

American University Washington College of Law

Digital Commons @ American University Washington College of Law

Human Rights Brief Spring 2019 Regional Coverage

Human Rights Brief 2016-2019 Regional Coverage

Spring 2019

Asia & Oceania Coverage

Human Rights Brief

Follow this and additional works at: <https://digitalcommons.wcl.american.edu/hrbregionalcoverage-spring2019>



Part of the [Human Rights Law Commons](#)

Forced Sterilization of Trans People in Japan

March 7, 2019

by Nicholas Ripley

It is very difficult to be transgender in Japan, legally speaking. One must be at least twenty years old, unmarried, and without children under the age of twenty. One must undergo a psychiatric evaluation to receive a diagnosis of “Gender Identity Disorder,” a sex reassignment surgery, and mandatory sterilization. This is to say nothing about the social, emotional, and physical safety difficulties of being trans in the country.

In 2003, Japan passed Law No. 111, which instated formidable hurdles for transgender people who seek government recognition of their gender. This law is restricted to recognition of the two binary genders but does allow for correction of the gender assigned at birth. Since 2003, approximately seven thousand people have complied with these invasive procedures and requirements in order to legally change their gender registration. On January 24, 2019, Japan’s Supreme Court unanimously affirmed Law No. 111 after Takakito Usui, a trans man, challenged the law as unconstitutional.

This comes after significant advances for LGBTQ people in Japan. Recent polling has found that over seventy percent of respondents support stronger legal protections for LGBT people. More respondents than ever openly identified as lesbian, gay, bisexual or transgender in the survey. This change in public attitude is being resisted by conservative lawmakers like Mio Sugita, who belongs to the ruling Liberal Democratic Party. She attracted widespread criticism last year when she published an article in the Japan Times saying, “Support for LGBTs has gone too far.”

For trans people, not having your correct gender recognized by the state can have dangerous implications. In Japan, if you have not gone through the official gender recognition process and become incarcerated, you will be placed in a prison with the gender you were assigned at birth—which can result in targeted violence, sexual assault, and death. As noted by the Secretariat in the 2016 Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, governments’ refusal to legally recognize transgender people’s appropriate gender “leads to grave consequences for the enjoyment of their human rights, including obstacles to accessing education, employment, health care and other essential services.” However, in recognizing trans people’s gender, governments have a responsibility not to impose abusive requirements, such as “forced or otherwise involuntary gender reassignment surgery, sterilization or other coercive medical procedures.”

In Japan, Gender Identity Disorder (a mandatory diagnostic prerequisite for trans people) is defined as “a person, despite his/her biological sex being clear, who continually maintains a psychological identity with an alternative gender, who holds the intention to physically and socially conform to an alternative gender.” The sex reassignment surgery, which Law 111 requires, is invasive and complies with binary gender standards. The law also requires trans people’s gonads to be either removed or rendered permanently nonfunctioning. These

requirements are based on beliefs that trans people, if not surgically altered and psychologically pathologized, cause “problems” with children and society at large.

This coercive sterilization violates the rights to physical integrity, health, privacy, and family life (including the right to decide the number and spacing of children), as well as the right to non-discrimination, as protected by the International Covenant on Civil and Political Rights. In some cases, it may even constitute torture, cruel, inhuman or degrading treatment.

There are currently no explicit protections for LGBTQ people in binding international law. Language dealing with gender in binding international law is actively compliant with binary notions of sex in order to avoid controversy (the Rome Statute goes out of its way to define gender as “two sexes, male and female”). This leads to the exclusion of transgender individuals from legal protection in international law. Likewise, there are no explicit prohibitions on involuntary sterilization in international law, despite the fact that the practice has ties to eugenics and primarily affects marginalized people like women, impoverished people, people living with HIV, people with disabilities, minority and indigenous people, and transgender and intersex people.

Despite the lack of binding international law, many in the field have made efforts to extend penumbral human rights law to include implied protections for LGBTQ people through nonbinding declarations and general guidance decisions. These legal theories (that LGBTQ discrimination is inherently prohibited under international law) have yet to be tested in international court. Possibly because, without stronger doctrine in international law, parties are concerned about losing and creating detrimental implications for future cases. International organizations like the UN need to take a stronger stance on LGBTQ rights. They could start by acknowledging the existence of LGBTQ people in binding international conventions. For its part, Japan could support its transgender citizens by removing the burdensome requirements needed to legally change one’s gender and offering recognition of a third gender identification for non-binary and gender diverse citizens.

A Culture of Impunity Still Lies Behind Kyrgyzstan's Bride Kidnapping Epidemic

March 14, 2019
by Gina Uyghur

The brutal murder of Turdaaly Kyzy sparked protests against the Kyrgyz cultural practice of bride kidnapping in Kyrgyzstan. On May 27, 2018, a twenty-nine-year-old man abducted twenty-year-old medical student Burulai Turdaaly Kyzy to force her into marriage. After police detained and recklessly left them alone in a room together, the man fatally stabbed her. Concurrently, Kyrgyz state TV has been justifying domestic violence and bride kidnapping in a high-profile drama series, which features a Kyrgyz woman who is abducted and forced to marry against her will but later chooses to stay with her kidnapper.

Kyrgyzstan is considered one of the most problematic countries in the world in terms of the frequency of forced marriages. Between ten to thirty women are kidnapped every day. Most of them are forced to marry their captor for fear of social stigma or condemnation from family members. These figures reveal a profound sickness at the heart of Kyrgyz society when it comes to marriage. Despite the public outcry and the UN Committee on the Elimination of Discrimination against Women's recommendation in 2015, urging Kyrgyzstan to raise public awareness through education and "to ensure the effective investigation, prosecution and conviction of perpetrators," the situation has not yet dramatically improved.

In accordance with the current legislation, the abduction of a girl under seventeen years old for forced marriage is defined as a crime in Articles 154 (2) and 155 (2) of the Criminal Code of Kyrgyzstan. In 2013, sentencing guidelines were increased to a maximum ten years' imprisonment for the abduction for forced marriage of a person under the age of seventeen and to seven years' imprisonment for the kidnapping of a person over that age. Nevertheless, both Article 154 and Article 155 allow payment of a fine in lieu of imprisonment. Rape is punishable by five to eight years' imprisonment according to Article 129. Marital rape is not specifically criminalized and remains unpunished.

Prosecutions for bride kidnapping have been rare, and only a few cases of bride abduction are officially registered. For instance, from 2013 through 2018, out of 895 registered reports and statements, 727 (or 81.2 percent) went uncharged. Government prosecutors sought convictions in only 168 (or 18.7 percent) of complaints. As the Committee on the Elimination of Discrimination against Women concluded in its inquiry concerning Kyrgyzstan in September 2018, deep-rooted patriarchal attitudes and cultural stereotypes remain the main issue as police officers "often discourage victims from filing a complaint and sometimes are under pressure from within their communities or receive bribes so as not to investigate reports of bride kidnapping." Bribery is prevalent to avoid investigation or prosecution. Hence, the laws are no more than symbolic so long as the pattern of socially legitimizing bride kidnapping and allowing perpetrators to act with impunity remains.

Kyrgyzstan has been ordered to report back to the Committee on the Elimination of Discrimination against Women by March 2019. As explained in the Committee’s General recommendation No. 28 on the core obligations of State parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women—which Kyrgyzstan ratified in 1997—“State parties have an obligation not to cause discrimination against women through acts or omissions . . . [and] to react actively against discrimination against women, regardless of whether such acts or omissions are perpetrated by the State or by private actors.” Therefore, by failing to take sustained measures to protect women from bride kidnapping, Kyrgyzstan acts in violation of Articles 2, 5, 10, and 16 of the Convention that specifically include the elimination of harmful cultural practices and stereotypes in collaboration with the educational system, the media, and society overall. Under Articles 1, 2, 12, and 16, Kyrgyzstan is also obligated to provide ex officio prosecution of perpetrators of bride kidnapping, to eliminate the option of paying fines to avoid imprisonment, and to criminalize subsequent marital rape. Failure to criminalize marital rape denies victims legal protection against rape within forced marriage. In addition, Articles 2, 5, 12, and 15 obligate Kyrgyzstan to ensure that victims of bride kidnapping have access to effective remedies, appropriate protection, and support services. In particular, the Articles call for legal aid and well-equipped shelters, where women can remain during and after legal proceedings.

Kyrgyzstan promotes a culture that bestows all power on men and that exercises willful blindness on bridal kidnapping—abusive cultural practices that invite human rights violations but are considered part of Kyrgyzstan’s cultural identity and ideals of masculinity. Although legislative frameworks can be amended in the blink of an eye, changing the social perception of a women’s place in the modern Kyrgyz society in order to meet human rights obligations, has a long way to go.

Twelve Years Old, Detained, and Imprisoned: President Duterte's Solution to End the Drug War in the Philippines

March 18, 2019
by Kate Juon

President Rodrigo Duterte has been on a mission to eradicate drug users and traffickers—and now his administration has set its sights on children. On January 28, 2019, the House of Representatives approved a bill to lower the minimum age of criminal liability from fifteen years old to nine years old. However, due to backlash from many child rights advocacy groups and religious organizations, Philippine lawmakers “compromised” to a minimum age of twelve. Currently under Section 6 of the Juvenile Justice and Welfare Act of 2006 (“Juvenile Act”), children as young as twelve can be subject to mandatory confinement in Bahay Pag-Asa or “House of Hope” Centers. Regarded as twenty-four-hour child care institutions with special child-focused rehabilitation programs, these centers are in reality overcrowded detention centers for children ages twelve to eighteen or even adults as old as twenty-eight. Children are detained alongside adults as centers become more and more overcrowded. Without proper food, services, or beds, these centers are already stretched thin for currently incarcerated children. Yet, the government wants to add children ages nine to fourteen to an already inhumane environment.

Since President Duterte took office, his administration has been on a deliberate and ruthless antidrug campaign. Its mission has been to “slaughter them all” which has already claimed an estimated twenty thousand lives. This number includes dozens of children who are being caught in the crossfire of the drug war. Without any regard to human life, Duterte calls these children “collateral damage” as the government continues to kill during the course of supposed anti-drug operations.

