



**LEGAL SOLUTIONS FOR SUSTAINABLE
FUTURES IN SOUTH ASIA: HOW PRO
BONO CONTRIBUTES TO SDG
PROGRESS**



ABOUT ADVOCATES FOR INTERNATIONAL DEVELOPMENT

Advocates for International Development (A4ID), founded in 2006, is a global charity that believes the law can and should be used more effectively to advance fair and sustainable development. A4ID aims to inspire and enable lawyers to join the global fight to eradicate poverty by advancing the United Nation's Sustainable Development Goals (SDGs). Through A4ID, the world's top lawyers provide free legal support to organisations, working to advance human dignity, equality, and justice. Its work has so far impacted over 130 countries.

A4ID's Rule of Law Expertise (ROLE UK) Programme is funded by the Foreign, Commonwealth and Development Office. It supports partnerships to provide pro bono legal and judicial expertise with the aim to strengthen the rule of law in official development assistance (ODA)-eligible countries. The Programme also provides the pro bono legal sector with access to targeted and relevant information to inform and improve their technical assistance in development contexts.

www.a4id.org | roleuk@a4id.org

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Report Cover Photo Credit: *Stephan Bachenheimer, World Bank Nepal*



FOREWORD



This year marks the midpoint of the UN Sustainable Development Goals' (SDGs) agenda, during which stakeholders worldwide have converged to exchange insights on the strides made so far and to complement efforts for the challenges ahead. Over the seven years since the SDGs were launched, the landscape has undergone significant transformations that demand our attention. The actions taken to revive the SDG agenda have ignited imaginative initiatives, yet they've also encountered formidable hurdles. Amidst the concerted global attempt to ensure “no one is left behind”, numerous goals and their corresponding indicators cry out for further action.

For A4ID, these realities serve as a poignant reminder of the imperative for a united effort to yield global outcomes. Reiterating the call to action through the SDG Legal Initiative, it becomes increasingly apparent why the global legal community must play a more dynamic role in the sustainability equation. This is essential if we are to approach the necessary progress mandated by 2030.

“Legal Solutions for Sustainable Futures in South Asia serve as a remarkable testament to demonstrate what is achievable”

As we navigate this intricate landscape, A4ID partners globally exemplify diverse contributions to SDG success, with the legal community

emerging as essential allies to the cause. In these instances, law and lawyers transcend mere professions; they become catalysts for positive change. Commissioned as part of the Rule of Law Expertise (ROLE UK) Programme and in celebration of A4ID's expanding network of change leaders in South Asia, I trust that the unique case studies and insights presented here will provide the necessary focus on our

work, inspire you and others in the region to get involved, fortifying our collective resolve to build upon the compelling and essential case for change. For A4ID, these endeavours epitomize the potency of pro bono efforts in forging a more equitable, sustainable, and peaceful world. Together, let us march forward, for in our collective actions lies the promise of a brighter and just future.



SDG Legal Initiative

#Advocates4SDGs

JOIN THE SDG LEGAL INITIATIVE

BECOME PART OF THE GLOBAL NETWORK OF LAWYERS WORKING
TO ADVANCE THE SUSTAINABLE DEVELOPMENTS GOALS.

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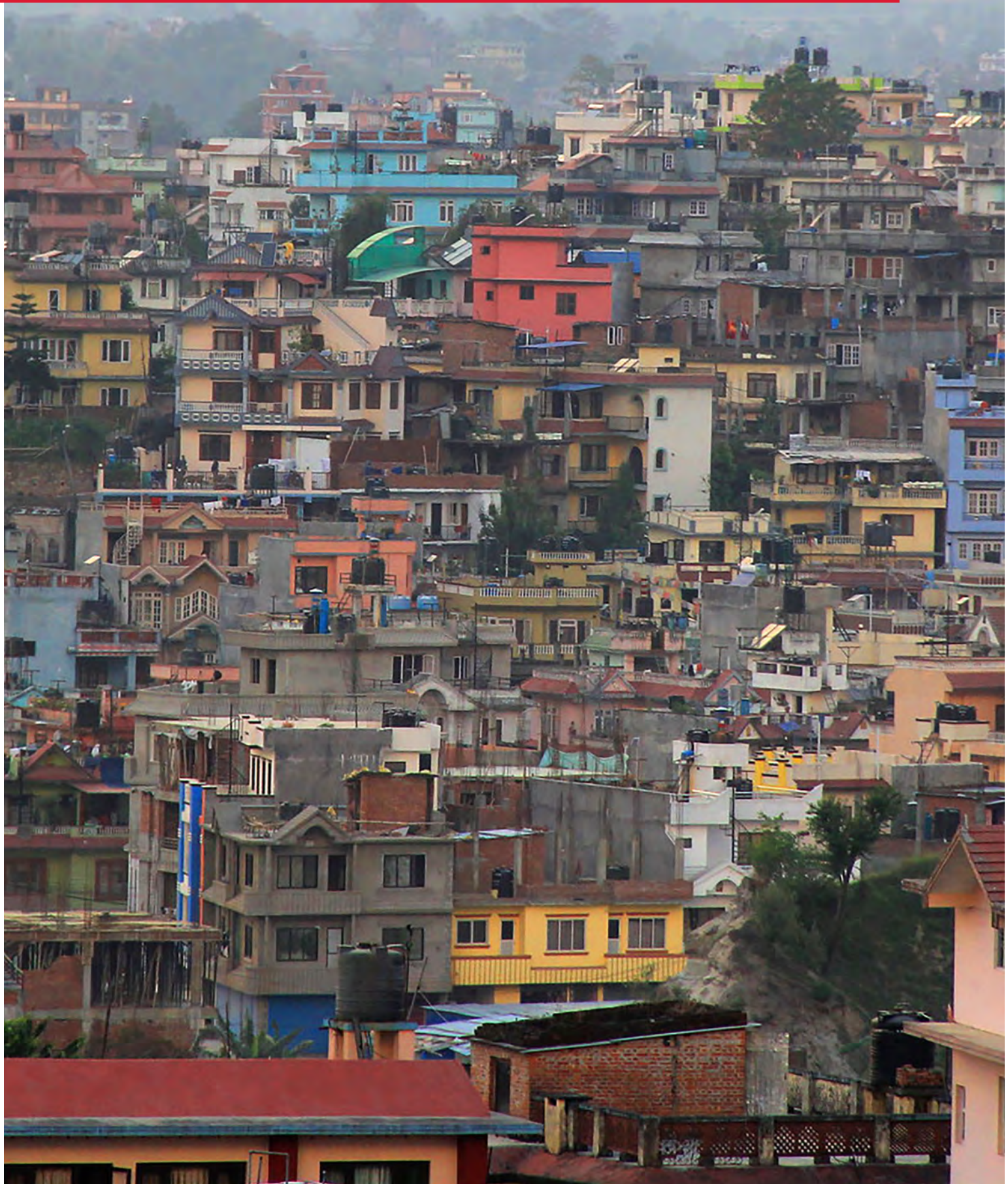
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TABLE OF ABBREVIATIONS

