, GoSL and SAPRI 2017: 2). Ethnic minorities living in the estate sector, districts affected by the war, and farming areas such as the northern mixed and south-eastern rain-fed areas demonstrate the worst levels of under-nutrition. Rural and low-income households are also at risk, demonstrating a predictable link between poverty, food security and nutrition.

Sri Lanka was ranked 85 out of 118 countries in the Global Hunger Index (GHI) and 65 out of 113 countries in the Global Food Security Index (GFSI). The Global Nutrition Report also places Sri Lanka as a country with one of ‘the highest “wasting” prevalence in the world’ with a ranking of 128 out of 130 countries (World Food Programme 2017, as cited in World Food Pro-

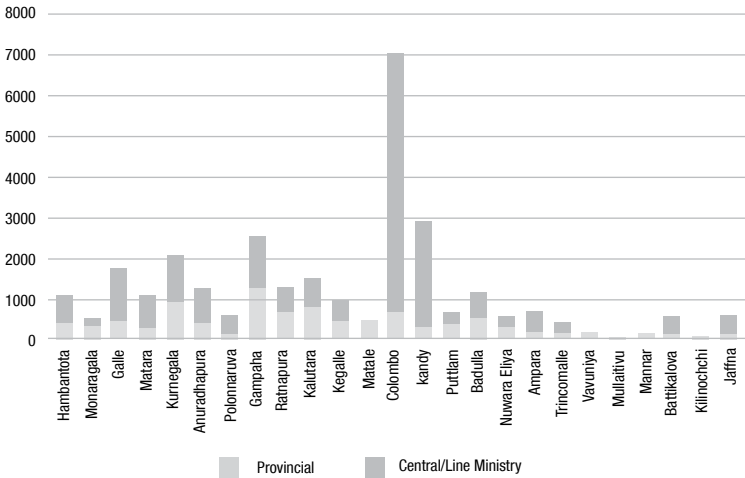
gramme, GoSL and SAPRI 2017: 2). A national nutrition and micronutrient survey by the Medical Research Institute reports that wasting has increased to 19.6% in 2012 from 11.7% in 2009, revealing a serious concern regarding public nutrition (World Food Programme, GoSL and SAPRI 2017: x). Killinochchi and Monaragala districts reported the highest rates of wasting at 34.9% and 28.8% respectively (ibid: 12).

A survey of 25 districts in 2012 showed high levels of acute malnutrition, ranging from 14–35%, with huge regional disparities. Low Birth Weight rates are reported to have remained ‘stagnant over the last decade, with almost 1 in 5 (18%) newborns in Sri Lanka having a low birth weight, indicating a vicious cycle of malnutrition and the need for improved maternal nutrition’ (ibid: 12). The level of stunting was reported to be three times higher in estate sector children than in children in urban areas (23.8% in Nuwara Eliya and 22.3% in Badulla versus 8% in Colombo), and two times higher in the poorest quintile than the wealthiest quintile (18% versus 9%) (ibid: 12). Data from the Household Income and Expenditure Survey (HIES) reports that households headed by ‘agricultural or non-agricultural labourers’, ‘skilled agriculture workers’, and ‘persons who are disabled or too old to work’ are the poorest in Sri Lanka (ibid: 16).

The lack of organisation and the political environment in national food production has caused instability in food production and prices (IPS 2008, as cited in World Food Programme, GoSL and SAPRI 2017: 18). Intra-district distribution of food stocks and patronage networks extending from administrative centres may also be a factor affecting access to food, despite food being available at a National level. Additionally, poor infrastructure for distribution including the lack of storage, and refrigeration facilities also hinder the distribution of food produced rurally by farmers, contributing to low productivity, income, poverty, and further food insecurity.

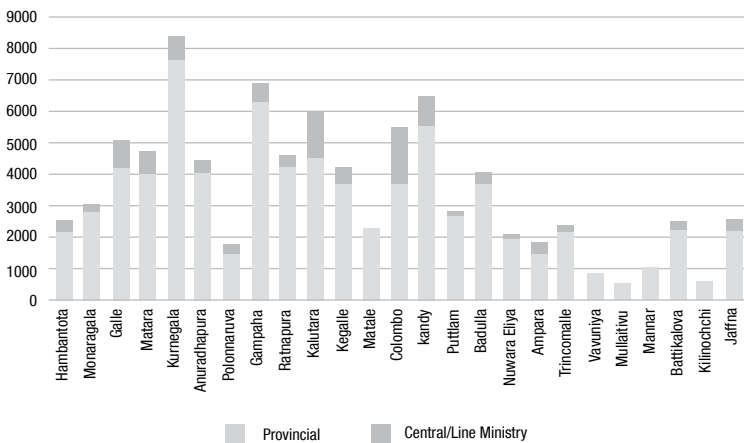
Samurdhi Welfare programmes launched in 1995 by the state sought to improve the socio-economic conditions of those living under impoverished conditions but has been criticised for the misallocation of resources, and failure to identify sectors of the population in need of support. The Samurdhi dry ration programme benefited 105 families in 2007 by distributing Rs. 1.2 billion; in 2012 this funding was reduced to Rs. 54 million (Central Bank of Sri Lanka 2012: 93). The nutrition programme which benefited 102,020 families through the distribution of Rs.594 million in 2007 was cut down to Rs. 250 million being distributed among 55,299 families. While funding is supposed to have shifted to livelihoods programmes supporting

Figure 5: Distribution of Nursing Staff by District



(Data source: Human Resource Profile – Ministry of Health 2015)

Figure 6: Distribution of Public Health Midwives by District



(Data source: Human Resource Profile – Ministry of Health 2015)

home gardening, animal husbandry, and cottage industries, the cut back in welfare payments towards nutrition and dry rations to already impoverished households is likely to have had a significant negative effect in the nutrition levels in the population depending on the Samurdhi welfare programmes (Glinskaya and The World Bank 2003).

Physical access to food and markets due to poor condition of roads and infrastructure is also a challenge. The Northern and Eastern provinces face road accessibility issues, and the quality and width of roads affect physical access to food markets especially in the Estate sector (World Food Programme, GoSL and SAPRI 2017: x). An important observation from the 2017 report is that areas with the highest rates of poverty also demonstrated poor road access.

Moreover, only 50% of the landmass in Sri Lanka is considered arable due to forest conservations, inland water bodies, and unsuitable terrain. Issues with policy concerning land, the market for land, and competition for limited arable land further affect food production. Moreover, the competition for arable land also appears to be an underlying insecurity in racially charged controversies and violence.

The Sri Lankan Military has been using the Land Acquisition Act of 1950 and the Strategic Development Act of 2008 to bring land under their control (MRG, IMADR and WDI 2017: paragraph 6). The former allows for the seizure of land for undefined and ambiguous ‘public purposes’. Vast amounts of land in the north and east are occupied as military camps, dispossessing local Tamil communities. The land is also used for commercial purposes by the military, including the practice of selling such land for the building of hotels (Human Rights Watch 2018 and Sri Lanka Brief 2018), which has been particularly harmful to local fishing communities losing access to the sea. The militarization of land in the North and East, despite some efforts by the present *‘Yahapalayana’* government to return such land, continues to be a source of displacement, loss of livelihoods and poverty, and tensions affecting minority communities. The continued displacement of these minority communities is a violation of Article 11 of the International Covenant on Economic, Social, and Cultural Rights (CESCR 2009).

Education

There are no statistics analysing secondary education from the perspective of ethnicity to ascertain any disparities affecting minorities, and the

additional lack of district level statistics on schools also makes it difficult to make deductions regarding minorities based on regional demographics.

A study commissioned by the National Education Commission (Ranasinghe et al 2016) identified that the demand for general education will remain constant with no increase or decrease in social demand in the next decade. These findings confirmed that the new education sector development plan should focus on improving the quality of existing schools rather than increasing the number of schools (ibid: 21–22).⁷

Regional disparities in the availability of schools, trained personnel, and resources are a main drawback in Sri Lanka's secondary education system. This is evident in the statistics concerning schools where both the highest number of AB1 schools and overall number of schools in the island are concentrated in the Western Province (Ministry of Education 2016).

According to the available population statistics, Sri Lankan Tamils are a majority in northern and eastern Provinces (Sri Lanka Department of Census and Statistics 2012). The highest numbers of Sri Lankan Moors live in eastern and north western Provinces, though they are still a minority in these districts (ibid). Schools in Mullativu, Mannar and Killinochchi (in northern provinces) suffer from a lack of electricity, water, and sanitary facilities (Ranasinghe et al 2014: 23–24). In 2012, 80% of schools in Mannar district, 75% of schools in Killinochchi district and 53% of schools in Mullativu district had no electricity and Mullativu reported the highest number of schools with 'unacceptable sanitary facilities' (11.7% in 2012 and 37% in 2005 (ibid: 24)) (Figure 7).

These same districts also have the lowest numbers of English, IT and science teachers (ibid: 29–31) (Figure 8). The continued effects of these disparities at the tertiary level is evident in Mullativu, Mannar and Killinochchi admitting the least number of students to state universities despite the z-score system being in place for the purpose of mitigating the regional disparities (ibid: 30).

The highest numbers of upcountry Tamils/Malaiyaha Makkal live in the Central and Uva Provinces, with greater concentrations in Nuwara Eli-

7. The study stipulates an exception: 'other than re-construction of schools destroyed in war affected districts and those due to natural disasters' (ibid: 22).

ya and Matale districts in the Central Province (Sri Lanka Department of Census and Statistics 2012). Although the Central province is among the provinces with highest number of type AB1 schools (Ministry of Education 2016), these are concentrated in the Kandy district, and these facilities may not be accessible to the upcountry Tamils/Malaiyaha Makkal population, who mainly live in the estate sectors in the Nuwara Eliya district. A breakdown of statistics according to schools in the estate sector and other government schools demonstrates a significant disparity in the quality of resources available to schools in the estate sector. In 2012, 27.16% of schools in the estate sector did not have electricity, in contrast to 13.91% of the other schools on the island. 89.2% did not have a telephone (versus 67.14%), and 20.71% did not have water (versus 15.48%).

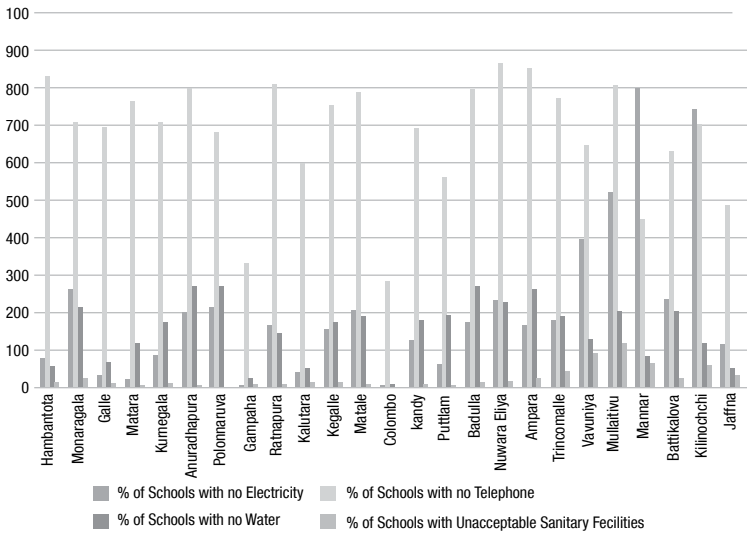
Nuwara Eliya district has 22.91% schools without provision of water, 23.09% schools without electricity, and 86.78% without telephones, according to 2012 school statistics (Ranasinghe 2016: 23) (Figure 7). Nuwara Eliya district also suffers from a lack of English, IT, and A/level science teachers while also being burdened with a high number of teachers who are not professionally trained (26.25%) in 2012 (ibid: 27). Uva Province, which reports the second highest presence of up-country Tamils/Malaiyaha Makkal, has the lowest number of Type AB1 schools (Ministry of Education 2016).

While degree of disparity between districts in the availability of facilities is significantly high, however, there is also an appreciable progress over time. Districts with the highest percentage of schools with no electricity in 2005 also demonstrated a significant reduction in this percentage by 2012: Mannar (95.79% to 80.21%), Kilinochchi (99.03% to 74.51%), Vavuniya (65.9% to 39.5%), and Trincomalee (65.52% to 17.97%) (Ranasinghe et al: 23). Mannar (8.3%), Kilinochchi (10.78%) and Mullaitivu (19.68%) reported the lowest percentage of schools with computer labs in the island, however, these are still an encouraging increase from the statistics in 2005, when the percentages were 0%, 4.85% and 6.45%, respectively.

Funding Towards Education – Structural Problems

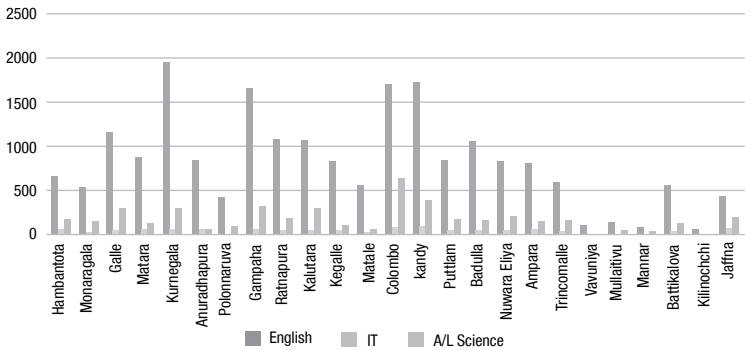
Structural problems in resource allocation and funding can be seen in the distribution of teachers across districts. While the national students to teacher ratio was 19 in 2012 and student-teacher distributions have remained consistent across the country, there are pockets of excess teachers, notably in Matara and Kandy in 2005, and Jaffna and Mullaitivu in 2012 (ibid: 27). The report also notes the lack of professionally trained teachers,

Figure 7: Lack of Facilities in Schools by District



(Data source: School Census – 2012)

Figure 8: Availability of English, IT, and Advanced Level Science Teachers



(Data source: School Census – 2012)

and in particular subject specific teachers for English, A/L Science, and IT. In 2012, there were 217 pupils per English Teacher in Colombo, and 375 pupils per English teacher in both Mannar and Kilinochchi.

Funding for schools is secured through a centralised school level committee as directed by a national circular (ibid: 41) from the government; NGOs and other organisations; and funds raised by the school itself. National schools receive all funding directly from the Ministry of Education. Provincial schools, however, receive funds through provincial education offices in the form of a Block Grant, a major portion of which is used to pay salaries, wages, and other recurring expenses.

Capital expenses to schools are provided through Provincial Specific Development Grants (PSDP), Criteria Based Grants (CBG), and the Education Quality Inputs (EQI) programme, according to a centrally determined formula in order to ensure equity in the distribution of funds. However, while the purpose of these grants is to improve the socio-economic status of the province, the inequities created by unequal resource allocation and funding actually originate here because the provinces themselves are left to decide how these funds can be allocated towards various development activities (ibid: 42).

EQI is often the only regular source of funding received by schools annually, however, these funds are reportedly not received on time or at all. The latter was the case in 2012 when the north western province was not given funds through EQI (ibid: 44). When the province receives insufficient funds for development under the EQI programme, funds allocated to education are used for other projects. This disrupts planned activities in schools and compromises quality of education schools are able to offer, and creates inequity in the quality of schools across provinces, even if they were technically allocated an equal amount of funding.

