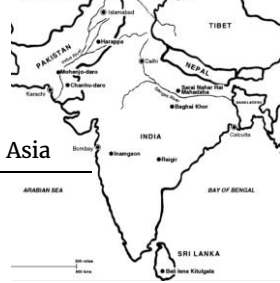




# Navigating Business and Human Rights in South Asia

**COMMON GOOD  
FOUNDATION**

*Dignity Rights Justice*



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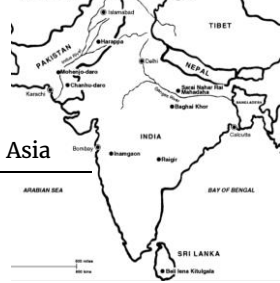
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## Report Authored by:

Regina Paulose, Kathryn Peer, and Taanya Trivedi

[Author Biography available at: [www.actwithus.org](http://www.actwithus.org)]

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## Introduction

The Common Good Foundation, Inc. is a non-profit organization which is based in the United States. The Common Good Foundation (CGF) originally wrote this report with the intention of participating in the 2020 United Nations South Asia Regional Business Forum on Human Rights (Forum). The Forum was delayed due to the COVID 19 pandemic. Although the Forum may not proceed in 2020, CGF believes the opportunity to raise awareness regarding the link between corporate involvement and rights related issues in South Asia should not be missed.

This report is divided into three parts. The first part briefly discusses the United Nations Guiding Principles on Business and Human Rights, complimentary international frameworks, and regional initiatives. The second part of this report focuses briefly on thematic areas: child rights, indigenous rights, and the environment. The third part of this report provides recommendations that are consistent with regional initiatives and international treaties.

## Business and Human Rights frameworks in South Asia

The states that are considered to be in South Asia are India, Pakistan, Afghanistan, Bangladesh, Sri Lanka, Nepal, Afghanistan, Bhutan, and Maldives. These states mainly work through the South Asian Association for Regional Cooperation (SAARC). In March 2020 almost all Prime Ministers in the region attended a video conference to address COVID 19. The delegate from Pakistan noted that South Asia is the “least integrated” region in the world.<sup>1</sup> Geopolitics has caused some of the SAARC agenda to come to a standstill since 2014.<sup>2</sup> Regardless, the South Asian region has different mechanisms it can utilize to enhance cooperation among these countries particularly in the area of business and human rights.

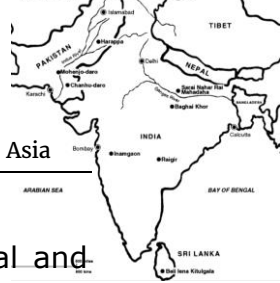
## South Asian Association for Regional Cooperation (SAARC)

The South Asian Association for Regional Cooperation (SAARC) is an intergovernmental organization comprised of South Asian states, established in 1985.<sup>3</sup> Among its stated objectives is “to strengthen cooperation with other developing countries; to strengthen cooperation among themselves in international

<sup>1</sup> Hindustan Times, “Coronavirus: Pakistan raises J&K at SAARC meet: Gautam Gambhir slams” March 15, 2020, <https://www.youtube.com/watch?v=ASqU1JP2GSM>

<sup>2</sup> Swagato Ganguly, “SAARC and Geopolitics” South Asian Survey, 23(1): vii-viii (2016) <https://doi.org/10.1177/0971523118774198>

<sup>3</sup> See South Asian Association for Regional Cooperation, available at: <http://saarc-sec.org/about-saarc>.



forums on matters of common interests; and to cooperate with international and regional organizations with similar aims and purposes.”<sup>4</sup> SAARC has done a tremendous job in creating programs that assist in achieving its stated objectives. Examples include the SAARC Environment Center (SEC), SAARC Summits on tourism, summits dedicated to promoting academia and protecting children, and culture. It is clear that the region has had a strong commitment<sup>5</sup> towards making progress on certain issues in order to benefit the people of the region.

### **Related Entities**

The other entities in the region include the South Asian Economic Union (SAEU), South Asian Free Trade Area (SAFTA), and the SAARC Development Fund (SDF).<sup>6</sup> Another entity which the South Asian countries take into consideration is the discussions, policies, and mechanisms created by the Association of South East Asian Nations (ASEAN). One such entity that has been created from ASEAN is the Asian Economic Community (AEC).<sup>7</sup> “The AEC is essentially a Free Trade Area (FTA) Plus model, in which the barriers to movements of goods, capital, labor and services will be reduced as much as possible. ASEAN is designed neither as a customs union with common external tariffs, nor as an economic union with a common currency.”<sup>8</sup> Both ASEAN and SAARC have moved towards working together in recent years.<sup>9</sup>

### **UN Guiding Principles on Business and Human Rights (GPBHR)**

In 2004, the United Nations (UN) attempted to create a set of norms related to the responsibilities of corporations and human rights. In 2005, as a result of “vehement” opposition from corporations, the UN appointed Special Representative (SR) John

<sup>4</sup> *Ibid*

<sup>5</sup> Some question the efficacy of SAARC’s output. “A total of 17 different agreements and conventions have been signed, covering aspects related to trade, development and social welfare. One may wonder about the consequence of these talks and agreements. But their implementation has remained dismally poor, when compared with other similar regional associations in Africa, East Asia, Latin America and North America.” Dr. Hemant R. Ojha, “The Future of SAARC” Southasia Institute of Advanced Studies, <https://www.sias-southasia.org/blog/the-future-of-saarc/>

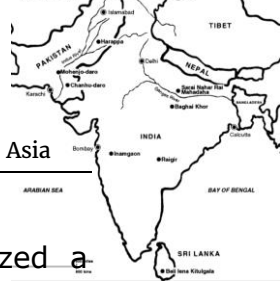
<sup>6</sup> SAARC Eighteenth Summit, “Kathmandu Declaration” November 26 – 27, 2014, para 2-7, [http://saarc-sec.org/uploads/digital\\_library\\_document/Kathmandu-18thSummit26-27Nov2013.pdf](http://saarc-sec.org/uploads/digital_library_document/Kathmandu-18thSummit26-27Nov2013.pdf)

<sup>7</sup> See ASEAN Economic Community, <https://asean.org/asean-economic-community/>

<sup>8</sup> SAARC Secretariat, “Next Steps to the South Asian Economic Union” pg. 2, <http://www.sasec.asia/uploads/publications/next-steps-to-saeu.pdf>

<sup>9</sup> ASEAN Secretariat News, “ASEAN and SAARC Secretariats Enhance Relation” February 28, 2013, <https://asean.org/asean-and-saarc-secretariats-enhance-relation/>





Ruggie to the position.<sup>10</sup> Eventually, SR Ruggie created and operationalized a Business and Human Rights Framework which was based on three pillars: protect, respect, and remedy.<sup>11</sup> In summary, states have a duty to protect against human rights abuses that are perpetrated by third parties. Businesses should act with due diligence to respect human rights, and finally, victims should be given access to remedies when violations occur.<sup>12</sup> This evolved into *The Guiding Principles on Business and Human Rights* adopted in March 2011 by the UN Human Rights Council.

The GPBHR contains 31 principles which envelop the three pillars of protect, respect, and remedy. The GPBHR is not legally binding however it sets a global standard on how businesses should conduct their entities while respecting and promoting human rights. **Table 1** lists a summary of the GPBHR. The GPBHR can be viewed as having two pathways, one path which addresses state responsibilities and the other which addresses corporate responsibilities.

**Table 1: GPBHR Summary**

Principles for States	Principles for Businesses
#1 States must protect against human rights abuses within their territory – including against violations by businesses.	#11 Businesses should respect human rights.
#2 States should set out clear expectations that human rights are to be respected by business throughout their operations in the territory of the state.	#12 Businesses are to respect internationally respected human rights – as described in international instruments.
#3 States have a “duty to protect” and therefore should enforce laws, provide effective guidance, and encourage business to communicate how they address human rights impacts.	#13 Businesses should avoid causing or contributing to human rights and address or mitigate impacts should they occur.

<sup>10</sup> For a complete history see Business-Human Rights, “The UN ‘Protect, Respect and Remedy’ Framework for Business and Human Rights” available at <https://www.business-humanrights.org/sites/default/files/reports-and-materials/Ruggie-protect-respect-remedy-framework.pdf>.

<sup>11</sup> These are sometimes referred to as the “Ruggie Principles.”

<sup>12</sup> Human Rights Council, “Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie” A/HRC/17/31, para 6, March 21, 2011.