| | |
|-----------------|--|
| A4ID | Advocates for International Development |
| BRAC | Bangladesh Rural Advancement Committee |
| Crore | Denoting ten million under the Indian numbering system |
| DFID | Department for International Development (United Kingdom) |
| EPA | Environmental Protection Agency |
| GII | Gender Inequality Index |
| GLOF | Glacial Lake Outburst Floods |
| GCF | Green Climate Fund |
| GRID | Green, Resilient, and Inclusive Development |
| GDP | Gross Domestic Product |
| INR | Indian Rupee |
| IPSF | International Platform on Sustainable Finance |
| LAHURNIP | Lawyers' Association for Human Rights of Nepalese Indigenous Peoples |
| LDC | Least Developed Country |
| LTS | Long Term Strategy |
| MFI | Microfinance Institutions |
| MDG | Millennium Development Goals |
| MFS | Mobile Financial Services |
| NAP | National Adaptation Plan |

| | |
|----------------|--|
| NHRC | National Human Rights Commission |
| NIMHANS | National Institute of Mental Health and Neurosciences |
| NRA | National Reconstruction Authority |
| NRC | National Register of Citizens |
| NGO | Non-Governmental Organisation |
| ND-GAIN | Notre Dame Global Adaptation Initiative |
| RMG | Ready-Made Garments |
| SAARC | South Asia Association for Regional Cooperation |
| SDG | Sustainable Development Goals |
| UN | United Nations |
| UNICEF | United Nations Children's Fund |
| COP | United Nations Climate Change Conference |
| UNCLOS | United Nations Convention on the Law of the Sea |
| UNDESA | United Nations Department of Economic and Social Affairs |
| UNDP | United Nations Development Programme |
| UNESCAP | United Nations Economic and Social Commission for Asia and the Pacific |
| UNEA | United Nations Environment Assembly |
| UNDRR | United Nations Office for Disaster Risk Reduction |
| UNFPA | United Nations Population Fund |
| USD | United States Dollar |
| WTO | World Trade Organisation |
| YECAP | Youth Empowerment in Climate Action Platform |

EXECUTIVE SUMMARY



The last few years have witnessed unprecedented challenges. The unanticipated COVID-19 pandemic, a rise in geopolitical tensions, the mass displacement of millions of people, a widespread cost-of-living crisis, and the continuing effects of climate change have all brought into sharp focus the global nature of issues that underpin the SDG agenda. Amidst these challenges however, regional variations and successes are being seen across the spectrum of sustainable development, intersecting and impacting progress within national boundaries and across the global ecosystem.

For South Asian nations¹ there remains great scope for future growth and development, and ample opportunity to Build Back Better towards the improvement of social, economic, and environmental conditions. However, to date, many SDG targets are still falling by the wayside.²

In recognition of these challenges, the primary objective of this report is to highlight some of the creative ways in which pro bono solutions are being applied within South Asian nations to advance SDG progress. In doing so, the report highlights the stories of individual law firms and legal sector organisations working on the ground to mobilise action for impact, serving as an inspiration for the wider legal community.

Acting in contrast to the global dashboards and international trackers that have taken centre stage

in this year's discussions, the findings of this report are less concerned, then, with quantifying or asserting the overall level of progress made

“It is important to recognise that the lack of progress on most of the targets in the [Asia-Pacific] region overall, masks many national achievements”

UNESCAP 2023 Report

in South Asia. Instead, they seek to identify opportunities amongst the region's shifting landscape for private sector engagement, including ways in which law firms and their clients can get involved. In celebration of the many instances in which this is already taking place, case studies on A4ID in-country partners provide a useful starting point to understand how greater pro bono and legal services contributions are being made in line with the SDG Agenda. A brief summary of the report's key findings is provided below:

FROM AN INTERNATIONAL PERSPECTIVE, SDG PROGRESS IN THE SOUTH ASIA REGION WILL NECESSITATE CROSS-BORDER PARTNERSHIPS AND PRIVATE SECTOR INVOLVEMENT OVER THE COMING YEARS. THIS IS BECAUSE:

- **Socio-political trends amongst South Asian nations will likely highlight the importance of multilateralism for achieving greater progress against all 17 SDGs.** At a time when geopolitical fragmentation is rife, solidarity among nations offers countries a chance to bolster internal capacities for advancing the SDG Agenda. As each country across the South Asia region possesses their own unique expertise on different SDGs, collective action in the form of knowledge, expertise, and resource exchange will help advance sustainable development as a collective endeavour. Lawyers acting as local, regional and international intermediaries can, in turn, help to support these activities.
- **Tumultuous economic recovery for South Asian nations following COVID-19, has led to limited fiscal capacity to further the SDG Agenda, with new opportunities for**

the private sector likely to emerge. As South Asian nations grapple with competing demands for recovery, with heavy debt burdens and high public expenditure following the COVID-19 pandemic, the private sector offers a promising avenue to help Build Back Better. A general decline in private investment growth compared to the pre-pandemic period leaves ample room for countries to incentivise private sector sustainable investment. Lawyers possessing expertise on the SDG framework will therefore have a competitive edge for clients wishing to capitalise on these opportunities.

- **Predictions on climate change and environmental hazards offer a chance for private sector stakeholders to proactively contribute to solutions for building resilience within South Asian countries.** The aftermath of environmental and climate disasters have seen spillover effects from both an economic and social standpoint, including repercussions to citizen welfare, food security, price stability, and industry. However, the existence of well documented environmental risk estimations offer a chance to innovate new solutions and adaptations to climate resilience. Given the tensions between social and environmental rights, lawyers are well positioned to advise on how best to build this resilience, drawing on their unique skill sets in diplomacy when balancing competing interests.