The PSDP is primarily designed to fund sector and subject specific infrastructure projects in-line with the National Development Policy Framework of the Government, and once received by the province is distributed across various sectors including education. Additionally, Parliamentarians also receive block grants through de-centralised funds such as the *manthri prathipadana* (facilitations granted for parliamentarians), which are distributed at the discretion of parliamentarians according to the needs of local schools.

Profile of a vulnerable minority Gender and Sexual Minorities

The discrimination and disregard of LGBTQI+ persons through legislation, administrative infrastructure, and limitations in accessing socio-economic rights due to a lack of resources and poor policy consideration, have effectively minoritised these communities in Sri Lanka. The main contribution to the issues faced by the LGBTQI+ community in Sri Lanka is the existence (and lack of) legal instruments, which are used to further discriminate against the community.

There is no specific data on their numbers in the country. Mapping studies such as one by Equal Ground reported that 19.6% of people over 18 living in Colombo, Matara, Nuwara Eliya and Galle identify as LGBT. This figure could be skewed, however, as enumerators conducting the study may have approached more LGBTQI persons for the study.¹ Nonetheless, the community exists in the sidelines, victim to a hostile state and society.

Criminalising same-sex sexual acts

As mentioned earlier, Sri Lanka criminalises consensual same-sex sexual relationships between adults under sections 365 and section 365A² of the Penal Code.³ Section 399 of the Penal Code,⁴ which makes it a criminal offence to ‘cheat by personation,’ is often used by the police to harass LGBTQI persons, especially transgender individuals (Human Rights Watch 2016: 16). Further, the Vagrants Ordinance, which ‘prohibits soliciting or committing acts of “gross indecency,”’ or being ‘incorrigible rogues’ gaining ‘illicit or unnatural intercourse,’ is also engaged to target LGBTQI individuals (Equal Ground and CIHR of Northwestern Pritzker School of Law 2017: 3).

These laws allow for a range of rights of LGBTQI individuals to be violated, while legalising their discrimination in society. Police officers have used these laws to threaten, harass, and extort LGBTQI individuals, and the existence of the laws prevents victims of crime from reporting to the police for fear of additional abuse or retribution. Abuse by the police is not uncommon, with a report by Human Rights Watch (2016) reporting that 24 out of

1. ‘Counting in LGBT’, 22 January 2018. <http://www.dailymirror.lk/article/Counting-in-LGBT-144350.html>
2. S365 refers to ‘carnal intercourse against the order of nature’ (which is widely understood to apply to same-sex sexual acts) and s365a criminalises ‘any act of gross indecency with another person’. ‘Gross indecency’ is not defined by the law or in the common law, but is understood to target acts of affection or sexual acts between two individuals of the same sex.
3. Sri Lanka Penal Code S356 and S365a
4. Sri Lanka Penal Code S399

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Dependency on funds allocated through the province faces the additional burden of being affected by patronage networks. Members of Parliament and local government authorities offer preference and ensure funding to their own voter area, leaving areas with weaker representation with less funding.

Access to Higher Education – Controversy on District Quotas for University Admission⁸

In the early 1970s a district quota system for admission to state universities was introduced, which allowed 55% of the placements to be distributed on the basis of the population ratio in the district, guaranteeing a precise number of seats for each district. As the proportion of the students to be admitted on merit was reduced to a mere 30%, the students who depended on their merit results, specifically the students from Colombo and Jaffna who entered the university in large numbers before 1970s, were deprived of university admission. This had the effect of aggravating the discrimination Tamil persons were subject to during the period, and in turn further intensified resentment between the communities (Devanesan 2012). In spite of this, the GoSL continued to hold their stance that the introduction of district quota was for the less privileged to access tertiary education, and it was necessary in order to encourage and uplift the education in the provinces where there was a lack of resources for education.

Judicial take on Socio-economic Entitlements of Minorities

In this context, in *Seneviratne v The University Grants Commission*,⁹ a group of students who were denied the opportunity to be admitted to state universities as a result of the new quota system challenged the measure on grounds of equality. They argued that distributing university placements according to a population ratio had no rational nexus to the government's objectives. The court went beyond analysing it as affirming action to taking the stance that the new system in fact promoted equality and dismissed

8. This section has been written by Azra J

9. *Seneviratne and Another v University Grants Commission and Another* (1980) 1 Sri L.R. 170, 211. Available at: http://www.hrsl.lk/PFF/Right_to_Equality/Seneviratne%20And%20Another%20V.%20...pdf

... Profile of a vulnerable minority continued ...

61 respondents in interviews carried out with LGBTQI Sri Lankans 'had suffered sexual, physical, or severe verbal abuse by the Sri Lankan police', 16 respondents report having suffered sexual or physical abuse by the police, and over half the respondents were detained by the police without cause.

Lack of Legal Protection from Discrimination

Sri Lanka's Constitution and laws do not prohibit discrimination on the grounds of sexual orientation and gender identity. Although Article 12(1) of the Constitution states that 'all persons are equal before the law and are entitled to the equal protection of the law', the list of various grounds in Article 12(2) under which discrimination is prohibited does not include sexual orientation or gender identity. However, in 2014 the Sri Lankan government made a statement to the Human Rights Committee that Article 12 of Sri Lanka's Constitution does protect persons from discrimination on the grounds of gender identity and sexual orientation. While this statement was welcome, it must be viewed against a backdrop of a legal system that continues to retain laws criminalising same-sex conduct and a deep-rooted hostility in society towards gender and sexual minorities. As such, any prohibition on discrimination must be explicitly stated in a constitution if it is to effectively guarantee the protection of gender and sexual minorities in Sri Lanka.

The report by Equal Ground and CIHR (2017: 6) makes the additional argument that even such an amendment to Article 12 may be compromised by Article 15(7), which allows for the restriction of fundamental rights on the grounds of 'morality', and Article 16(1), which provides a judicial challenge to the constitutionality of preceding laws (such as the Penal Code) which cannot be considered to violate Article 12 Right to Equality.

This lack of legal protection has resulted in the violation of the socio-economic rights of LGBTQI persons in Sri Lanka, compromising access to healthcare, education, employment, housing, and legal protection. In a 2012 study (Equal Ground 2016: 4), 35.22% of respondents believed they had been refused employment, 12% reported they had been denied a promotion or experienced an adverse change in their role, and 24% of respondents reported the loss of a job in the previous two years because of their sexual orientation or gender identity. 24% of respondents reported that they had been unable to rent housing or were forced to change residence in the last two years because of their sexual orientation and gender identity.

With respect to education, of the 20 respondents who had attended school in the past two years, 70% had been dismissed, suspended, or prevented from attending school on the basis of their sexual orientation or gender

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the application.¹⁰ The court ruled that the policy has a rational nexus to the objective of the state. In order to serve the objective, which was to ‘provide equitable access to education’¹¹ 55% of seats were allocated based on population ratio, because it would ensure ‘that districts having larger populations and consequently a greater number of school-going children will obtain a larger number of places within the 55%.’ As a result of the effect of the standardisation policy and the fact that the scheme’s distribution severely limited the seats received by Tamil students in Jaffna on previous occasions, the Tamil community received its imposition with antagonism. The court, however, made no reference to the population that was affected by said scheme, reflecting an insensitivity to the intersections of class and race affected by the issue.

However, during a period of intense tension and mistrust between communities, the context in which said policy of equality applied became important. Even after witnessing the consequences of the Sinhala Only Act and the standardisation policy, the government failed to bring in any sustainable policy to reverse the outright discrimination promoted through said laws and policies. Therefore the district quota scheme further entrenched the systemic discrimination towards the ethnic Tamils of the island.¹² Further, Justice Wanasundera’s holistic approach towards equality – ‘...every class of citizens must have a sense of equal participation...’ – did not hold true in this instance, because one cannot discount the systemic violation of Tamils to view the policy as a standalone measure of access to education – especially in the context of mistrust and insecurity between communities.

It is worth noting that although the facts of the case did not concern minority rights, the issue is of importance because of the impact it had on

10. Substantiating the claims of equality, Justice Wanasundera cited the following from the Indian case of *Pathumma And Others v State Of Kerala And Others* (1978): ‘...equality means equality to all and not merely to the advanced and educated sections of the society. It follows, therefore, ... every class of citizens must have a sense of equal participation in building up an egalitarian society, where there is peace and plenty, where there is complete economic freedom, where there is equal opportunity to education, to work... so that the goal of social justice is achieved.’ See: <https://indiankanon.org/doc/1959928/>.

11. Imposed ‘to make available the limited number of places to as wide a number of qualifying candidates as possible from various parts of the country, so that access to high education provided by the State will be equitably distributed and also subserve the objectives of the national interest and policies.’ See: http://www.hrsl.lk/PFF/Right_to_Equality/Seneviratne%20And%20Another%20V.%20...pdf

12. Only to be rectified in 1993 by the identification of Jaffna as one of the qualifying districts for special quota.

... Profile of a vulnerable minority continued ...

identity. In a subsequent study conducted in 2016, it was reported that bullying and marginalization had forced many LGBTQI students to drop out of school (ibid, as cited in Equal Ground and CIHR 2017: 7).

Administrative and policy making issues

Sri Lanka does not have an administrative procedure whereby a transgender person, simply on request, may apply to obtain legal identity documents that reflect their name and gender identity (Equal Ground and CIHR 2017: 7). A new policy introduced in June 2016 to obtain a 'gender recognition certificate' could be used to obtain an amended birth certificate, which can then be used to obtain an identity card and other legal documents conforming to a person's gender identity. This new policy presents serious concerns with its requirement for evaluation from a psychiatrist who is required to refer individuals to 'hormone and necessary surgical treatment' and certify that a 'transformation process' must be completed (ibid: 10). This policy effectively implies that only those who have undergone full treatment, which many individuals may either not want or are unable to access or afford, may be granted their chosen legal identity.

The ability to choose one's name and identity is a key aspect of self-determination and freedom.⁵ Identity documents are especially important in Sri Lanka as their absence hinders the carrying out of day-to-day activities, including maintaining a bank account, seeking public healthcare, interacting with the police, or applying for a job. In these situations, a transgender or gender fluid person whose identity documents do not match their chosen name and gender identity are subject to humiliation, discrimination, and the possibility of violence. This disparity in a person's documented and chosen identity is the root cause of much of the discrimination and abuse that transgender persons are subject to.

Activism or advocacy for LGBTQI issues and attempts to engage state parties by organisations that are involved in this work (such as Equal Ground) are also viewed with scepticism, or are ignored at policy-making levels. This issue of 'non-recognition' (Equal Ground and CIHR 2017: 8) demonstrates how LGBTQI persons are neither recognised as a minority in Sri Lanka, nor are their issues viewed as legitimate. Without a legitimate identity in front of the state or society, they continue to be marginalised and disempowered, relegated into a life of social and economic deprivation.

5. Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity, Principle 3 (2007), available at http://www.yogyakartaprinciples.org/principles_en.htm, as cited in Equal Ground and CIHR 2017: 7

society. In this instance, barring access for a large number of Tamil students to state university education and depriving them of their right to education jeopardised the students' access to employment and an adequate standard of living. The judiciary in this instance did not appreciate the context in which the state policy was formulated, which resulted in effective discrimination against an ethnic minority.

The ability to relate and therefore express sensitivity in legal reasoning is distinctly felt where Justice Sharvananda, in his eminent work *Fundamental Rights of Sri Lanka: a Commentary* (1993), disagrees with the decision of the case on the ground that the fundamental rights chapter of the Constitution only provides for individual rights and not community rights. He further criticises the decision, stating that the objective of the state is to admit the best students on individual merit instead of enforcing the unenforceable Directive Principles of State Policy. However, a categorical stance on community rights as such can also be precarious because it defeats the claims of economic social and cultural entitlements of the people. The different ways of approaching the case by both judges, despite their sound *stare decisis* and reasoning, speak to the inevitable flavour of personal beliefs and values involved in judicial decision-making. It also indicates that having a more diverse judiciary would ensure sensitivity to the diverse views of society in the judicial decision-making process and thereby enrich the decisions (Hunter 2015).

Housing and Land

Eviction and Alternative Accommodation

Land remains a contentious and largely politicised issue among the different ethnicities of Sri Lanka, which is attributed to the fact that 82% of land in Sri Lanka is vested with the State (GoSL et al 2018: viii). The ad hoc administrative and executive actions pertaining to state land distribution are often not transparent, and some of the laws are outdated – or, at least, not relevant in our 'post-conflict' society.¹³ Further, the state acquisition of private lands for 'development purposes' has intensified tensions among the people. However, because minority communities often live together, concentrated in particular parts of each district, any state action affecting the land rights of the people residing in the region may be deemed to be a systematic violation of the economic rights of the ethnic minorities residing in

13. Ibid.

the region. In the North and Eastern provinces of the country, this issue is further complicated due to the demographics of the regions.

The case *Mowjood v. Pussadeniya*¹⁴ concerned alternative accommodation. The Rent (Amendment) Act No. 26 of 2002,¹⁵ which was the related legislation in the case, required landlords to provide the tenants with alternative accommodation before obtaining a decree against them. In this case, the tenants contended that the alternative accommodation provided to them was not proper as their circumstances were not taken into consideration when providing the accommodation, and they therefore sought to obtain a writ of certiorari. The court analysed the purpose of the provision for alternative accommodation and observed,

'In view of this social objective, the needs and circumstances of the tenant ought to have some relevance if the offer of alternative accommodation is to be meaningful and not be illusory.'

This bears relevance to the evictions that take place for beautification and development plans undertaken by the state. Those who are evicted from their houses are in a vulnerable state and many of their intersecting rights are violated, namely the right to food and the right to education. As far as ethnic minority groups are concerned, forcible eviction increases their vulnerability or results in an 'aggravated violation' of their rights.¹⁶ The necessity of offering the most conducive alternative accommodation is felt in this instance because minorities tend to live in communities that are concentrated in a given locality and, therefore, uprooting them from that place and placing them in a completely new environment severely jeopardises their belonging to a given community and risks several of their social and cultural rights.¹⁷

Further, setting out the standards of an alternative accommodation that should be provided upon the ejection of a tenant, Sharvananda CJ stated

14. Available at: <https://www.lawnet.gov.lk/1987/12/31/mowjood-v-pussadeniya-and-another/>

15. Available at: http://www.commonlii.org/lk/legis/num_act/ra26o2002200/

16. See Centre on Housing Rights and Evictions (COHRE) v Italy (2010): 'The Committee considers that an aggravated violation is constituted when the following criteria are met: on the one hand, measures violating human rights specifically targeting and affecting vulnerable groups are taken; on the other, public authorities not only are passive and do not take appropriate action against the perpetrators of these violations, but they also contribute to such violence.' Available at: <https://www.escr-net.org/caselaw/2011/centre-housing-rights-and-evictions-cohre-v-italy-collective-complaint-no-582009>

17. Judicial Mind p 86; no access to sunlight etc.

that the accommodation had to be habitable and appropriate to the affected individual and the family members, and that it must have the elementary amenities. The court also made an important observation on the alternative accommodation with regard to the lifestyle of ethnic minorities who will not be able to thrive in an entirely unfamiliar environment because of their tendency to dwell among their own community:

‘It must not be located in a far-off area with which he has no local connection, an area where, because of his religion, race or caste etc, it is unsafe for him to dwell. The nature of the environment where the proposed accommodation is located is a relevant consideration in determining whether the new accommodation can fairly be described as ‘alternative’.’