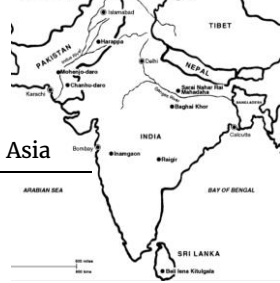


Principles for States	Principles for Businesses
#4 States should take additional steps to protect against abuses that are committed by state owned enterprises.	#14 Businesses should respect human rights regardless of their size.
#5 States should exercise adequate oversight over businesses to ensure human rights are respected.	#15 Businesses should meet their responsibility to protect human rights through policy commitment, due diligence, and remediation.
#6 States should promote awareness of and respect for human rights.	#16 Businesses should express their commitment to human rights through policy statements that have been approved at the highest levels and are publicly available and communicated internally to all persons.
#7 States should ensure that businesses that operate in conflict affected areas are not involved in human rights abuses.	#17 Businesses should carry out due diligence.
#8 States should ensure that its institutions observe and are aware of human rights obligations and offer appropriate information, training, and support when shaping business practices.	#18 Businesses should identify and assess any actual or potential adverse human rights impacts.
#9 States should maintain adequate domestic policy to meet rights obligations.	#19 Businesses should integrate findings from their impact assessments and take appropriate actions.
#10 States should ensure multilateral institutions neither restrains their duties to protect or hinder businesses from respecting human rights, encourage these institutions to promote and protect human rights, and promote shared understanding of the GPBHR.	#20 Businesses should track their responses to adverse human rights impacts.
#25 States must take appropriate steps to ensure through appropriate means -	#21 Businesses should communicate their human rights impacts to their stakeholders.



Principles for States	Principles for Businesses
those affected have access to an effective remedy.	
#26 States should ensure access to remedy in domestic judicial systems.	#22 Businesses should cooperate or provide for remediation through legitimate processes.
#27 States should provide effective and appropriate non-judicial grievance mechanisms to remedy business related human rights abuse.	#23 Businesses should comply with international laws (compliance).
#28 States should consider facilitating non-state based grievance systems to deal with business related human rights abuse.	#24 Businesses should prevent and mitigate severe violations.
#31 State and non-state based mechanisms should be legitimate, accessible, predictable, equitable, transparent, rights compatible, source of continuous learning, based on engagement and dialogue.	#29 Businesses should establish or participate in effective grievance mechanisms for communities or people adversely impacted.
	#30 Industry and multi-stakeholder initiatives for respect for human rights standards effective grievance mechanisms are available.
	#31 State and non-state based mechanisms should be legitimate, accessible, predictable, equitable, transparent, rights compatible, source of continuous learning, based on engagement and dialogue.

With a general overview of the business and trade related organizations which exist in the South Asia region, CGF now focuses on issues to the specific areas that regional organizations and state parties should consider when determining the purpose and effectiveness of the GPBHR in South Asia.



## Areas of Review

All the countries which make up South Asia have expressed a commitment to current international human rights treaties. The only treaty that does not have universal ratification among the South Asian nations is the 1951 United Nations Convention Relating to the Status of Refugees (Refugee Convention). Even so, the Refugee Convention is considered to be part of customary international law. The region is clearly committed to issues relating to migrants and refugees based on the total endorsement by the parties in the region to the two Global Compacts, the Global Compact on Refugees and the Global Compact for Migration.<sup>13</sup>

This report will cover the following thematic issues: Child Rights, Indigenous Rights, and the Environment. The following areas are not exhaustive but these issues are generally interconnected with one another and also provide rich examples which highlight tensions with GPBHR in South Asia.<sup>14</sup>

## Child Rights

Child rights are set out in conventions such as the Minimum Age to Employment Convention (1973) (No. 138), Worst Forms of Labour Convention (1999) (No. 182), and the United Nations Convention on the Rights of the Child (1989). Child labor is defined as “work that deprives children of their childhood, their potential and their dignity, and that is harmful to physical and mental development.”<sup>15</sup> Children are often the worst victims of this exploitation due to factors such as “poverty, social norms condoning [exploitation], lack of decent work opportunities for adults and adolescents, migration, and emergencies.”<sup>16</sup> The International Labour Organization (ILO) reports that “millions of South Asian children remain trapped in child labour.”<sup>17</sup> In 2011 the South Asia Initiative to End Violence against Children (SAIVAC) became an “apex body” of SAARC, and its mission was to end all forms of violence against

<sup>13</sup> See United Nations Global Compact, <https://www.unglobalcompact.org/>

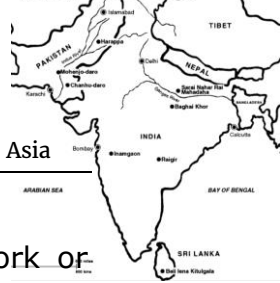
<sup>14</sup> Memorandum of Understanding, “The South Asian Initiative to End Violence against Children (SAIEVAC)” available at: [https://www.ilo.org/wcmsp5/groups/public/---dgreports/---jur/documents/genericdocument/wcms\\_439878.pdf](https://www.ilo.org/wcmsp5/groups/public/---dgreports/---jur/documents/genericdocument/wcms_439878.pdf)

<sup>15</sup> ILO, “What is Child Labour” available at: <https://www.ilo.org/ipec/facts/lang--en/index.htm>

<sup>16</sup> UNICEF, “Child labour and exploitation” available at: <https://www.unicef.org/india/what-we-do/child-labour-exploitation#:~:text=Child%20labour%20and%20exploitation%20are,social%20inequities%20reinforced%20by%20discrimination.>

<sup>17</sup> Sherin Khan and Scott Lyon, “Measuring Children’s Work in South Asia” ILO, 2015, pg 7, [https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---sro-new\\_delhi/documents/publication/wcms\\_359371.pdf](https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---sro-new_delhi/documents/publication/wcms_359371.pdf)





children.<sup>18</sup> It is unclear what has happened to this body since it began work or whether or not any of the programs it may have created reduced violence against children.

In 2012 SAARC signed a Memorandum of Understanding for five years with the ILO. Interestingly, the 2012 Memorandum of Understanding did not make reference to the GPBHR. It is apparent from the cases and reports that CGF examined that businesses and states must integrate and genuinely enforce the framework around business and human rights which is also intimately tied in many situations relating to violence against children. A cursory examination across South Asia pinpoints to the use of child labor as a result of 1) a lack of enforcement of laws; 2) a lack of appropriate data; 3) extreme poverty which has led to hazardous working conditions

## **Lack of Enforcement**

The textile and clothing industry has a large presence in South Asia, specifically in India. Unfortunately the industries lack of attention and protection of children from forced labor and their impact on the environment (which we discuss below) make it one category of business to easily focus on for the purposes of this report. In 2010 for instance, the media highlighted the “Sumangali Scheme”<sup>19</sup> which forces young girls into bonded labour. The human rights violations that are associated with this practice have been repeatedly reported by multiple NGO’s.<sup>20</sup> The associations that work directly with the mills that produce the textiles have pledged to eradicate such exploitative practices.<sup>21</sup> Brands were notified of such practices and made the same commitment, and purportedly carry out joint action plans to ensure young girls are not exploited in their supply chains and conform to their codes of conduct.<sup>22</sup> European brands created the Sumangali Bonded Labour Group (SBL Group) which currently consists of 20 brands and retailers to address this issue of forced labour in its supply

<sup>18</sup> ILO, “South Asia Initiative to End Violence against Children (SAIEVAC), [https://www.ilo.org/newdelhi/areasofwork/child-labour/partnerships/WCMS\\_246235/lang--en/index.htm](https://www.ilo.org/newdelhi/areasofwork/child-labour/partnerships/WCMS_246235/lang--en/index.htm)

<sup>19</sup> See Solidaridad, “Understanding the Characteristics of the Sumangali Scheme in Tamil Nadu Textile & Garment Industry and Supply Chain Linkages” May 2012, [https://www.solidaridadnetwork.org/sites/solidaridadnetwork.org/files/publications/Understanding\\_Suman\\_gali\\_Scheme\\_in\\_Tamil\\_Nadu.pdf](https://www.solidaridadnetwork.org/sites/solidaridadnetwork.org/files/publications/Understanding_Suman_gali_Scheme_in_Tamil_Nadu.pdf)

<sup>20</sup> One such report that breaks down the violations is SOMO and ICN, “Maid in India” April 2012, [https://www.facing-finance.org/wp-content/blogs.dir/16/files/2012/05/SOMO\\_India\\_labor-abuses-garment-industry\\_report2012.pdf](https://www.facing-finance.org/wp-content/blogs.dir/16/files/2012/05/SOMO_India_labor-abuses-garment-industry_report2012.pdf)

<sup>21</sup> Solidaridad, *supra* note 13, at 24 - 26

<sup>22</sup> *Ibid* at 26



chains. India does have laws which prohibit children under 18 from working.<sup>23</sup> However, it is clear there is a lack of enforcement with this particular law.