This goes beyond a violation of the UN Convention on the Rights of Children. The International Criminal Court (ICC) has even recently launched a preliminary examination of Duterte’s drug war concerning alleged crimes against humanity. Though Duterte has since announced that the Philippines will be pulling out from the ICC’s Rome Statute that grants the ICC jurisdiction over crimes against humanity, and he remains adamant that this drug war is a “legitimate police operation,” evidence of deliberate killing of drug users as opposed to drug traffickers paints a different picture.

The administration states that the main motivation for this bill is to deter adult offenders from abusing children as the current law allegedly incentivizes drug gangs to use children “because they know the children will be freed.” Though children under fifteen were indeed freed before the January 2019 bill was approved, the current administration has always held the child responsible. The Juvenile Act does state that anyone who exploits a child shall be imposed a maximum penalty; however, the onus remains on a child and their own actions. Such laws completely ignore the fact that children even at fifteen do not possess the maturity to

comprehend what they have done or understand the consequences to their decisions. Many countries recognize that a child does not reach the legal age of majority or age to give consent and take on social responsibilities until at least sixteen, yet the Philippine government ignores this widely recognized truth. Oddly, the government has acknowledged that the age of civil responsibility concerning marriage or the creation of a contract is eighteen, but it holds a child legally responsible for any criminal actions at twelve.

As a party to the Convention on the Rights of the Child (“CRC”), the Philippines must protect the child who is, as defined by the Convention, below the age of eighteen. As it states, a child, “by reasons of his physical and mental immaturity, needs special safeguards and care,” and State Parties must under Article 19 take all “appropriate legislative, administrative, social and educational measures to protect the child” and to provide support and care. Yet, the Philippines had been proposing that children as young as nine—with a “compromise” to increase the age to twelve—be convicted and imprisoned until they can be sentenced at age twenty-five. Not only does this directly violate CRC Article 37 against detention and punishment, but some critics believe that this bill will actually cause children to become “well-trained criminals” as they grow up in prisons.

As this war continues to rage on with other leaders like Donald Trump applauding Duterte’s “success” eradicating drugs from the community, the Filipino children are most harmed as they face abuse from perpetrators and the government alike. With nearly thirty-one percent of children living below the basic needs poverty line, many of these exploited children are helpless as the country further enables many to turn to illicit means to make ends meet. The fact that Duterte and his allies believe the next step is to lower the age of criminal liability further shows the continuous neglect of the country’s children.

Compacts of Free Association in FSM, RMI, and Palau: Implications for the 2023-2024 Renewal Negotiations

March 18, 2019
by Erin Thomas*

Introduction

The Compacts of Free Association (COFA) with the Federated States of Micronesia (FSM), Republic of the Marshall Islands (RMI), and Palau have shaped political, economic, and social possibilities for the freely associated states and for the role of the United States in the region. In 1986, when the agreements were initially negotiated, they were a route to independence for FSM, RMI, and Palau. The upcoming renewal negotiations will be affected by the greater political autonomy of the freely associated states. This article highlights the important ramifications for the COFAs around human rights, migration, and economic assistance leading up to the 2023-2024 renewal negotiations.

Background

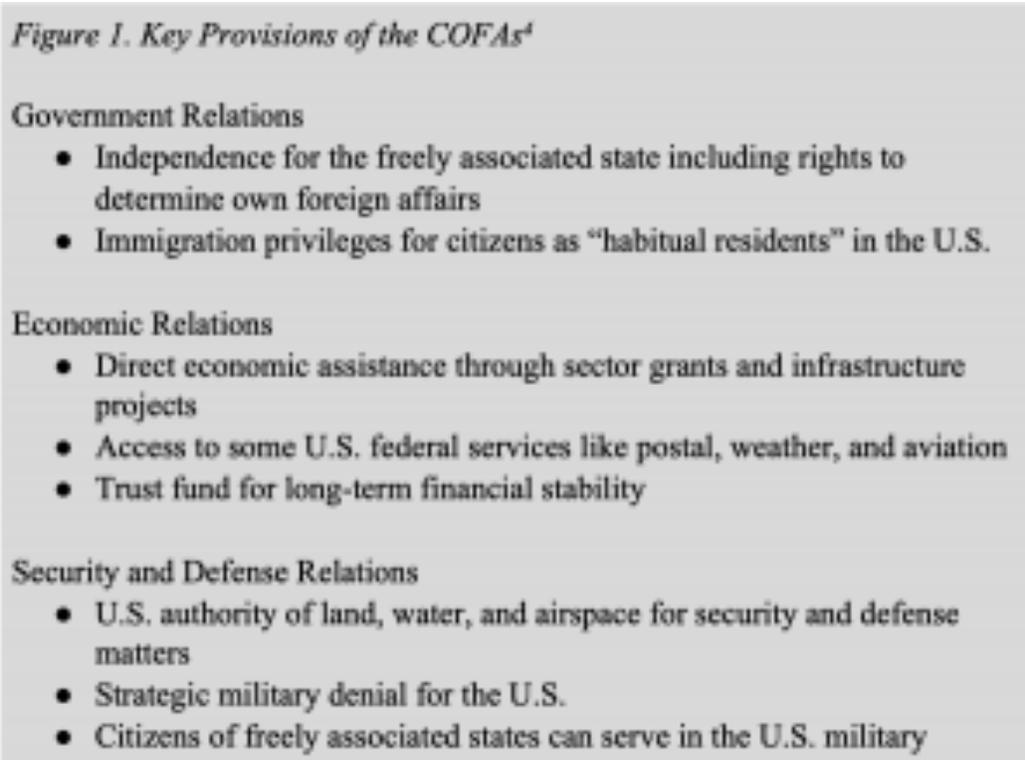
The Compacts of Free Association are the political association agreements between the United States and three countries in the Pacific Islands: Federated States of Micronesia (FSM), the Republic of the Marshall Islands (RMI), and the Republic of Palau. Historically, these states, along with other territories in the region of Micronesia, faced several forces of economic, political, and military colonization. After World War I, the region as a trust territory was administered by Japan. From 1947 to 1994, the region, as the UN Trust Territory of the Pacific Islands (TTPI), was granted to the United States.^[1] With the Cold War raging on, U.S. territory in Micronesia became a prime location to exert U.S. military power. It also became the site of the largest nuclear weapons testing program in the world, with over 67 weapons detonated and tested with results upwards of 1000 times more powerful than the atomic bomb dropped in Hiroshima.^[2]

There are two separate COFA agreements, one between the United States, FSM, and RMI, and one between the United States and Palau. The agreements were an opportunity for the United States to maintain strategic influence in the region while supporting the self-determination and economic self-sufficiency of FSM, RMI, and Palau. They effectively ended the TTPI and granted independence to the island states. The agreements span government, economic, and defense relations between the United States and the freely associated states. The provisions are similar across the agreements (see Figure 1).

The COFAs with RMI and FSM will be up for renewal in 2024 and the COFA with Palau in 2023.^[3] It has been over thirty years since the initial negotiations, and the dynamics during the upcoming negotiations will be different. The rising influence of China reinforces the strategic importance of the islands, and the trade-offs for the freely associated states under the current

agreements show that there are possibilities beyond the current terms. The agreements have shaped political, economic, and social realities for the freely associated states and for the role of the United States in the region.

FSM, RMI, and Palau all have had different experiences under the COFAs, but many have been shared, especially considering the similarities between the agreements. This article will explore the issues thematically with examples from all three states, highlighting key issues of human rights, migration, and economic assistance for the upcoming renewal negotiations.



Human Rights and Legal Fallout

Human rights are a pressing concern in the freely associated states, especially relating to the U.S. military. After World War II, the islands became testing grounds for some of the most powerful nuclear weapons in the world. The testing occurred mainly in RMI from 1946 to 1958.^[4]

Although the U.S. military took some steps to move islanders out of harm’s way, the impact on communities is embedded in historical memory, and the lack of reparations has continued to affect RMI. ^[5] In addition to displacement and its long-term effects, the radiation has had long-lasting health impacts on the population. A high proportion of cancer diagnoses in the Marshall Islands are related to radiation.^[6] Food and water sources were also contaminated, forcing many Marshallese to become dependent on food imports from the United States. As opposed to traditional food sources and agriculture, food imports are linked to higher rates of obesity, which is a risk factor for further negative health outcomes.^[7]

Section 177 of the COFA created the Nuclear Claims Tribunal (NCT), which intended to remedy all past, present, and future effects of the U.S. nuclear testing program.^[8] Nearly \$2.4 billion^[9] has been awarded in claims through the NCT, but only a small fraction of that has been paid out to claimants.^[10] In fact, the NCT ran out of funds in 2010. Many individuals whose claims were awarded have died without receiving compensation, and many of the NCT's records have been jeopardized since it became defunct.^[11] Since then, archivists from Switzerland and Spain have been working to preserve the records, which will likely be released before 2020.^[12] “Compared to the nearly \$1.2 trillion that will be spent on modernizing the U.S. nuclear forces, the payout for remaining awarded claims from the Nuclear Claims Tribunal would be miniscule.^[13]”

In 2014, the Marshall Islands sought justice at the International Court of Justice by arguing that the signatories to the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) were not making efforts to disarm.^[14] The case was dismissed on grounds similar to that of other cases relating to nuclear weapons, and the United States was not even a respondent because the government does not recognize the ICJ.^[15] In 2017, the Ninth Circuit Court of Appeals heard another case from the Marshall Islands against U.S. nuclear proliferation, but it was ruled outside of the jurisdiction of the domestic courts.^[16] The ICJ case showed that there is a space to be heard on these issues at an international level, but a path to non-proliferation, particularly from the United States, appears unlikely.

Little has been done by the United States to resolve the lasting environmental degradation, negative health outcomes, and distrust caused by the nuclear testing program. Even beyond nuclear testing, there is still World War II wreckage across the Pacific that only the United States and Japan have access to. The United States has taken minimal action in preventing dangerous leakages from the hundreds of wrecks in the Pacific.^[17]

Further, the impact of climate change cannot be understated. Carbon emissions from wealthy states like the United States have caused disproportionate harm to the land, air, and sea in Micronesia. This injustice extends far beyond the end of nuclear testing and continues to threaten livelihoods and human rights.

The UN Special Rapporteur on human rights and toxic waste visited RMI and remarked that “the deep fissure in the relationship between the two Governments presents significant challenges; nonetheless the opportunity for reconciliation and progress, for the benefit of all Marshallese, is there to be taken.”^[18]

The “Compact Impact” and Migration Policy

The COFA migration policy, which allows citizens of the freely associated states to live and work in the United States with some restrictions, is a key feature of the agreements. In fact, the RMI Ambassador has said that the Compact would not have been amenable without it.^[19] There has been significant out-migration since the agreements were enacted. The trend is likely to continue with climate change as a push factor^[20], and renewal negotiations cannot undermine the importance of the migration provisions for the freely associated states.