As far as the cases during the latter stages of the war are concerned, the observation holds relevance in respect of the acquisition of lands by the military in the north and the east, affecting people’s lifestyles and the demographics. However, in the cases filed regarding eviction and displacement during the latter stages of the war, and inability to return to homeland after the war, the court failed to give weight to the concept of ‘demographic choice and behaviour’ of ethnic minorities.¹⁸ Due considerations to ‘choice and behaviour’ call for a sensitive approach from the court to the requirements of minorities. Erratic stances from the Supreme Court have, however, resulted in court orders ranging from the upholding of violation of the rights of the people who were evicted, to an instance in which the court accused the petitioner of merely ‘creating news for international consumption’ and dismissed the petition. Such instances portray the frail and unsettled jurisprudence on the land and housing rights of the ethnic minorities who were subject to aggravated violation of rights.

State’s Acquisition of Lands and Discrimination Against the Vulnerable

In another case, *Manel Fernando v. Minister of Land*, the petitioners challenged the state acquisition of their land, which was mala fide and in violation of the equal protection of the law guaranteed by Article 12 of the Constitution. The Garama Sevaka had harassed the petitioners, calling them ‘terrorists’ on account of the fact that one of them was a Tamil, and forcibly removed them from their premises. The decision upheld discrimi-

18. Manivannan case.

Good practice case study

The movement calling for the release of the Justice Saleem Marsoof Committee report on the Muslim Marriage and Divorce Act

During the period under review there have been a number of civil society-led efforts to protect rights of the Muslim minority in the country. These include protests against attacks on Muslims, various expressions of solidarity, as well as supportive participation in the campaigns demanding for reforms to the law governing Muslim marriages that discriminate against Muslim women.

One of the more recent outbreaks of anti-Muslim violence occurred in the Kandy District in early March 2018, leading to the declaration of a state of emergency in the country. The violence raged on for nearly a week, with scattered attacks in other parts of the island as well. During this time three Muslims were reported killed, several were injured and millions worth of damage to homes, shops and livelihoods has been recorded to date.

While the fires burned in Kandy, some monks and young Buddhists set out to protect mosques in Colombo, even overnight. Monks in charge of five temples in the capital visited four Jumma Mosques in Colombo's Ratmalana and Mount Lavinia boroughs to express solidarity with the Mosques.¹ In some areas Buddhist Monks stood in solidarity with the Sri Lankan Muslims during Friday prayers.

The support of civil society in times of ethnic violence is not unheard of in the melting pot that is Sri Lanka. In May 2017 a chilling image of a young woman bandaged from head to toe in Puttalam District after being set on fire by her husband went viral on Sri Lanka's social media networks. The young mother of two, who eventually succumbed to her injuries, was married while she was still a child. Under Sri Lanka's law governing Muslim marriages – the Muslim Marriage and Divorce Act (MMDA) – child marriages are permitted, and a campaign to abolish or amend the Act was already afoot, as grassroots level activists have been working on the issues for the past few decades.

On 29 May 2017, Muslim women from Puttalam, along with civil society from across the island, marched to demand justice for the young woman torched by her husband. In early 2018 a protest was staged near the Justice Ministry highlighting Muslim women's call for justice and equality in Sri

1. 'In Colombo Buddhist monks express solidarity with Muslims victims of attacks', 3 October 2018. <http://www.asianews.it/news-en/In-Colombo-Buddhist-monks-express-solidarity-with-Muslims-victims-of-attacks-43317.html>

Contd...

nation against the petitioners, in addition to the authority's abuse of power to forcibly evict the owners.

Mark Fernando J stated the following on the unlawful state acquisition:

'The statutory power given in order to enable the State to acquire land needed for a public purpose cannot be used for any other purpose. That would be a gross abuse of power, particularly in this case, where the owner's wish to dispose of his land had been brought about by unlawful and improper harassment on account of race.'

The case law on state acquisition of land provides some guidance on the scope of 'public purpose', which has not been defined under the Land Acquisition Act of 1950. In the *Manel Fernando* case, the judiciary refers to a 'truthful public purpose' and the need for a statutorily required 'Section 2 notice' stating the public purpose.¹⁹ However, in said case, the officials had harassed the petitioners on a number of occasions, had deliberately made their lives difficult in the said premises and had requested the government to acquire the property although there was no prior plan for such acquisition, invalidating the claim for any truthful public purpose.

The judgment of *Manel Fernando* acknowledged the explicit discrimination the petitioners were subject to by the state officials in the context of the war that was ongoing at the time, and was ground-breaking, hence, because an established precedent of upholding discrimination against minorities is unknown to Sri Lankan fundamental rights jurisprudence.

The decision is of relevance in the post-war context because the war-affected communities had been left vulnerable and prone to exploitation by public officials, specifically in relation to acquisition of private lands. Three important instances post-war must be highlighted in the state's acquisition of private lands for disguised 'public purposes', namely, the forced eviction of *Manal Aru* residents upon the acquisition of Mahaweli Economic Agency in 1988, the acquisition of 6380 acres of land in Jaffna for purposes of military cantonment, and land in Sampur for industrial development (Fonseka and Jegatheeswaran 2013). The three situations put forward a strong case for 'aggravated violation' of the rights of victims who constitute the ethnic

19. 'Public purpose' was further crystallised in the *Water's Edge* case (see: <http://www.island.lk/2008/10/12/features16.html>.) 'Public purpose' should not be construed broadly but for public utility and should be directly attributable to the benefit of the community as a whole.

... Good practice case study continued ...

Lanka. The silent protest was for the release of the Marsoof report. In 2009 a 17-member Committee, led by Justice Saleem Marsoof, was appointed by the then Justice Minister to review the discriminatory provisions and recommend amendments to the MMDA. The committee was unable to reach a consensus and the report was put on hold for seven years, until it was revitalised in 2016, as grass roots level activists created a public campaign on their work, drawing attention to the burning need to amend the MMDA.

As anti-Muslim attacks have grown in frequency and intensity, this small and dispersed population in Sri Lanka find themselves in a precarious place. Support from other communities – especially the majority Sinhalese community – while they demand for justice provides them with a certain degree of protection; it (unjustifiably) legitimises their demands, and it amplifies their voices. Where Sri Lanka is concerned it is important to note that those from other communities who have joined the protests, campaigns and the fight for justice have done so only in a respectful supportive role. Taking the lead on such matters can detract from the issue at hand; it can result in the issue being hijacked for other agendas ; the Muslims can lose their voice; and, in the case of the MMDA, it can easily turn into an anti-Muslim campaign or be perceived as such. By assuming a more supportive role, members of the Sinhalese community, among others, show that they are not against Islam, but against the discrimination and grave abuse of Muslim women that is permitted under a faulty law.

The Sinhalese as a majority community use their place of privilege to ensure the Muslim women leading the campaign and the victims who have chosen to go public remain unharmed. As Professor Gayathri Spivak argues in her essay ‘Can the Subaltern Speak’, given their position in society, women within a minority group are often not allowed to speak or be heard. Therefore, while it is not ideal, in a space where minority communities lack the means or freedom to do speak, support from the majority community can enable them to achieve their demands. This applies to ethnic violence as well. The monks who chose to be at the mosques that day provided protection with merely their presence.

The Marsoof report was released in July 2018, and the support of the Sinhalese community does not in any circumstance overshadow the work done by Muslim grass root level activists. Having worked on the issue for the past 20 to 30 years, first educating and empowering Muslim women to seek justice, only then were they able to compile case studies and pursue justice for all Muslim women in Sri Lanka.

minorities who were affected by the war and were further targeted by the state for their land and property. Quite contrary to the *Manel Fernando* case, when a fundamental rights case was filed on behalf of the residents against the eviction of Sampur residents (ibid: 50), the then Chief Justice dismissed the petition remarking that the petitioner was merely ‘creating news’ for ‘international consumption’ and that the government should be given ample time to complete the security measures in the area. The statement indicates the judiciary’s pro-government stance and complete disregard for the victims in the immediate postwar context, despite the visible violation of right to equal protection of law. While the controversial Sampur project was abandoned with the President’s intervention in 2016, more than 4000 acres of land acquired in Jaffna have not been released to date.

The History of Violence and its Economic Consequences on Minorities

Much of the violence towards minorities viewed as post-war phenomena are in fact, historical and longer standing tensions that date back to 1915 (Haniffa and Nagaraj 2017: 2). Many of the incidents of violence towards Muslims in particular and the anti-Muslim rhetoric following the 1970’s were overshadowed by the tensions between the state and armed Tamil groups, the JVP insurrection, and the ethnic conflict. These incidents, which are widely viewed as communal in nature and are often initiated as minor disputes between individuals within a background of general tensions between two ethnic groups in a local community, in fact always have an economic and political background.

The anti-Muslim violence of 1915 must be considered in context of a number of economic and political factors, including the end of an export-oriented boom of the late 19th century, and the fact that resentment towards increasing prices and high inflation was taken out on Muslim traders (Jayawardena 1970). The ‘revival’ of Sinhala-Buddhist nationalism that integrated a prejudiced view of Muslims by Anagarika Dharmapala, a champion of this cause, is also central (Roberts 2013). The ‘othering’ of Muslims, and the propagation of the idea of Muslim prosperity (versus Sinhala weakness and poverty) through ‘Shylockian methods’ – appealed to later by multiple others, including religious leaders seeking to justify the removal of or violence towards Muslims in their local areas – appears here:

‘The Muhammedans, an alien people, who in the early part of the 19th century were common traders, by Shylockian methods became prosperous like the Jews. [...] The Muhammedan [...] is an alien to

the Sinhalese by religion, race and language [...] The whole nation in one day have risen against the Moor people. The causes are economic and spiritual...' (Dharmapala 1915)

The episodes of violence in Puttalam in 1976 are attributed to a series of incidents when the newly settled and increasing²⁰ Sinhalese population was viewed to be receiving favourable treatment from the State, including when land belonging to Muslims was taken and redistributed through the Land Reform Act, and when a newly established Cement Corporation factory in Puttalam hired Sinhalese workers who had migrated to the area for this purpose, despite Puttalam having a significant population (largely Muslim) of its own.

Incidents of violence in Galle in 1982, Mawanella in 2001, and Aluthgama in 2006 also demonstrate how the anxieties surrounding apparent economic weakness and prosperity, in the Sinhalese and Muslims respectively, also manifested themselves in the way violence was used to re-organise economic capital, with many cases in which businesses or the contents of shops were completely burnt, thereby completely destroying the capital.

Six days of violence in Galle in 1982 resulted in two deaths and millions of rupees worth of property damage, when 27 businesses in Galle alone were attacked, and some of the larger shops and lorries belonging to Muslim businesses were completely destroyed (Haniffa and Nagaraj 2017: 20, 26). Two separate narratives regarding the initial trigger both involve an altercation between a Sinhalese and a Muslim: one with a Muslim landowner and a Sinhalese tenant who had refused to move despite not paying rent, and the other involving a Sinhalese fruit vendor and a Muslim neighbour. The government had declared an island-wide emergency and curfew within Galle city limits, and the riots eventually required the intervention of the military.

An incident involving the extortion of money from a Muslim business in Mawanella in 2001 eventually escalated to a full-scale riot that extended over a few days. The inaction of the police in Mawanella and surrounding areas sparked off protests and further clashes in Colombo and Maradana. Tensions boiled over when Muslim shops were attacked, and the largest

20. The influx in the 1970s was a continuation of the Sinhalese of Puttalam. Calculations by Catherine Brun report that the Sinhalese made up approximately 39.2% of the population in 1901, and that the district was 82.6% Sinhalese by 1981. See Haniffa and Nagaraj (2017: 2).

businesses that were destroyed belonged to Muslims. What is also concerning regarding Mawanella are reports that the Police were complicit in the attacks (ibid: 33).

In 2006 an altercation between a Muslim shop-owner and three Sinhalese youth over the alleged theft of a mobile phone sparked large-scale violence in Aluthgama, mostly targeting Muslim businesses and homes. Minister Rauf Hakeem, the leader of the Sri Lanka Muslim Congress (SLMC), noted that much of this occurred during 'curfew hours in the presence of the police and the armed forces, before their very eyes; while some of the shopkeepers were pleading for the police to intervene they did nothing to stop the mobs from setting fire to these shops.' He went on to suggest that the violence was systematic: 'the shops owned by Muslims... [have] been set on fire' but where 'Muslims have been carrying on business as tenants, things have been taken out of the building and set on fire without damaging the building since that building did not belong to Muslims' (Hansard). While the incidents in Puttalam involved the police opening fire at those running towards a Mosque for refuge, Mawanella and Aluthgama involved prejudicial and complicit behaviour by the police, which has led to a loss of confidence in the police among locals. Minister Hakeem called for a commission to investigate the conduct of the police.

While Silva et al (2001) suggest that tensions in Mawanella emerged out of resentment felt towards Muslims dominating the Mawanella bazaar by local Sinhalese entrepreneurs, and Nagaraj and Haniffa (2017: 37) demonstrated a shift in economic, political power and resources away from the Muslims in Mawanella as context for the background of tensions, the violence in Mawanella can also be considered as the peak point in a series of anti-Muslim rhetoric and violence, influenced by proceedings on the national political stage.

The emergence of the SLMC as a key player²¹ in 1994 in a fractured electoral mandate gave the SLMC and other minority parties 'unprecedented bargaining power and influence'.²² The SLMC thus represented political

21. See 'A tiring battle', *Frontline*, 26 March 2004, available at <http://www.frontline.in/static/html/fl2106/stories/20040326004211600.htm>; 'SLMC: Liability on the Muslim community', Lathief Farook, *The Daily FT*, 23 December 2014, available at <http://www.ft.lk/2014/12/23/slmc-liability-on-the-muslim-community/>; and 'Rendering the SLMC inconsequential', *The Sunday Observer*, 30 August 2015, available at <http://www.sundayobserver.lk/2015/08/30/polo6.asp>

22. See 'SLMC: Liability on the Muslim community', Lathief Farook, *The Daily FT*, 23 December 2014, available at <http://www.ft.lk/2014/12/23/slmc-liability-on-the-muslim-community/>.

power in the east, while the Liberation Tigers of Tamil Eelam (LTTE) was holding military power in the North. Haniffa and Nagaraj (2017) argue that this led to further insecurities and anxieties in the Sinhalese regarding minorities yielding power, which is demonstrated in the dominant theme it took at a meeting to mark the first anniversary of the bombing of the temple of the Tooth Relic by the LTTE (with the bombing in itself viewed as a mark of cultural vulnerability of the Sinhalese) by a 'lament that the Sinhala majority was being held hostage politically by the Muslims and militarily by the LTTE'.²³

Against a backdrop of peace talks with the LTTE and opposition to devolution of power in the late 1990s, there was also a growth in Sinhala–Buddhist nationalist organisations.²⁴ Among these the Sinhala Veera Vidana (Sinhala Heroes Forum, SVV) and the United Sinhala Traders Association (UST) in particular represented the economic interests of the Sinhalese, with the SVV attempting to arrange for Sinhalese paddy farmers to sell rice to Sinhala traders at more favourable rates than the government-determined price, provided they joined the SVV and endorsed its policies on racial exclusion. This must also be viewed against the setting of widening inequalities and a decrease in government funding towards agriculture and the open-economy reforms initiated in 1977. The latter gave an extra edge to competition among the Tamil, Muslim and Sinhalese business interests, which invariably took on racial character in an already ethnicised political environment.