In 2019 Siddharth Kara stated in his report “Tainted Garments” that based on his team’s research in various places in India, “More than half (51.2%) of workers documented in the north began working in home-based garment work as children, whereas only 14.5% did so in the south. These findings shed additional light on the high prevalence of child labor in the home-based garment sector in India.”<sup>24</sup>

### **Lack of Data**

The garment industry in Pakistan presents many challenges that are in need of addressing. The 2012 fire that tragically impacted nearly 255 workers in Ali Enterprises in Karachi should have been a tremendous wake up call for the need for urgent reforms in Pakistan.<sup>25</sup> Human Rights Watch conducted an investigation into the unfair and abusive practices in Pakistan’s garment industry and found:

“Some of the smaller factories sometimes employ children, including as young as 13, to avoid paying minimum wage and overtime. Human Rights Watch spoke to nine children working in garment factories, all of them producing for the domestic market. None of the children had a written contract. The management can avoid giving them an employment contract or other benefits because workers under the age of 18 do not have a national identification card (NIC), which is often used as a pretext for denying official wages.”<sup>26</sup>

Recent statistics in Pakistan highlight that even though there is no actual statistics regarding child labourers, a recent survey indicates that “approximately 19 million children below 14 years of age were working as labourers in Pakistan.”<sup>27</sup> The U.S. Department of Labor’s International Bureau of International Labor Affairs in its “2018 Findings on the Worst Forms of Child Labor: Pakistan” found that Pakistan has made moderate advancements in addressing the worst forms of child labor and specifically

<sup>23</sup> See Dr. Delaney and Dr. Connor, “Forced Labour Textile and Garment Sector in Tamil Nadu, South India” Corporate Accountability Research, 2016, <https://corporateaccountabilityresearch.net/njm-report-xiii-sumangali>

<sup>24</sup> Siddharth Kara, “Tainted Garments” January 2019, pg 7, <https://www.candafoundation.org/en/latest/news/2019/02/tainted-garments.pdf>

<sup>25</sup> Human Rights Watch, “No Room to Bargain” January 23, 2019, <https://www.hrw.org/report/2019/01/24/no-room-bargain/unfair-and-abusive-labor-practices-pakistan#>

<sup>26</sup> *Ibid*

<sup>27</sup> The Express Tribune, “Society downplays seriousness of domestic child labour” June 21, 2020, <https://tribune.com.pk/story/2247021/1-society-downplays-seriousness-domestic-child-labour>



noted that in 2018 “all provincial governments began conducting child labor surveys...” which are expected to be completed by 2019.<sup>28</sup> The national child labor prior to that was conducted in 1996.

### **Hazardous Working Conditions and Lack of protection**

Children in Afghanistan, like many other places in South Asia, are often driven to work because of the extreme poverty. This is also true in Afghanistan where despite the laws, “child labor, including in some of the country’s most hazardous industries, is widespread.”<sup>29</sup> The lack of enforcement of Afghanistan’s laws has made it so that exploitative labor conditions for children in hazardous industries means that there is a lack of social and psycho-social support for children in these abusive labor situations.<sup>30</sup> The ILO noted that some of the impacts of child labor in Afghanistan 1) exposes children to criminal groups; 2) exposes them to drug cultivation and addition; 3) involvement in jobs leading to poor health and death; 4) long working hours in extreme weather conditions; 5) risk of sexual abuse and HIV/AIDS.<sup>31</sup> These factors of course are on top of poor health conditions that generally have been documented to exist in Afghanistan.<sup>32</sup>

Although CGF has not specifically written about cases from the Bangladesh, Maldives, Bhutan, and Sri Lanka, there are no exceptions to the pattern of child labor practices emerging from South Asia.

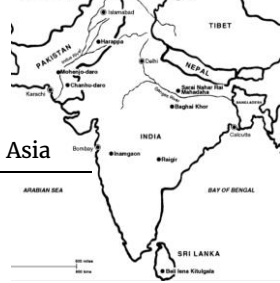
<sup>28</sup> Bureau of International Labor Affairs, “Child Labor and Forced Labor Report” 2018, <https://www.dol.gov/agencies/ilab/resources/reports/child-labor/pakistan>

<sup>29</sup> Human Rights Watch, “They Bear All the Pain” July 14, 2016, <https://www.hrw.org/report/2016/07/15/they-bear-all-pain/hazardous-child-labor-afghanistan>

<sup>30</sup> *Ibid*

<sup>31</sup> International Labour Organization, “National Child labor strategy and action plan 2018 -2030”, 2018, pg 7, [https://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---ipecc/documents/publication/wcms\\_666015.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---ipecc/documents/publication/wcms_666015.pdf)

<sup>32</sup> The Lancet, “Peace and health in Afghanistan” March 21, 2020, [https://doi.org/10.1016/S0140-6736\(20\)30643-7](https://doi.org/10.1016/S0140-6736(20)30643-7)



## Indigenous Peoples Rights

While the GPBHR does not contain a specific guiding principle relating to the needs and rights of indigenous peoples, the Commentary highlights that Principle 3, Principle 12, and Principle 26, should be read in a manner so as to promote and protect indigenous rights.<sup>33</sup> States are required to employ due diligence in assessing the adequacy of laws in regulating the business sector and its relationship with indigenous rights, while also ensuring there is effective judicial redress for potential violations of indigenous peoples rights.<sup>34</sup> Businesses are required at a minimum to respect internationally recognized human rights.<sup>35</sup> The Working Group on the issue of human rights and transnational corporations and other business enterprises, has also underlined that the duty to protect outlined in the GPBHR is in part derived from the pre-existing standards outlined in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP),<sup>36</sup> and International Labour Organisation's 'C169 - Indigenous and Tribal Peoples Convention' (ILO C169)<sup>37, 38</sup>

As previously discussed in CGF's *Catalysts for Change: ICESCR for Indigenous Groups in Asia* the UNDRIP, although non-binding, contains rights already identified and largely accepted by the international community in legally binding treaties.<sup>39</sup> Of particular importance to the application of the GPBHR, is Article 32 which summarizes the right of indigenous peoples to determine how their lands, territories, and resources are used. Integral to this is the requirement of states to obtain 'Free, Prior, and Informed Consent' (FPIC).

ILO C169, on the other hand, does bind its signatories. It represents a distinct shift from the previously "integrationist" approach of ILO 'C107 - Indigenous and Tribal Populations Convention' adopted in 1957,<sup>40</sup> which advocated assimilation in lieu of

<sup>33</sup> Refer to Table 1

<sup>34</sup> *Ibid*, pp. 8-9, 23-24.

<sup>35</sup> *Ibid*, pp.12-13.

<sup>36</sup> UNGA, 'United Nations Declaration on the Rights of Indigenous Peoples' A/RES/61/295.

<sup>37</sup> International Labour Organisation 'C169 - Indigenous and Tribal Peoples Convention,' (1991).

<sup>38</sup> UN General Assembly, 'Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises' August 6, 2013, GAOR 68th Session, UN Doc A/68/279 §6-8.

<sup>39</sup> Common Good Foundation, "Catalysts for Change: ICESCR for Indigenous Groups in Asia" March 2020, <http://www.actwithus.org/report-esr/#more-288>

<sup>40</sup> International Labour Organisation 'C107 - Indigenous and Tribal Populations Convention' (1957); see Article 36 ILO C169.



self-determination.<sup>41</sup> Similar to UNDRIP it emphasizes the duty to engage in meaningful consultation with indigenous peoples with regards to their land and education. It obliges States to take steps in order to prevent work-place discrimination; implement measures to ensure safe and fair working conditions; provide vocational training opportunities; protect traditional subsistence economies and rural trade; and access to an equal level of education which has due regard for their cultural and linguistic needs. As of April 2020, only Nepal has ratified ILO C169.

ILO C107 is now closed for ratification, but reporting obligations are still in place for its signatories. Both ILO Conventions contain an enforcement mechanism: the 'Committee of Experts on the Application of Conventions and Recommendations' (CEACR), which periodically examines government reports, taking into account comments from workers' or employers' organization, and may issue observations and direct requests. Reporting obligations and dialogue between the ILO bodies and Party States' may be found on an easily accessible online database, providing transparency and information on implementation.<sup>42</sup>

SAARC member States have to varying degrees engaged with instruments designed to address the specific needs of indigenous peoples, although in the region not all countries use the term "indigenous." The composition of each SAARC Member State is unique, and any policy or legislation recommendation must be developed in light of varying capabilities and needs. This section will provide an assessment of the interaction between businesses, States, and indigenous peoples, in the SAARC region. It is important to highlight that while experiences across the region are not homogenous, there are patterns which need to be addressed, particularly relating to marginalization, land rights, tourism, and access to education.

## **Marginalization**

Evidence from SAARC member states<sup>43</sup> affirms that both direct and indirect discrimination resulting from perceived indigeneity is a commonplace experience of indigenous peoples.<sup>44</sup> This has a knock-on effect on private sector interaction. As

<sup>41</sup> Minority Rights Group International, "A Practitioner's Perspective on the Rights of Indigenous Peoples since the Adoption of ILO Convention No. 169" July 2019, <https://minorityrights.org/2019/07/01/rights-indigenous-peoples-ilo/>

<sup>42</sup> ILO, "Supervision of Convention No. 169 and No. 107" April 2020, <https://www.ilo.org/global/topics/indigenous-tribal/supervision/lang--en/index.htm>

<sup>43</sup> Possibly excluding the Maldives, see Section II.B.5.

