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## ASIA & OCEANIA

### THE PRIMARY EDUCATION STRUGGLE IN PAKISTAN

The ratification of several human rights treaties over the past two-and-a-half decades seems to serve as evidence that Pakistan is working towards providing millions of children the opportunity to attend school. In 2010, Pakistan's legislative body amended the constitution by inserting Article 25A, which mandates the government "provide free and compulsory education to all children of the age of five to sixteen years in such manner as may be determined by law." The amendment reflects the country's ratification of two major human rights treaties. In 1990, Pakistan ratified the United Nations (UN) Convention on the Rights of the Child (CRC). Under Article 28, States Parties must "[m]ake primary education compulsory and available free to all." Pakistan took this commitment further in 2008 by ratifying the International Covenant on Economic, Social, and Cultural Rights, which also recognizes the necessity of affording compulsory education to all children with the view that education "shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms."

While Pakistan's ratification of these treaties and its subsequent constitutional amendment are positive steps towards the full realization of the right to primary education, the country continues to face many challenges. According to a report by United Nations Educational, Scientific, and Cultural Organization (UNESCO) Institute for Statistics, Pakistan had the world's second largest number of children out of school in 2012, with 8.3 million Pakistani children accounting for one in twelve of the world's out-of-school children. The report further revealed that one out of every four school-aged children in Pakistan had never attended any school, with girls comprising half of those children. According to Aamir Latif of

Pakistan Press International Reports, the situation is more alarming in rural regions, such as Baluchistan, where the female literacy rate stands between three and eight percent.

Providing adequate educational resources for Pakistani children is preconditioned on assuring their safety. According to a report by the Global Coalition to Protect Education from Attack, the total number of reported militant attacks on schools in Pakistan between 2009 to 2012 "was at least 838 and could be as high as 919."

While these existing challenges depict a very difficult road for Pakistani children in reaching their dreams of attending school, the relevant treaties offer some mechanisms at the government's disposal that can lead to positive outcomes. Article 44 of the CRC requires States Parties to submit their periodic reports to the CRC Committee every five years. This helps human rights experts fully assess the domestic measures affecting the rights recognized in the convention. The government of Pakistan has been adhering to this obligation since its submission of initial report in 1993, but it has failed to strictly follow the general guidelines of the Committee regarding the form and content of periodic reports. In fact, in its last Concluding Observation on Pakistan's combined third and fourth periodic reports, the Committee expressed regret that the government did not "fully comply with [its] revised general guidelines regarding the form and content of periodic reports."

Furthermore, the Pakistani government has the opportunity to take full advantage of the Optional Protocol to the CRC on a communications procedure. By ratifying it, the government not only provides its citizens the right to submit complaints arising out of the convention, it can also benefit from resources offered within the protocol. Under Article 15, the Committee with the consent of the State Party concerned can transmit its views and recommendations to "United Nations special-

ized agencies, funds and [programs] and other competent bodies” in order to provide further technical advice or assistance.

Similar to the CRC, Articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights also mandate States Parties submit reports, but in stages. Pursuant to Article 16, the country must submit reports to the UN Secretary-General, who must then transmit copies to the Economic and Social Council and other specialized agencies. This mechanism creates a collective platform for addressing issues raised in the reports. Regrettably, since its ratification of the convention in 2008, Pakistan has not submitted a report.

Pakistan could gain substantial support by observing treaty standards. The treaty-based committees may assist with specific challenges such as terrorism, insurgency, and lack of sufficient economic resources that Pakistan is currently facing as it tries to provide adequate primary education to all its children. These issues continue to deprive many Pakistani children of their dreams of going to school; but, the government can help to bring these obstacles into international spotlight and seek assistance by fully adhering to its treaty obligations.

*By Jessica McKenney, staff writer*

### **CAMBODIA – UN REPORTS NEW NGO LAW FALLS SIGNIFICANTLY SHORT OF INTERNATIONAL HUMAN RIGHTS STANDARDS**

On July 24, 2015, the United Nations (UN) Office of the High Commissioner for Human Rights (OHCHR) released a statement expressing grave concern over a new law ratified by the Cambodian Senate and National Assembly, which could greatly restrict the freedoms of Cambodia’s non-governmental organizations (NGOs). According to a UN press release, the new law, the Law on Associations and Non-Governmental Organizations (LANGO), will enable authorities to deregister and prevent registration of local and international associations, as well as NGOs deemed