Propagating the idea of 'Muslim prosperity' and 'Sinhalese weakness'

The economic interests these organisations sought to mobilise targeted and involved a largely working- and middle-class Sinhala population. An old narrative of Muslim traders being 'Shylockian' and more economically prosperous, against the Sinhalese being economically vulnerable in this environment, reappeared again in a series of post-war attacks directed at Muslim businesses or economic elements that concerned the Muslims (such as the controversy surrounding an apparent cost to a general consumer when buying halal certified products).

23. Buddhist clergy lament, 'Sinhala community faces annihilation due to power crazy leaders', *The Island*, 28 January 1999.

24. Organisations such as the National Movement Against Terrorism (NMAT), Sinhala Urumaya, Sinhala Veera Vidhanya (Sinhala Heroes' Forum, SVV, a predecessor of the Jathika Hela Urumaya (JHU) a Sinhala-Buddhist right-wing political party) and the United Sinhala Traders Association (USTA).

The same narrative is now commonly used in other ways within wider political controversies, but the contemporary reincarnation of the SVV, with the economic interests of the Sinhalese at heart, appears in the more sophisticated form of The Chamber of Young Lankan Entrepreneurs (COYLE). COYLE's membership is (demonstrated to be) exclusively Sinhalese, however, unlike SVV or UST, COYLE is distinctly more elite, with its membership reportedly contributing 600 billion per annum to the Sri Lankan economy and its meetings bringing together 116 chairmen and key shareholders of some of the largest companies in Sri Lanka.²⁵ The dangers of such an organisation are threefold: firstly, it demonstrates how the narrative of needing to secure the economic interests of the Sinhalese has permeated across all classes of society; secondly, it yields so much power and benefit within the business community at the point of joining that its membership is now attractive, especially to young businesspeople; and thirdly, its economic interests are now much wider, with the organisation commanding meetings with key ministers and executives to influence national policy²⁶; and its market presence across its membership, many of which are conglomerates, controlling a significant portion of Sri Lanka's economy.

The anxieties are also further affected by class dynamics, with the Sinhalese-Buddhist extremist movements primarily gaining traction and popularity among young working-class Sinhalese men operating within an environment of aspiration, who are affected by economic anxieties worsened by inflation, increased cost of living and unemployment, and are therefore most prone to accepting the narratives around an apparent Sinhalese economic weakness. The flow of capital and internet penetration has further intensified the sharing of this narrative, as was demonstrated in the recent riots in Digana, where calls to join the riots were most widely perpetuated through a series of viral videos shared on social media.

25. See <http://coyle.lk/>.

26. 'COYLE is a chamber that always renders its untiring efforts and support in resolving national issues. It also possesses a remarkable position in the Sri Lankan economic and financial arena due to the significant contribution made to the GDP and GNP of Sri Lanka' – at <http://coyle.lk/coyle> under 'About COYLE'. The section goes on to state that organisation's vision is to be the 'most influential and vibrant chamber of young business leaders whose views on the matters of national importance are sought by the government' (accessed online: 4/08/2017).

27. <http://coyle.lk/coyle-member-company/>

Conclusion and Recommendations

Sri Lanka's overall outcomes with respect to the socio-economic indices concerning minorities have seen positive improvement; however, these generalised patterns have also not always been able to capture the pockets within communities – particularly minorities within traditional ethnic minority regions who sit at the intersections of class, gender, caste, and population, who are most affected by issues pertaining to the violation and lack of protection of their socio-economic rights. The chapter has also sought to note how the framework of minorities is contested and mobilised in different ways in Sri Lanka, particularly in the way minority and majority identities are shifted based on economic and political dynamics, further blurring the situations in which socio-economic rights are compromised.

Gender and caste in particular are important axes by which such consideration and analysis must occur. The report was not able to draw these out due to constraints on time, however, a snapshot perspective of the former is attempted in our case study on war-affected women with disabilities and our good practice case study on civil society's advocacy with respect to the Muslim community in Sri Lanka.

The chapter highlights the reductive manner in which minority rights are approached in Sri Lanka and the resulting discursivities in guaranteeing human rights for all. If Sri Lanka is to move forward on guaranteeing economic, social and cultural rights to all its citizens along with civil and political rights, one of the first steps required is to resolve the ambiguities, contradictions and regressions within the constitutional and legislative framework in the country. An imperative first step is to recognise economic and social rights as justiciable rights in the constitution. This has been recommended by the consultative process on constitutional reform, which consulted across the island in formulating its recommendations. Other laws that discriminate against minority groups must also be amended or repealed; these include sections 365 and 365a of the Penal Code and the Vagrants Ordinance.

Secondly, inequalities in resource allocation for the health and education sectors must be addressed. The data reviewed in this chapter highlight the manner in which discretionary funding for local schools and cut backs on social welfare schemes directly affect the most marginalised in the country. National budget allocations should continue to sustain or increase allocations to basic economic and social indicators, including health and edu-

cation, in keeping with Sri Lanka's international obligation to progressively realise economic, social and cultural rights.

Thirdly, the policy decisions that discriminate against minority groups must be addressed. Addressing the competition for resource allocations would allow for the reversing of discriminatory quota changes in university admissions; the increased allocation of resources to the poorest regions with the lowest social indicators; and increased diversity of representation in the public sector, including the judiciary. Some of the ethnic and religious based groupings, whether historical or presently forming, would lose their divisive powers if inclusive language policies, university and school admission policies, resource allocations and economic opportunities becomes a part of state policy in Sri Lanka. State policy, if implemented effectively, will permeate every rung of state service, and will challenge divisive narratives along ethnic and religious lines that may be pushed by extremist groups belonging to any ethnic or religious affiliation.

It is our view that if these three major plans are addressed by the government in the short term, medium term and long term, as a part of a national trajectory, guarantee of economic, social and cultural rights to all persons in Sri Lanka will become an increasingly achievable goal.

The State of Economic, Social and Cultural Rights in Sri Lanka:

A Joint Civil Society Shadow Report to the United Nations
Committee on Economic Social and Cultural Rights;
Introduction Chapter (Law & Society Trust, April 2017)

Context

1. Coming two years after a political transition from post-war authoritarianism, this Shadow Report to the United Nations Committee on Economic Social and Cultural Rights is framed in the backdrop of two concurrent processes of 'transformation' currently underway in Sri Lanka. The first is the process of constitutional reform initiated by the Government that was elected on the platform of restoring democratic, inclusive and accountable governance. The second is the transitional justice process whose contours continue to be shaped by the interplay of domestic and international political dynamics.
2. This year also marks forty years since President J.R. Jayawardene initiated the open economy reforms, almost twinned to which was the

second republican constitution that also firmly entrenched the executive presidency as well as the majoritarian character of the State. Soon thereafter, in 1980, came the massive crackdown on trade unions and, in July 1983, the pogrom against Tamils. If the former forced a violent repudiation and redrawing of the social contract between state and society, especially organised labour, the latter firmly entrenched violence as a defining feature of the new social contract, especially between the State and minority communities.

Sri Lanka's political economic landscape

3. Sri Lanka's economic geography, a legacy of post-1977 liberalisation policies and the war, has its epicenter in the Western Province and was bolstered by extraction from the inner peripheries, such as the plantations. With the exception of the two-year (1988–90) Southern Insurrection and periodic suicide bomb attacks, the war was contained largely in the Northern and Eastern outer peripheries. Almost throughout all of the war years, the Sri Lankan economy continued to grow steadily, remittances from migrants escaped the war and rural joblessness added to the economy.
4. The legacy of decades of economic liberalisation and the war has shaped a state-society contract characterised by serious deficits in political and economic democratisation, power sharing, inclusion, and accountability. Alongside the political marginalisation and exclusion of minorities, and ethnicisation of political economic relations, also entrenched is economic precariousness due to inadequate levels of investment in health, education and social protection, attacks on permanent jobs and burgeoning informalisation. In the North and East especially these add to many harms from the war that are yet to be addressed, including killings, disappearances, displacement, sexual violence and post-war militarisation.

Constitutional Reforms and Transitional Justice

5. Hundreds of submissions to the Public Representations Committee on Constitutional Reforms (PRC) on the one hand and thousands of submissions to the Consultation Task Force on Reconciliation Mechanisms (CTF) on the other, sought a fundamental redrawing of the social contract between the State and its citizens. Taken together and read expansively, the reports of the PRC and the CTF reflect an aspiration for political, civil, social and economic justice. Both reports also stress the importance of a state that is committed to equality, equity, inclusion, democratic participation and accountability. Yet, it is the Government's

near identical response to both reports—consigning them to a ‘display only’ shelf or in the case of the CTF virtually disowning it domestically—that defines this moment and sets the stage for the critique offered in this report.

6. The far-reaching proposals of the PRC call for the recognition of a raft of economic and social rights—especially with regard to education, food, health, housing, social security, labour—coupled with protection from forced evictions as well as an expansive equality and non-discrimination clause, which are also reflected in the report of the Fundamental Rights Sub-Committee of the Constitutional Assembly. This assumes great significance in the context of the major concerns raised in this report: Entrenched poverty and widening inequality; weakening social protection; precarious wages and employment; union busting; declining investment in education and health; worsening food insecurity and malnutrition; large-scale evictions and land grabs, and exclusion or discrimination on grounds of disability, gender and sexual orientation, economic status, ethnicity, caste, etc.
7. The transitional justice agenda has all but sidelined the question of economic or distributive justice and the structural as well as gendered violence inherent in economic relations—be it before, during or after the war. The critique from the Malaiyaha Makkal or Up-Country People regarding the exclusion of their experiences from the scope of transitional justice hinges precisely on this point¹. As discussed in this report, the high levels of economic insecurity and precariousness in the post-war North and East also stem from post-war policies that focused on debt-driven physical infrastructure, and the militarisation and financialisation of development through the aggressive pursuit of micro-credit measures. The result has been indebtedness², lack of decent work, poor social security, and militarisation of land and economic relations—all of which affect women in very particular ways and cannot be divorced from questions of post-war justice and accountability.

Current economic and social policy—Key concerns

8. There are serious concerns about the current Government’s moves to slash public expenditure, especially on health and education in 2017. Moreover, the push for privatization and the plans to initiate sweeping reforms in critical areas, such as social security, land and labour guided by the World Bank and the International Monetary Fund’s austerity mind-set, raises many serious concerns. Whilst food producers—farmers and fishers—battle dispossession, massive tax concessions and holidays are being given to foreign investors for large and medium-scale

projects; for example, to build the Colombo Port City or establish commercial farms for export. Even as a highly regressive tax system and spiralling cost of living squeezes the poor and near poor, the Government is prioritising 'reforms' of the Samurdhi programme that will almost certainly see reduced net transfers and more debt-oriented schemes.

9. Sri Lanka's much vaunted middle-income status and impressive aggregates of human development, in areas such as health and education, in fact hide much more than they reveal. About 40 percent of the population lives on less than 225 rupees per person per day,³ multidimensional poverty measures classify an additional 1.9 million people as poor⁴ and almost 70% of the labour force is in the informal sector, with low wages and no social security.⁵ Add to this a crisis in nutrition in many parts of the country, very low levels of investment (relative to GDP) in public health and education, and a weakened social protection system—all of which are exacerbated by gendered, ethnicised, caste and class-based deprivation as well as exclusions.
10. Decades of inequitable political economic development have generated a landscape with many and expanding pockets of marginality and precariousness. This is evident in places as far apart and diverse as Monaragala, Batticaloa, Puttalam and Mullaitivu, which have entrenched pockets of poverty. Moreover, as discussed in this report, communities ranging from Colombo's urban poor and the Up-Country plantation community to the Veddas and manpower (contract) workers in manufacturing, services and agriculture, as well as fishers and/or farmers fighting for their land in Panama, Kepapulu, Mullikulam, Vallikamam, Kalpitiya and Uma Oya, all suffer forms multiple and shared forms of deprivation and exclusion. All of the above underlines that Sri Lanka's commitments under the ICESCR assume an urgency and significance today that they have perhaps never had before.

Enforcing economic and social rights in Sri Lanka

11. Sri Lanka's Constitution includes a chapter spelling out the directive principles of state policy, which call, amongst others, for the:

- Pursuit of a social order with social, economic and political justice (art. 27 2 [b] and [f])
- Realisation 'by all citizens of an adequate standard of living for themselves and their families, including adequate food, clothing and housing, the continuous improvement of living conditions and the full enjoyment of leisure and social and cultural opportunities' (art. 27 2 [c])
- 'Equitable distribution among all citizens of the material resources of the

community and the social product, so as best to subservise the common good' (art. 27 2 [e])

12. The directive principles however 'do not confer or impose legal rights or obligations and are not enforceable in any court or tribunal' (art. 29). The fundamental rights chapter of the Constitution does not recognise economic and social rights. However, the Court has considered several cases pertaining to economic and social rights concerns in the light of the general equality and non-discrimination provisions in the Constitution.

13. The mandate of the Human Rights Commission of Sri Lanka (HRCSL), in terms of its ability to investigate complaints of rights violations, is restricted to the rights spelt out in the fundamental rights chapter of the Constitution. The HRCSL therefore investigate complaints of economic and social rights violations.

14. Redress for economic and social rights violations is limited but has to be seen in the context of the significant weaknesses in the enforcement of the rule of law and accountability for human rights violations. Whilst the change of Presidency in January 2015 did result in a drawdown in the generalised atmosphere of threats and intimidation faced by human rights defenders, significant challenges still remain. As outlined in the report, activists working on labour and land issues, especially in the context of military occupation, face surveillance, intimidation or threats, including arrest/detention for or restrictions on their activities.

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- 1 Submission by the Malaiyaha Makkal (Up-Country People) to the Consultation Task Force on Reconciliation Mechanisms (2016).
 - 2 In reality, almost seven years after the war, there have not been substantial levels of private sector investments in the North and East, at least not at levels enough to provide decent jobs and secure livelihoods for people struggling to survive. Parallel to that, the State pushed the people to take up micro-credit and self-employment schemes for day-to-day survival. However, a large population in the North and the East are mired in indebtedness and other forms of dispossession due to their severe exposure to credit, and are struggling to survive. Women were the main targets of such microcredit schemes, underlining gendered patterns of suffering central to such political economic arrangements.
 - 3 The World Bank (2016, February 16), Poverty has Fallen in Sri Lanka but Fiscal, Growth, and Inclusion Challenges Need to Be Tackled to Sustain Progress. Retrieved from The World Bank: [http://www.worldbank.org/en/news/press-release/2016/02/16/poverty-has-fallen-sri-lanka-](http://www.worldbank.org/en/news/press-release/2016/02/16/poverty-has-fallen-sri-lanka)

but-fiscal-growth-and-inclusion-challenges-need-to-be-tackled-to-sustain-progress

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Annexure I

The State of Minorities in Afghanistan

Introduction

Afghanistan is a unique case when it comes to minority rights, mainly because no ethnicity is a majority in the country, and most ethnicities have tried to inflate their numbers so as to seem more powerful. The constitution identifies no minorities, and thus no minority rights. Doing a survey of minority rights is therefore essentially an attempt to make a case for them to exist in the first place. It entails outlining who the minorities are, what their status is, whether they have rights, and why they need minority rights and protection. This is how this summary is structured.