<sup>44</sup> See R K Dhir, "Indigenous Peoples in the World of Work in Asia and the Pacific" ILO, 2015, [https://www.ilo.org/wcmsp5/groups/public/---dgreports/---gender/documents/publication/wcms\\_438853.pdf](https://www.ilo.org/wcmsp5/groups/public/---dgreports/---gender/documents/publication/wcms_438853.pdf); see also Minority Rights, "Minority Rights



Gautam Mody, Secretary General of the New Trade Union Initiative, highlighted the labor hierarchy finds Adivasi's in India performing manual labor and high-risk jobs.<sup>45</sup> Even though there may be government programs that provide education to Adivasi groups, they often quit and are looped back into a cycle of working "menial jobs."<sup>46</sup> As was reported in a study conducted by Transparency International Bangladesh, even when indigenous peoples have equivalent access to education and job opportunities, there are often hidden barriers as a result of preferential treatment.<sup>47</sup>

In addition, indigenous women often bear the brunt of intersectional discrimination; as a result they are peripheralized both within their local communities and at national level. Due to the intersectional and additive nature of the discrimination indigenous women face, generalized approaches which fail to adequately engage and consult have fallen short in their protection.<sup>48</sup> This impact is tripled when considering the difficulties in accessing education and the ongoing cycle of poverty.<sup>49</sup> In Bangladesh, opportunities for women in the private sector are marred by discriminatory hiring

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Afghanistan" July 2018, <https://minorityrights.org/country/afghanistan/>. See Iftekharuzzaman et al, "Indigenous and Dalit Peoples of Bangladesh: Challenges and Way Forward for Inclusion in Rights and Services" Transparency International Bangladesh, March 2019, See also Minority Rights Group International, "World Directory of Minorities and Indigenous Peoples: Bhutan" June 2019, <https://minorityrights.org/country/bhutan/>. See also Borok Peoples' Human Rights Organization (BPHRO), Indigenous Women Forum of North East India (IWFNEI), Karbi Human Rights Watch (KHRW), Naga People, "Joint Statement on draft Indian Forest Amendment Act 1927" IWGIA, September 2019, [http://iwgia.org/images/documents/Statements-support/Joint Statement on draft Indian Forest Amendment Act 1927.pdf](http://iwgia.org/images/documents/Statements-support/Joint%20Statement%20on%20draft%20Indian%20Forest%20Amendment%20Act%201927.pdf). See also S Saifi and B Wilkinson, "Pakistan dismantles troubled tribal regions" CNN, May 2018, <https://edition.cnn.com/2018/05/25/asia/pakistan-tribal-areas-dismantled-intl/index.html>.

<sup>45</sup> V M. Olazábal "The silent death of workers in India" Equal Times, April 2019, <https://www.equaltimes.org/the-silent-death-of-workers-in?lang=en#.Xn3gvtP7Q1L>

<sup>46</sup> Ashok and Sanjeev, "Telangana's Dalit-Adivasi Scholars Struggle to Access Overseas Scholarships" August 20, 2020, <https://www.newsclick.in/Telangana-Dalit%20Adivasi-Scholars-Struggle-Access-Overseas-Scholarships>

<sup>47</sup> See Iftekharuzzaman *supra* note 44, at p.45.

<sup>48</sup> MADRE, "CEDAW for Indigenous Women" April 2020, <https://www.madre.org/CEDAW4IWG>. See also Human Rights Council, "Report by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, James Anaya," July 20, 2009, A/HRC/12/34/Add.3 at §45.

<sup>49</sup> L Jesmin Lushai, "The triple whammy for indigenous women in Dhaka" ILO Blog, August 2014, <https://iloblog.org/2014/08/06/the-triple-whammy-for-indigenous-women-in-dhaka/>. See also R K Dhir, *supra* note 44. See also, ILO, "Tripartite cooperation and commitment can promote decent work in the tea plantation sector in Bangladesh" November 2018, [https://www.ilo.org/dhaka/Informationresources/Publicinformation/Pressreleases/WCMS\\_649089/lang--en/index.htm](https://www.ilo.org/dhaka/Informationresources/Publicinformation/Pressreleases/WCMS_649089/lang--en/index.htm)





practices, lower wages, and violence.<sup>50</sup> Dr. Debapriya Bhattacharya emphasizes, “[w]hether in terms of the poverty line, nutrition levels, or education attained, indigenous women were found to be the furthest behind.”<sup>51</sup>

Similarly, the Special Rapporteur on indigenous rights James Anaya, highlights during his mission to Nepal that indigenous women invariably showed lower levels of employment, often occupying unskilled jobs in the informal sector.<sup>52</sup> In Sri Lanka, the ongoing efforts to assimilate the Wanniyala-Aetto have often left women and children vulnerable to exploitation in informal economies.<sup>53</sup> Professor De Silva has reported that as a result of ‘extreme economic deprivation’ there have been instances where Wanniyala-Aetto women and children have been coerced and trafficked into domestic servitude and the sex trade.<sup>54</sup>

Whether the peripheralization of indigenous people’s results from historical exclusion, or legislative biases, this has proven to be an overwhelming obstacle to participation in the mainstream political and economic spheres. The multidimensional nature of social exclusion necessitates a multifaceted response.<sup>55</sup>

## Land Rights

The interrelationship between indigenous culture and ancestral territories has been underlined by UNDRIP and ILO C169.<sup>56</sup> Part II of ILO 169 codifies the obligation of States: to recognize and map out indigenous territories;<sup>57</sup> establish procedures in order to resolve land claims;<sup>58</sup> to safeguard indigenous people’s rights to natural resources, and where the government retains the right to such resources they must consult and fairly compensate the affected indigenous peoples;<sup>59</sup> it further clarifies that indigenous peoples should not be removed from their land, but where this is unavoidable, that they must be compensated with ‘lands of quality and legal status at least equal to that of the lands previously occupied’.<sup>60</sup> Similarly, Article 19 outlines

<sup>50</sup> ILO, *supra* note 48. See also M Khan, “No country for indigenous women” The Daily Star, August 2017, <https://www.thedailystar.net/star-weekend/no-country-indigenous-women-1446607>

<sup>51</sup> *Ibid*

<sup>52</sup> Human Rights Council, *supra* note 45.

<sup>53</sup> Cultural Survival, *supra* note 44.

<sup>54</sup> K. Childs, “The Last Veddass of Sri Lanka” The New Internationalist, January 2017, <https://newint.org/features/web-exclusive/2017/01/10/the-last-veddas-of-sri-lanka>.

<sup>55</sup> See Iftakharuzzaman, *supra* note 44.

<sup>56</sup> Article 19 UNDRIP, Part II ILO C169.

<sup>57</sup> Article 14 (1),(2).

<sup>58</sup> Article 14 (3).

<sup>59</sup> Article 15.

<sup>60</sup> Article 16.



the right to FPIC that states are to “consult” and “cooperate in good faith” with indigenous peoples to obtain FPIC.

In light of GPBHR Principle 11 and 22, the Working Group on Human Rights and Business highlighted that where the state-led FPIC process is inadequate, business enterprises must consider whether it is appropriate to proceed with their projects and whether this can be done without causing or contributing to adverse impacts on indigenous peoples.<sup>61</sup> The Working Group also emphasized the importance of due diligence and carrying out impact assessment which provide for an “evidence-based and gender disaggregated review of socio-anthropological issues.”<sup>62</sup> The obligation upon business enterprises to carry out due diligence is particularly important in situations which are already marred by opaque administrative policies and complicated land disputes, as it prevents further human rights violations while avoiding disruption of operations further down the line.

Despite the international human rights framework espousing a clear stance on indigenous peoples land rights and business interests, this remains to be an acute problem for indigenous populations in the SAARC region. Of particular issue is the alienation of land under the guise of forest conservation, development of new infrastructure, and mining and extraction.

## Forests

A recurring theme within the research is the requisition of forests in the name of conservation, and the subsequent exclusion of indigenous peoples.<sup>63</sup> In addition to excluding indigenous peoples from their ancestral lands, there are also concerning developments in the criminalization of their livelihoods and the prevalence of “fortress conservations.”<sup>64</sup> Regina Paulose has highlighted this example in her article about India forest management, where the Indian government and international community’s desire to protect the tiger species as been at the exclusion of Adivasi

<sup>61</sup> UN General Assembly, “Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises” August 6, 2013, GAOR 68th Session, UN Doc A/68/279 §21.

<sup>62</sup> *Ibid* §31.

<sup>63</sup> R K Dhir, *supra* note 44, p.21- 31; *see also* N Bay, “Protecting the Kalash: The EU Must Hold Pakistan Accountable” The Parliament, December 2018, <https://www.theparliamentmagazine.eu/articles/opinion/protecting-kalash-eu-must-hold-pakistan-accountable>. *See also* K Childs “The Last Veddass of Sri Lanka” The New Internationalist, January 2017, <https://newint.org/features/web-exclusive/2017/01/10/the-last-veddas-of-sri-lanka>

<sup>64</sup> *Ibid*.



peoples, even though they are in fact the most knowledgeable and the strongest people to lead conservation efforts.<sup>65</sup>

Another example is the ongoing exclusion and criminalization of the Wanniyala-Aetto peoples in Sri Lanka. Having inhabited the forests since 28,500 BP (before present), the identity and culture of Wanniyala-Aetto is deeply interwoven with their traditional home - their name is conjugation of 'Wanni' meaning forest, and '-laetto' meaning being.<sup>66</sup> On November 9, 1983, the Sri Lankan government, in coalition with the International Union for Conservation of Nature and Natural Resources (IUCN) and WWF, designated 51,468 hectares of Wanniyala-Aetto customary land as a forest and wildlife reserve: the Maduru Oya National Park.<sup>67</sup> Since their displacement, they are unable to practice religious traditions, or continue with their lifestyles due to criminalization of hunting, picking flowers, lighting fires, or exercising livelihood activities.<sup>68</sup> Many now live in housing provided by the government on the outskirts of the forest, with reports of disproportionately high levels of alcoholism, mental illness, and diet-related health issues.<sup>69</sup> In 2011, an agreement was signed between Chief Uruwarige with the Department of Wildlife Conservation, enabling partial access to the park and the resumption of certain trades.<sup>70</sup> However, despite this, and the pledges by four Sri Lankan presidents, meaningful land rights remain elusive.<sup>71</sup> Cultural Survival has also reported that many Wanniyala-Aetto have since been killed, beaten or arrested by park guards for hunting on their ancestral land; in 2013, a 26 year old Wanniyala-Aetto man named Tale Warige Sunila was killed by a park guard