FROM A GRASSROOTS PERSPECTIVE, CASE STUDIES FROM A4ID IN-COUNTRY PARTNERS ACROSS BANGLADESH, NEPAL AND INDIA HIGHLIGHT THE MYRIAD WAYS THAT LAW FIRMS, LEGAL ACTIVISTS, AND LAW SCHOOLS CAN ACTIVELY CONTRIBUTE TO THE SDG AGENDA. AS SUCH:

- **Law firms, like The Legal Circle, demonstrate how they are contributing to SDG 5 (Gender Equality) by offering creative pro bono solutions, alongside financial products and services for female entrepreneurs in Bangladesh (see Chapter 3).** Here, Bangladesh's rapid industrialisation has created new opportunities for elevating the rights and economic standing of women, and helped make strides towards greater gender parity. However, cultural and structural barriers continue to limit the financial independence and economic prospects of many Bangladeshi women. Despite the significant contributions made by women to Bangladesh's rapid economic growth, particularly in the Ready-Made Garment sector, there are still barriers to upward mobility when seeking financial independence. These include: limited access

to capital, comparatively fewer asset-holdings, financial illiteracy, and cultural expectations aligned with traditional gender roles. Legal services therefore offer one promising avenue to help overcome these challenges.

- **Youth activists in Nepal, including Youth Empowerment in Climate Action Platform, demonstrate how they are working with lawyers on SDG 13 (Climate Action) to improve environmental accountability (see Chapter 4).** Here, the use of legal best practice is holding public infrastructure projects accountable to environmental impact assessments, while strategic litigation is being used to combat exploitation of the country's land and environmental resources. These contributions arise against Nepal's unique vulnerabilities to climate-related disasters. However, the country's natural assets also offer sizable economic opportunities in sectors such as hydropower, which could pave the way to clean energy transitions both nationally and regionally. As the country's national development plans and climate resilience measures offer an opportunity for greater environmental protections, climate activists argue that large scale investment projects and unregulated trade require greater oversight and accountability to protect the rights of the environment and local communities. A need for more environmental lawyers to represent these interests is therefore required.

■ **'Academic legal institutions, such as Project 39A, demonstrate how they are working to advance SDG 16 (Peace, Justice and Strong Institutions) by using a multidisciplinary approach to advocate for the reform of India's death penalty laws, whilst simultaneously providing legal representation for prisoners on death row (see Chapter 5).** Here, India's position as a regional and international leader, owing to its large population, democratic status and sizable GDP, places the country in a pivotal

position to enhance peace, justice, and strong institutions (SDG 16). However, access to justice within the country is being undermined by structural deficiencies in the criminal justice system, including an increasingly punitive penal code, contradictory laws and practices, and exclusionary policies. For prisoners facing the death penalty, excessive punishment, undue process and arbitrary sentencing have compromised the proper administration of justice, necessitating legal expertise and advocacy to overhaul death penalty practices.

EXECUTIVE SUMMARY: END NOTES

¹ Note: for the purposes of this report, 'South Asian nations' are considered to be the founding members of the South Asia Association for Regional Cooperation (SAARC), and therefore include: Afghanistan, Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka.

² UNESCAP, *Asia and the Pacific SDG Progress Report 2023*, (March 2023), p.5. Available at: <https://www.unescap.org/kp/2023/asia-and-pacific-sdg-progress-report-2023>

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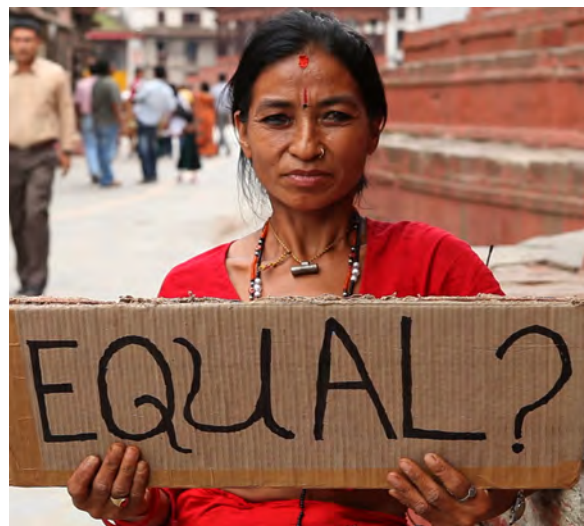


Photo Credit: Stephan Bachenheimer, World Bank, Nepal

INTRODUCTION



Advancements towards the SDGs have been slowing worldwide. 2023 marked the midpoint of the SDG Agenda, though progress thus far has fallen exceedingly short of the 50% mark. On the contrary, for half of all the global indicators, weak or insufficient strides have been made, and for a further 30% of indicators, there has been a complete reversal or standstill. As a result, less than 25% of the 169 indicators can be considered to have had any positive traction since 2015.¹

With a quarter of the world's population² and a third of the world's poor³ residing in South Asia, understanding and accelerating progression in this region provides considerable opportunity to galvanise progress towards the SDGs.

Law and lawyers play a core part in this transition. As rights and liberties come under global threat, social protection measures become ever-more essential, and the impacts of climate change are more acutely felt. Accordingly, adherence to the rule of law and the provision of equal access to legal representation come into distinct focus. Moreover, creative approaches to pro bono support, used to empower, protect, and emancipate those otherwise lacking sufficient backing, play a crucial role in disseminating legal assistance to those most in need.

To identify opportunities for the legal sector's involvement in South Asia, broad-based secondary



“South Asia’s economic dynamism and promising prospects provide confidence in the sub-region’s ability to transform itself and build a sustainable future for all”

UNESCAP, 2017 Report⁴

research has been undertaken at the macro (international and regional) level, in order to highlight key data trends and generate insights into the region's overall SDG progress. These findings maximise on international reporting and datasets available under various UN institutions, particularly in the wake of this year's SDG Summit, and contextualise the work of A4ID in-country partners against the wider development landscape. For legal professionals, they offer the chance to understand how laws and legal developments across practice area specialisms fit into the wider SDG framework, and how the legal profession can

maximise on these opportunities.