Who are Afghanistan's minorities?

Afghanistan has minorities based on religion, ethnicities and language. While it is an Islamic State, as per its constitution, people of other faiths are allowed to practise them in private according to the law. 84.7–89.7% of the population is Sunni Muslim, while 10%–15% is Shia (Central Intelligence Agency 2018). Other minorities, mainly Hindus and Sikhs, make for roughly 1% of the population. Persecution of Hindus and Sikhs has increased drastically in recent years, forcing most of them out of the country. Thus, their numbers have dwindled down to a mere 220 families.

On ethnic grounds, there is no single group that represents more than 50% of the population, even though the largest group, the Pashtuns (40%), has tended to play a dominant role. The Tajiks (33%) come second. There also exist the Hazaras (11%), Uzbeks (8%), and Turkmens (2%). The Kyrgyzs, Balochs, Aimaqs, Ismailis, Brahuis, and Nuristanis etc comprise 1% or less each (The Asia Foundation 2014). The Pashtuns mainly occupied a belt of mountains that extend along much of the border with Pakistan, but they presently live in pockets across the country. The Shia Hazaras occupy the east and the Tajiks largely occupy the western half of the central Hindu Kush range. The conditions for growing crops are extremely difficult throughout

the Hindu Kush, rendering both the Hazaras and the Tajiks relatively poor, although the Tajiks have had access to important areas of fertile land in the Shomali valley to the north of Kabul and in the adjacent Panjshir valley. The Aimaqs are Turkic in origin and are to be found in the westernmost part of the Hindu Kush, to the west of the Hazarajat. The Turkmenis occupy the hills on the northwest of the Hindu Kush, and the Uzbeks the desert of Faryab and the flat plain that extends northwards into Central Asia, which permitted an important agricultural and trading economy to develop, until occupied by Taliban. The Shia Ismaili community has its base to the immediate north and northwest of the Salang Pass, which was also controlled by opposition forces and the Taliban intermittently. The Baluchis occupy the inhospitable no-man's land of high sand dunes and a black stony desert near the borders of Iran and Pakistan in the extreme southeast of the country, and are too dispersed to correctly take account of. The Nuristanis exist in particular isolated valleys to the south of Badakshan in eastern Afghanistan (Marsden 2001: 6). They survive primarily on goat herding.

From a linguistic perspective, Persian (Dari) is a widely spoken language, spoken by around 50–55% of the population. It has not only been the native language of many ethnic groups such as Tajiks, Hazaras and Qizilbashes, but it has also been the day-to-day administrative language of the country for many centuries. The World Factbook indicates that Persian is the most widely spoken (50%), followed by Pashto (35%), Turk (Uzbeki and Turkmeni) (11%), and 30 minor languages (Balochi and Pashai) (4%) (CIA 2018).

The history of inter-ethnic relations in Afghanistan is one of coexistence, tolerance and pride in diversity, but also of unequal opportunities and conflict. Afghans are reluctant to define the conflicts that have rived their country in recent years in ethnic terms (Simonsen 2004). At first, the government of Afghanistan did not indicate tribe or ethnicity on ID cards so as to homogenise an Afghan identity, but it still continues the practice so as to not gaslight ethnic tensions. It also does not record any such data.

Minority rights in Afghanistan have improved since the 2001 Bonn agreement, but not by much. Historically, Hazaras have often been victims of discrimination and persecution by other ethnic groups for religious and racial reasons. They have been systematically excluded from government positions and education and have struggled to achieve social mobility. The Taliban regime was particularly brutal in its persecution of Hazaras. However, in the constitution ratified in 2004, Hazaras were given equal rights to other ethnic groups. Most religions, apart from Sunni Islam, have been discriminated against in one time or another. Apart from discrimination against minority ethnicities like the Hazaras or Kyrgyzs (during the Soviet invasion), discrimination against other religions such as Hinduism and Sikhism arose in the Taliban period, and is especially rife now.

The data challenge in Afghanistan

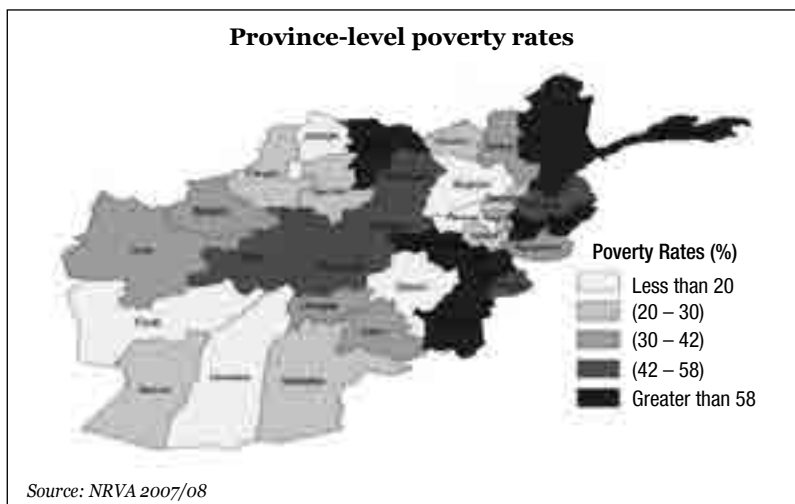
It is only right to acknowledge in the beginning that there is no comprehensive report on the status of minorities in Afghanistan. Finding data on different political, social and economic indicators related to minorities in Afghanistan is a challenging task. The government and international agencies' data, statistics and reports are not disaggregated in terms of ethnic and religious groups. This makes the task of analysing the conditions and status of minorities tough. The task is made even more difficult by the fact that most reports are slightly outdated and may

not reflect the true demographics of the current day. Heavy internal displacement and forced migration are also contributing factors. The current chapter relies on reports by governmental and international organisations whenever available; it also draws on media reports and newsletters, and secondary sources to fill the gaps in primary documents.

How do minorities perform on socio-economic rights?

It needs to be understood that specific figures are not available for most parameters that are used to check socio-economic performance. General assessments have been compiled through secondary reports about specific communities and policies.

According to the 2017 estimates of The World Factbook, 54.5% of Afghanistan's population lives below the poverty line (CIA 2018). Urban Afghans are safer and have better access to services and economic opportunities than those living in rural areas. Inequalities also persist between Afghan men and women, who increasingly find it difficult to access education and health services (World Bank 2017). Higher than 54% poverty incidences are found amongst the Kuchi population, a Pashtun Nomadic Social Group that has been forced to settle, creating disputes between existing settlers and the Kuchis.



As seen above, poverty is most rampant in the northern parts, occupied by the Aimaqs, Turkmenis, Uzbeks, and Ismailis etc. Parts of central Afghanistan, like Bamiyan, the unofficial Hazara capital, are amongst Afghanistan's poorest, often lacking basic facilities and electricity (Hucal 2016). Many reports indicate that the poorest developed areas are ones occupies by Shiite minorities like the Ismailis and Hazaras (Chioventa 2014). Government facilities like healthcare centers, schools, roads etc are fewest in such areas. This is a continuation from the Taliban regime, where these minorities were persecuted and their lands and belongings force-

fully grabbed. In trying to maintain peace after the 2001 intervention, the government never punished anyone for war crimes and the groups of people that were left without resources were never repaid. Thus, their conditions worsened. According to the diet diversity data, the most food insecure provinces are the central highlands, and the Nuristan province (Economic and Social Council 2009). Regions that are occupied largely by minority groups are very underdeveloped and see little opportunity for economic progress.

Commitment

After 11 September 2001, when international forces invaded Afghanistan, which led to the Bonn Agreement, the Government of Afghanistan agreed to support human rights and the initiation of a commission to prepare the first preliminary draft of a revised Constitution, which was later discussed, amended and adapted at the 2003 Constitutional Loya Jirga.

Since the adoption of the new constitution there have been consistent promises made by Afghan politicians, including former president Hamid Karzai and President Ashraf Ghani, to address the concerns of Afghanistan's Sikh and Hindu communities and ensure that they, like all Afghans, are equally protected by the law.

Constitutional provisions

The Constitution of Afghanistan has been made more inclusive since the Bonn Agreement but contradicts itself in various places.

The constitution includes a mandate to abide by the Universal Declaration of Human Rights (UDHR) to create a prosperous and progressive society based on social justice, protection of human dignity, protection of human rights, and the realisation of democracy to ensure national unity and equality among all ethnic groups and tribes (Bureau of Democracy, Human Rights and Labor 2013).

While the constitution declares Islam to be the religion of the State, other religions can be freely practised, according to the law. While there is personal freedom, however, this does not extend to lawmaking itself. The constitution states that no law can go against the tenets of Islam, and in cases where the law is unclear, the Hanafi law¹ can be applied. Thus, religious freedom is limited. Also, while local representatives can follow any religion, the President has to be a Muslim. Thus, non-Muslim minorities like Hindus and Sikhs have little to no political or electoral power. Even among Muslims, Sunni Muslims are dominant over Shia Muslims. Tenets of Islam must also be followed in the field of education, thus limiting access to education for Hindus and Sikhs, who reportedly face severe discrimination from staff and peers; although non-Muslims are not constitutionally required to study Islam in public schools (Bureau of Democracy, Human Rights and Labor 2017).

1. Hanafi is one of the four schools of jurisprudence that Sunni Muslims follow. Where laws are unclear, it is applied to everyone in Afghanistan, regardless of whether they are Sunni Muslims or not.

Although the constitution does not define the minorities in Afghanistan, it does refer to 14 ethnic groups that it says constitute the nation of Afghanistan: Balochs, Tajiks, Hazaras, Uzbeks, Pashtuns, Turkmen, Pachtas, Nuristanis, Aimaqs, Arabs, Qirgizs, Qizilbashs, Gujurs and Brahwuis (Article 6). The constitution grants rights based on a liberal principle of citizenship. It considers all those who have citizenship of Afghanistan to be nationals of Afghanistan. It further stipulates that no member of the nation will be deprived of citizenship (Article 4), all the citizens have equal rights and duties, and discrimination is prohibited under the law (Article 22). The fundamental rights guaranteed by the constitution include, amongst others: non-discrimination and equality before the law; freedom of expression; and freedom of association.

While these articles ensure individual freedom, however, the exclusion of the term minority, and the non-existence of any article explicitly acknowledging such groups, puts minorities in a position of vulnerability. They have little legal reprise when discriminated against because of their ethnicity or religion.

International obligations

While Afghanistan is party to most international covenants, much of its constitution and many of its laws do not comply with them. The constitution and penal code are silent on apostasy and blasphemy, which gives a free hand to the courts, relying on their interpretation of Sharia Law, to punish alleged offences, even where this violates the country's international commitments to the UDHR and the International Covenant on Civil and Political Rights (Shayegan & Ammaar 2016).

Recently, though, efforts have been taken by the Government of Afghanistan to build its capacity to meet its obligations under the Rome Statute and to facilitate national investigations

Table 1. International Obligations of Afghanistan on Minority Rights

Conventions	Year acceded/ ratified by Afghanistan
International Convention on Prevention and Punishment of the Crime of Genocide (1948)	1956
International Convention on the Elimination of All Forms of Racial Discrimination (1965)	1983
International Convention on Economic Social and Cultural Rights (1966)	1983
Convention on the Elimination of all Forms of Discrimination Against Women (1979)	2003
International Convention on the Rights of the Child (1989)	1994
ILO 111 - Discrimination (Employment and Occupation) Convention (1958)	1969
ILO 169 – Indigenous and Tribal Peoples Convention (1989)	Not ratified
International Covenant on Civil and Political Rights (1966)	1983

and prosecutions of ICC crimes. The Government of Afghanistan has promulgated a new Penal Code that now explicitly incorporates Rome Statute crimes and specifies superior responsibility as an available mode of liability. The Penal Code Bill was adopted by Afghanistan's parliament in May 2017 (International Criminal Court 2017).

Laws on non-discrimination and affirmative action for minorities

The criminal code states that persons who forcibly stop the conduct of rituals of any religion, those who destroy or damage 'permitted places of worship' (a term not defined by the code) where religious rituals are conducted, and those who destroy or damage any sign or symbol of any religion are subject to imprisonment for six months to one year or a fine starting from 30,000 afghanis.

The law, pursuant to a 2016 presidential decree, mandates that an added seat in parliament's lower house be reserved for a member of the Hindu and Sikh community. Four seats in parliament are also reserved for Ismailis.

Apart from this, there is little legal reprieve for a member of a minority. They can at most be protected under personal rights. In practice, however, they do not seek justice in court out of fear of being discriminated against. The International Religious Freedom Report 2017 (Bureau of Democracy, Human Rights and Labor 2017) stated that Hindus, Sikhs and Shia minorities felt unsafe seeking justice from courts, as they would be treated unfairly.

The effort on minority rights

The Afghan Professional Alliance for Minority Rights (APAMR) is a civil society organisation that has consistently worked towards minority rights, but there is little effort on the government's part.

Programmes and schemes

No specific schemes and programmes have been launched for minorities, mainly because ethnicities and religions have not been categorised as minorities.

Structures: commissions, ministries, and departments.

The government established the Afghanistan Independent Human Rights Commission (AIHRC) as part of the Bonn Agreement. The commission is composed of nine commissioners, each of whom covers a particular human rights area. The commission has distinct units for women's rights, children's rights and the rights of persons with disabilities, but it does not have a particular unit or commissioner on minority rights. The government also did not publish the commission's 800-page report on the status of minorities in 2012, fearing severe backlash.

Amongst government ministries, the Ministry of Hajj and Religious Affairs aims to ensure and promote harmony amongst all sects of Islam and also arranges for pilgrimages of Hindus and Sikhs.

Conclusion and Recommendations

As can be seen from the above summary, there is a need for the government of Afghanistan to define a set of minority rights to protect minority groups from discrimination and harassment.

On the commitment front, Afghanistan must ratify all relevant international obligations on socio-economic rights and align its national laws to international covenants. Internal discrepancies in the constitution and laws of Afghanistan need to be resolved so as to not contradict or supersede other rights and laws.

The government must also make an effort to identify minorities for special attention. It should collect data, and track and publish reports on these identified minority groups. Targeted programmes and policies with adequate budgets and resources allotted to them would help to economically uplift such groups. Special vehicles to implement such plans would be desirable.

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Annexure II

The State of Minorities in Nepal

Introduction

Nepali society is characterised by religious as well as caste and ethnic diversity, which manifests itself in differing sociocultural practices and socioeconomic disparity. There are 125 caste/ethnic groups in Nepal that speak 123 languages and follow 10 different religions (CBS 2012). Geographically there is great variation in terrain with mountains in the north, hills in the centre, and Tarai plains in the south. The country's population is equally divided between the hill and mountain regions and the southern Tarai plains. While the Tarai has always been home to indigenous peoples (namely Tharu and a few other small minorities), others also live there, such as Madhesis, including both Hindu caste groups and Muslims, and people from the hill and mountain areas.

In terms of population, no caste/ethnic group is in the majority in Nepal. The hill-origin people – specifically the Khas Aryas, who have roots in and practice Hinduism – are the dominant minority (28.8%), followed by the Madhesis, and Janajatis (CBS 2012) (see Table 1 for disaggregation and explanation). Adivasi Janajatis fall outside the Hindu classificatory system and claim to be indigenous to the land.