The majority of COFA migrants have gone to other U.S. insular areas including Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands (CNMI), but a

number have also gone to Hawaii and the mainland.^[21] Figure 2 highlights overall migration patterns, with FSM having the highest proportion of overall migration.

Migration is an important option for citizens of the freely associated states for complex and interconnected reasons like family reunification, economic opportunities, healthcare access, and environmental degradation among others. The U.S. government tends to see reducing immigration from the freely associated states as the only solution with only two options: 1) make immigration more challenging for COFA migrants or 2) improve development outcomes in freely associated states to prevent out-migration.^[22] The reality is that the migration provisions in the COFAs are important to the freely associated states, and threatening them could undermine the future of the agreements.

Figure 2. Key Statistics on the U.S. Freely Associated States²³

	Palau	RMI	FSM
Population	17,708	53,753	102,166
GDP per Capita	\$14,066	\$3,474	\$3,115
Percentage of Total COFA Migrants	9%	23%	68%

The United States should instead protect migration from the freely associated states, and there are plenty of opportunities to do so. For example, the 1996 Personal Responsibility and Work Opportunity Act made COFA migrants ineligible for Medicaid, which has had serious impacts on healthcare for low-income COFA migrants and the jurisdictions in which they live that are bearing the financial burden.^[23] “The cost education and health services for migrants from freely associated states is estimated at \$2.1 billion. Only \$409 million (less than 20 percent) of those costs were supported by Compact Impact funds.”^[24]

Further, climate change will be an increasing factor in driving migration, especially from the Pacific.^[25] In the freely associated states, migration is not viewed as the sole solution to climate change, but as islands become uninhabitable, it will become an important option. In the absence of protections for climate migrants, these existing pathways must be protected.

Economic Assistance

A major goal of the Compacts is to advance economic growth and self-sufficiency for the freely associated states. Economic assistance from the U.S. comes in three main forms: 1) access to selected U.S. programs and services, 2) direct economic assistance, and 3) contribution to trust funds.^[26] Since the COFAs were implemented, economic growth has not followed expected trajectories. U.S. negotiators have attributed this to a lack of accountability and oversight of funds.

The original goal of the agreements was to support FSM, RMI, and Palau with the economic assistance tapering into only trust fund access after 2024 (2023 for Palau). The problem with this arrangement is that the unreasonable goal of total self-sufficiency for any economy creates indefinite dependency on economic support. Instead, economic assistance should be tailored to support the domestic economies of the freely associated states in a way that meaningfully promotes their political autonomy.^[27] Past actions have worked in the opposite direction to erode trust between the U.S. and freely associated states.

The 2003 amended agreement for FSM and RMI established oversight committees to address these concerns. The Joint Economic Management Committees (JEMCO) in FSM and the Joint Economic Management and Fiscal Accountability Committee (JEMFAC) in RMI were created consisting of three U.S. representatives and two from either the FSM or RMI, respectively.^[28] Although accountability is an important goal for any funding mechanism, the committee functions more as U.S. oversight than a supportive partnership.^[29]

“The goal of self-sufficiency should be suspect when other, far more richly endowed territories are not self-sufficient and do not really aspire to self-sufficiency. Self-sufficiency is not its own reward. It makes little sense to argue that the poor should learn to be self-sufficient if the rich continue to be supplied and subsidized in one way or another by the prevailing social system.”^[30]

Funding arrangements and a lack of U.S. accountability have impacted the trust between respective governments, particularly with Palau. In 2010, the Compact Review Agreement was signed by both the U.S. and Palau governments, which would extend economic assistance after the 2009 expiration. Despite several attempts, the funding was not actually approved by Congress until the 2018 National Defense Authorization Act (NDAA), eight years later. From 2010 to 2018, funding was appropriated by Congress at a lower rate than agreed upon, and there were no contributions to the trust fund or adjustments for inflation in the meantime.^[31]

Resistance

Ahead of the renewal negotiations, the NDAA authorized a comprehensive assessment of the strategic importance of the freely associated states to the United States. Given the rise of China and the geopolitical significance of the islands, the U.S. government will likely confirm the importance of the islands to the strategic goals of the United States. However, the 2023 and 2024 renewal negotiations will be much different than they were in 1986.

In 1986, the COFAs were, in effect, the only route to independence for FSM, RMI, and Palau. The trade-offs in the upcoming renewal negotiations will be an exercise of greater political autonomy and agency for the freely associated states. Their governments and civil societies have shown reservations about certain pieces of the COFAs, including the presence and actions of the U.S. military. Even during the initial COFA negotiations, civil society resistance in Palau delayed the agreement until 1994.^[32]

The freely associated states have concerns and potential to pivot from the existing agreements given there are alternatives to renewing the COFAs. As explained above, the awarded claims from the Nuclear Claims Tribunal have still not been paid to the Marshallese. The coveted immigration provisions are being restricted in new ways; for example, legal precedent and

COFA terms reinforce the Attorney General’s ability to deny entry to anyone likely to broadly become an expense to the public.^[33] Even the economic assistance, in its inconsistency, has eroded the trust of the freely associated states’ governments, with U.S. congressional authorization taking up to eight years.

Despite their complex political arrangements, the freely associated states are sovereign, independent states. At the UN General Assembly in 2014, the call to action on climate change by RMI activist, Kathy Jetnil-Kijiner, inspired the first standing ovation in the hall since the late Nelson Mandela.^[34] Leaders from both FSM and Palau have converted large parts of their exclusive economic zones (EEZs) to marine sanctuaries.^[35] When China attempted to strong-arm Palau into ending their diplomatic ties with Taiwan through tourist restrictions, Palau President Remengesau responded that “it actually made us more determined to seek the policy of quality versus quantity.”^[36]

There are other actors involved as well, including rising donor countries like China and Japan which also seek access to the strategic significance of FSM, RMI, and Palau. For example, the Japanese government has responded to calls for clean-up of the dangerous leakages from World War II ships and airplane wrecks in FSM. The U.S. government has long resisted requests to remedy or claim responsibility for their dangerous wrecks in FSM waters.^[37] COFA migration has also involved Hawaii, Guam, American Samoa, and CNMI, all of which will be affected by the outcomes of the renewal negotiations.

Conclusion

The 2023-2024 COFA renewal negotiations will be significantly different from the initial negotiations. The platform that the original COFAs built provided for the independence of the freely associated states. FSM, RMI, and Palau all have an unprecedented amount of political autonomy coming into the 2023-2024 COFA renewal negotiations that need to be recognized. Several pertinent human rights issues will be on the table alongside the broader questions of the future of these political relationships.

The U.S. nuclear testing program in RMI and lack of reparations, among other human rights concerns in the region, has eroded trust in the U.S. government. With the Nuclear Claims Tribunal records being preserved, the unfulfilled claims will be a key point of debate given that the COFA responds to all nuclear claims past, present, and future. Additionally, the lack of protections for COFA migrants in the United States is concerning, considering that the migration provisions are integral to the freely associated states and are increasingly so with the threats of climate change.

Economic assistance to the freely associated states has been questioned because it has not led to the intended economic self-sufficiency. A focus on how the governments of RMI, FSM, and Palau can take ownership of their domestic economies will reduce economic dependence. Funding oversight by the United States has been prioritized over partnership with the freely associated states, a method which would advance domestic ownership of economic policy. The financial management of economic assistance has illustrated distrust on both sides and a particular lack of U.S. accountability considering the substantial delays in funding authorization and payment fulfillment.

Although the U.S. military has been afforded strategic military denial in the region, geopolitical conflict in the region has sparked interest from other states including China, Japan, and Taiwan. These agreements are complex and contentious with an increasing number of interested parties. Far from guaranteed, the COFA negotiating tables will open the discussion on what the real impact of these political arrangements have been and what the future of the agreements could bear.

**Erin Thomas is an Associate Advisor with the International Center for Advocates Against Discrimination. Her work is focused on human rights in the Pacific Islands, specifically gender-based violence and sub-national island jurisdictions. She is currently finishing her Master's degree at the University of Auckland in Development Studies.*

[1] C.D. Bay-Hansen, *Power Geopolitics in the Pacific Age* 179 (Inkwater Press, 2011).

[2] Davor Pevec, *The Marshall Islands Nuclear Claims Tribunal: The Claims of the Enewetak People*, 35 J. Int'l L. & Pol'y 221, 221 (2006); *Republic of the Marsh. Is. v. United States*, 865 F.3d 1187, 1191 (9th Cir. 2017).

[3] Approval of U.S.-FSM Compact of Free Association and the U.S.-RMI Compact of Free Association, 48 U.S.C. § 1921 (2006); Extension of Compact of Free Association to Palau, 48 U.S.C. § 1932 (2012).

[4] Calin Georgescu (Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes), *Report of the Special Rapporteur on the Implications for Human Rights of the Environmentally Sound Management and Disposal of Hazardous Substances and Wastes*, U.N. Doc. A/HRC/21/48 (July 2, 2012).

[5] During the largest and most powerful test, Castle Bravo, the atoll of Rongelap was intentionally not evacuated in order to run the Project 4.1 medical study on the effects of such radiation. Martha Smith-Morris, *Domination and Resistance: The United States and the Marshall Islands During the Cold War 75-102* (University of Hawaii Press, 2016).

[6] National Institutes of Health, *Estimation of the Baseline Number of Cancers Among Marshallese and the Number of Cancers Attributable to Exposure to Fallout from Nuclear Weapons Testing Conducted in the Marshall Islands*, Nuclear Claims Tribunal (2004), https://web.archive.org/web/20131016002503fw/http://www.nuclearclaimstribunal.com/NCI_Report_92804.pdf; Misa Imaizumi, et al., *Radiation Dose-Response Relationships for Thyroid Nodules and Autoimmune Thyroid Diseases in Hiroshima and Nagasaki Atomic Bomb Survivors 55-58 Years After Radiation Exposure*, 295 J. of Am. Med. Association 1011, 1011 (2006); Steven L. Simon, et al. *Radiation Doses and Cancer Risks in the Marshall Islands Associated with Exposure to Radioactive Fallout from Bikini and Enewetak Nuclear Weapons Tests: Summary*, 99 Health Physics 105, 105 (2010).