to threaten “political security, stability, and order.” LANGO’s provisions further dictate that if any of the roughly 5,000 local associations or NGOs should operate in Cambodia without registration, such groups will be immediately subject to criminal liability. Prior to the Senate vote, the UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and Association, Mr. Maina Kiai, urged senators to reject the proposed law on the basis that it would allow the government to shut down groups advocating for human rights, basic freedoms, or good governance. In an attempt to express their displeasure and withdraw the legislative measure, many of the NGOs themselves, including several of the local civil society organizations as well as internationally renowned groups such as Human Rights Watch, came together and wrote a series of letters to the President of the National Assembly, Heng Samrin; Prime Minister Hun Sen; and even King Norodom Sihamoni. The National Assembly ratified LANGO on July 13 and the Senate ratified the draft law with little opposition on July 24. Now the Constitutional Council will review LANGO before submitting it to King Norodom Sihamoni for final approval.

Cambodian authorities maintain that LANGO is justified and necessary because there is currently no legislation overseeing the thousands of NGOs and organizations operating within its borders. Additionally, the law will aim to eliminate illegitimate NGOs and prevent illicit organizations from receiving financing from terrorists. Government spokesmen insist that neither citizens nor the international community should fear the law’s provisions.

Yet, despite government reassurances, letters from the NGO contingents and local reports cite that many Cambodian citizens do not support LANGO. In their letter, Amnesty International and nearly forty other organizations point to multiple efforts by the Cambodian authorities to delegitimize and dissolve peaceful protests against the draft law. Moreover, the letter notes that the majority Cambodian People’s Party (CPP) promised, but failed to hold any parliamentary consultation

with NGOs. The CPP rescheduled discussions on three separate occasions, and ultimately passed the law without any civil society input. The coalition of NGOs noted that appropriate legislation is already in place to regulate NGO activities and that LANGO will impose impermissible restrictions on the rights and freedoms of civil society.

In its review, the Constitutional Council will evaluate LANGO's provisions and rule on the law's constitutionality under Cambodia's national charter. In a recent report, the Observatory for the Protection of Human Rights Defenders (ODS) found that numerous provisions of LANGO contradicted key constitutional principles. ODS cited that articles 8 and 9 of LANGO imposed "mandatory and highly discretionary" registration procedures for NGOs. These regulations could conflict with Article 35 of Cambodia's Constitution, which grants all citizens the right to "participate actively in the political, economic, social, and cultural life in the nation." Additionally, ODS found that Article 24 of LANGO asks NGOs to ensure their operations are consistent with skewed and dangerously vague standards of "political neutrality." Such an inequitable policy seems to contravene the right to freedom of opinion guaranteed in Article 41 of Cambodia's Constitution.

Cambodia has also signed and ratified a number of international human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR). Article 22 of the ICCPR guarantees the right to freedom of association and dictates that a state may only restrict the right when prescribed by a law that is clear, accessible, and in pursuit of a legitimate interest. Under Article 22, the government must prove that any limit on freedom of association is absolutely necessary. Additionally, Article 42 of Cambodia's own Constitution guarantees the right to free assembly. In April of 2015, the Human Rights Committee (CCPR), the body that monitors implementation of the ICCPR, met with Cambodian delegates in Geneva and gave its concluding observations on the Southeast Asian state's compliance. In

the CCPR's review, committee members voiced concerns similar to those of ODS regarding Cambodia's pending NGO-targeted legislation. The committee urged the Cambodian delegates to thoroughly evaluate the new law's prospective incongruence with Articles 22 and 19 of the ICCPR, which collectively guarantee the right to hold opinions without interference.

OHCHR spokesperson, Ravina Sham-sadani, expressed concern that the criminal liability imposed on any NGO operating without registration, alongside LANGO's broadly-worded provisions, would have a "chilling effect" on the work of NGOs. Moving forward, the OHCHR urged the Constitutional Council to reject the bill, thus allowing NGOs to carry out their crucial work, while preserving and fulfilling Cambodia's human rights obligations under international law, particularly with regards to freedom of association.