The diversity of people in terms of religion, geography, caste and ethnicity has given rise to huge variations between and within these groups. In a country of 26,494,504 people, Hinduism is followed by majority of the population (81.3%), from all ethnicities and regions (CBS 2012). Even within Hinduism, there is a great divide based on a social hierarchy defined by caste rules and practices that have trickled down to socioeconomic standing. Buddhism is the dominant minority religion (9%), followed by Islam (4.4%), Kirant (3.1%), and Christianity (1.4%). Prakrit is practised by slightly more than 100,000 people, Bon by 13,000, Jainism by 3000, Bahai by 1000, and Sikhism by 600 (CBS 2012). Among the minority religions, Muslims and Christians are often discriminated against in the mainly Hindu milieu.

While peoples of Nepal speak more than 123 languages, Nepali is the official language of Nepal, as well as the lingua franca. Other languages have been discouraged in the past, when the state was trying to establish the idea of a unified and uniform Nepal, a defining feature of

Table 1. Groups Identified as Minorities

Groups	Population
Adivasi Janajatis (Mountain, Hill, and Tarai)	35.8% (26.1% Hill-Mountain Janajatis and 9.7% Tarai Janajatis)
Madhesi	14.8% (including the Tarai Dalits in this category would take this number to 19.3% of the total population of Nepal; if Tarai Janajatis are also included, it would be 29.0%)
Dalits (Madhesi Dalits and Hill Dalits)	12.6% (8.1% Hill Dalits and 4.5% Tarai Dalits)
Muslims ¹	4.4%
Christians	1.4%

Source: Adapted from Sharma (2014) and CBS (2012)

which was a common language.

Recognising the multi-religious, multi-lingual, multi-ethnic, multi-cultural character of Nepal, Article 18 of the 2015 Constitution guarantees the right to equality for all citizens. The state cannot discriminate against citizens on the grounds of religion, race, sex, caste, tribe or ideological conviction. No person can be discriminated against as untouchable on the basis of their caste, be denied access to any public places, or be deprived of the use of public utilities. However, historical and cultural practices of discrimination remain and constitutional principles and provisions have not been implemented fully in practice. This failure has wider repercussions, both for affected communities and for society as a whole.

The main brunt of discrimination is borne by women. Their access to education and health-care services and their presence in socioeconomic and political arenas is minimal compared to men's (NWC and Shantimalika 2013), but this also varies based on caste, ethnicity, geography, and religion (DfID and World Bank 2006). Many women from the 'lower castes' fare worse than their 'upper-caste' counterparts. While women's representation in elected governments at the federal, state and parliamentary levels has increased considerably since elections were held in 2017 under the 2015 Constitution, there are great internal variations amongst different castes/ethnicities and religions.

There is no official census on the LGBT+ community. Nepal's Supreme Court had mandated in 2007 that the government include a third gender option in all its documents, but this has not yet been executed completely. There have been some advances, however, such as passports providing the option to identify oneself as belonging to a third gender. Activists have remained frustrated with the lack of implementation of a recommendation – made by a committee mandated by the Supreme Court in the same 2007 ruling – that the government should recognise same-sex relationships (Human Rights Watch 2017 and UNDP and USAID, 2014). The new civil code that went into effect in August 2018 has once again remained silent on the question of same-sex marriage.

1. Muslims are the only religious group considered an ethnicity in Nepal.

Table 2. Language Domain Index

Caste/Ethnicity	Mother Tongue Education		Linguistic Access		Language Domain
	Mean (%)	Index	Mean (%)	Index	Index
Bahun	97.1	.9710	100.0	1.0000	0.9855
Chhetri	96.5	.9651	99.8	.9978	0.9814
Tarai Brahman/ Rajput	2.5	.0255	89.2	.8916	0.4586
Tarai Other Caste	3.2	.0323	92.8	.9280	0.4802
Hill Dalit	97.0	.9704	99.8	.9978	0.9841
Tarai Dalit	1.2	.0122	94.5	.9451	0.4787
Newar	0.0	.0000	28.5	.2848	0.1424
Mountain/Hill Janajati	10.2	.1018	32.9	.3287	0.2152
Tarai Janajati	3.3	.0334	74.6	.7456	0.3895
Muslim	52.9	.5290	71.7	.7171	0.6230
Others	5.1	.0509	4.6	.0459	0.0484
Total	45.4	0.4537	75.4	.7543	0.6040

This summary seeks to explore the state of minorities in a country where, while there is no explicit majority, the dominant minorities in terms of caste/ethnicity, religion, and region continue to have power. Two developments between the Interim Constitution of 2007 and the Constitution of 2015, which have a direct bearing on minorities, need to be highlighted. The first is the electoral system. The 2007 Interim Constitution was the first to introduce proportional representation (PR), along with the plurality voting system, in a bid to increase representation from marginalised groups. While the 2015 Constitution retained PR in the parliamentary elections, the proportion of PR seats decreased from the 56% in the 2007 constitution to 40%. The same formula was applied for the newly formed provincial assemblies as well, while specific quotas were set aside for women, Dalit women, and specified minority groups in the local bodies. Secondly, Nepal was declared a secular state through a parliamentary declaration in May 2006, and that status was reaffirmed in the 2007 Interim Constitution. While the 2015 Constitution did not change the country's secular status, it watered it down somewhat by defining secularism as 'religious, cultural freedom including protection of religion and culture handed down from time immemorial' (Constitution of Nepal 2015). The Sanskrit term *sanatan* is used to convey the meaning of 'time immemorial', but is generally understood to be related to Hinduism.

Socio-economic Status

In 2014 a pioneering study on the status of social inclusion in Nepal was undertaken by the Central Department of Sociology/Anthropology (CDSA), Tribhuvan University, which showed widespread disparity between and within caste/ethnic groups. The following tables, taken from the Nepal Multidimensional Social Inclusion Index (CDSA 2014) and supported by data

from the 2011 Census, underscore the poor performances of minorities along various socio-economic indices.

Language

The 2015 Constitution recognises that ‘all languages spoken as the mother tongues in Nepal are the languages of the nation’. Constitutional recognition of the country’s languages grants them greater importance, since language is not only a ‘key element of culture and a marker of identity’ but it also provides a ‘structured set of social conditions for living’, with education in the mother tongue bolstering access to education and employment (CDSA 2014).

The language index shows that the Hindu caste groups of Bahun/Chhetri and Hill Dalits record the highest scores, since Nepali is their mother tongue. Interestingly, although Muslims have their own mother tongue, Urdu, they score highly in this index because of their access to mother-tongue education (in madrasas) and linguistic access. Mountain/Hill Janajati and Newars, who have their own mother tongues, score the lowest in language index. Tarai Brahmans/Rajputs, despite their high socioeconomic status, score quite low in the language index, as their languages are not recognised in terms of mother-tongue education. Thus, despite the provision of mother-tongue education being a crucial element of the government’s 2003 ‘Education for All: National Plan of Action’, mother-tongue teaching is not seen in practice. Thus, mother-tongue education is not only a reflection of the ‘classroom learning situation’ but also ‘represents power relations between the social groups..., placing the dominant language group at the top’ (L. Ghimire n.d.)

Religion

Despite more than 10 religions being practised in Nepal, the 2015 Constitution did not fully commit to secularisation in the real sense, as demonstrated by its definition of secularism. In a country like Nepal with diverse religious groups, it is important for the state to provide equal treatment to each religion. The religion index ‘measures the extent to which religions are treated equally, and the recognition of religions by the state’ (CDSA 2014). As the table below shows, there is religious discrimination of varying degrees against all groups except for Bahuns. However, it also shows that there is a great variety of religious followings and practices, even among those groups falling within the caste hierarchy. Discrimination in these cases is intersectional; for example, Chhetri and Hill Dalits also face religious discrimination. Surprisingly, despite the fact that they are Hindus, Tarai Brahmans/Rajputs also score very low in the index, which probably reflects the fact that their religious festivals are provided less state recognition than the Hindu practices of the hills. That Dalits and the Muslims are discriminated against is a reflection of their ‘low’ caste status for the former and prejudice against the latter. Though there is no data on Christians, as a community that believes in and often practises proselytisation, they fall foul of the 2015 Constitution, which criminalises any act to ‘convert another person from one religion to another or any act or conduct that may jeopardise other’s religion’ (Constitution of Nepal 2015). Since the promulgation of the 2015 Constitution, there have been reports of Christians being harassed, arrested, and jailed, and rising anti-Christian sentiments (USCIRF 2017).

Table 3. Recognition of Religion Index by Broader Social Group

Social Categories	Religion recognized		Absence of religious discrimination		Recognition of religion
	Mean (%)	Index	Mean (%)	Index	Index
Bahun	98.7	.9868	100.0	1.0000	.9934
Chhetri	97.1	.9713	98.2	.9818	.9766
Tarai Brahman/Rajput	77.1	.7712	96.3	.9633	.8673
Tarai Other Caste	77.1	.7712	96.3	.9633	.8673
Hill Dalit	97.9	.9792	92.4	.9236	.9514
Tarai Dalit	96.1	.9610	90.4	.9038	.9324
Newar	92.1	.9211	94.7	.9474	.9342
Mountain/Hill Janajati	93.3	.9331	93.5	.9350	.9340
Tarai Janajati	91.9	.9195	97.4	.9744	.9469
Muslim	90.8	.9079	92.1	.9211	.9145
Others	96.5	.9647	98.9	.9889	.9768
Total	94.4	.9443	96.0	.9600	.9521

Education

Educational attainment is an outcome of and predictor for higher socioeconomic status. Higher educational attainment results in increased economic access, such as gainful employment and opportunities other than subsistence agriculture, which is the main occupation of marginalised caste/ethnic groups. Educational attainment seems to be a factor of sociocultural status. Tarai Dalits and Muslims, who are at the bottom of the social hierarchy, score the lowest education domain while caste/ethnic groups such as Bahuns and Chhetris score the highest. Janajati and Tarai caste/ethnic groups also score low on this index, indicating that a mother tongue other than Nepali is connected to a low score on this index.

Poverty

The CDSA study (2014) uses three indicators of food consumption, food sufficiency, and elementary occupations to calculate the non-poverty index, with higher values implying a more favourable situation. While there is great variation among the caste/ethnic groups, the table below clearly shows that Bahuns have the highest index score and Tarai Dalits have the lowest. Poverty results in other long-term, adverse life outcomes, as will be shown later.

Standard of Living

The CDSA (2014) study calculates the standard of living index based on housing conditions, living conditions, use of cooking fuel, and access to electricity. The standard of living index shows that the Bahun have the highest living standards and the Dalits have the lowest living standards. It is interesting to note that the standard of living of Chhetris, a Hindu caste group,

Table 4. Recognition of Religion Index by Broader Social Group

Caste/Ethnicity	Adult Literacy Rate		Net Enrolment Rate		Basic Schooling Completion Rate		Educational Domain	
	Mean	Index	Mean	Index	Mean	Index	Mean	Index
Bahun	78.5	0.7846	84.1	0.8406	42.3	0.4227	0.6826	
Chhetri	66.4	0.6635	76.9	0.7687	24.9	0.2488	0.5603	
Tarai Brahman/Rajput	80.0	0.8005	79.1	0.7913	45.0	0.4499	0.6805	
Tarai Other Caste	45.0	0.4502	64.1	0.6408	20.7	0.2068	0.4326	
Hill Dalit	51.8	0.5180	67.8	0.6783	9.2	0.0920	0.4294	
Tarai Dalit	23.1	0.2312	49.4	0.4939	9.5	0.0948	0.2733	
Newar	76.5	0.7649	80.6	0.8065	36.4	0.3637	0.6450	
Mountain/Hill Janajati	61.5	0.6152	72.3	0.7232	18.2	0.1817	0.5067	
Tarai Janajati	54.1	0.5406	70.8	0.7084	16.6	0.1659	0.4716	
Muslim	35.4	0.3543	47.1	0.4711	10.9	0.1087	0.3113	
Others	78.0	0.7796	72.1	0.7213	35.3	0.3525	0.6178	
Total	59.6	0.5957	71.1	0.7107	21.9	0.2194	0.5086	

Table 5. The Non-Poverty Index

Caste/ Ethnicity	Food expenditure		Food sufficiency		Elementary occupations		Non- poverty
	Mean	Index	Mean	Index	Mean	Index	Index
Bahun	35.5	0.9204	89.5	0.8947	4.9	0.9553	0.9235
Chhetri	36.4	0.8987	68.1	0.6815	5.9	0.9389	0.8397
Tarai Brahman/Rajput	46.4	0.6607	89.3	0.8934	10.5	0.8675	0.8072
Tarai Other Caste	54.4	0.4689	81.7	0.8168	14.5	0.8052	0.6970
Hill Dalit	53.3	0.4956	56.0	0.5598	11.9	0.8457	0.6337
Tarai Dalit	64.2	0.2357	53.7	0.5369	42.5	0.3683	0.3803
Newar	44.7	0.7000	90.8	0.9079	6.3	0.9335	0.8471
Mountain/Hill Janajati	45.3	0.6857	79.4	0.7938	4.1	0.9682	0.8159
Tarai Janajati	51.9	0.5296	84.4	0.8441	16.1	0.7797	0.7178
Muslim	53.7	0.4863	72.4	0.7237	18.4	0.7450	0.6517
Others	42.7	0.7475	96.7	0.9668	12.0	0.8444	0.8529
Total	44.5	0.7059	77.1	0.7706	10.5	0.8674	0.7813

Source: CDSA 2014

is comparable to that of Tarai Janajati and Muslims, perhaps due to the Chhetris' lack of access to commercial cooking fuel and electricity. This shows that there is great disparity even among the Hindu 'upper caste' groups.

Economic Access

The economic access index calculates the average of the sum of average landholdings and non-agricultural employment. Thus, this index measures access to land, non-agricultural employment, productive resources and non-economic activity. The table below shows that caste/ethnic groups from the Tarai have a higher economic access index, which is mainly due to their landholdings but is also indicative of their access to non-agricultural economic activities. Hill and Tarai Dalits have the lowest economic access index, suggesting a lack of land ownership and a lack of access to other economic activities, resources and means.

Women bear the largest burden of work in Nepal. Their contribution to the agricultural sector is 44.8% and their total labour participation is 54.3% (CBS 2012). Additionally, women provide about 64% of unpaid family labour (CBS 2014). Women's access to economic means in terms of land ownership is limited, with only 19.71% of women owning land (CBS 2012), even though 76.61% of women are involved in agriculture-related occupations (CBS 2014a), with a rising trend of the 'feminisation of agriculture' (CBS 2014b). This also varies by location, however, in that women in the mountains have the lowest ownership of land and those in the Tarai have the highest (CBS 2012). This underscores significant cultural and social barriers to women's land ownership (Dhakar et al, 2016). In addition, 'women's economic activity is still low in non-agriculture sectors, possibly due to a lack of education and a tradition of working in agriculture' (CBS 2014b).