<sup>65</sup> See Regina Menachery Paulose, "Avenging Champawat: Adivasis and Tigers in the Age of Extinction" The Resolution Journal, 2020 Edition, <https://jerseylawcommission.files.wordpress.com/2020/09/resjour20.pdf>

<sup>66</sup> Cultural Survival, "Sri Lanka's Forests: Conservation of Nature Versus People" March 1996, <https://www.culturalsurvival.org/publications/cultural-survival-quarterly/sri-lankas-forests-conservation-nature-versus-people>. See also P. Roberts, "Evidence for persistent forest reliance by Indigenous peoples in historical Sri Lanka" Max Planck Institute, April 2018, <https://www.shh.mpg.de/906627/forest-reliance-sri-lanka>. See also W Ann-Chatrin Stegeborn, "The Wanniya-Laetto (Veddahs) of Sri Lanka" *Soba*, September 1993, <http://vedda.org/stegeborn.htm>

<sup>67</sup> Ibid; See also, Minority Rights, "Wanniyala-Aetto" 2020, <https://minorityrights.org/minorities/wanniyala-aetto/>.

<sup>68</sup> Cultural Rights, "Convention on the Rights of the Child: Shadow Report Submission: Indigenous Children's Rights Violations in Sri Lanka" December 2017, <https://www.culturalsurvival.org/sites/default/files/CRC%20Sri%20Lanka%20FINAL.pdf>.

<sup>69</sup> See S. Sriyananda, "Indigenous Sri Lankans Develop Diseases From Changing Diet" Global Press Journal, April 2013, [https://globalpressjournal.com/asia/sri\\_lanka/indigenous-sri-lankans-develop-diseases-from-changing-diet/](https://globalpressjournal.com/asia/sri_lanka/indigenous-sri-lankans-develop-diseases-from-changing-diet/);

<sup>70</sup> See Dilmah Conservation, "Indigenous Communities in Sri Lanka The Veddahs" <https://www.dilmahtea.com/tea-inspired-ebooks/free/veddha>; Survival International, "Sri Lanka: Survival calls on UN to stand up for Wanniyala-Aetto" March 2013, <https://www.survivalinternational.org/news/9021>

<sup>71</sup> R.K. Dhir, *supra* note 44



for 'poaching' on his ancestral land.<sup>72</sup> While the Wanniyala-Aetto struggle to regain access to their lands, the Sri Lankan Ministry of Culture profits from their position as a tourist attraction.<sup>73</sup> Akin to human zoos, this practice is overtly problematic, and benefits from the situation of economic deprivation forced upon these people.<sup>74</sup> Adverts for 'a walk with the veddas' - a day in the life experience, are easy to find online, and are even rated officially by TripAdvisor.<sup>75</sup> The hypocrisy of banning those who have lived in these forests for a millennium, while admitting paying outsiders should not be lost.

## Development

The Sustainable Development Goals (SDGs) outline that bold and transformative steps are needed to shift the world away from poverty and onto a more resilient path. Among the 17 SDGs: food security, access to clean water, energy, and investment in infrastructure.<sup>76</sup> Central to the success of the SDGs, is the pledge that no one will be left behind.<sup>77</sup> There are several references within the SDGs which underline the need to involve and empower indigenous peoples within the process.<sup>78</sup> The SDGs outline the archetypal path to follow when pursuing development projects at the national and local level. All SAARC Member States voted to adopt the SDGs.

It is necessary to assess to what extent such development may impact the rights of indigenous peoples. Historically, development has had an overtly negative effect upon indigenous populations, as it has often framed them as an object or barrier, rather than a contributor to leader of sustainable development. For instance, hydropower projects have flooded indigenous lands, causing mass displacement in several South Asian states.<sup>79</sup>

<sup>72</sup> Cultural Survival, *supra* note 68

<sup>73</sup> K Childs, *supra* note 54

<sup>74</sup> Cultural Survival, *supra* note 68

<sup>75</sup> Sri Lanka in Style, "Gal Oya experience: a walk with the veddas, Sri Lanka's indigenous people" 2020, <https://www.srilankainstyle.com/experience/gal-oya-experience-a-walk-with-the-veddas-sri-lankas-indigenous-people>. Sri Lanka Day Tours, "Meet the "Aadi Vaasi" - Veddah Tribes in Sri Lanka" <https://www.srilankadaytours.com/other/mahoora-explorer-camps-dambana.html>, accessed March 16, 2020.

<sup>76</sup> United Nations General Assembly, "Transforming our world: the 2030 Agenda for Sustainable Development" UNGA A/RES/70/1, September 2015.

<sup>77</sup> *Ibid*, preamble.

<sup>78</sup> *Ibid*, §23, 25, 52, 79, and Goal 2.3, and 4.5.

<sup>79</sup> For a continued reporting on dams in South Asia visit South Asian Network on Dams, Rivers, and People (SADRP) <https://sandrpin/>



In 2018, concern was raised at the Committee on the Elimination of Racial Discrimination summit concerning the progress of development in Nepal.<sup>80</sup> Cali Tsay reported:

"Of the 683 hydroelectric projects that were proposed, or are proposed, in Kathmandu... 95% are to be found on indigenous land. Which displaces millions of people, and has a negative impact on hundreds of sacred, and religious, and cultural sites. Similarly, in the Kathmandu Valley your road widening projects will also displace more than 150,000 people from their homes as well as their means of subsistence, chasing them away from their ancestral lands. 95% are Newar indigenous peoples, many of them have already lost their lands and their homes without any compensation."<sup>81</sup>

Nepal's 'Road Extension Project' (996km) plans to improve existing connections between Pokhara (a prime tourist destination) and Kathmandu, by widening the highway to four lanes, reducing travel times and costs, while improving access to domestic and international markets.<sup>82</sup> The project is being supported by a loan of \$195 million by the Asian Development Bank, and a part of it has been contracted out to China Construction Seventh Engineering Division, a subsidiary of China State Construction Engineering Corporation.<sup>83</sup> The project has been criticized for the destruction of homes, temples, and heritage sites, and had been pursued without consultation or consent.<sup>84</sup>

The Supreme Court of Nepal issued a judgement on June 30, 2018, directing the Government to provide compensation to landowners, and to only conduct the road-widening project with the consent of local residents, thereby empowering the Newar peoples.<sup>85</sup> This judgement and others like it have been subjected to fierce criticism,

<sup>80</sup> CERD, "Concluding observations on the combined seventeenth to twenty-third periodic reports of Nepal" May 2018, CERD/C/NPL/CO/17-23 at §22.

<sup>81</sup> CERD, "Consideration of Nepal (Cont'd) - 2627th Meeting 95th Session Committee on Elimination of Racial Discrimination" May 2018, <http://webtv.un.org/search/consideration-of-nepal-contd-2627th-meeting-95th-session-committee-on-elimination-of-racial-discrimination/5780260860001/?term=>

<sup>82</sup> New Spotlight Online, "ADB To Support Pokhara and Mugling Road Expansion Project" October 2019, <https://www.spotlightnepal.com/2019/10/31/adb-support-pokhara-and-mugling-road-expansion-project/>

<sup>83</sup> Xinhuanet, "Chinese company starts expansion work of Nepal's longest highway" March 2019, [http://www.xinhuanet.com/english/2019-03/23/c\\_137918192.htm](http://www.xinhuanet.com/english/2019-03/23/c_137918192.htm)

<sup>84</sup> D K Sunuwar, "Community Radio Helps Indigenous Peoples Win Legal Battle Against Nepalese Government" Cultural Survival, June 2019, <https://www.culturalsurvival.org/news/community-radio-helps-indigenous-peoples-win-legal-battle-against-nepalese-government>

<sup>85</sup> *Ibid*



with a former minister Surendra Pandey, contending “[t]his verdict is controversial and clearly against the state’s policy of infrastructure development.”<sup>86</sup> The judgement has resulted in increased costs and an increase in the length of time for the project;<sup>87</sup> however, the judgement has proven the importance of consulting tribal peoples and calculating their needs in the planning phase of development projects. Suman Sayami, coordinator of Kathmandu Valley-wide Struggle Committee, has underscored, “[w]e are not against the development. The development is meant for empowering people”.<sup>88</sup>

## **Mining and Oil**

Finally, ILO C169 provides for scenarios in which governments retain ownership of minerals and sub-surface resources. Article 15 of ILO C169 states that procedures and processes relating to exploration or extraction, must include consultation, with a view to ascertaining whether and to what degree indigenous peoples interests would be prejudiced, furthermore, that indigenous peoples shall wherever possible participate in the benefits, and shall receive fair compensation. To this extent, conventions which protect indigenous people’s rights do not vitiate State access to mineral resources, they do, however, provide important caveats for processes. SAARC as a whole is a region on the rise, and this is in no small part a result of the ubiquity of their natural resources. Changing political landscapes are opening up opportunities which pose substantial investment risks.