### **AUSTRALIA / PAPUA NEW GUINEA—ASYLUM SEEKERS DETAINED AT MANUS ISLAND FILE CLASS ACTION SUITS**

A group of twenty-five asylum seekers from Manus Island Regional Processing Center filed suit in Papua New Guinea's (PNG) Supreme Court last March. The refugees—from Iran, Myanmar, Pakistan, Syria, and Lebanon—will argue that their ongoing detention breaches PNG's constitutionally guaranteed rights of liberty and access to legal representation. The suit comes after another Iranian asylum seeker on Manus Island, Majid Karami Kamasaei, initiated a class action against the Australian government for failing to uphold its duty to take reasonable care of detainees. Manus Island, located in northern Papua New Guinea, has been home to one of Australia's two offshore immigrant-processing centers (OPC) since 2001. After falling into disuse, the government formally closed the Manus Island center in 2008, but a significant rise in the number of maritime refugees in 2012 led the Australian government to re-open the facility. As recently as February 2015, approximately 1,004 refugees

occupied the detention center, many of whom had lived at the facility since November of 2012. The United Nations High Commissioner for Refugees (UNHCR) has made multiple inquiries into the treatment of asylum-seekers at Manus Island since the detention center reopened its doors; it has expressed concern that the facility's cramped living conditions coupled with open-ended refugee assessments and placement times frequently result in arbitrary detentions.

The PNG class action suit's named plaintiff, thirty-four-year-old Iranian refugee Majid Karami Kamasae, spent eleven months in the Manus Island detention center before the government transferred him to Melbourne for medical treatment after health workers confiscated his medication on the island. In his suit against the Australian government, which includes all asylum seekers held on Manus Island between November 2012 and December 2014, Kamasae states that the standard of care provided by the Australian Commonwealth at the island's detention facilities fell far below the standards required by Australia's Migration Act. Court documents show that the medical providers on the island, the International Health and Medical Services (IHMS), instructed asylum seekers to drink a minimum of five liters of water per day due to the hot climate of PNG. However, reports show that as recently as December of 2014, many asylum seekers had access to only 500 milliliters of water per day. Court documents from the case, *Kamasae v. Commonwealth*, also state that accommodations were dire and asylum seekers were often exposed to the elements with no appropriate shelter from the high heat and humidity. The court will consider whether the Australian government has effective control over the detention center, since the majority of those working at facilities are private security companies contracted by the government. Lead plaintiff Kamasae commenced the class action in the Australian Supreme Court of Victoria on May 15, 2015, and the Court will hear the case for the first time July 17, 2015.

Article 42 of the PNG Constitution once

guaranteed all people the right to liberty unless they were suspected of a criminal offense or unless they entered the country illegally. However, in early 2014 the PNG Parliament amended the Constitution so that "no person shall be deprived of liberty except . . . under purposes of holding a foreign national under arrangements made by PNG with another country or an international organization that the Minister responsible for immigration matters, in his absolute discretion, approves." In their class action suit, the group of asylum seekers will argue that, since their detention predated the amendment, Article 42's new language should not apply.

In addition to the domestic mechanisms protecting asylum-seekers, both PNG and Australia are parties to similar international agreements. For example, Article 31 of the 1951 Convention and Protocol Relating to the Status of Refugees (1951 Refugee Convention), to which both PNG and Australia are signatories, forbids contracting states from imposing penalties on refugees who are present in their territory without proper authorization. The UNHCR, in accordance with Article 35 of the 1951 Refugee Convention, requires refugee cases be brought promptly before a judicial or other independent authority for review. Furthermore, Article 9 of the International Covenant on Civil and Political Rights (ICCPR) decrees that "no one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law."

In May of 2014, the UNHCR publicized that, as a matter of international law, the physical transfer of asylum-seekers from Australia to PNG does not eliminate the commonwealth nation's international or domestic responsibilities for the protection of asylum seekers. The Australian Parliamentary Joint Committee on Human Rights echoed the UNHCR and found that regardless of whether Australia established official effective control, government officials and contractors had sufficient involvement in Manus Island's operations to implicate the commonwealth nation as responsible for any

violations of refugee standards under international law.

In addition to the delays in establishing legal frameworks for refugee status determination, UNCHR Director of International Protection, Volker Türk, noted that harsh conditions for asylum seekers were punitive and did not provide safe or humane conditions as required by the 1951 Convention. Tensions also seem to be mounting at Manus Island with a 700-person hunger strike in January of this year, alongside increased reports of deadly violence. Moving forward, the UNHCR considers it imperative that the more than 18,000 asylum seekers, who arrived in Australia by boat since 2012, be provided with just and effectual asylum procedures as soon as possible. These obligations should endure, regardless of whether the asylum seeker remains in Australia or is subsequently transferred to PNG.