Table 6. The Standard of Living Index

Caste/ Ethnicity	Housing conditions		Living conditions		Access to commercial cooking fuel		Access to household electricity		Standard of living domain
	Mean	Index	Mean (bed- rooms)	Index	Mean	Index	Mean	Index	Index
Bahun	44.9	0.4486	2.86	0.5567	34.1	0.3410	74.9	0.7486	0.5237
Chhetri	26.6	0.2664	2.66	0.4904	23.0	0.2296	58.6	0.5857	0.3930
Tarai Brahman/Rajput	57.8	0.5783	2.83	0.5477	16.0	0.1603	64.1	0.6411	0.4818
Tarai Other Caste	32.7	0.3268	2.57	0.4589	14.1	0.1406	65.1	0.6513	0.3944
Hill Dalit	11.6	0.1165	1.93	0.2501	18.9	0.1887	60.3	0.6028	0.2895
Tarai Dalit	11.2	0.1123	1.82	0.2141	15.1	0.1515	64.3	0.6430	0.2802
Newar	49.3	0.4928	3.17	0.6588	47.0	0.4704	83.3	0.8330	0.6138
Mountain/Hill Janajati	21.9	0.2189	2.49	0.4335	27.4	0.2737	70.2	0.7024	0.4071
Tarai Janajati	18.9	0.1889	2.40	0.4056	23.0	0.2296	70.6	0.7065	0.3826
Muslim	31.6	0.3157	2.45	0.4198	17.1	0.1708	66.5	0.6649	0.3928
Others	67.3	0.6731	3.03	0.6132	26.4	0.2638	71.6	0.7164	0.5666
Total	28.0	0.2802	2.55	0.4541	24.6	0.2457	67.3	0.6726	0.4131

Table 7. Economic Access Index

Caste/Ethnicity	Average landholding		Non-agricultural employment		Economic Access
	Mean (ha.)	Index	Mean (%)	Index	Index
Bahun	0.3290	0.3173	41.7	0.4169	0.3671
Chhetri	0.3517	0.3434	28.5	0.2848	0.3141
Tarai Brahman/ Rajput	0.5799	0.6056	60.4	0.6039	0.6048
Tarai Other Caste	0.6317	0.6651	33.0	0.3304	0.4977
Hill Dalit	0.2153	0.1866	30.7	0.3073	0.2469
Tarai Dalit	0.1895	0.1569	30.5	0.3051	0.2310
Newar	0.1822	0.1486	61.2	0.6121	0.3803
Mountain/Hill Janajati	0.3554	0.3476	27.2	0.2719	0.3098
Tarai Janajati	0.5800	0.6057	30.3	0.3033	0.4545
Muslim	0.4110	0.4115	42.2	0.4223	0.4169
Others	0.2226	0.1951	74.4	0.7440	0.4695
Total	0.3750	0.3702	33.4	0.3337	0.3519

According to the 2011 Census, Chhetris, with one of the lowest landholdings, are mostly engaged in agriculture-related employment (68.59%); for Janajatis, it is 70%; for Hill Dalits, 62%; for Newars, 35.21%; and for Tarai Brahmans, 34.42% (CBS 2014b). This indicates that, while geography is a factor in determining who is engaged in agriculture, it is also a case of 'traditional' economic roles and opportunities for employment in other fields.

Economic Status

The economic status of caste/ethnic groups is a composite index derived from non-poverty, standard of living, and economic access. There is great variation in economic wellbeing among caste/ethnic groups, even within the same geography. While Tarai Brahmans/Rajputs have the highest economic status, Tarai Dalit have the lowest.

Women bear the largest burden of work in Nepal. Their contribution to the agricultural sector is 44.8% and their total labour participation is 54.3% (CBS 2012). Additionally, women provide about 64% of unpaid family labour (CBS 2014). Women's access to economic means in terms of land ownership is limited, with only 19.71% of women owning land (CBS 2012), even though 76.61% of women are involved in agriculture-related occupations (CBS 2014a), with a rising trend of the 'feminisation of agriculture' (CBS 2014b). This also varies by location, however, in that women in the mountains have the lowest ownership of land and those in the Tarai have the highest (CBS 2012). This underscores significant cultural and social barriers to women's land ownership (Dhakal et al, 2016). In addition, 'women's economic activity is still low in non-agriculture sectors, possibly due to a lack of education and a tradition of working in agriculture' (CBS 2014b).

Health and Nutrition

Health and nutrition are taken as both indicators and outcomes of socioeconomic access and status. As seen in the table below, the ‘upper castes’ can better afford health services and safe water, and thus have higher child survival rates and can be inferred to be generally healthier. Tarai Dalits, on the other hand, score the lowest on access to drinking water and modern toilet facilities. Tarai Janajatis and Muslims also score low in this domain.

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Table 8. The Economic Dimension Index

Caste/Ethnicity	Economic Access Index	Non-poverty Index	Standard of Living Index	Economic Dimension Index
Bahun	0.3671	0.9235	0.5237	0.6048
Chhetri	0.3141	0.8397	0.3930	0.5156
Tarai Brahman/ Rajput	0.6048	0.8072	0.4818	0.6313
Tarai Other Caste	0.4977	0.6970	0.3944	0.5297
Hill Dalit	0.2469	0.6337	0.2895	0.3900
Tarai Dalit	0.2310	0.3803	0.2802	0.2972
Newar	0.3803	0.8471	0.6138	0.6137
Mountain/Hill Janajati	0.3098	0.8159	0.4071	0.5109
Tarai Janajati	0.4545	0.7178	0.3826	0.5183
Muslim	0.4169	0.6517	0.3928	0.4871
Others	0.4695	0.8529	0.5666	0.6297
Total	0.3519	0.7813	0.4131	0.5155

Table 9. Health Domain Index

Caste/Ethnicity	Health service affordability		Child survival		Household access to safe water		Household access to modern toilet facilities		Health domain	
	Mean	Index	Mean	Index	Mean	Index	Mean	Index	Mean	Index
Bahun	55.4	0.5540	11.8	0.8816	57.3	0.5733	70.0	0.6996	0.6771	
Chhetri	55.4	0.5537	18.2	0.8180	57.5	0.5747	48.8	0.4883	0.6087	
Tarai Brahman/ Rajput	53.4	0.5337	10.1	0.8989	16.1	0.1612	49.0	0.4905	0.5211	
Tarai Other Caste	57.1	0.5706	18.1	0.8188	16.6	0.1664	19.4	0.1942	0.4375	
Hill Dalit	52.1	0.5214	27.6	0.7237	61.4	0.6144	30.6	0.3062	0.5414	
Tarai Dalit	56.4	0.5642	19.0	0.8103	14.1	0.1410	5.5	0.0555	0.3927	
Newar	60.4	0.6045	13.2	0.8684	64.5	0.6448	75.1	0.7511	0.7172	
Mountain/Hill Janajati	51.8	0.5179	20.6	0.7945	64.9	0.6488	40.9	0.4093	0.5926	
Tarai Janajati	53.9	0.5390	19.2	0.8080	20.8	0.2076	23.2	0.2322	0.4467	
Muslim	53.6	0.5357	32.2	0.6776	18.0	0.1799	20.7	0.2073	0.4001	
Others	59.9	0.5990	7.9	0.9211	24.7	0.2472	67.6	0.6758	0.6108	
Total	54.7	0.5473	18.9	0.8106	47.8	0.4778	41.7	0.4172	0.5632	

water, and thus have higher child survival rates and can be inferred to be generally healthier. Tarai Dalits, on the other hand, score the lowest on access to drinking water and modern toilet facilities. Tarai Janajatis and Muslims also score low in this domain.

Efforts and Results

Nepal has taken various steps to ensure equality and non-discrimination. Along with constitutional provisions, Nepal is also a party to several international conventions to ensure non-discrimination.

While Nepal sends periodic reports on the status of these conventions, it has been widely recognised that implementation is lacking. For instance, an alternative report submitted to the United Nations shows that observance of these conventions is especially inadequate and flawed when it comes to minorities, and that the police force often uses certain laws to harass minorities (LAHURNIP et al, 2018).

The government has enacted several laws and policies against discrimination, as well as for affirmative action for minorities, including the following:

- While Nepal's Supreme Court has mandated that the government have the third gender option on all its forms, this has not yet been completely executed. There has also been no implementation of the 2007 Supreme Court-mandated committee recommendation that the government recognise same-sex relationships.
- With a view to accelerating compliance with the International Covenant on Civil and Political Rights (ICCPR), the Government of Nepal has many legal and constitutional measures in place, including the 2015 Constitution, the Act Relating to Children 1992, the Organisations Registration Act 1978, the Civil Liberties Act 1954, the Local Self- Governance Act 1999, the Torture Related Compensation Act 1996, the Legal Aid Act 1998, the Nepal Treaties Act 1990, the Prisons Act 1962 and Prisons Rules 1963, the Human Rights Commission Act 1997, and the Kamaiya Labour (Prohibition) Act 2002. However, Nepal still faces growing expectations among the people for the effective implementation of the ICCPR (NHRC 2007).

Table 10. International Conventions Ratified by Nepal Government

Conventions	Year ratified
Convention on Prevention and Punishment of the Crime of Genocide (1948)	1969
International Convention on the Elimination of All Forms of Racial Discrimination (1966)	1971
International Covenant on Economic, Social and Cultural Rights (1966)	1991
Convention on the Elimination of all Forms of Discrimination Against Women (1979)	1991
Convention on the Rights of the Child (1989)	1990
Discrimination (Employment and Occupation) Convention (1958) (ILO 111)	1974
Indigenous and Tribal Peoples Convention (1989) (ILO 169)	2007
International Covenant on Civil and Political Rights (ICCPR) (1966)	1991

- The Child Labour (Regulation and Prohibition) Act 2000 recognises the rights of children to identity and non-exploitation, regardless of their background. There have also been significant efforts to promote minority rights through programmes and schemes.
- The Government of Nepal endorsed the National Employment Policy in March 2015 to promote equal access to employment opportunities and inclusive workspaces.
- The 5th Human Rights National Action Plan 2015–2020 is being implemented to ensure that the ICCPR is executed at the ground level, but the implementation aspect of this action plan has been very weak and most district administrators and relevant agencies are found to be unaware of issues relating to the action plan and its implementation (INSEC 2017).
- The national campaign Education for All (EFA) began in 2004 with three primary objectives: building institutional capacity in education at all levels of decision-making (e.g., central, district, and school); improving the efficiency and quality of education services; and improving equity in access to education, especially for girls and students from disadvantaged communities. It is a fairly successful programme, which has helped reduce unequal access to education to some extent. One of the goals of School Sector Development Plan (SSDP) 2016–2023 is to ‘ensure that the education system is inclusive and equitable in terms of access, participation and learning outcomes, with a special focus on reducing disparities among and between groups having the lowest levels of access, participation and learning outcomes’ (MoE 2016). However, it remains to be seen whether resources will be provided for the effective implementation of this goal.
- Gender Equality and Social Inclusion (GESI) units have been established in a number of key ministries to address the issue of marginalisation of different social groups, but they have neither clear, separate funding nor actual executive power.

From an institutional point of view, the government has established regular courts, human rights committees and human rights cells within the Ministry of Home Affairs, the Nepal Army and the Nepal Police, while the National Human Rights Commission, the National Women’s Commission, and the National Dalit Commission are other constitutional bodies that ensure access to justice.

While there have been various efforts, a major problem is that the executive wing of the government and the police forces do not always comply with the Supreme Court’s judgments. Most of the police force are from the upper castes and often refuse to file reports of discrimination in order to ‘maintain social order’. Minorities are also constantly under threat due to the frequent misuse of laws for the gain of the dominating castes. Dalits, women, and other minorities are highly underrepresented in the police force, and the system is quite exclusionary (Sob, 2007). Apart from this, lack of proper funding and clear executional power to the commissions and units that have been formed is also a major problem. Often, key stakeholders have also not been consulted when forming policies. An example would be the Education for All Campaign, where due to a lack of funding, most of it was centralised, rendering the campaign unable to focus on key issues local to particular regions. There was little real consultation with representative groups, notably teachers, communities, and organisations concerned with the rights of minorities (Vaux et al, 2006). Similar concerns plague other programmes and committees.

Conclusion and Recommendations

In recent years, especially since the promulgation of the 2015 Constitution, the Hindutva movement has gained a lot of following, and extreme right-wing and left-wing ideologies have been taking centre stage in Nepal. The USCIRF Report (2017) lists this as one of the reasons why religious freedom is under threat. Muslims and Christians have already been experiencing the effects of this. According to the report, they feel less safe in recent years than in the previous decade.

Madhesis have sought greater participation since 2007, setting the foundation for federalism. While their agitations were initially started to gain greater political representation and power, it has turned into a broader social movement about their unequal standing compared to hill-origin populations and the need for economic and social inclusion and support. However, the movement itself has since seen ruptures, mainly because of the unclear composition of the Madhesis (Y. Ghimire, 2015). The Madhesis consist of different castes from diverse socioeconomic, ethnic and religious backgrounds – a situation that has contributed to multiple factions and regional parties wanting to gain dominance. However, while the increasing power of regional parties may contribute to higher representation of the dominant population of that particular region, the lowest of the low castes are still under threat. In addition, the current factionalism in the movement may lead to stronger nationalist and homogenising ideologies taking the forefront. This will only further hurt the cause of minority rights and socioeconomic access in the country.

It becomes apparent that, while there is a significant movement towards social and civil rights in Nepal, the execution of such laws and schemes has been severely lacking. Hopefully, with reserved quotas guaranteeing greater representation, the power of such groups will increase, enabling them to implement adequate policies.

In the case of religious freedom, laws that prohibit religious freedom need to be revoked, but more importantly, the government's security organs have to be checked in order to prevent minority religions and castes from being harassed. Policies that ensure equal economic and social access, such as the Human Rights Action Plan and the Education for All Scheme, need to be revised, taking into account the experience and needs of minorities. They also need to be funded properly and proportionately.

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Annexure III A

Research Methodology

Mostly desk research, using a variety of public sources, with the possibility also to administer light surveys to document minority voices. As helpful tool for evidence gathering, below, longlist of indicators, grouped in 'outcome', 'commitment' and 'effort', by the principal socio-economic rights, and corresponding sources of data as well as methods, drawing extensively from UN's Human Rights Indicators framework.