In turn, in-depth qualitative case studies from A4ID’s in-country partners offer primary research findings, from a grassroots perspective, into the localised challenges that are hindering SDG progress. Here, local organisations were selected to represent a diverse range of partners working in and with the legal community on issues that international datasets have been less able to monitor.

In its special edition 2023 SDG Progress Report, the UN stated that “for several cross-cutting goals such as climate action (Goal 13), gender equality (Goal 5), and peace, justice, and

strong institutions (Goal 16), less than half of the 193 countries or areas have internationally comparable data since 2015.”⁵ Consequently, to better understand the progress made against these three goals, the report provides case-studies from Bangladesh (SDG 5), Nepal (SDG 13), and India (SDG 16) on topics relevant to progressing these specific SDGs. This includes contributions from a corporate and commercial law firm (The Legal Circle, Bangladesh), legal activists (UNDP Nepal Youth Advisory Board), and a legal academic institution (Project 39A, India). By providing insights from these stakeholders, the case studies contribute recommendations for how pro bono efforts can be made in pursuit of the SDG agenda.



Photo Credit: Aisha Faquir, World Bank

INTRODUCTION: END NOTES

¹ UN, *Sustainable Development Goals Report: Special Edition*, (2023), Foreword: p.2. Available at: <https://unstats.un.org/sdgs/report/2023/The-Sustainable-Development-Goals-Report-2023.pdf>

² UNDESA Population Division (2022), “World Population Prospects: The 2022 Revision,” available at: <https://population.un.org/dataportal/data/indicators/49/locations/5501,900/start/1950/end/2023/line/linetimeplot>

³ UNDP and Oxford Poverty and Human Development Initiative (2023), “Global Multidimensional Poverty Index 2023: Unstacking Global Poverty,” available at: <https://hdr.undp.org/system/files/documents/hdp->

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⁴ UNESCAP (2017), “Achieving Sustainable Development Goals in South Asia,” available at: <https://www.unescap.org/publications/achieving-sustainable-development-goals-south-asia-key-policy-priorities-and>

⁵ UN, *Sustainable Development Goals Report: Special Edition*, (2023), p.9. Available at: <https://unstats.un.org/sdgs/report/2023/The-Sustainable-Development-Goals-Report-2023.pdf>

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Photo Credit: UNDP, Nepal

REGIONAL SNAPSHOT



South Asian countries are collectively home to approximately 2 billion people.¹ As one of the fastest growing regions, both in terms of economy and population,² South Asia offers tremendous scope for change. However, positive transformation may be difficult to achieve as today’s international landscape faces challenges from all corners of the sustainability triangle: *the social, economic, and environmental*.

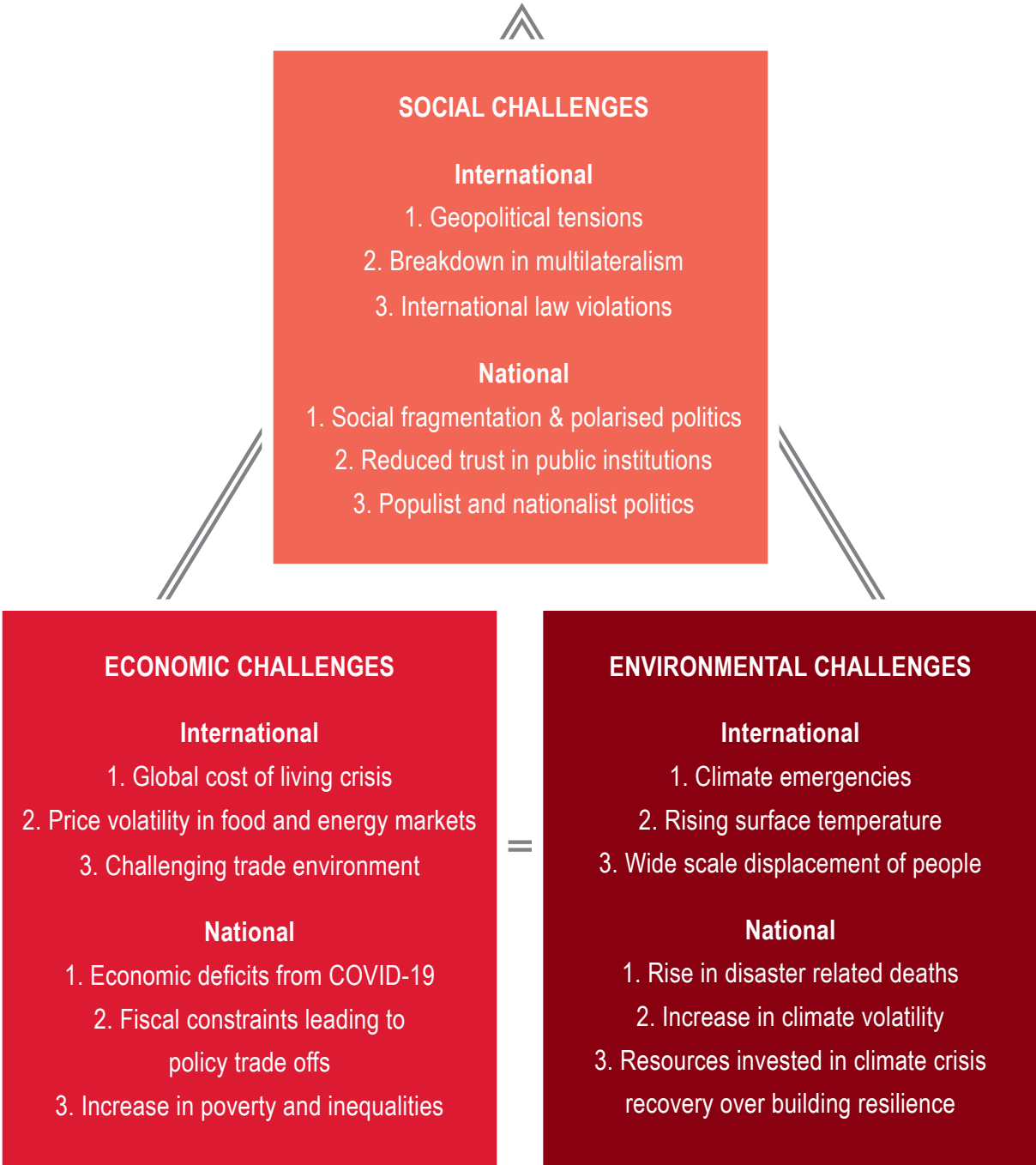


Fig 1: Sustainability Triangle

Specific to the South Asia region, macro-trends witnessed from a socio-political, economic, and environmental perspective, highlight the key takeaways relevant to the region's legal sector. Of note are the reasons why regional cooperation, strategic partnerships, and cross-border projects will be necessary for the remaining seven years of the SDG timeframe, why the private sector plays a key role in aligning with the SDG framework, and how the role of law and lawyers fits within this.