[7] Tracy Ku Lin et al., *The Effect of Sugar and Processed Food Imports on the Prevalence of Overweight and Obesity in 172 Countries*, *Globalization & Health*, 11 (2018).

[8] Approval of U.S.-FSM Compact of Free Association and the U.S.-RMI Compact of Free Association, 48 U.S.C. § 1921(177) (2006).

[9] In the Matter of the Alabs of Rongelap, NCT No. 23-02440, 23-05443-B, 23-05445-B, 23-00501, at 34 (2007); The People of Bikini, NCT No. 23-04134, at 45 (2001); In the Matter of the People of Enewetak, NCT No. 23-0902, at 45 (2000); In the Matter of the People of Utirik, NCT No. 23-06103, at 34 (2006); Sophie van Dijken et al. Monetary Payments for Civilian Harm in International and National Practice 44-46 (2013), https://civiliansinconflict.org/wp-content/uploads/2017/11/Valuation_Final_Oct_2013pdf.pdf.

[10] Georgescu, *supra* note 5, at 11.

[11] Trudy Huskamp Peterson, *Searching for Support: Preserving the Records of the Nuclear Claims Tribunal*, Groniek 99, 102 (2015).

[12] *Id.* at 106; Interview with Trudy Huskamp Peterson, Certified Archivist (Jan. 14, 2019).

[13] CBO, *Approaches for Managing the Costs of U.S. Nuclear Forces, 2017 to 2046* (2017), <https://www.cbo.gov/system/files/115th-congress-2017-2018/reports/53211-nuclearforces.pdf>.

[14] BBC News, *UN court throws out Marshall Islands' nuclear weapons case* (Oct. 5, 2016), <https://www.bbc.com/news/world-asia-37560663>.

[15] Maitê de Souza Schmitz, *Decision of the International Court of Justice in the Nuclear Arms Race Case*, Harv. Int'l L. J. (2016), <http://www.harvardilj.org/2016/11/decision-of-the-international-court-of-justice-in-the-nuclear-arms-race-case/>.

[16] *Republic of the Marsh. Is. v. United States*, *supra* note 2, at 1192.

[17] Clement Yow Mulalap, *Federated States of Micronesia*, Contemp. Pac. 126, 133 (2018).

[18] Georgescu, *supra* note 5, at 16 ¶ 62.

[19] Government Accountability Office, *Migration From Micronesian Nations Has Had Significant Impact on Guam, Hawaii, and the Commonwealth of the Northern Mariana Islands* 61 (2001), <https://www.gao.gov/products/GAO-02-40>.

[20] Victoria W. Keener et al., *Climate Change and Pacific Islands: Indicators and Impacts Executive Summary* (2012), http://www.cakex.org/sites/default/files/documents/Case-Studies-PIRCA-FINAL2_0.pdf.

[21] David Gootnick, Government Accountability Office, *Compacts of Free Association: Issues Associated with Implementation in Palau, Micronesia, and the Marshall Islands* (2016), <https://www.gao.gov/products/GAO-16-550T>.

[22] Government Accountability Office, *supra* note 20, at 24.

- [23] Franco Ciammachilli et al., *Medicaid Parity for Pacific Migrant Populations in the United States*, 24 Asian Am. Pol’y Rev. 41, 46 (2014).
- [24] Cost estimate is from affected jurisdictions over the period of 2003 to 2014 and is used in the lack of other sufficient data collected by relevant institutions. (Gootnick, *supra* note 22, at 22.)
- [25] Briana Dema, *Sea Level Rise and the Freely Associated States: Addressing Environmental Migration Under Compacts of Free Association*, 37 Colum. J. Envtl. L. 177, 192 (2012).
- [26] John Fairlamb, *Compact of Free Association Negotiations: Fulfilling the Promise*, Govt. of F.S.M. (2002), https://www.fsmgov.org/comp_per.html.
- [27] Francis X. Hezel, *Is That the Best You Can Do? A Tale of Two Micronesian Economies*, 1 Pac. Islands Pol’y (2006), <http://www.micsem.org/pubs/articles/economic/frames/taleoftwofr.htm>.
- [28] Robert Underwood, *The Amended U.S. Compact of Free Association with the Federated States of Micronesia And The Marshall Islands: Less Free, More Compact 3* (East-West Center, 2003).
- [29] Asian Development Bank model is more collaborative which involves ADB staff based in the islands functioning more as coaches (Underwood, *supra* note 30, at 3.) Department of Interior staff responsible for funding oversight are currently based in Honolulu and Washington, D.C.
- [30] George Kent, *Development Planning for Micronesia*, 34 Pol. Sci. 1, 18 (1982).
- [31] David Gootnick, Government Accountability Office, *Compact of Free Association: Proposed U.S. Assistance to Palau for Fiscal Years 2016 to 2024* (2016), <https://www.gao.gov/assets/680/678243.pdf>.
- [32] 22 Palauan women brought forth a case supporting the original Constitution of Palau which would deny U.S. military access to Palauan land, water, and airspace. Against U.S. political pressure and the consequent pressure from the U.S.-backed Palau government, they managed to hold off the Compact for seven years and were nominated in 1988 for the Nobel Peace Prize. J. Roman Bedor, *Palau: From the Colonial Outpost to Independent Nation* 276 (2015).
- [33] *United States v. Terrence*, 132 F. 3d 1291, 1292 (9th Cir. 1997); 8 U.S.C. § 1182(a) (2006); Dema, *supra* note 27, at 188.
- [34] Monica C. Labriola, *The Marshall Islands*, 28 Contemp. Pac. 193, 195 (2016).
- [35] Landisang L. Kotaro, *Republic of Palau*, 29 Contemp. Pac. 118, 119 (2017); Mulalap, *supra* note 18, at 132.
- [36] Farah Master, *Empty Hotels, Idle Boats: What Happens When a Pacific Island Upsets China*, Reuters (2018), <https://www.reuters.com/article/us-pacific-china-palau-insight/empty-hotels-idle-boats-what-happens-when-a-pacific-island-upsets-china-idUSKBN1L4036>.

^[37] Mulalap, *supra* note 18, at 133.

Disproportionate Effects of Disaster Preparedness on Women: An Empowerment Approach in Fiji

April 11, 2019
by Kate Morrow

Women are often left out of the conversations on disaster preparation and response. According to the United Nations (UN), women and girls experience greater “risks, burdens, and impacts” during and after disasters such as cyclones and extreme flooding. These risks include sexual violence and food insecurity, because of barriers to accessing health care, food and nutrition, water and sanitation, education, technology, and information in the aftermath of disasters. Cyclone Winston, which hit Fiji in 2016, limited access to food and water, forcing women and girls to travel further to get daily supplies of food and water, exposing them to greater risks to their security along the way. Women’s needs have not been adequately included in disaster preparation, and thus, women are burdened with extra labor to account for their own needs and those of their families after disasters strike. The disproportionate burden of disaster preparation and response that falls on women threatens the realization of women’s rights, but communities have also used it as a catalyst for organizing around women’s empowerment.

Fiji has been a party to and legally bound by the Convention on the Elimination of Discrimination Against Women (CEDAW) since 1995. Under Article 2, Fiji is responsible for all discrimination against women both by the government and by private individuals. Article 11 protects the right to have the same employment opportunities as men and prohibits any discrimination in employment. Articles 7 and 14 require that women be included equally in policy planning, development, and implementation at all levels, noting the particular vulnerability of rural women and the need to support their inclusion. In 2018, the committee to CEDAW issued General Recommendation Number 37 on gender-related dimensions of disaster risk reduction in the context of climate change.

General recommendations are treated as authoritative interpretations of a state’s obligations under CEDAW. The Recommendation encourages states to address gender issues in the context of disasters and climate change through three broad principles: (1) substantive equality and non-discrimination; (2) participation and empowerment; and (3) accountability and access to justice. These principles can be measured by a variety of factors: discrimination in post-disaster access to food, water, and shelter, security from gender-based violence in temporary shelters and evacuation centers, representation in response planning, or even the normalization of skills like swimming and climbing as activities for girls. In its 2018 Universal Periodic Review (UPR), the UN Committee on the Elimination of Discrimination Against Women recommended that Fiji take steps to include women in disaster preparedness planning and strategy development. While General Recommendation Number 37 was passed after the 2018 UPR, many recommendations incorporated General Recommendation Number 37’s second principle of participation and empowerment.

After natural disasters, Fijian women's unpaid work increases while their autonomy decreases, as they tend to be the people finding resources and caring for families. Further, women have been excluded from policy development for disaster preparedness, so their needs have not been adequately addressed or met. Over two years after the devastation of Cyclone Winston, mud crab fishers, which are predominantly women, are still feeling the effects of the disaster in the size and number of mud crabs they are able to catch. Other women stopped fishing for crabs altogether, citing reasons such as needing to rebuild and repair homes or fallen trees blocking their access to the mangroves where the crabs live. Women were unable to access paid employment because the bulk of the rebuilding and recovery work fell to them. The implicit discrimination that forces women to take on a heavier burden in post-disaster rebuilding is a violation of Fiji's obligations to eliminate discrimination against women, especially rural women, because it discriminates against women entering paid employment, guaranteed under Articles 2 and 11.

While the government's seeming inaction and indifference towards who is bearing greater risks and burdens in preparing for and rebuilding after disasters is a violation of its obligations, private community organizations are working through an empowerment approach to provide women with the skills and support they need to effectively join the conversation on disasters. One such organization, FemLINKPACIFIC, is a feminist organization that focuses on having a coordinated community approach to warning systems through radio and SMS communications. Through trainings, publications, and conferences, FemLINKPACIFIC focuses on using media, like radio, to voice women's issues and needs in the planning and development process. FemLINKPACIFIC has successfully empowered women to participate in disaster-readiness planning. While they have been around longer than General Recommendation Number 37, they provide an example of how empowerment and participation can be used to advocate for women to be included in discussions and development on disaster preparedness and response. Using models like this, the Fijian government and other island nations can uphold their CEDAW obligations to ensure women are participating in decision-making under Articles 7 and 14 and actively work to mitigate, and eventually prevent, the disproportionate effects of disaster preparedness and response on women.