Indicators / Rights	Right to Work/Income/Standard of living			Right to HEALTH	Right to EDUCATION
	WORK	FOOD	HOUSING		
<p>Outcome Indicator</p> <p>1.1 Minority Condition</p> <p>Sources:</p> <p>i. Statistical data</p> <ul style="list-style-type: none"> - census - demographic surveys - health and education surveys, - poverty surveys - regional data - Specific sectoral data <p>ii. Public reports</p> <p>iii. Research reports</p>	<p>i. Employment rates under minimum wage regulations</p> <p>ii. workforce covered by social security</p> <p>iv. women and men labour force participation rates</p> <p>v. children in labour</p> <p>vi. workforce in bonded labour</p> <p>vii. workforce in hazardous conditions</p> <p>viii. workforce not covered by fair labour laws</p>	<p>i. Chronic hunger</p> <ul style="list-style-type: none"> - Under-weight among under5 adults with low body mass <p>ii. Gender inequality</p> <ul style="list-style-type: none"> - underweight boys and girls <p>iii. freedom from food insecurity</p> <ul style="list-style-type: none"> - HHs not able to have 2 square meals a day - HH expenditure on food as proportion of total expenditure <p>iv. access to nutritional food</p> <ul style="list-style-type: none"> - Inadequate micro-nutrient intake - Inadequate Protein intake 	<p>i. Homelessness</p> <ul style="list-style-type: none"> - proportion of homeless persons <p>ii. security of tenure</p> <ul style="list-style-type: none"> - Proportion of HH with formal ownership - Incidence of those squatting - Incidence of those evicted <p>i. Habitable housing</p> <ul style="list-style-type: none"> - unit area - families living per HH <p>iv. affordable housing</p> <ul style="list-style-type: none"> -Housing expenditure as proportion of monthly exp. <p>v. accessible housing</p> <ul style="list-style-type: none"> -% of housing 	<p>i. Access to affordable primary health care</p> <ul style="list-style-type: none"> - Life Expectancy at Birth - poor with access to affordable drugs - doctors per unit area - Primary health units per area <p>ii. eliminate avoidable child mortality</p> <ul style="list-style-type: none"> - under 5 mortality - IMR - % under 5 immunised against communicable diseases <p>iii. eliminate avoidable maternal mortality</p> <ul style="list-style-type: none"> - Maternal mortality rate - % births attended by skilled health personnel - % mothers with pre and post-natal care 	<p>i. Universal Primary Education (PE) for boys/ girls:</p> <ul style="list-style-type: none"> - net enrolment ratio in PE. - proportion of pupils starting grade 1 that reach grade 5 - Literacy rate (15-24 yrs) - Drop-out rates in PE <p>ii. free PE for all</p> <ul style="list-style-type: none"> - Proportion of PE pupils in State schools, not paying fees <p>iii. Eradicate illiteracy</p> <ul style="list-style-type: none"> - adult literacy rate - Literacy rate 15-24 yrs <p>iv. equal access for all to secondary education</p> <ul style="list-style-type: none"> - Net enrolment rate in Secondary Education (SE), - Ratio of girls to boys in SE - Drop-out rates in SE - Proportion of children with

Indicators / Rights	Right to Work/Income/Standard of living			Right to HEALTH	Right to EDUCATION
	WORK	FOOD	HOUSING		
<p>1.2 Minority Experiences Important especially because of the absence of much disaggregated data</p> <p>Sources/methods: - Focus Group - Perception survey [Refer section 3, 'recording minority voices', for further on this]</p>	<p><i>i. Perceptions of discrimination -employment in formal and informal sector</i> -women</p> <p><i>ii. Processes of discrimination</i> -skills, credit, regulation, violence</p>	<p>i. Perceptions of discrimination -in public provisioning of food and nutrition</p> <p>ii. Processes of discrimination -exclusion from counting</p>	<p>units available to disabled: the poor in housing</p> <p>iv. access to services and infrastructure - % houses with safe drinking water -% houses with sanitation facilities - % houses with electricity - % houses with roads.</p> <p>i. Perceptions of discrimination -homelessness tenure/eviction/squatters segregation and rental -public provision of housing</p>	<p>iv. men and women having access to safe contraceptives - rate of use among poor</p> <p>v. Eliminate HIV/AIDS - HIV prevalence among pregnant mothers - condom use rate</p> <p>vi. eliminate communicable diseases - % households with clean drinking water - % of HH with access to sanitation - % of children immunised</p> <p>vii. eliminate gender inequality in access to health - sex ratio -disability adjusted life years lost (men and women)</p> <p>i. Perceptions of discrimination</p>	<p>disabilities attending SE</p> <p>vi. Free SE to all -Proportion of secondary school pupils in State schools not paying school fees, disaggregated for the poor and the non-poor - Average fees paid by secondary school pupils in State schools</p> <p>vii. Eliminate gender disparity in PE and SE - Ratio of girls to boys in PE and SE - Ratio of literate females to males, 15-24</p> <p>viii. Quality of PE and SE - Pupil-teacher ratio - Teacher-classroom ratio - % PE/SE pupils receiving textbooks free of charge</p>

Indicators / Rights	Right to Work/Income/Standard of living			Right to HEALTH	Right to EDUCATION
	WORK	FOOD	HOUSING		
<p>2. Structural Indicator</p> <p>2.1 Commitments on the sector</p> <p>Sources:</p> <p>i. Review of laws, case judgements</p> <p>ii. review of international treaty bodies. [Refer section 4 for sources on this] (structural)</p> <p>2.2. commitment to apply those without discrimination + action to undo discriminations</p> <p>Source:</p> <p>i. Review of laws, case law, judgements</p>	<p>i. Domestic laws on employment and labour</p> <p>ii. Precedents in legal judgements</p> <p>i. Ratification of international treaties:</p> <p>ILO, ICESCR 1966, ICERD 1965, CEDW 1979, CRPD 2006..</p> <p>i. Prohibit discriminatory practices</p> <p>ii. Positive action:</p> <p>-informal sector workers social security</p> <p>-affirmative action in public employment/ equal opportunity in private</p> <p>-disabled</p>	<p>i. Domestic laws on food security</p> <p>ii. Precedents in legal judgements.</p> <p>iii. Ratification of international treaties: ICESCR.</p> <p>i. Prohibit discriminatory practices</p> <p>i. Positive action: Dalits, women, girls in RTI acts</p>	<p>-poor services:</p> <p>ii. Processes of discrimination -not counted</p> <p>i. Domestic laws on Housing and shelter</p> <p>iii. Precedents in legal judgements</p> <p>i. Ratification of international treaties: ICERD, CRPD..</p> <p>i. Prohibit discriminatory practices</p> <p>ii. Positive action</p> <p>Quotas for Dalits, minorities, women, disabled</p> <p>Inheritance rights to women</p>	<p>-poor public health provision</p> <p>ii. Processes of discrimination</p> <p>i. Domestic laws on health access</p> <p>i. Precedents in legal judgements</p> <p>iii. Ratification of international treaties: ICESCR, ICERD, CEDW, CRC 1989, CRPD...</p> <p>i. Prohibit discriminatory practices</p> <p>ii. Positive action: Nutrition,</p>	<p>i. Perceptions of discrimination -public provisioning of PE and SE, and vocational</p> <p>ii. Processes of discrimination</p> <p>i. Domestic laws on education and literacy</p> <p>ii. Precedents in legal judgements</p> <p>iii. Ratification of international treaties: ICESCR, ICERD, CEDW, CRC, CRPD..</p> <p>i. Prohibit discriminatory practices:</p> <p>ii. Positive action: -special programmes - child labour - girls</p>

Indicators / Rights	Right to Work/Income/Standard of living			Right to HEALTH	Right to EDUCATION
	WORK	FOOD	HOUSING		
ii. Review of international treaty bodies... [see Section 4 for sources]	- women/minority women				
3. Process Indicator 3.1 Efforts to translate commitment into results Sources: i. review of policy and programme documents ii. review of national budgets; public expenditure accounts. iii. review of admn. reports of national institutions	<i>i. Public policy framework, especially with an eye to deliver for minorities:</i> - targets - guidelines - inspection and regulatory frameworks -resource allocations <i>i. Information about key regulators, inspectors, ombudsman and related mechanisms</i>	<i>i. Public policy framework especially with an eye to deliver for minorities:</i> - targets - guidelines - inspection and regulatory frameworks -resource allocation <i>ii. Information about key regulators, inspectors, ombudsman and related mechanisms</i> iii. Findings of investigations, inquiries and reviews	<i>i. Public policy framework especially with an eye to deliver for minorities:</i> - targets - guidelines - inspection and regulatory frameworks -resource allocation <i>ii. Information about key regulators, inspectors, ombudsman and related mechanisms</i> iii. Findings of investigations, inquiries and reviews	i. Public policy framework especially with an eye to deliver for minorities: - targets - guidelines - inspection and regulatory frameworks -resource allocations ii. Information about key regulators, inspectors, ombudsman and related mechanisms iii. Findings of investigations, inquiries and reviews	

Indicators / Rights	Right to Work/Income/Standard of living			Right to HEALTH	Right to EDUCATION
	WORK	FOOD	HOUSING		
<p>iv. Review of proceedings of UPR/ international treaty bodies</p> <p>[See section 4 for sources]</p> <p>v. review of NGO documents</p> <p>vi. Review of media reports</p>	<p>ii. Findings of investigations, inquiries and reviews</p> <p>– concerns highlighted by domestic and international human/minority rights monitoring bodies (eg. UN treaty monitoring committees)</p> <p>ii. Allegations and concerns raised by NGOs and other civil society mechanisms such as media reports</p>	<p>iii. Findings of investigations, inquiries and reviews</p> <p>– concerns highlighted by domestic and international human/minority rights monitoring bodies (eg. UN treaty monitoring committees)</p> <p>iii. Allegations and concerns raised by NGOs and other civil society mechanisms such as media reports</p>	<p>iii. Findings of investigations, inquiries and reviews</p> <p>– concerns highlighted by domestic and international human/minority rights monitoring bodies (eg. UN treaty monitoring committees)</p> <p>iv. Allegations and concerns raised by NGOs and other civil society mechanisms such as media reports</p>	<p>– concerns highlighted by domestic and international human/minority rights monitoring bodies (eg. UN treaty monitoring committees)</p> <p>iii. Allegations and concerns raised by NGOs and other civil society mechanisms such as media reports</p>	<p>– concerns highlighted by domestic and international human/minority rights monitoring bodies (eg. UN treaty monitoring committees)</p> <p>iii. Allegations and concerns raised by NGOs and other civil society mechanisms such as media reports</p>

Annexure III B

Data collection, Methods and Sources

UN Mechanisms

Below, international treaties and links to corresponding treaty bodies and documentations of their reporting cycles:

Treaty	Treaty body	Weblink*
International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966	UN Committee on Economic, Social and Cultural Rights (CESCR)	http://ohchr.org/en/hrbodies/cescr/pages/cescrindex.aspx
International Convention on Elimination of All Forms of Racial Discrimination (ICERD), 1965	UN Committee on the Elimination of Racial Discrimination. (CERD)	http://www2.ohchr.org/english/bodies/cerd/
Convention on Elimination of All Forms of Discrimination against Women (CEDW), 1979	UN Committee on the Elimination of Discrimination against Women (CEDAW)	http://www.un.org/womenwatch/daw/cedaw/committee.htm
Convention on the Rights of the Child (CRC), 1989	UN Committee on the Rights of the Child (CRC)	http://www.ohchr.org/EN/HRBodies/CRC/Pages/CRCIndex.aspx
Convention on the Rights of Persons with Disabilities (CRPD), 2006	UN Committee on the Rights of Persons with Disabilities (CRPD)	http://www.ohchr.org/EN/HRBodies/CRPD/Pages/CRPDIndex.aspx
The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 1990	UN Committee on Migrant Workers (CMW)	http://www.ohchr.org/EN/HRBodies/CMW/Pages/CMWIndex.aspx
ILO 111 Discrimination Convention	ILO	http://www.ilo.org/dyn/normlex/en/f?p=NORMLEX-PUB:12100:0::NO::P12100_ILO_CODE:C111
ILO 169 Convention Concerning Indigenous and Tribal Peoples, 1989.	ILO	http://www.ilo.org/dyn/normlex/en/f?p=NORMLEX-PUB:12100:0::NO::P12100_ILO_CODE:C169

* Each site has an archive of useful documents related to reporting cycle, mostly under 'The Work of the Committee' section, categorized by: 'State party reports', 'List of Issues', 'Replies to List of Issues (Lols)', and 'Concluding Observations', or in case of ILO, under 'Key Documents', as 'Country profiles'.

And below that on Universal Periodic Review (UPR)

UPR reviews the human rights record of UN member countries, providing states the opportunity to declare what actions they have taken to improve the human rights situation in their country, and to fulfil their human rights obligations. There have been two cycles of UPRs, 2nd having just concluded. This is the most relevant for us.

All UPR related documents are available at link below, arranged by country:
<http://www.ohchr.org/EN/HRBodies/UPR/Pages/Documentation.aspx>

Minority Voices

Important to foreground understanding in minority voices – of experiences, opinions, and thoughts – to fill the large gap in disaggregated statistical data, and to contribute to bolstering minorities' autonomy and agency. This mostly relates to 'outcome' part of evidence, although some also relate to 'process'.

Hear minorities on

- The status of minorities as they see it, especially on socio-economic rights
- How minorities themselves differ, in their situation and access to rights
- Why minorities do poorly (across the 3 rights clusters – Income, health, education)?
- What and who is to blame, according to them?
- The role of discrimination in undermining minorities' access to rights
- How discrimination plays out in different contexts: different minorities/rights arenas
- Their hopes and expectations about change
- What community/civil society efforts are underway/needed

Use a combination of tools:

- a. Focus group discussion, with a cross section of respondents, to understand minorities' opinions about discrimination, its drivers and processes, and ways to challenge it.
 - Organise at least one FGD, towards the end of data collection process
 - 10-15 respondents, mix of minority communities, mix of female and male; mix of old and young, from different walks of life and different socio-economic strata.(Alternatively, and preferably, organise multiple FGDs with different mixes of audiences – one for women only from all minorities; another, youth; another only the most marginalised minority group..)
 - Moderator to facilitate discussions, by introducing topic, prompting questions, facilitating discussion, and encouraging debate, all to elicit opinions and view-points
- b. Preferably, and if resources allow, also a light perception survey
 - to complement FGDs (the qualitative understanding of the phenomenon of discrimination that FGD would enable, with quantitative insights on incidence, helping generalise findings for the entire population)

- Method: For ease, ideally online/web-survey, but since there is a large set of potential respondents without access to Internet, also face-to-face survey. whether it would have to be one or the other, or can be both, needs to be confirmed.
- Sample size: small (250-400), representative of the population, both minorities (and the different groups within that) as well as population as a whole, suitably weighted.
- Sampling: (i) mix of minority and non-minority: to get a handle on varying perceptions about discrimination (existence, drivers and processes); and (ii) mix of minority groups: to understand intra-minority experiences of discrimination (in specific instances – work, housing, basic services, education, health care..), and experiences as well as opinions about challenging those.

SOUTH ASIA STATE OF MINORITIES REPORT 2018

Exploring the Roots

South Asia's minorities - religious and linguistic groups, especially women and those from Dalit backgrounds amongst them, and the many indigenous/advansi communities, besides sexual minorities - make up disproportionate numbers of the poor and excluded in each country, suffering discrimination in the socio-economic sphere and denial of the most basic human rights.

South Asia State of Minorities Report 2018: Exploring the Roots seeks to examine the reasons for the poor outcomes for minorities in South Asia, shining a light specifically on their socio-economic situation and their access to rights and opportunities. South Asia demonstrates amply how failures to prevent exclusion and discrimination against specific minorities have opened the way for graver abuse of human rights and violence against those groups.

The South Asia State of Minorities Report is planned as a tool for advocacy. It is hoped that the periodic reports on outcomes for minorities and the quality of state provisioning for them, will spur public debate on the subject in the region and create the conditions for state parties and the SAARC to agree to give serious consideration to issues of minorities and how to deliver for them. The purpose of the project is about promoting citizenship, a central challenge of the 'deepening democracy' agenda in the region. This publication is the second in the series following the publication of South Asia State of Minorities Report 2016: Mapping the Terrain.

The South Asia Collective is a group of human rights activists and organisations that dream of a just, caring and peaceful South Asia, that came together in December 2015 to document the condition of the region's minorities - religious, linguistic, ethnic, caste and gender, among others - hoping this would help in better outcomes for South Asia's many marginalised groups.