THE SOCIO-POLITICAL PERSPECTIVE: A CASE FOR COLLABORATION AND COHESION

South Asian countries demonstrated their commitments to international development goals long before the SDG Agenda, with great

strides accomplished in response to the SDG's predecessor: the Millennium Development Goals (MDGs).³ Here significant progress was made on issues relating to poverty, malnourishment, and access to education amongst many other targets. However, regional variations existed even then, attributable to factors including: population size, level of NGO engagement, institutional capacities and public spending priorities.⁴ It is no surprise then, that progress against the 17 SDGs in the South Asia region has similarly seen regional disparities both within and amongst nations.

For example, as demonstrated in Figure 2, progress towards SDG 1 (No Poverty) and SDG 4 (Quality Education) paints a mixed picture, with some countries on track to achieve their targets, whilst others are stagnating or even declining in

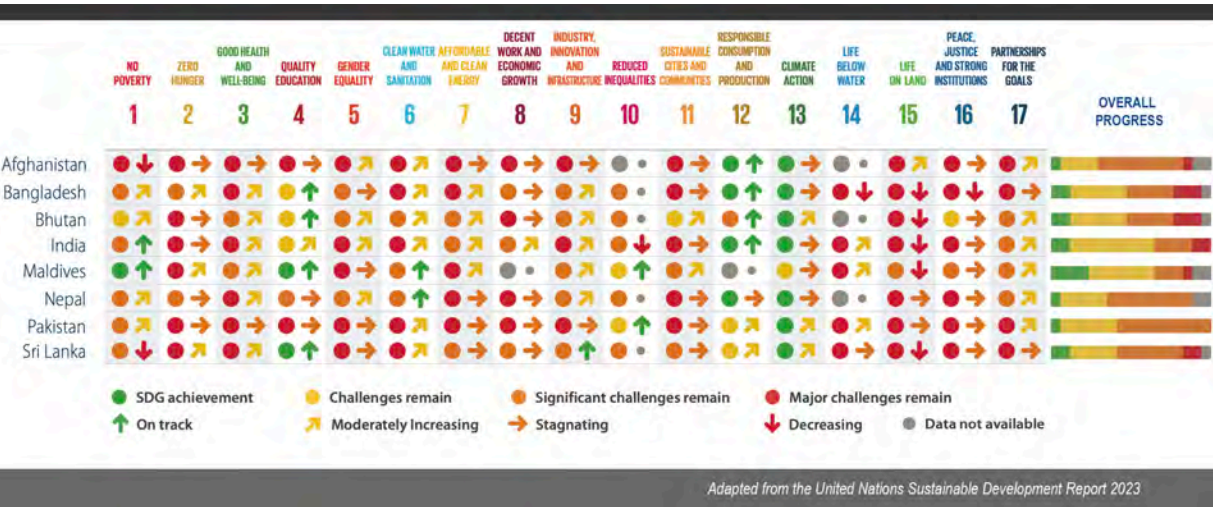


Fig 2. 2023 SDG Progress Dashboard of South Asian Countries

terms of progress made. Similarly, from findings on overall progress made, the percentage of SDGs already achieved as compared to those where significant or major challenges remain, varies notably from country to country.

Whilst these variations may seem problematic, UNESCAP attests to their importance in reiterating the SDG Agenda as a *“collective endeavour that relies on the progress of every country.”*⁵

Inherent within this is the acknowledgement that each country will have their own specialisations on the SDG Agenda and may have to prioritise certain SDGs over others in the current timeframe and against various crisis recovery efforts. Consequently, if South Asian nations work collaboratively through regional cooperation to progress the SDG targets, there arises huge potential to make improvements across the board.

For instance, it is interesting that the two goals in Figure 2 to have witnessed strong progress amongst almost all South Asian nations are SDG 12 (Responsible Consumption and Production) and SDG 13 (Climate Action); both of which typically require cross-border cooperation given the interconnected, international nature of today's commodity, trade and infrastructure routes.

Indeed, the value of cross-border cooperation lies at the heart of the SDG Agenda, setting it apart from the earlier MDGs, and forming the basis upon

which the SDGs were conceived. As embodied by SDG 17 (Partnership for Goals), it is neither the responsibility of developed or developing regions alone to build a sustainable future, nor is the 'developed-developing' divide a useful framework for securing a world where 'no one is left behind.'

On the contrary, when looking at the regional pace leaders identified by UNESCAP in their latest 2023 SDG report (see Figure 3), a healthy array

“Peace and global cooperation must not become mere slogans... Peace and global cooperation mean nothing less and nothing more than choosing the end of human poverty over the end of human life”

**UN SDG SPECIAL EDITION 2023
REPORT**

of South Asian countries are included in the fold. Here it is promising to see that 7 out of the 17 SDGs are already being progressed at speed by South Asian nations. If regional collective action and strategic partnerships were thus developed to promote knowledge-transfer, dialogue-building, and expertise exchange, further progress could be made, at pace, over the next 7 years across South Asia before the 2030 deadline.

To enable progress towards the SDGs, calls for multilateralism, triangular cooperation, and strengthened social cohesion are voiced by the UN itself.⁶

These calls are made at a time when geopolitical fragmentation, a weaponisation of global trade and economy, and an increase in 'self-sufficient' defensive policies continue to erode trust amongst nations.⁷ In turn, the international order is also being put to the test, as are international laws and treaties that have been integral to maintaining global peace and alliance. To overcome these challenges, and see continued progress towards the SDG Agenda, it is therefore likely that South Asian states will need to continue to work collaboratively and cohesively towards the global goals, maximising on their respective expertise and contributing towards regional success.