### **PHILIPPINES: UN EXPERTS CALL FOR PROBE INTO KILLINGS OF INDIGENOUS RIGHTS DEFENDERS**

The United Nations Special Rapporteur on the Rights of Indigenous Peoples, Victoria Tauli-Corpus, and the United Nations Special Rapporteur on the Situation of Human Rights Defenders, Michael Forst, urged the Philippine Government to launch a “full and independent” inquiry into the killings of three human rights defenders in Surigao del Sur on the southern Philippine island of Mindanao. One of those killed was the director of the Alternative Learning Center for Agriculture and Development (ALCADEV), a school that provides education to children of the Lumad people, an indigenous group living in the mountainous Caraga region. The shooting occurred immediately after members of the regular Philippine Army and government-supported paramilitary forces occupied the school grounds, detained the director, and allegedly executed him in one of the classrooms. In their report, the Special Rapporteurs reiterated that “military occupation of civilian institutions and killing of civilians . . . are unacceptable, deplorable and

contrary to international human rights and international human rights standards.” They noted that locating such violence in schools, “which should remain safe havens for children,” is particularly egregious.

The Surigao del Sur territory has long been afflicted by armed conflicts between the government and indigenous groups—particularly the Moros and Lumad peoples—regarding issues of self-determination and land rights. Despite the fact that the Lumad peoples never formed a unifying revolutionary group, unlike the Moros, the government has stationed military and state-backed paramilitary forces in Lumad lands since May of this year. This occupation has increased tensions between the Lumads and the State, particularly with military forces interfering with the lives and livelihoods of the indigenous peoples by blocking access to farms and ancestral gravesites and conducted a string of civilian killings. Government actions in Surigao del Sur have compelled some 3,000 Lumads to evacuate to Tandag, the provincial capital, where they continue to stay in provisional shelters.

The Indigenous People’s Rights Act of 1997 is national legislation that promotes and protects the rights of indigenous peoples and their cultural communities. Section 13 of the Act recognizes the inherent right of self-governance and self-determination. Additionally, Section 14 of the Act explains that the state is required to continue to strengthen and support the various autonomous regions, which include the Lumad regions of Mindanao. In addition to these domestic obligations, the Philippines is a State Party to the International Covenant on Civil and Political Rights (ICCPR). Article 1 of the ICCPR ensures that all peoples have the right of self-determination; by virtue of that right, such peoples are free to determine their political status and to pursue their economic, social, and cultural development. This language mirrors Article 1 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), which the Philippines has also ratified. The Philippines also voted in favor of, and ultimately helped pass the United Nations Dec-

laration on the Rights of Indigenous Peoples, adopted by the UN General Assembly in 2007.

Amidst allegations that the military has been staging the Lumad killings, Philippine President Benigno Aquino publically assured citizens, in a nationally televised address, that there is no government-sponsored campaign to kill Lumads or any indigenous peoples in the region. Delegates from the Philippines announced at the Human Rights Council in Geneva last September that an internal, government-led investigation is underway. Additionally, in October of last year, the Philippine Senate Committee on Justice and Human Rights, in partnership with the Committee on Cultural Communities, held a two-day probe into the killings and evacuations within the southern province. Local officials, resident witnesses of the killings, members of the army, and members of government-affiliated militias attended the Senate inquiry. The Senate probe also included a visit to the refugee camp that now occupies the Tandang City Provincial sports complex to talk to the approximately 3,000 individuals who fled the killings in Surigao del Sur.

The Special Rapporteurs recognized and felt encouraged by the government's announcement of an investigation at the Human Rights Council. Yet they also urged Philippine authorities to verify that independent investigators are not only identifying and bringing the perpetrators to justice, but also ensuring a safe return and proper redress for the indigenous peoples displaced by these events. The Rapporteurs expressed pressing concern about the increasing insecurity and ascent of unlawful killings in the region. In particular, Mr. Forst, the Special Rapporteur on the Situation of Human Rights Defenders, called on the Philippine government to finally accept his requests to visit the country and assess the context in which human rights defenders operate in the Philippines.

*by Wilson Melbostad, staff writer*

## DOMESTIC VIOLENCE IN KYRGYZSTAN

One night, after Asya's partner severely beat her, she called the police in desperate need of help. Expecting some kind of response, she was shocked when the police asked her if her partner had tried to stab or kill her. According to Human Rights Watch (HRW), when she told them no, the police responded, "Okay, you call me when he tries to kill you, because we have more important things to do."