Australia's Draconian Offshore Processing Policy: Crimes Against Humanity on Nauru and Manus Island

April 14, 2019
by Lucia Canton

Over the past seventeen years, asylum seekers and refugees who arrive to Australia by boat are prohibited from entering and accessing asylum procedures on the mainland. Instead, they are sent by boat to Australia's offshore detention centers located on the island nation of Nauru and on Manus Island in Papua New Guinea (PNG). Families with woman and children who arrive by boat are sent to Nauru, while male refugees and asylum seekers arriving alone are sent to Manus Island. Men, women, and children are sent to these islands for "offshore processing," a harsh dysphemism, because upon arriving to Nauru and Manus, they are exposed to appalling conditions and held under arbitrary and indefinite detention. These detention centers have become notorious for their inhumane conditions and several organizations, such as the UN and Amnesty International, have documented various human rights violations occurring on both islands. Conditions are dire, resulting in widespread physical and mental suffering amongst detainees and causing what experts described as "epidemic levels" of self-harm with children as young as ten-years-old attempting suicide. By enforcing this offshore processing policy, the Australian government has not only violated several international human rights treaties, including the Convention on the Rights of a Child and the Convention Against Torture, but it has also committed crimes against humanity, within the jurisdiction of the International Criminal Court (ICC), against refugees and asylum seekers in these offshore detention centers.

Australia experienced its first big wave of boat arrivals by refugees and asylum seekers in the 1970s, when half of the Vietnamese population was displaced during the aftermath of the Vietnam war. The Australian public initially received these arrivals with sympathy, but increased numbers of refugees quickly became a main political issue and a dominant topic in the news with widespread claims that Australia was losing control of migrant selection by allowing individuals who arrived by boat to stay in the country. In 1999, another wave of asylum seekers, who were predominantly from the Middle East, arrived to Australia's shores in much larger numbers than before. In response, the Australian government introduced its first offshore processing policy in September 2001, known as the Pacific Solution. This policy was designed to deter refugees from seeking safety on Australia's shores by intercepting all boat arrivals at sea and sending refugees and asylum seekers to newly established offshore detention centers on Nauru and Manus Island.

Over the following years, human rights groups widely criticized the Pacific Solution, claiming that the policy conflicted with international refugee law, was unjustifiably expensive, and caused detainees severe psychological damage. As a result, the Australian parliament announced the decision to end the Pacific Solution and close both offshore detention centers on February 8, 2008. The abandonment of this offshore processing policy was short-lived, and the offshore detention centers were reopened in 2013 in response to another significant increase in boat arrivals, primarily from Syria. Since this reopening in 2013, succeeding Australian government

officials have continued to orchestrate a complex legal architecture aimed at legitimizing the indefinite detention of refugees and asylum seekers entering Australia by sea, hoping to deter more arrivals. Not only have Australian government officials failed to prevent or investigate human rights violations on these islands over the years, but they have used Nauru and PNG as scapegoats, attempting to avoid complete responsibility by concluding agreements with them and contracting with private corporations to run the facilities on these two different countries.

There is sufficient evidence to support that the Australian government's actions resulting in the offshore detention of thousands of refugees and asylum seekers may amount to the crimes against humanity of imprisonment or other severe deprivation of physical liberty, torture, rape, deportation and forcible transfer, and persecution, within the jurisdiction of the ICC. The Office of the Prosecutor of the ICC should exercise her authority and initiate an investigation into these crimes. Under Article 7 of the ICC's Rome Statute, a crime against humanity occurs when an individual knowingly commits a specifically prohibited act "as part of a widespread or systematic attack directed against any civilian population." The refugees and asylum seekers arriving to Australia by boat constitute a "civilian population," which includes victims of a "widespread or systematic attack" as defined by the Rome Statute.

Factual allegations about both locations claim that the offshore detention centers on both islands are inadequate, overcrowded, unsanitary, and overall extremely unsafe; the Australian government's subjection of detainees to these conditions constitute severe deprivation of physical liberty or imprisonment. According to findings by the UNHCR, since the 2013 reopening of offshore-processing on Nauru and Manus Island, the Australian government has forcibly transferred approximately 3,172 refugees and asylum seekers to these offshore facilities. In November 2016, the U.S. government agreed to accept some of the refugees on these islands for resettlement. As of 2019, the U.S. has resettled approximately 500 refugees from Australia's offshore detention facilities; however, due to Trump's administration policies, most Syrian, Iranian, Yemeni, and Somali refugees are not amongst those being resettled into the U.S. In November 2017, Australian authorities decided to shut down the Manus Island detention center, resulting in the forced relocation of male refugees and asylum seekers to three nearby locations on the island and heightening tension between these men and the local community, which responded with discrimination and violence.

In July 2018, approximately 1,600 people were still detained on Nauru and Manus Island, including 850 men, women, and children on Nauru. Fortunately, in February 2019, the last four children held on Nauru were finally released and flown to the U.S. for resettlement; however, several men and women remain in offshore detention on Nauru. The release of these children, while an improvement, was long overdue and still no government officials have taken responsibility or been held accountable for these arbitrary detentions.

Individuals detained at both locations were subjected to physical and sexual abuse, inadequate medical care and legal assistance, extremely severe mental health conditions, and insufficient access to food and water. This lack of sustenance, medical and legal aid, and the abuse committed against those detained at these offshore centers, amounts to torture, rape, and imprisonment or severe deprivation of physical liberty. In August of 2016, The Guardian published the "Nauru Files", consisting of 8,000 pages providing approximately 2,000 leaked formal incident reports that were compiled and authored by security guards, teachers, and child

protection workers at Nauru's Regional Processing Centre (RPC). These incident reports, written by the staff at the RPC, stem from contractual obligations between the Australian and Nauruan government, requiring that regular documentation and records be kept regarding the events occurring at the center in Nauru. The events mentioned in the reports include mental health issues, such as attempts at self-harm, and incidents of sexual assaults, child abuse, hunger strikes, physical injuries, and more. Additionally, a former Salvation Army employee, Nicole Judge, who was contracted to provide welfare services at the RPC on Manus Island, described the center's conditions:

“When I arrived on Manus Island during September 2013, I had previously worked on Nauru for one year. I thought I had seen it all: suicide attempts, people jumping off buildings, people stabbing themselves, people screaming for freedom whilst beating their heads on concrete. Unfortunately, I was wrong; I had not seen it all. Manus Island shocked me to my core. I saw sick and defeated men crammed behind fences and being denied their basic human rights, padlocked inside small areas in rooms often with no windows and being mistreated by those who were employed to care for their safety.”

The Nauru Files and descriptions provided by welfare services paint an alarming picture of the inhumane conditions and practices that occurred at the Nauru RPC.

Australian government officials, in partnership with corporate officers and government officials from Nauru and PNG, knowingly committed acts that amount to crimes against humanity, against thousands of refugees and asylum seekers who were in search of a safe haven on Australia's shores. For years, these individuals have faced legal limbo under the uncertainty of their indefinite detention, while Australia's government fails to appropriately address the atrocities occurring on these offshore facilities, despite widespread condemnation and thorough documentation provided to them. For these reasons, the Office of the Prosecutor of the ICC should investigate and prosecute the government officials responsible for these crimes against humanity, and the victims of these crimes should be compensated accordingly.

Death by Stoning and Other Draconian Punishments Installed in Brunei

April 27, 2019
by Nicholas Ripley

Brunei's [new criminal code](#) legislates death by stoning for extramarital sex, anal sex between people of any gender, and abortion. It also codifies amputation of limbs for stealing and forty lashes by whip for lesbian sex. The Code makes consensual same-sex acts illegal and punishable by death and criminalizes transgender people by prohibiting gender expression associated with a different sex than one's state-recognized binary gender. These punishments will also apply in full force to children who have reached puberty (called *baligh*), while younger children (above seven years old, called *mumaiyiz*) may still be subjected to whipping.

In October 2013, Sultan Hassanal Bolkiah first formally published the [Syariah Penal Code Order](#). The order established a brutal new criminal law system designed to punish ideological morality crimes. It was to be [installed in phases](#) (likely in an attempt to temper international outrage), starting with fines and imprisonment and escalating to include amputation, whipping, and death by stoning. The implementation of the law was delayed after international outcry, but finally took effect on April 3, 2019. Now that it is in force, the new penal system is expected to target Brunei's most vulnerable citizens; women, LGBTQ people, children, and the poor.

Brunei is a [small country](#) on the north coast of the island of Borneo in Southeast Asia, bordering the South China Sea. The state is majority Muslim and ethnically Malay. Despite its size, Brunei is extremely wealthy due to its [crude oil](#) and natural gas production. It consistently ranks in the top five [richest countries in the world](#) and has the second-highest [Human Development Index](#) score among the Southeast Asian nations after Singapore. Ruled by an Islamic [absolute monarchy](#) under Sultan Hassanal Bolkiah, Brunei's ruling royal class enjoys a huge private fortune provided by the state. Hassanal Bolkiah has been in power since 1963 as the world's second longest-reigning current monarch after Queen Elizabeth.

Hassanal Bolkiah is no stranger to problematic policy positions. During the Contra War in Nicaragua, Bolkiah played a significant role in [funding the United States' illegal interventionism](#). America's current special envoy for Venezuela, Elliott Abrams, convinced Bolkiah to wire ten million dollars to help the United States overthrow Nicaragua's Leftist Sandinista government. This payment was ultimately sent to the wrong Swiss bank account number by mistake.

Bolkiah also leads the [Brunei Investment Agency](#) which owns the Dorchester Collection, an operator of some of the world's most elite hotels, including the Dorchester in London and the Beverly Hills Hotel in Los Angeles. Despite Dorchester's attempt to separate itself from the inhumane criminal policies of Brunei, a movement among celebrities has started to boycott Dorchester hotels because of their clear financial connections to Bolkiah. It is unclear whether the pressure from a highly-visible coalition of wealthy, secular, Neoliberal personalities will be sufficient to convince Brunei's government to change course.

Brunei's lack of transparency has made independent monitoring of human rights in the country difficult. It has had the death penalty in place since British colonization but has not carried out an execution since 1957, leading Amnesty International to declare the penalty "abolitionist in practice." And while many citizens are fearful of the enforcement of the new penal code, there is suspicion that the new criminal penalties are a bluff designed to attract more investment from conservative Muslim markets. For example, the laws stipulate that acts of anal sex or adultery must be witnessed by four Muslim adults in order to be prosecuted. Still, gay dating in Brunei has reportedly come to a grinding halt, with people fearing entrapment by policemen pretending to be gay. Any enforcement of these laws, no matter how rare, would be devastating for human rights in the country and in violation of international law.