Adapted from the UNESCAP Asia and the Pacific SDG Progress Report 2023

Fig 3. South Asian SDG Pace Leaders (2015-2023)

THE ECONOMIC PERSPECTIVE: A CASE FOR THE PRIVATE SECTOR

Economically speaking, South Asia is expected to grow faster than any other developing country region in the coming years and is considered a “bright spot in the global economy” according to the World Bank Group’s predictions.⁸ However, the region is also home to considerable disparities as some countries see greater potential for sustainable growth whilst others are still grappling with internal crises following COVID-19. Of note, is the role of the energy-food-finance nexus, in which limited fiscal capacity, coupled with the impacts of the Ukraine War and increasing climate disasters, have weakened national resilience to unexpected shocks, undermined access to basic resources and forced policymakers across South Asia to make increasingly difficult trade-offs between long- and short-term interests.⁹

For South Asian countries, these consequences have led to economic variations across the region, creating a mixed landscape for sustainable investment. At one end of the scale lies those countries enjoying economic stability and growth including: India, expected to emerge as the world’s third largest economy by 2027¹⁰; the Maldives, having witnessed positive economic growth accelerating beyond projected figures,¹¹

and Bangladesh, expected to graduate from ‘LDC status’ in 2026 following an accelerated growth cycle.¹² Meanwhile, countries such as Nepal, Pakistan, and Bhutan remain in mitigation mode, albeit with expectations for growth in due course.¹³ In contrast however, are the circumstances of Sri Lanka, where unsustainable debt and high public financing has led to an economic downturn¹⁴, and Afghanistan, where harmful gender policies under Taliban rule have compromised socio-economic development leading to economic collapse.¹⁵

Following the aftermath of the COVID-19 pandemic, and in wake of the polycrisis recognised by both the UN¹⁶ and the World Economic Forum,¹⁷ tumultuous economic recovery and heavy debt burdens are further felt by many countries around the world. As a result, progress towards the SDG Agenda now requires greater stimulus for long-term financing.

For South Asian countries, part of this puzzle lies with the integral role of the private sector. As almost all eight countries see a decline in private investment growth compared to the pre-pandemic period, incentives for the private sector to contribute to sustainable investment are encouraged.¹⁸ Indeed, recommendations on behalf of the UN go a step further, calling on: “*regulatory innovations that align private sector governance models with sustainable development objectives [that] could spark*

significant change."¹⁹ It is therefore clear that as South Asian countries face varying levels of state capacity for sustainable investment, constrained in terms of both fiscal capacity and competing demands for crisis recovery, the role of the private sector to contribute towards the 17 SDGs has become more urgent and essential.

THE ENVIRONMENTAL PERSPECTIVE: A CASE FOR MITIGATION

Finally then, from an environmental perspective, climate action continues to be of such global concern, that it has almost become synonymous with the term 'sustainability' itself. In 2023, the Intergovernmental Panel on Climate Change unequivocally pointed to human activities as a principal cause of global warming, noting that "human-caused climate change is already affecting many weather and climate extremes in every region across the globe."²⁰

For South Asian nations this is particularly worrying, given their high exposure to both the long- and short-term effects of climate change. As noted by the World Bank, not only do a significant proportion of the South Asian population reside in dense river valleys, but according to the Global Climate Risk index, three South Asian countries rank in the top ten, namely: Bangladesh (7th), Pakistan (8th), and Nepal (10th).²¹

Notwithstanding the UN's recent findings (see Figure 2) that almost all South Asian nations have achieved SDG 13 (Climate Action), these risks are thought to be a large part of the reasons why UNESCAP is still calling for greater progress on this goal. As the only SDG to have seen significant regression across the Asia-Pacific,²² the spill-over effects of natural disasters make SDG 13 a particular and pressing concern. Indeed, by holding a dual role, as both a causal factor of climate change, but also a primary victim to its disasters, South Asian nations need to maintain environmental protection and climate action as ongoing SDG priorities. In this regard, the severe lack of progress on SDG 14 (life below water) and SDG 15 (life on land) across the region (see Figure 2), will also require further efforts to mitigate damage to the ecosystem and biodiversity loss.

Disruptions caused by natural disasters move beyond the environment, affecting food production, agriculture, economic resilience, price stability and individual livelihoods across South Asia. In the wake of major environmental disasters, the impacts on persons and their basic human rights, particularly where displacement is concerned, require legal and administrative support from national actors. However, the climate crisis also offers an opportunity for private sector stakeholders to contribute proactively. Armed with scientific projections to better

understand where environmental vulnerabilities lie, there is now greater scope and rising market need for private sector solutions to help build national resilience for climate change.

THE ROLE OF LAW AND LAWYERS

With the above perspectives in mind, there are multiple ways in which the role of law and lawyers will be critical to the next seven years of achieving SDG success across South Asia.

For regional and international law firms, there arises a strategic advantage for facilitating cross-border initiatives and exchange, where existing networks, expertise and infrastructure can be usefully mobilised towards achieving greater SDG progress. This also applies for individual lawyers with experience handling international or cross-jurisdictional clients and cases. However, even for local and national law firms, cross-border cooperation will likely see new opportunities emerge for SDG alignment, as collaborative projects still require insights into the SDG needs and impacts for specific municipalities and smaller communities to effectively operate at all levels. As all legal institutions are united under integral concepts such as rule of law, it is also the legal community as a whole, who can set the standard in advocating for multilateral cooperation, promoting

social cohesion and ultimately pushing for peaceful partnerships towards a just future.

Even from a purely national perspective, opportunities arise. As private sector contributions become more vital for achieving SDG success, new opportunities to advance the SDG agenda will likely emerge for businesses of all sizes over the coming years. Here, law firms once again, have a chance to contribute directly. For example, when providing legal expertise to corporate clients, law firms that are cognisant of the SDG framework and any emerging laws or regulations aligning private sector objectives with the SDGs, will be better placed to advise on investment matters. Similarly, law firms themselves may find new opportunities to integrate and align with the SDG agenda both in creating a competitive edge, and in pursuing more sustainable business practices. In this way, it is not only through pro bono contributions, but in the way that law firms conduct and measure their business impact, that they can more fully contribute towards SDG progress.

For those operating in the public sector, the use of strategic litigation, and contributions through legal research, can also help to shape new laws and regulations to mitigate future risks. Notably, given the increasingly complex role of public policy in navigating the polycrisis that the world is now facing, with trade-offs likely to emerge between

economic, social, and environmental rights, lawyers can draw on their unique skill sets in diplomacy to contribute solutions and expertise on how these competing interests might be balanced.