A key example is the prospective opening of Afghanistan’s mineral reserves, which are estimated to be worth \$1 trillion, with the possibility of generating \$2 billion in revenue per annum.<sup>89</sup> This has the potential to create a substantial source of tax revenue, improve job opportunities, and facilitate a shift away from international aid.<sup>90</sup> Afghanistan’s mineral reserves, however, have been abused in the past.<sup>91</sup> For years, corrupt mining practices in Badakhshan contributed to fueling the war economy, while providing less than 1% of State income.<sup>92</sup> Concerns have been raised about the pressure being placed upon the Afghani government by the Trump administration to endorse large mining contracts, in conjunction with troubling

<sup>86</sup> See A Subedi and R Pangeni, “How a ‘dangerous’ verdict halted road expansions” Myrepublica, December 2018, <https://myrepublica.nagariknetwork.com/news/how-a-dangerous-verdict-halted-road-expansions/>

<sup>87</sup> *Ibid*

<sup>88</sup> D K Sunuwar, *supra* note 84

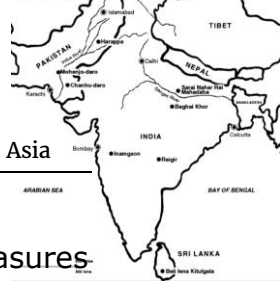
<sup>89</sup> Global Witness, “War in the Treasury of the People: Afghanistan, Lapis Lazuli and the Battle for Mineral Wealth” June 2016, <https://www.globalwitness.org/en/campaigns/conflict-minerals/war-treasury-people-afghanistan-lapis-lazuli-and-battle-mineral-wealth/>

<sup>90</sup> *Ibid*

<sup>91</sup> *Ibid*

<sup>92</sup> *Ibid*





amendments to State Mineral laws such as the lessening of anti-corruption measures and tribal people's rights is unknown, however, Afghanistan must maintain safeguards to prevent abuses of the system. Furthermore, future investment projects must work alongside communities rather than in competition.

The mining and extraction industry in Bhutan is the country's major source of income, particularly ferroalloys, carbides, dolomite, and gypsum.<sup>93</sup> Concerns have previously been raised about the impact of the mining sector on local communities, as well as the cross-border effect of lower mining standards.<sup>94</sup> In 2016, the Anti-Corruption Commission of Bhutan, highlighted evidence of the negative health and well-being effect on those living near the Begogang Stone Quarry in Wangdue Phodrang and Tintaley Quartzite Mine in Samtse.<sup>95</sup> Furthermore, it was noted that for many locals, mountains are deemed to be the abode of local deities, destruction of which will bring disharmony to the community.<sup>96</sup> There have been situations, where recognition of cultural heritage has not been given by the Department of Culture, consequently opening the lands up to the Department of Geology and Mines.<sup>97</sup> There is, however, a commitment on the part of the Bhutanese government to implement reform, as Dasho Yeshe Wangdi, the Secretary of the Ministry of Economic Affairs stated in 2018, "[o]ur aim is to have a stronger and vibrant mineral sector to manage the country's mineral resources for maximum benefit to the nation and the people."<sup>98</sup>

## Education

Finally, a number of international human rights instruments have stressed the importance of ensuring that all children have access to primary level education.<sup>99</sup>

<sup>93</sup> Observatory of Economic Complexity, "Bhutan" OEC, 2017, <https://oec.world/en/profile/country/btn/>

<sup>94</sup> B. Majumdar, "Mines destroy Bhutan's mountains" Reuters, June 2007, <https://www.reuters.com/article/environment-bhutan-dolomite-env-dc/mines-destroy-bhutans-mountains-idUSPAR54656020070605>

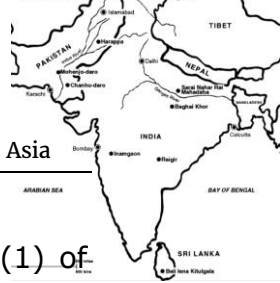
<sup>95</sup> Bertrand Venard, "Improving Business Environment: The case of the Mining Industry in Bhutan" Anti-Corruption Commission of Bhutan, May 2016, <https://www.acc.org.bt/sites/default/files/Mining%20research%20report.pdf>.

<sup>96</sup> *Ibid*

<sup>97</sup> *Ibid*

<sup>98</sup> World Bank, "Bhutan Receives World Bank Support for Reforms in the Mining Sector" June 5, 2018, <https://www.worldbank.org/en/news/press-release/2018/06/06/bhutan-receives-world-bank-support-for-reforms-in-the-mining-sector>

<sup>99</sup> Article 30 of Convention on the Rights of the Child (adopted November 20, 1989, entered into force September 2, 1990) 1577 UNTS 3 (UNCRC); Article 13 of International Covenant on Economic, Social and Cultural Rights (adopted December 16, 1966, entered into force January 3, 1976) 993 UNTS 3 (ICESCR); Article 18 of International Covenant on Civil and Political Rights (adopted December 16, 1966, entered into force March 23, 1976) 999 UNTS 171 (ICCPR); Article 14 UNDRIP; Part VI ILO C-169.



When applying this positive obligation to indigenous communities, Article 27(1) of ILO C169 outlines that educational programs, “shall be developed and implemented in co-operation with [IPs] to address their special needs, and shall incorporate their histories, their knowledge and technologies, their value systems and their further social, economic and cultural aspirations.” The Committee on the Rights of the Child General Comment No.11 also outlines that indigenous children are entitled to an education which is on an equal footing with non-indigenous children; as such States may need to take special measures that target possible barriers such as facilities, distance, cultural expectations, teachers, and the agricultural calendar.<sup>100</sup> A key example of this in practice is Bangladesh’s Seventh Five-Year plan, which demonstrates a clear commitment to printing pre-school books in indigenous languages, ensuring primary education of tribal peoples in their mother tongues, and establishment of schools in more remote areas.<sup>101</sup> Although there is evidence of an implementation gap, Bangladesh’s government is moving in the right direction and should be supported.<sup>102</sup>

Conversely, there is worrying evidence of the return of residential schools, the purpose of which is assimilation and dislocation of indigenous children.<sup>103</sup> These institutions cut children off from their families, homes, heritage, and language. Survival International reports that in the Indian State of Maharashtra alone, “almost 1,500 tribal children died in residential schools between 2001-2016, including over 30 suicides.”<sup>104</sup> This is a dangerous repetition of past practices, such as those implemented in Canada, the US, and Australia, and is a complete violation of Article 20(3) of the Convention on the Rights of the Child (CRC), which emphasizes that alternative care placements must have due regard for a child’s ethnic, religious, cultural and linguistic background.<sup>105</sup> The CRC has highlighted that schools for children must ‘comply with culturally sensitive standards and be monitored on a regular basis.’<sup>106</sup> Of particular concern, is the relationship between residential establishments targeting indigenous children and business interests.<sup>107</sup>

<sup>100</sup> Committee on the Rights of the Child, ‘General Comment No.11: Indigenous children and their rights under the Convention’ (2009) Doc CRC/C/GC/11 at §§60-62.

<sup>101</sup> Iftekharuzzaman et al, *supra* note 44.

<sup>102</sup> *Ibid* at p.40.

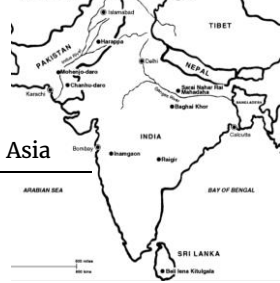
<sup>103</sup> Survival International, “Factory Schools: Destroying Indigenous People in the Name of Education” 2020, <https://survivalinternational.org/factoryschools>

<sup>104</sup> *Ibid*.

<sup>105</sup> *See also* CRC, ‘General Comment No.11: Indigenous children and their rights under the Convention’ (2009) Doc CRC/C/GC/11 at §48.

<sup>106</sup> *Ibid* at §61.

<sup>107</sup> Survival International, “Brazen and shameless: outrage as controversial Indian mining company opens tribal school” January 2020, <https://www.survivalinternational.org/news/12316>. *See also* B. Cassey, “The forest is everything’: indigenous tribes in India battle to save their home from Adani – in pictures” The



## Environment

South Asia's ecological diversity has a remarkable reputation. The region has proven to be an innovative leader in protecting the environment throughout Asia. In 1981 South Asian countries created the South Asia Co-operative Environment Programme (SACEP) through the Colombo Declaration. The Colombo Declaration balanced the interests of people, development, and the environment.<sup>108</sup> In 2007 SACEP celebrated its "silver jubilee."<sup>109</sup> SACEP has held 14 Governing Council meetings and the most recent was held in March 2018. During this meeting several items were discussed which included air quality, pollution, achieving the SDGs, climate change, and the South Asian Seas Program (SASP).<sup>110</sup>

While these achievements, and others that are not listed here, indicate the region is working to address challenges that threaten the environment, it appears more attention is needed, particularly addressing these issues in a holistic manner. One element that appears to be lacking in most initiatives is the integration of a corporate responsibility framework. As the report has already discussed, conservation methods, green energy projects, and economic development opportunities have a detrimental impact on peoples in the region, however they also have the same impact on the surrounding ecosystem and environment. The region faces diminishing returns on development if the environment is exploited. This section explores the following themes a) pollution and b) oceans.