The newly enacted penal code, according to Human Rights Watch, "is discriminatory on its face" and violates Brunei's obligations under international human rights law, including the rights to "life, freedom from torture and other ill-treatment, expression, religion, privacy, and individual autonomy."

Brunei's draconian punishments against women and children violate treaties to which Brunei is party, such as the Convention on the Rights of the Child and the Convention on the Elimination of all Forms of Discrimination Against Women. The use of stoning and amputation in the penal system violates binding customary international law's absolute prohibition of all forms of torture, and other cruel, inhuman, or degrading treatment or punishment. Brunei's proposed use of the death penalty for "offenses" such as adultery and homosexuality is a form of arbitrary deprivation of life that violates Brunei's international legal obligations as described by the United Nations Human Rights Committee's General Comment No. 36, which states that "under no circumstances can the death penalty ever be applied as a sanction against conduct" that is protected by international law.

In addition to new criminal laws dealing with sex and gender, Brunei has invoked the death penalty for "insult or defamation of the Prophet Mohammad" by both Muslims and non-Muslims, which (along with the other new capital punishment crimes) violates the international principle that the death penalty should be reserved for only "the most serious crimes," such as those involving intentional killing. Additionally, the criminalization of both Muslims and non-Muslims for "printing, disseminating, importing, broadcasting, and distributing publications against Islamic beliefs," Brunei violates the rights to freedom of expression and religion.

The United States, Britain, France, Germany, the United Nations, and several human rights advocacy organizations have joined in condemning the new penalties in Brunei. So far, no sanctions, divestments, or legal challenges have been implemented. China, Singapore, Malaysia, the United States, the United Kingdom, and Germany (respectively) remain Brunei's largest trading partners, making billions of dollars on exports to the country every year. If Brunei is making these changes to increase their foreign investments, maybe these countries should put their money where their outrage is.

Pakistan Establishes One of the Most Progressive Legal Protections for Transgender Persons in the World, But Who Does it Actually Protect?

April 28, 2019
by Kate Juon

As the first Asian country to legally recognize self-perceived gender identity, Pakistan has become a pioneer of transgender rights in Asia. Unlike some other Asian countries where gender recognition is only adjudicated and decided by the courts, Pakistan has created “one of the most progressive laws in the whole world” concerning transgender rights.

The Transgender Persons (Protections of Rights) Act was passed in March 2018, providing citizens the right to self-identify as male, female, neither, or a blend of both genders as well as protection, relief, and rehabilitation of their rights. The law expressly prohibits harassment of transgender persons, provides for the establishment of protection centers and safe houses, and also requires the creation of mechanisms for the periodic “sensitization and awareness” of public servants such as law enforcement and medical professionals relating to issues involving transgender persons. The comprehensive law even calls for the creation of special vocational training programs specifically for the vulnerable transgender community.

The law provides hope in the transgender communities, but advocates know that enforcement and implementation will be very difficult. Although the preexisting social category, “*Khawaja Sira*” (transgender people), has existed for centuries in South Asian culture and South Asian society has traditionally venerated them as having spiritual powers, today transgender women have no choice but to seek shelter within aguru-chela system. Unlike a typical guru relationship where *gurus* act as a religious leader and the *chela* is a student or disciple, through this system, transgender women are mentored by a *guru* who pushes them to work as beggars, sex workers, and wedding dancers. Or many are denied jobs merely based on their status. The law specifically prohibits discrimination against transgender people, but what happens if the country does not accept gender and sexual orientation equality?

Though officially outlawing public and private harassment and discrimination, violence and inequity remains within the communities. In 2018, the same year that the law was passed, there were 479 attacks against transgender women reported in one province, some ending in death. At least five hundred transgender people have been murdered since 2015; in 2017, a morgue refused to accept a body of a transgender woman because “it would make their freezers dirty”; and in 2016, a transgender activist was shot six times and was refused medical services, causing her death. However, even after the law was passed in March 2018, violence has not ended as random attacks continue. In May 2018 a transgender woman was killed over a money dispute over Rs 1,000 (US\$9). In August 2018, a transgender woman was shot and dismembered. In September 2018, a transgender woman was set on fire by men while resisting sexual assault. In January

2019, transgender people were gunned down by unknown assailants, killing one and injuring another.

The treatment of transgender persons, specifically transgender women, is not surprising as Pakistan is a patriarchal country that continues to dismiss feminism as a threat to traditional social structure. Violence against girls and women are still on the rise as an estimate of one thousand “honor killings” occur yearly. Despite Pakistan’s ratification of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in 1996 and an emerging women’s movement to combat these backward laws and norms, violence and inequality against women are imbedded in its culture and tradition. Important to note is that Pakistan does not abide by Paragraph One of Article Twenty-Nine of CEDAW which protects its sovereignty against arbitration by a disputing party. Perhaps because of such a reservation, Pakistan’s “compliance”—or really its noncompliance—to CEDAW cannot be challenged.

Despite the difficulties, some transgender people have begun to take a stand as they are going to the courts to petition for more protections from their communities. Many have begun running for office to introduce more empathetic legislation and push the four provincial governments to actually implement, adopt, and fund their own version of the 2018 law.

Nonetheless, homosexuality is still illegal in Pakistan. This has affected the overall acceptance of the larger LGBTQ community. Though there are active, underground communities in Pakistan, being gay is not acceptable and can even be punishable by death. Islamic states like Pakistan have regularly justified human rights abuses against gay persons using religion, and continue to treat LGBTQ individuals as “abnormal and sub-human.” A leading Pakistani Islamic scholar, Imam Sahib, even described homosexuality as a “curable illness” and stated that he would advise a gay man who wanted to remain in Pakistan to live a secret life or leave the country of origin.

This is the reality that the LGBTQ community faces. Though the Transgender Persons Act is impressive in its specifications concerning the protection of transgender persons, how will the lives of the LGBTQ community actually change? Despite instrumental changes that have allowed transgender persons to live freely as their true selves, the road to dismantle decades of stigma and prejudice at a national level will be difficult. If Pakistan remains committed to its traditionalist ways, actual implementation and change will be difficult to attain.

Air Pollution in Ulaanbaatar – a Human Rights Crisis in Mongolia’s Capital

May 2, 2019

by Valentina Capotosto

Extreme air pollution in Ulaanbaatar, Mongolia, threatens the health and safety of almost half of Mongolia’s population. In May 2019, the Mongolian government will introduce a raw coal ban in multiple districts of its capital to reduce air pollution in its “ger” communities as part of its National Program for Reducing Air and Environmental Pollution (NPRAEP). In an October 2018 keynote address, Daniela Gaparikova, the Deputy Resident Representative for Mongolia to the United Nations Development Program, described the air pollution crisis as a violation of the right to “a standard of living adequate for health” under Article 25 of the Universal Declaration of Human Rights (UDHR) and citizens’ “right to [a] healthy and safe environment and to be protected against environmental pollution and ecological imbalance” under Article 16.2 of Mongolia’s constitution. The air pollution crisis is a climate, health, and human rights crisis that could have implications under national and international law for violation of citizens’ environmental and human rights.

A changing economy and climate have caused unexpected migration from rural communities to Ulaanbaatar. After transitioning from a soviet era command economy to a free-market democracy in 1991, caps on livestock and state support were removed from herding communities causing a sharp increase in livestock populations and subsequent pastureland degradation. Mongolia’s nomadic culture took a second hit when summers became drier, severe weather events became more frequent, and hundreds of bodies of water succumbed to encroaching desertification attributed to climate change. Rural influx to Ulaanbaatar quickly led to the unplanned “ger” communities dominating Ulaanbaatar’s northern district, which burns over one million tons of raw coal each year.

Mongolia’s air pollution crisis is a health and human rights crisis. “Ger” communities burn raw coal in the winter months to survive temperatures sometimes hitting below fifty degrees Fahrenheit causing months of air pollution levels reaching as high as 133 times what the World Health Organization (WHO) considers safe. Ulaanbaatar’s almost 1.5 million residents endure months of exposure to high concentrations of pollutants small enough to “penetrate the lung barrier and enter the blood stream,” causing heart and lung disease, pneumonia, bronchitis, stroke, and impaired cognitive development in children. Pollution has become so severe that many families now send their children to the countryside during the winter.

Mongolia has made past attempts at decreasing its air pollution concentrations under its Ulaanbaatar Clean Air Project (UBCAP) in 2012 and other international commitments under the UN Framework on Climate Change (UNFCCC). According to the World Bank, air pollution declined in response to UBCAP measures until the 2015 financial crisis left enforcement of efficient stove and home insulation initiatives at a standstill. The 2017 NPRAEP, the newest initiative to combat air pollution, aims to overcome the financing issues of past programs to meet ambitious goals for air pollution reduction by 2025. In May, the coal ban takes effect in line with

a revamp of other initiatives attempting to curb air pollution. However, many in Mongolia are “skeptical that the Mongolian government will be able to enforce the ban.”

Mongolia could face liability for its human rights crisis if it fails to mitigate its air pollution levels. An amicus brief by Human Rights Watch to the Supreme Court of Chile suggested that state and regional court systems have used international law as a guide to interpret and apply state constitutional provisions concerning environmental rights. The brief said that international frameworks, specifically the 2018 U.N. Special Rapporteur’s Framework Principles (Framework Principles), outlined obligations that could be “instructive to courts around the world.”

The Framework Principles could provide guidelines for interpreting Mongolia’s basic environmental and human rights obligations. Under Articles 6.4 and 16.2 of Mongolia’s constitution, “the state regulates the economy . . . to ensure . . . social development of the population,” and citizens have a “right to [a] healthy and safe environment and to be protected against environmental pollution and ecological imbalance.” If a case were to be brought to the Mongolian court, the court could choose to use the Framework Principles to interpret its constitutional obligations pursuant to international law standards. Framework provisions such as the responsibility to “protect and fulfill human rights . . . to ensure a safe, clean, healthy, and sustainable environment” (Principle 2), to provide effective remedies for violations of environmental law (Principle 10), and to adopt international standards for air pollution levels from organizations such as the WHO (Principle 11, 33(b)) could be used by the court to interpret the state’s affirmative obligations to ensure social development, a healthy and safe environment, and protection from environmental pollution under Articles 6.4 and 16.2 of its constitution.