Asya's story is common in Kyrgyzstan. Women and girls in Kyrgyzstan suffer high rates of domestic violence, yet many cases go unreported. According to Kyrgyzstan's 2012 Demographic and Health Survey, twenty-three percent of women age fifteen to forty-nine have experienced either physical or sexual violence. However, the problem is bigger than mere prevalence. Police and the judicial system often fail to prosecute perpetrators, as detailed by HRW.

HRW issued a report on October 9th documenting what it describes as the government's failure to provide sufficient support, protection, and remedies to domestic violence survivors. The report includes ninety interviews with survivors, police, lawyers, and shelter staff members. These accounts describe cases of severe physical and psychological domestic abuse of women, including concussions and skull fractures, broken jaws, stab wounds, severe beatings to the point of miscarriage, and numerous other acts of violence.

This report serves as an update to an earlier report issued in 2006, which highlighted the systemic problems of violence and bride kidnapping in Kyrgyzstan. Since the release of that report, the government has introduced several amendments and publicity campaigns highlighting the need for social change and greater protection for women.

In 2013, the government increased penalties for bride kidnapping. The next year, Kyrgyzstan entered into a "Partnership for Democracy" with the Parliamentary Assembly of the Council of Europe, which affirmed its commitment to international human rights and to combating violence against women. In

2015, the United Nations Trust Fund to End Violence against Women awarded a large grant to Kyrgyzstan's Ministry of Social Development to fund improved responses to reported cases. Kyrgyzstan has also ratified several international human rights treaties that require the government to protect women from violence and discrimination, including the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). CEDAW outlines what constitutes discrimination against women, as well as the specific obligations of States Parties to eliminate such practices. Kyrgyzstan ratified CEDAW in 1997, and the current gap in the legal system is potentially in contravention of its obligations thereunder. Furthermore, the state has not ratified the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, which provides detailed guidance on measures to address domestic violence.

Kyrgyzstan's current efforts to end violence against women are insufficient, according to HRW. Its report describes how women in Kyrgyzstan continue to face barriers to equality, such as limited assistance, protection, or justice for acts of domestic violence. Cultural attitudes still play a significant role in the prevalence of violence and the reluctance of police to pursue perpetrators. One view is that charging perpetrators of domestic violence would lead to social upheaval due to the disillusion of families by separating husbands from their wives and children. Women who want to leave abusive relationships struggle to do so because of the limited access to shelters and other services. Furthermore, many victims feel trapped because they depend on their abuser or their abuser's family for food and shelter, according to the recent HRW report.

Courts tend to emphasize that reconciliation is the best outcome for the family. Additionally, there is a significant amount of victim blaming and stigma attached to domestic violence. One victim reported to HRW that, after attempting to get a divorce, the judge refused and asked, "Why would he beat you? You were not doing the housework? Or are you sleeping

around?"

The most recent HRW reports notes that, in some cases, police refer victims who have been seriously injured to community elders' courts, called "aksakals," in an attempt to reconcile the couple and preserve the social dynamic. Kyrgyzstan's current domestic violence laws allow police to issue temporary or long-term orders that specify protective measures for victims. The laws also prevent the perpetrator from contacting the victim for fear of penalty. In many of the cases documented by HRW, the police did not issue a protective order and often the police did not inform victims that the option exists. Furthermore, lawyers and judges told several victims that they did not meet the criteria for long-term protection services, despite having sustained significant injuries.

Prosecutors often treat domestic violence as a minor offense. According to government data for 2013, fewer than half of registered domestic violence complaints went to court. Of those cases, only seven percent constituted criminal offenses. The rest resulted in small penalties that were often not designated as domestic violence.

Survivors who do come forward, despite harsh social pressures, often feel trapped due to a lack of social services. There are few local organizations that can provide services, such as basic food and shelter, if the abuser's family refuses to do so. Staff at nongovernmental crisis centers told HRW that they are struggling to remain open and are forced to eliminate programs due to lack of funding.

Proposed legislation is currently under review that would build on the 2003 law to expand and clarify the responsibilities of the state when dealing with domestic violence. HRW has called on the government to ensure that police, prosecutors, and judges fulfill their duties under the domestic violence laws and that all officials who fail to comply face discipline. It has called for the establishment of clear protocols with specific guidelines and mandatory training curriculums in line with international standards on domestic violence response.

*By Summer Woods, staff writer*