### Pollution

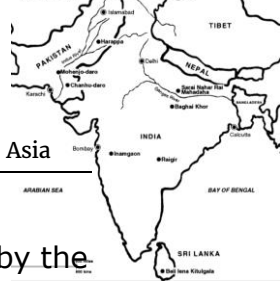
Pollution comes in many forms and the South Asian region, sadly, has various types of pollution that is created by corporations that makes this an important topic to cover.

Guardian, March 20, 2020, <https://www.theguardian.com/environment/gallery/2020/mar/20/the-forest-is-everything-indigenous-tribes-in-india-battle-to-save-their-home-from-adani-in-pictures>; See also B. Cassey, "India's ancient tribes battle to save their forest home from mining" The Guardian, February 2020, <https://www.theguardian.com/environment/2020/feb/10/indias-ancient-tribes-battle-to-save-their-forest-home-from-mining>. See also, Survival International, "Survival Factory Schools - Full Report" Survival International, 2019, <https://assets.survivalinternational.org/documents/1810/factory-schools-full-report.pdf>

<sup>108</sup> The Colombo Declaration on the South Asia Co-operative Environment Program (SACEP), January 1981, <http://www.sacep.org/pdf/Declarations/07.The-Colombo-Declaration-on-SACEP-25-January-1981.pdf>

<sup>109</sup> See SACEP, *25 Years of SACEP, 1982- 2007*, <http://www.sacep.org/pdf/General-Publications/2007.01-SACEP-Silver-Jubilee-Souvenir.pdf>

<sup>110</sup> SACEP, *The Fourteenth Meeting of the Governing Council South Asia Co-operative Environment Programme (SACEP)*, March 26 – 28, 2018, [http://www.sacep.org/pdf/Reports-GC-SACEP/2018.03.26-28-GC\\_14\\_Report.pdf](http://www.sacep.org/pdf/Reports-GC-SACEP/2018.03.26-28-GC_14_Report.pdf)



Air pollution is at the top of this category. The 2020 Global Air report released by the Health Effects Institute (HEI) states that nearly half a million infants die in their first months because of air pollution and the highest risk populations were in South Asia and sub-Saharan Africa.<sup>111</sup> Throughout the South Asia region, India is one of the top contenders for the amount for air pollution followed closely by Pakistan and Bangladesh.<sup>112</sup> Corporate entities are contributing to this problem. In Afghanistan for instance, private military firm, KBR Inc. received criticism for the health risks inflicted upon American soldiers/veterans as well as civilians in Afghanistan due to open air burn pits, where tires and medical waste was burnt next to soldiers' barracks, which lead to the release of toxic fumes in atmosphere.<sup>113</sup> KBR escaped liability, as it claimed to be acting under military direction and was thus immune from any claim.<sup>114</sup>

Sri Lankan environmentalists were likely celebrating in 2016 when a coal power plant in Sampur, which was a joint venture of the Ceylon Electricity Board and the National Thermal Power Corporation of India, was cancelled. The project caused quite a stir because of the amount of flue gases which would have been emitted from the coal power plant and then would be blown across the country.<sup>115</sup> The Sri Lankan government has opted instead for liquefied natural gas (LNG) projects which is part of the "Vision for Prosperity" to create "green" and "renewable" energy.<sup>116</sup> LNG however, has not shown that it will have any environmental benefits. In fact as one researcher stated, "LNG developments also leak methane, which is a relatively short-lived gas that lasts in the atmosphere about 12 years but still has a warming power about 28 times greater than the same amount of CO<sub>2</sub> when calculated over a century."<sup>117</sup>

Bhutan is the only South Asian country with an international reputation for a negative carbon footprint. Yet, air pollution is choking parts of the country. "Pasakha, [an]

<sup>111</sup> Dita Shetty, "Air Pollution Contributed to Nearly 500,000 Infant Deaths In 2019, Finds Report" Forbes, October 21, 2020, <https://www.forbes.com/sites/dishashetty/2020/10/21/air-pollution-contributed-to-nearly-500000-infant-deaths-in-2019-finds-report/#773e2cfa4192>

<sup>112</sup> Usman Kabir, "Pakistan has second- most polluted air in the world based on population density in cities" Geo News, February 25, 2020, <https://www.geo.tv/latest/274174-pakistan-has-second-most-polluted-air-in-the-world-based-on-population-density-in-cities-report>

<sup>113</sup> Frud Bezhan, "U.S. Military Waste A Smoldering Afghan Health Issue" Radio Free Europe, October 28, 2011, [https://www.rferl.org/a/us\\_military\\_waste\\_an\\_afghan\\_health\\_issue/24374413.html](https://www.rferl.org/a/us_military_waste_an_afghan_health_issue/24374413.html)

<sup>114</sup> Quil Lawrence, "Veterans Claiming Illness From Burn Pits Lose Court Fight" NPR, January 16, 2019, <https://www.npr.org/2019/01/16/685657005/veterans-claiming-illness-from-burn-pits-lose-court-fight>

<sup>115</sup> Sarah Muiz, "Sampur Coal Power Plant: An Environmental Doom and Gloom?" Daily Mirror, March 23, 2016, <http://www.dailymirror.lk/107275/Sampur-Coal-Power-Plant-An-Environmental-Doom-and-Gloom->

<sup>116</sup> Colombo Page, "Two LNG plants by 2023 for power generation" September 18, 2020, [http://www.colombopage.com/archive\\_20B/Sep18\\_1600453363CH.php](http://www.colombopage.com/archive_20B/Sep18_1600453363CH.php)

<sup>117</sup> Adam Morton, "Booming LNG industry could be as bad for climate as coal, experts warn" The Guardian, July 2, 2019, <https://www.theguardian.com/environment/2019/jul/03/booming-lng-industry-could-be-as-bad-for-climate-as-coal-experts-warn>



industrial town in the Himalayan Kingdom of Bhutan, was ranked second behind Muzaffarpur in India. With around 150 micrograms per cubic meter of fine particle emissions found in the air, it was above the notoriously smoggy climates of Delhi and Cairo.”<sup>118</sup>

Nepal has recently gained a reputation for its poor air quality. The long term health effects of pollution on residents are “catastrophic” and pollution levels are alleged to exceed those considered safe by the World Health Organization.<sup>119</sup> Complaints by Nepalese citizens have translated into small responses by the government. However it is reported that corporations have stepped in to attempt to resolve issues such as waste management.<sup>120</sup> Of course air pollution has far greater impacts in the Himalaya region. As Stephen Groves reports,

“Smoke from fires and emissions from vehicles produce soot containing black carbon. Black carbon absorbs lots of solar energy. It settles on glaciers and snow, and its dark color causes the snow and ice to absorb more of the sun’s radiation. It also warms up the air, changing rainfall patterns. For the mountains that are called the “water towers of Asia,” this could have serious impacts. Over a billion people depend on the monsoon rains and snow melt of the Himalayas for their source of water.”<sup>121</sup>

Of course in tandem with air pollution must be a complimentary discussion on river and water pollution (distinct from oceans and marine pollution we discuss later). South Asia is a huge contributor to the fashion industry. While many consumers remain ignorant to the impact their fashion choices have, it is clear that companies should not be oblivious to the impact their production has on water systems in South Asia. For instance, in Bangladesh, it was noted:

“Fashion is responsible for up to one-fifth of industrial water pollution, thanks in part to weak regulation and enforcement in producer countries like Bangladesh, where wastewater is commonly dumped directly into rivers and streams. The discharge is often a cocktail of carcinogenic chemicals, dyes, salts and heavy metals that not only hurt the environment, but pollute essential drinking water sources.”<sup>122</sup>

<sup>118</sup> Tej Parikh, “Bhutan’s Happiness Faces the Growing Pains of Development” The Diplomat, May 16, 2018, <https://thediplomat.com/2018/05/bhutans-happiness-faces-the-growing-pains-of-development/>

<sup>119</sup> Elen Turner, “What is Kathmandu in the Midst of a Pollution Crisis?” Culture Trip, September 20, 2018, <https://theculturetrip.com/asia/nepal/articles/why-is-kathmandu-in-the-midst-of-a-pollution-crisis/>

<sup>120</sup> *Ibid*

<sup>121</sup> Stephen Groves, “Nepal’s air pollution threatens humans and glaciers” PRI, April 6, 2017, <https://www.pri.org/stories/2017-04-06/nepal-s-air-pollution-threatens-humans-and-glaciers>

<sup>122</sup> Helen Regan, “Asian rivers are turning black. And our colorful closets are to blame” CNN, September 28, 2020, <https://www.cnn.com/style/article/dyeing-pollution-fashion-intl-hnk-dst-sept/index.html>



Given the poor implementation and enforcement of labour laws, many companies may loosen standards. One example in Bangladesh was Surma Garments which was fined for illegal waste dumping in water bodies around their factories. While many global brands emphasize abiding to labour norms and fire and safety mechanisms, little has been done to ensure environmental integrity of all actors across the supply chains.<sup>123</sup> There has been some progress in attempting to save water,<sup>124</sup> this very distinct from the question and challenges regarding pollution.