If it fails to mitigate its extreme air pollution problem, Mongolia could face litigation for violating its citizens’ constitutional right to protection against environmental pollution and other affirmative obligations under the U.N. Special Rapporteur’s Framework Principles. The new coal ban effective this May will likely be watched closely and could be an important indicator of the NPRAEP’s future success.

When in Conflict: Guaranteeing the Right to Education in India

June 20, 2019
by Sanskriti Sanghi*

Introduction

Since 2007, military use of educational institutions has been documented in twenty-nine countries – commonly in those countries which have been experiencing armed conflict during the past decade.[1] Educational institutions have been taken over by the military, partially or in entirety, in order to be converted into military bases, used for training fighters, used as interrogation and detention facilities, or utilized to hide weapons. Such occupation or use of educational institutions for military purposes and targeted violent attacks on educational institutions and their infrastructure disrupt education and expose students to the risks of death, injury, recruitment, and sexual exploitation. To prevent and discourage the military use of educational institutions domestically, there must be action at the international level.

Given that the right to education is recognized in the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights, a legal framework is needed to protect the right and recognize the repercussions of military use of educational institutions.[2] This article addresses the historical development of the international framework leading up to the *Guidelines for Protecting Schools and Universities from Military Use during Armed Conflict* (Guidelines) and the *Safe Schools Declaration* (Declaration) and argues for India to endorse these documents.[3]

International Legal Framework

The use of educational institutions by military in armed conflict was first explored as early as 1935 in the Roerich Pact, which stated that educational institutions “shall be considered as neutral and as such respected and protected by belligerents.”[4] In international law, a deliberate attack on a school is prohibited and amounts to a serious violation of the laws and customs applicable in armed conflict. This is established in Article 52(2) of the Additional Protocol I to the Geneva Conventions (Articles), which recognized that “attacks shall be limited strictly to military objectives,”[5] and must comply with the rule of distinction and proportionality in an attack upon an object.[6] Additionally, international humanitarian law states that “intentionally directed attacks against buildings dedicated to education” constitute war crimes.[7]

The Rules of the ICRC Customary International Humanitarian Law Study (Rules) refer to rules that come from a general practice accepted as law, as opposed to treaty law. These rules are of crucial importance to today’s armed conflicts because they strengthen protections offered to victims by filling in the gaps left by treaty law. Rule 7 recognizes that “[t]he parties to the conflict must at all times distinguish between civilian objects and military objectives. Attacks may only be directed against military objectives. Attacks must not be directed against civilian

objects.”^[8] Rule 9 states that civilian objects are not military objectives and schools are *prima facie* civilian objects, unless they become military objectives.^[9] Further, under Rule 10, civilian objects, such as schools, lose their protective status when used for military purposes, such as being used to store artillery or to serve as a command post.^[10] However, there is a rule of presumption that establishes that, “*in case of doubt whether an object which is normally dedicated to civilian purposes, such as . . . a school, is being used to make an effective contribution to military action, it shall be presumed not to be so used.*”^[11] The objective of the rules referenced herein and the articles referenced in the paragraph above, within international humanitarian law, is to deter military use of civilian objects, including educational institutions.

The United Nations Security Council (UNSC) has condemned military attacks on schools as one of the six grave violations affecting children most in times of war.^[12] This classification forms the foundation that allows the UNSC to monitor, report on, and respond to abuses suffered by children during conflict.^[13] Similarly, the Optional Protocol on the Involvement of Children in Armed Conflict condemns “the targeting of children in situations of armed conflict and direct attacks on objects protected under international law, including places that generally have a significant presence of children, such as schools . . .”^[14] Additionally, Goal 4 of the Sustainable Development Goals 2030, entitled *Quality Education*, lists “[n]umber of attacks on students, personnel and institutions” as an indicator, addressing the need to safeguard education during armed conflict.^[15]

In January 2009, a United Nations Committee on the Rights of the Child Report recommended that states “fulfill their obligation therein to ensure schools as zones of peace and places where intellectual curiosity and respect for universal human rights is fostered; and to ensure that schools are protected from military attacks or seizure by militants; or used as centres for recruitment.”^[16] In 2011, the Security Council adopted Resolution 1998, which highlighted the implications of attacks on schools for the education, safety, and health of children and called for greater action to ensure schools would not be involved in armed conflict.^[17] In 2012, in light of increased international attention, a coalition of United Nations (UN) agencies and Civil Society Organizations initiated consultations with experts from around the world to develop guidelines, for both government and non-state armed groups, aimed at avoiding military use of schools and mitigating the negative consequences of such use.

In 2014, UNSC Resolution 2143 recognized the negative impact of attacks on education and raised the issue of engagement by member states of the Security Council in the formulation of concrete measures to deter military use of educational institutions.^[18] The Guidelines and the Declaration, which were opened for endorsement at the Oslo Conference in May 2015, provided states with a voluntary, non-legally binding framework to formulate those deterrence measures. States that endorse these legal instruments demonstrate a political commitment to do more to protect educational institutions during armed conflict. This commitment was mirrored in UNSC Resolution 2225, which expressed “deep concern that military use of schools in contravention of applicable international law may render schools legitimate targets of attack, thus endangering the safety of children” and urged states to “take concrete measures to deter such use of schools by armed forces and armed groups.”^[19]

The Guidelines, though not legally binding, specify that parties to an armed conflict should take all necessary measures to avoid impinging on the safety and education of children. The six guidelines urge states to commit to not using educational premises in support of military efforts and to extend such commitment to the premises even when the institution is not functioning due to the threat of active conflict.[20] An exception is carved out for extenuating circumstances, in which the premises must be utilized for only a limited time with no remaining evidence of use by military forces and availability for the school to reopen at will. States are urged to respect the civilian status of educational institutions and to disseminate and incorporate the guidelines into practice throughout the chain of command. It is also imperative for states to recognize that even if an educational institution has been converted into a military objective, it may only be attacked when no other alternative target is feasible. Consequently, states which attack and occupy educational institutions that have been converted into military objectives are also required to ensure that such premises are not used for purposes of their military personnel or activities.

The Declaration which has been endorsed by eighty-four states as of February 2019, encourages state initiatives promoting and protecting the right to education and facilitating the continuation of education during armed conflict.[21] The Declaration highlights that the Guidelines draw on good practice within the international framework and provide guidance to reduce the impact of armed conflict on education. The Guidelines must be used as the focal instrument to construct domestic policy and operational frameworks, develop and adopt a conflict-sensitive approach to education, focus on continuation and re-establishment of facilities – as well as support international collaborative efforts and establish effective review mechanisms.[22] Further, the Guidelines provide impetus for states to collect data on attacks on educational facilities and victims, provide assistance to victims in a non-discriminatory matter while investigating allegations of violations of applicable laws, and establish monitoring and reporting mechanisms.

Education Under Attack in India

The *Education Under Attack Report* of 2018 provides an assessment of military use between 2013-2017 of educational institutions in India, including: military use of educational institutions was responsible for damaging or destroying more than 100 schools; over thirty cases of abductions, targeted killings, explosive attacks and violent repressions of student protestors; higher dropout rates among girl students due to sexual violence; and increasingly common attacks on higher education due to rising tensions between student political groups in nexus with communal tensions leading to increased violence affecting academics and students.[23]

In India, education is under attack primarily in the North-Eastern states, Eastern states, Jammu, and Kashmir. The country witnessed its highest rates of attack in 2013 during elections in the North-East and in 2016 during the violent protests in the state of Jammu and Kashmir. These areas are relatively more susceptible to disruption due to communal tensions and separatist movements which trigger unrest and require the intervention of the military.[24]

India's deviation from international law and policy protecting schools during armed conflict has led to many threats to education. India must create and implement a domestic legal framework that prevents armed conflict from affecting education.

Domestic Legal Framework

As per Section 3(2) of the *Manoeuvres, Field Firing and Artillery Practice Act, 1938*, domestic legislation which deals with *power exercisable for the purpose of manoeuvres*, “[t]he provisions of sub-section (1) shall not authorise entry on or interference with any . . . educational institution”^[25] Section 3 of the *Requisitioning and Acquisition of Immovable Property Act, 1952*, states that where the competent authority is of the opinion that a property is likely to be or is needed for any public purpose, the property should be requisitioned by an order in writing. The provision states: provided that no property or part thereof . . . is exclusively used . . . as a school . . . or for the purpose of accommodation of persons connected with the management of . . . such school . . . shall be requisitioned.^[26]

The right to education is a constitutional guarantee under Article 21(A) of the Constitution of India when read alongside Article 41 pertaining to right to education as a Directive Principle of State Policy, Article 45 pertaining to free and compulsory education for children, and Article 46 pertaining to the promotion of educational interests of the weaker sections of the society.^[27] The domestic laws discussed above display the inadequate scope of protection provided to education in general, as well as to educational institutions. They present a vacuum in comparison with international law; several of the relevant international instruments have not been endorsed by India, namely the *Additional Protocols to the Geneva Conventions*, the *Rome Statute*, the Guidelines, and the Declaration.