To provide more concrete examples of legal

sector involvement to SDG progress in the South Asia region, the following case studies highlight some of the ways that law firms, legal activists, and legal academic institutions are already contributing, providing country-specific recommendations for others to follow suit.

REGIONAL SNAPSHOT: END NOTES

¹ UNDESA, *World Population Prospects 2022*, (2022). Available at: https://www.un.org/development/desa/pd/sites/www.un.org.development.desa.pd/files/wpp2022_summary_of_results.pdf

² The World Bank Group, “*South Asia Development Update: Toward Faster, Cleaner Growth*” (October 2023), p.xv. Available at: <https://openknowledge.worldbank.org/server/api/core/bitstreams/9ffd589a-dfb0-4942-b94a-b89c41fb93b6/content>

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BANGLADESH: FEMALE EMPOWERMENT THROUGH FINANCIAL INCLUSION



In 2015, at the end of the Millennium Development Goals (MDGs), and the beginning of the SDGs, Bangladesh was making considerable progress across the development spectrum. Despite battling intense environmental vulnerabilities exacerbated by climate change, and overcoming multiple implementation challenges, the country achieved stark reductions across several pressing indices. These included: poverty alleviation, maternal and infant mortality, food security, immunisation coverage and disease incidence, primary educational enrolment, and gender parity in primary and secondary education.¹ Moving into the SDG Agenda then, several priorities centred around building on these improvements and securing equitable growth across the country.

To implement these commitments, Bangladesh took a number of steps to integrate achievement of the SDGs into their own national framework. As a result they are among only a small handful of countries out of the 191 member states that pledged to achieve the UN SDGs by 2030, who have set national targets for their attainment.² In doing so, the country has adopted a 'data-first' approach, with national level actors such as the Bangladesh Bureau of Statistics working in coordination with other government departments to collate data within a national 'SDG tracker.'³

This reflects the country's 'whole of society' approach to achieving the SDGs – drawing upon relevant expertise and galvanising cohesive action across the public (national and local governments), private, and not-for-profit sectors (including academia).⁴

Since 2015, Bangladesh has seen notable progress in SDGs 4 (Quality Education) and 7 (Affordable and Clean Energy), and is identified as a 'regional pace leader' amongst all Asia-Pacific countries by UNESCAP. Despite these efforts however, Bangladesh is ranked 101st in the world for SDG attainment overall, and fifth out of the other eight SAARC countries.⁵ Of particular note here is that the rates of child marriage in Bangladesh remain the highest of all other South Asian nations, with 59% (over 4.3 million) of women aged 20-24 reportedly being married or in union by the age of 18. This further translates into one of the highest rates of adolescent fertility in the world, with 83 births per 1,000 to girls aged 15-19 years, and 10 per 1,000 to girls aged 10-14; double that of Pakistan and India.⁶ While progress has been made in reducing child marriage over the past two decades, it has been insufficient to buck the trend overall.⁷

LEGAL DEVELOPMENTS

To improve gender equality across the country, the government and judiciary of Bangladesh has been proactive in developing new laws and precedents to bolster female rights and inclusion, promoting greater dignity and respect towards women.

The below snapshot highlights some of the recent laws and policy developments relating to gender equality (SDG 5), in order to help inform the international legal community, and national law firms, on how the law is changing and developing within the country.

“The State shall endeavour to ensure equality of opportunity and participation of women in all spheres of national life”

**ARTICLE 19 OF THE
CONSTITUTION OF BANGLADESH**



Photo Credit: Orange the World 2018 - Bangladesh. UN Women, Fahad Kaizer

RECENT LAW AND POLICY DEVELOPMENTS ON THE RIGHTS OF WOMEN IN BANGLADESH

In 2022, The Supreme Court of Bangladesh ordered an amendment to the Evidence Act 1872. The Government of Bangladesh amended sections 146 and 155 of the Evidence Act 1872, disallowing questions concerning a victim's character and personal life within criminal trials, without prior and express approval from the court. The change was introduced in recognition of highly prejudicial treatment that the evidentiary process posed towards female victims of rape. The change was hailed as a landmark decision as it spared rape victims, especially women, from humiliation in court.

In January 2023, the High Court Division of the Supreme Court of Bangladesh ordered that mothers can now be sole legal guardians of their children. This verdict came following an incident where a young woman was denied registration for a matriculation exam after she had refused to enter her father's name in the exam registration form as mandated by the requirements. Following the precedent set by the case, children may now register for such exams by solely entering their mother's name and cannot be forced to enter their father's name if they do not wish to do so. This decision was highly beneficial to single mothers, allowing for sole guardianship of their children.

On 12 October 2023, the High Court Division of the Supreme Court of Bangladesh ordered the prevention of unnecessary Caesarean Sections in all hospitals and clinics in Bangladesh. A lack of guidance for hospitals and clinics, in combination with the prevalence of C-sections, meant that many women suffered unnecessary physical harm and distress from the over-use of C-sections during birth. The Court directed the Government to widely circulate guidelines concerning sexual harassment and to make it compulsory for all hospital and clinics to follow the relevant guidelines to prevent unnecessary operations.

In 2022, Rule 361A was incorporated into the Bangladesh Labour Rules concerning

sexual harassment of women at the workplace. The new rule sets out a list of actions that may amount to sexual harassment at the workplace, providing safeguards for female employees and greater guarantees of a safe working environment.

In addition to the above-mentioned laws and guidelines the Government of Bangladesh has also introduced other targeted policies which prioritise the rights and emancipation of women.

The Government has allocated 3% of the annual Upazilla Parishad budget to the Women Development Forum. The allocated budget is to be used by the Women Development Forum to increase female employment by providing training, to decrease the dropout rate of female students from schools and ensure proper education for female students. At the same time, the funding aims to create social awareness against female trafficking and the abuse of women.

In 2021, the National Women's Organisation launched the 'Women Entrepreneur Development Project for the Economic Empowerment of Women' at the grassroots level. The project aims to train 256,000 underprivileged women in 7 specific areas such as interior design, project management, beautification, catering, fashion design, childcare and housekeeping.

Whilst the above legal developments highlight the efforts made on behalf of public sector stakeholders to improve gender equality across the country, there are also ways in which the private sector has been contributing.