Finally, when South Asia considers development, one of its growing industries is tourism. The lure of South Asia makes it a top travel destination for many travellers. Sadly, this also has negative impacts on the environment and contributes to pollution if it is not reined in by governments, through robust frameworks on the private sector and through their own state owned enterprises. For instance the Maldives is one of South Asia's richest countries because of tourism. However, with that comes an "unsustainable amount of waste" because of the amount of rubbish tourism produces.<sup>125</sup> The larger threat that looms for a country such as the Maldives is climate change, which it is attempting to answer through its new Asian Development Bank "5 year country partnership strategy."<sup>126</sup> This of course will be lost if corporations are not included in the larger strategy to help manage tourism waste and pollution in an eco-friendly manner.

## Oceans

CGF wants to give some attention to the Indian Ocean Region because of its geopolitical significance and the importance it has not only to governments and South Asian people, but because of the unique nature of the marine environment. The Indian Ocean Region is economically significant because of its fisheries, minerals, and petroleum<sup>127</sup> which makes it a lucrative playground for state owned enterprises and private enterprises to flourish.

In 1984 SACEP committed to address issues related to the marine environment. It was not until 1995 that SASP was formally adopted. The ambitious action plan

<sup>123</sup> See Samantha Masunaga, "Does fast fashion have to die for the environment to live?" LA Times, November 2, 2019, <https://www.latimes.com/business/story/2019-11-03/fast-fashion-sustainable>

<sup>124</sup> Star Business Report, "BGMEA signs pact for green production" The Daily Star, October 1, 2017, <https://www.thedailystar.net/business/bgmea-signs-pact-green-production-1470316>

<sup>125</sup> Ramdeep Ramesh, "Paradise lost on Maldives Rubbish island" The Guardian, January 2, 2009, <https://www.theguardian.com/environment/2009/jan/03/maldives-thilafushi-rubbish-landfill-pollution>

<sup>126</sup> The Financial, "ADB supports Maldives' development via new 5- year CPS" October 21, 2020, <https://finchannel.com/world/78785-adb-supports-maldives-development-via-new-5-year-cps>

<sup>127</sup> Apurbaa Sengupta, "The global pivot: Significance and contestation over the Indian Ocean Region" South Asia Journal, June 3, 2020, <http://southasiajournal.net/the-global-pivot-significance-and-contestation-over-the-indian-ocean-region/>





concentrated on four specific areas: (1) coastal zone management (2) protection from land based activities (3) human resource development (4) contingency planning for national and regional oil spills.<sup>128</sup> The last inter-governmental meeting of the SASP was held in December 2013.

In the 2014 Summit Statement, SAARC “recognized the manifold contributions of ocean-based Blue Economy in the SAARC Region and the need for collaboration and partnership in this area.”<sup>129</sup> The United Nations recently launched its “Decade of Ocean Science for Sustainable Development” (Decade) initiative to support “efforts to reverse the cycle of decline in ocean health.”<sup>130</sup> This initiative brings together those who are committed to working on challenges that pertain to the marine environment.

One of the largest challenges that exist in the marine/ocean environment is plastic pollution. In 2019 United Nations Environment Programme (UNEP) noted in its report “The Role of Packaging Regulations and Standards in Driving the Circular Economy” that “South Asia is a primary source and victim of plastic, where it is choking seas and threatening ecosystems and livelihoods.”<sup>131</sup> Plastic pollution has an impact on people’s incomes. As Mercy Barends, a member of the House of Representatives in Indonesia noted, “in coastal communities in Southeast Asia, primarily men go out to sea to catch fish while women collect crabs, shellfish, and small fish at the shore. When beach litter increases, women’s income shrinks. When marine plastic litter increases, men’s income shrinks.”<sup>132</sup> Another impact to plastic pollution is the chokehold it has on marine life and obviously has a significant impact on the ocean’s ecosystems in general.<sup>133</sup>

People and governments within South Asia are responding. In the Maldives, Maalhos has a recycling center that is sponsored by the World Bank to combat plastic

<sup>128</sup> See SACEP, “South Asian Seas Programme – Action Plan” <http://www.sacep.org/programmes/south-asian-seas/action-plan>, accessed February 11, 2020

<sup>129</sup> SAARC Eighteenth Summit, “Kathmandu Declaration” November 26 – 27, 2014, para 15, [http://saarc-sec.org/uploads/digital\\_library\\_document/Kathmandu-18thSummit26-27Nov2013.pdf](http://saarc-sec.org/uploads/digital_library_document/Kathmandu-18thSummit26-27Nov2013.pdf)

<sup>130</sup> See Decade of Ocean Science for Sustainable Development, available at: <https://www.oceandecade.org/>

<sup>131</sup> UNEP, “UNEP report warns plastic policies lagging behind in South East Asia” November 13, 2019, <https://www.unenvironment.org/news-and-stories/press-release/unep-report-warns-plastic-policies-lagging-behind-south-east-asia>

<sup>132</sup> Mercy Barends, “Confronting Southeast Asia’s Plastics Problem” The Diplomat, September 26, 2019, <https://thediplomat.com/2019/09/confronting-southeast-asias-plastics-problem/>

<sup>133</sup> See Graham Readfearn, “More than 14m tonnes of plastic believed to be at the bottom of the ocean” The Guardian, October 5, 2020, <https://www.theguardian.com/environment/2020/oct/06/more-than-14m-tonnes-of-plastic-believed-to-be-at-the-bottom-of-the-ocean>



pollution.<sup>134</sup> In Pakistan, the World Bank offices have stopped using single use plastic for approximately a year.<sup>135</sup> In India, the government is attempting to address the issue through “extended producer responsibility” which would “make a manufacturer responsible for managing plastic waste after a consumer has used their product...”<sup>136</sup> Given the complexity of plastic pollution as an issue, it requires a “regional approach” which “includes stakeholders from across South Asia.”<sup>137</sup> It appears that some are interested in promoting a new plastic pollution treaty.<sup>138</sup> Those who are pushing for the treaty state that “the number of voluntary multi-stakeholder initiatives and the number of national regulations to address plastic pollution have more than doubled in the last five years. The world’s largest fast-moving consumer goods (FMCG) companies rank tackling plastic packaging waste as a top sustainability issue...”<sup>139</sup> CGF questions whether another treaty would be effective it is clear that enforcement and corruption in South Asia are likely at the root of some of these issues.

<sup>134</sup> Ibid

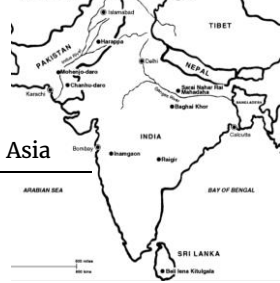
<sup>135</sup> Ibid

<sup>136</sup> Bhasker Tripathi, “India wants manufacturers to manage plastic waste. Here’s how proposed rules fall short” Sify, October 5, 2020, <https://www.sify.com/finance/india-wants-manufacturers-to-manage-plastic-waste-heres-how-proposed-rules-fall-short-news-topnews-ukfhfhcificca.html>

<sup>137</sup> Hartwig Schafer, “South Asia can turn the tide on oceans plastics pollution” World Bank Blogs, November 19, 2019, <https://blogs.worldbank.org/endpovertyinsouthasia/south-asia-can-turn-tide-oceans-plastics-pollution>

<sup>138</sup> World Wildlife Fund for Nature (WWF), “The Business Case for a UN Treaty on Plastic Pollution” October 2020, <https://www.newplasticseconomy.org/assets/doc/UN-Treaty.pdf#:~:text=A%20UN%20treaty%20on%20plastic%20pollution%2C%20whereby%20governments,a%20path%20toward%20a%20circular%20economy%20for%20plastics>.

<sup>139</sup> Ibid pg 1



## Recommendations

Based on the information provided in this report and in the spirit of collaboration and in line with the SDGs, CGF recommends the following:

- SAARC needs to work beyond geopolitics and restart immediately with a focus to provide more educational opportunities to children and creating eco-friendly and sustainable economic opportunities for all peoples throughout South Asia, in order to increase the health and well-being of South Asian peoples.
  - South Asian countries must enforce their national laws against child labor.
  - ASEAN should mandate where possible and enforce the end of child labor practices throughout all of Asia to prevent “forum shopping” of exploitative labor of any kind.
- South Asian countries should conduct appropriate Environmental Impact Assessments (EIA) for projects which have the potential to cause destruction to lives and cultural heritage in South Asia. These EIA’s need to be completed by neutral third parties that have no stake in the outcome of the EIA, preferably from outside the region, to allow for a fair assessment to be made.
  - South Asian countries must make a larger commitment to *enforcing* the UN Convention against Corruption and the UN Convention against Transnational Organized Crime.
  - South Asian countries need to strengthen access to justice for people throughout the region so that they can litigate the violation of their rights and also find ways to ensure that enforcement of the outcomes of court decisions, particularly those involving just compensation and relocation are followed.
  - South Asian countries must incorporate access to justice or a complaints process in line with the GPBHR as detailed in section 1 of this report.
- South Asian countries through SAARC should participate in the Ocean Decade and encourage all corporations who work in their marine environments to participate in the Decade so that their business ventures and policies align with the goals of the international community.