Despite this vacuum, India remains bound by customary principles of International Humanitarian Law and obligations arising under ratified instruments, namely the *International Covenant on Economic, Social and Cultural Rights*, and the *UN Convention on the Rights of the Child*. In 2010, the National Commission for Protection of Child Rights recognized these obligations, noting:

Schools should never be used as temporary shelters by security forces. The National Commission for Protection of Child Rights is of the view that use of schools by police or security forces violates the spirit and letter of the Right to Free and Compulsory Education Act 2009 because it actively disrupts access to education and makes schools vulnerable to attacks.^[28]

Role of the Judiciary in India

The Indian judiciary is playing a significant role in highlighting the responsibility of the police forces, military, armed groups, schools, students, teachers and educational personnel; identifying deficiencies in the law; and bringing state practice closer to international standards. In *Inqalabi Nauzwan Sabha v. The State of Bihar*, it was noted:

What is being complained of is that the police has occupied the building of the school with the result that the children are not being sent to school where the police has occupied the classrooms. This is depriving the children of education. The correct perspective would be that the police may remain within the district; but, the schools should not be closed for the reason that the classrooms have been converted into barracks. Why should this happen? This is depriving a generation and a class of children from education to which they have a right.^[29]

Further, in *Paschim Medinipur Bhumi Kalyan Samiti v. West Bengal*, the state requisitioned twenty-two schools to accommodate police forces deployed there to cope with the tensions in the region. Though ten schools had been handed over, the state was directed to give up possession of the remaining schools that had been requisitioned within a period of one month.[30]

In *Exploitation of Children in Orphanages in the State of Tamil Nadu v. Union of India*, the Court noted that schools, hostels and children home complexes under the control of security forces should be vacated within a provided time period, and such premises should not be allowed to be used by such forces in the future for any purpose.[31] Further, the Court directed the Ministry of Human Resource Development to submit a list of all the schools and hostels that were occupied by security forces, while the Ministry of Home Affairs was directed to ensure that the premises were vacated by such forces. Similarly, in the decision of *Nandini Sundar v. The State of Chhattisgarh*, the Court held that security forces that had not complied with the direction to vacate all occupied educational institutions were provided one last chance to vacate through a stipulated time period.[32]

International Concern over the Deviation of Domestic Laws in India from the International Legal Framework

The deviation of Indian domestic laws from the international legal framework governing education under attack has also been a subject of concern in the international community. This can be noted through the concluding observations on the report submitted by India under Article 8, Paragraph 1 of the *Optional Protocol to the Convention on the Rights of the Child* on the involvement of children in armed conflict, which reflected that the Committee was concerned at the deliberate nature of attacks on schools by non-state armed groups as well as occupation of schools by state armed forces. The Committee urged India to pro-actively undertake measures to prevent the attacks on, occupation of, and use of places with a significant presence of children, such as schools, in alignment with international humanitarian law. The Committee further urged India to ensure that schools were vacated in an expeditious manner and to take concrete measures to promptly investigate cases of unlawful attacks or occupation of schools and prosecution and punishment of perpetrators.[33]

Further, the Committee on the Rights of the Child's concluding observations on the consolidated third and fourth periodic reports of India noted, "[t]he Committee . . . calls upon the State Party . . . to take measures to . . . [p]rohibit the occupation of schools by security forces in conflict-affected regions in compliance with international humanitarian and human rights law standards . . ."[34]

Recommendations to Ensure the Safety of Education in India

In furtherance of the goal to promote and protect the right to education, even when under attack during situations of armed conflict, India should endorse the Declaration and commit to both incorporation of the framework of the Guidelines and intent of the Declaration into domestic policy.[35] Given that India has not provided explicit protection for the right to education within domestic laws and has neither ratified nor signed nor endorsed the relevant international instruments identified above, it is imperative for India to implement the international legal

framework and enact domestic legislation. The framework must expressly prohibit attacks on educational institutions; disseminate and build awareness on such laws, regulations, and policies which prohibit armed forces and groups from using the premises of such institutions; and ensure that all violators of international and domestic protections are held accountable. Further, in order to improve prevention, as well as response, India should establish a monitoring mechanism for reporting attacks on education, collecting disaggregated data, and provide training to all armed groups, schools, students, teachers, and educational personnel.[36]

Local negotiations spearheaded by the government should attempt to further efforts at the international and national level through agreements providing educational institutions safe haven by declaring them politics-free zones, banning weapons, and providing a code of conduct for forces. Additionally, India should implement conflict sensitive education and curriculums to minimize the negative effects of attacks due to greater understanding among potential victims. Advocacy for the protection of education from attack should also be carried out at all levels with clearly defined objectives and with messages communicated to all relevant stakeholders.[37]

While endeavoring to prevent, India must also be capable of response. Importantly, it is imperative for India to provide remedies for education-related violations which must be available and effective, including fair functioning of the mechanisms and assistance to all victims seeking access to such mechanisms without discrimination. Physical protection measures must also be implemented by India to shield potential targets and reinforce their protection, in addition to programs of alternate delivery of education to ensure non-interruption of education.[38]

Conclusion

Attacks on education have significant consequences both short and long-term. The military use of educational institutions during armed conflict harms the education system, educators, and students. Education is critical for the social and economic recuperation of a society in the aftermath of conflict and crises and is widely recognized as the foundation for other social, economic, and political rights. Possession and use of schools by the military impedes access to education and threatens future outcomes for children and society as a whole. By failing to incorporate international standards in domestic law, the right to education in India as guaranteed by the Indian Constitution is hollow.

With the endorsement of an international legal framework, incorporation of international standards within the domestic framework and measures for protecting education and mitigating the effects of attacks, India's legal framework will be capable of protecting education. India's legal framework must not only expressly prohibit attacks on educational institutions but must also pave the path for the establishment of a monitoring mechanism, implementation of physical protection and remedial measures for victims of education-related violence, a conflict-sensitive curriculum, and dissemination of information and awareness regarding such laws. Such a framework shall then be reflective of the enabling capacity of education, which is necessary to empower access, capacitate meaningful participation in society, and promote respect for the dignity of all.[39]

[1] *Protecting Schools from Military Use*, Hum. Rts. Watch, <https://www.hrw.org/report/2017/03/20/protecting-schools-military-use/law-policy-and-military-doctrine#> (last visited Dec 22, 2018) [hereinafter *Protecting Schools*].

[2] G.A. Res. 217 (III) A, Universal Declaration of Human Rights (Dec. 10, 1948); International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, 6 I.L.M. 360, 993 U.N.T.S. 3.

[3] See Global Coalition to Protect Educ. from Attack, *Guidelines for Protecting Schools and Universities from Military Use during Armed Conflict* (2014) [hereinafter *Guidelines*]; Global Coalition to Protect Educ. from Attack, *Safe Schools Declaration* (2015) [hereinafter *Declaration*].

[4] Convention for the Protection of Cultural Property in the Event of Armed Conflict, May 14, 1954, 249 U.N.T.S. 216.

[5] Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), art. 52(2), Jun. 8, 1977, 1125 U.N.T.S. 3 [hereinafter *Protection of Victims Protocol*].

[6] *Id.* at art. 51(4); see also *What does Humanitarian Law say about attacks on schools and hospitals?*, Watchlist, <https://watchlist.org/publications/what-does-international-law-say-about-attacks-on-schools-and-hospitals/> (last visited Dec 27, 2018).

[7] *Rome Statute of the International Criminal Court*, art. 8, Jul. 17, 1998, 37 I.L.M. 1002, 2187 U.N.T.S. 90.

[8] Jean-Marie Henchaerts & Louise Doswald-Beck, *Customary International Humanitarian Law, Vol. 1, Rules*, Int'l Committee of the Red Cross 25, <https://www.refworld.org/docid/5305e3de4.html> [hereinafter *Rules*].

[9] *Id.* at 32.

[10] *Id.* at 34.

[11] *Protection of Victims Protocol*, *supra* note 6, at art. 52(3).

[12] *Attacks on Schools and Hospitals*, Off. of the Special Representative of the Secretary Gen. for Child. & Armed Conflict, <https://childrenandarmedconflict.un.org/six-grave-violations/attacks-against-schools/> (last visited Dec 23, 2018).

[13] *Id.*

[14] Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, May 25, 2000, G.A. A/RES/54/263.

[15] *The Quality Factor: Strengthening National Data to Monitor Sustainable Development Goal 4*, UNESCO Inst. of Stats., 16, <http://uis.unesco.org/sites/default/files/documents/quality-factor-strengthening-national-data-2017-en.pdf> (last visited Dec 23, 2018).

[16] *Day of Discussion on Education in Emergencies*, Inter-agency Network for Educ. in Emergencies (September 2008), <https://archive.ineesite.org/en/education-in-emergencies/un-education/crc-discussion>.

[17] S.C. Res. 1998 (Jul. 12, 2011).

[18] S.C. Res. 2143 (Mar. 07, 2011).

[19] S.C. Res. 2225 (Jun. 18, 2015).

[20] Guidelines, *supra* note 3.

[21] *Safe Schools Declaration Endorsements*, Global Coalition to Protect Educ. from Attack, <http://www.protectingeducation.org/guidelines/support> (last visited Feb 21, 2019).

[22] Declaration, *supra* note 4.

[23] *Education Under Attack*, Global Coalition to Protect Educ. from Attack, 127-37 (2018), http://www.protectingeducation.org/sites/default/files/documents/eua_2018_full.pdf

[24] *Id.*

[25] The Manoeuvres, Field Firing and Artillery Practice Act, No. 5 of 1938, India Code (1938), § 3(2), <https://indiacode.nic.in>.

[26] Requisitioning and Acquisition of Immovable Property Act, No. 30 of 1952, India Code (1952), § 3, <https://indiacode.nic.in>.

[27] India Const. art. 21-A, art. 41, art. 45, art. 46.

[28] National Commission for Protection of Child Rights (NCPCR), *Protection of Children's Rights in Areas of Civil Unrest*, Nat'l Commission for Protection of Child Rts., 10 (2010), http://ncpcr.gov.in/view_file.php?fid=61.

[29] *Inqalabi Nauzwan Sabha and others v. The State of Bihar*, (1999) C.W.J.C. 4787 (India).

[30] *Paschim Medinipur Bhumij Kalyan Samiti v. West Bengal*, (2009) W.P. 16442(W) (India).

[31] *Exploitation of Children in Orphanages in the State of Tamil Nadu v. Union of India and others*, (2007) W.P. (Crl.) 102 (India).

[32] Nandini Sundar and others v. The State of Chhattisgarh, (2011) W.P. (C) 250 (India).

[33] *List of issues in relation to the report submitted by India under article 8, paragraph 1, of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict*, U.N. Doc. CRC/C/OPAC/IND/CO/1 (Jun. 13, 2014).

[34] *Concluding observations on the consolidated third and fourth periodic reports of India*, U.N. Doc. CRC/C/IND/CO/3-4 (Jun. 13, 2014).

[35] Protecting Schools, *supra* note 1.

[36] Study on Field-Based Programmatic Measures to Protect Education from Attack, Global Coalition to Protect Educ. from Attack, 13-15, http://www.protectingeducation.org/sites/default/files/documents/study_on_field-based_programmatic_measures_to_protect_education_from_attack_0.pdf#page=48 (last visited Jan 1, 2019).

[37] *Id.* at 18-19, 44.

[38] *Id.* at 10-18.

[39] *Protecting Education in Insecurity and Armed Conflict*, British Inst. of Int'l & Comp. L., 20, https://www.biicl.org/files/6099_protecting_education_handbook.pdf (last visited Jan 3, 2019).