One particular solution for overcoming high rates of child marriage and adolescent fertility,

has been to improve the financial inclusion of women and girls to broaden the opportunities available to them beyond traditional gender roles. This solution emerges in light of the growing role that women have been playing within the country's economic development for the last few decades within private industry.

“Bangladeshi women have been struggling to establish their rights in family, society and in the State. Inequitable laws and policies hinder formal equality and socio-political conditions prevent women from exercising their rights. Girls are often considered a burden, especially for poor households, where they are at risk of marriage at an early age and where the practice of dowries, though illegal, continues and is burdensome”

THE LEGAL CIRCLE



Photo Credit: Simone D. McCourtie, World Bank

SECTOR OVERVIEW: READY-MADE GARMENTS

Alongside its large agricultural sector, rapid growth and industrialisation within the ready-made garment (RMG) sector helped Bangladesh's economy grow at an average of 5.76% GDP each year between 2000-2015.⁸ RMGs accounted for the majority of Bangladesh's manufacturing output, and are still the single largest source of the country's exports (80% in 2015).⁹

As part of this industrialisation process, Bangladesh saw a boom in formal employment, having a concerted impact on many previously excluded groups, including women, many of whom were able to transition away from domestic and agricultural work for the first time. The growth of the RMG industry was therefore closely associated with positive impacts on female empowerment and women's roles in society, increasing the social standing, educational enrolment, and economic participation of Bangladeshi women, whilst also reducing rates of childhood marriage and pregnancy.¹⁰

However, while the RMG workforce continues to consist predominantly of women, the ratio of women to men in the sector has fallen in recent years, decreasing from around 80% in the 1980s, to around 54% as of 2021.¹¹ These declines

have concerned some commentators, with a 2023 report from the Ethical Trading Initiative finding that departures from employment were largely voluntary, but that the reasons cited often revolved around gender-specific issues including childcare and pregnancy. Pregnant women also reported being subject to verbal abuse during their pregnancy, especially if this resulted in reduced productivity.¹² The sector as a whole has additionally faced numerous serious challenges to its operation since its inception, including issues with eliminating child labour from its supply chains, poor safety standards, a prevalence of industrial accidents, and inadequate pay.¹³



Photo Credit: Chhor Sokunthea, World Bank

POLICY LANDSCAPE

To improve the financial opportunities available to women in Bangladesh, building on the legacy of industries such as the RMG sector, a number of key policy developments have taken place to improve financial inclusion across the board. However, challenges also remain. The below provides a snapshot of the general policy landscape in this regard:

CHALLENGES

Limited Access to Banking Services

Traditional banking institutions are not widely available in rural areas, making it difficult for women to open accounts and access financial services. As of 2021, only 36% of women have bank accounts compared with 65% of men. Bangladesh's economically crucial RMG sector employs around 3.4 million women, of whom 81% are unbanked.

Social Norms and Cultural Barriers

Deep-rooted social norms and cultural barriers often restrict women's mobility and participation in economic activities. Women may face resistance when trying to access financial services, engage in income-generating activities, or seek financial independence. This is further inhibited by the prevalence of early marriage, with almost 60% of adolescent girls being married before the legal age of 18.

DEVELOPMENTS

Microfinance Institutions (MFIs)

Bangladesh has a robust microfinance sector, pioneered by organisations like the Bangladesh Rural Advancement Committee and Grameen Bank. These MFIs have played a significant role in providing financial services to women in rural and underserved areas. They offer small loans and financial training to women, allowing them to start or expand small businesses.

Digital Financial Services

The expansion of mobile banking and mobile financial services (MFS) has been a game-changer for women's financial inclusion. Services like bKash and Nagad have enabled women to access banking and financial services through their mobile phones, even in remote areas. Bangladesh Bank data shows that the number of MFS accounts stood at 19.10 crore at the end of December 2022 with women holding 8.01 crore accounts (42% of the total).

CHALLENGES

Low Financial Literacy

Many women lack the knowledge and skills required to make informed financial decisions and navigate the financial system effectively. These women do not control any financial assets and they lack financial literacy that can impact their ability to gain access to finance, land assets, and supply chain logistics to run businesses.

Lack of Collateral

Traditional lending institutions often require collateral for loans, which can be a barrier for women who may not possess valuable assets or land in their name.

Digital Divide

While digital financial services are growing in Bangladesh, there is still a significant digital divide, with many women lacking access to smartphones, the internet, and digital payment platforms.

DEVELOPMENTS

Women-Only Bank Accounts

Some banks and financial institutions have introduced women-only bank accounts, making it easier for women to open accounts and save money without the need for male guardians.

Government Initiatives

The government of Bangladesh has launched various initiatives to promote financial inclusion for women. For instance, the "One House, One Farm" project provides financial support to rural women for livestock and poultry farming, while the "Women Entrepreneurship Development" project offers training and financial support for women entrepreneurs.

Access to Credit

Specialised credit schemes and initiatives have been designed to address the issue of collateral. For example, the "Nobin Udyokta" program provides collateral-free loans to aspiring entrepreneurs, a majority of whom are women.

Financial Literacy Programs

NGOs and governmental organisations have been working on improving women's financial literacy through various training programs.¹⁵ These initiatives help women develop the knowledge and skills needed to manage their finances effectively.

CHALLENGES

Gender Gap in Financial Inclusion:

Between 2003 to 2016, Bangladesh increased the female labour participation rate by 10% to 36%. However, there remains a 13% gender gap in phone ownership, 14% gap in mobile financial service (MFS) account ownership, 29.2% in bank account ownership and 44.8% in labour participation. Moreover, according to the Government's Aspire to Innovate programme there is a large variation in the financial independence and decision-making capacities among women of different households.¹⁴

DEVELOPMENTS

Financial Inclusion Policies:

Bangladesh Bank's specific policies include small entrepreneurs and women in Financial activities, including specific quotas for financing women entrepreneurs, providing COVID-19 stimulus packages benefitting women, and targeted regulations assisting with women's access.

Data and Research:

A deeper understanding of women's financial inclusion issues through research and data collection has guided the development of targeted policies and interventions.

These trends have laid the foundations for change, allowing for the growth of other initiatives tangential to female emancipation in the country, with efforts made to provide financial products and services, such as bank accounts with higher deposit rates for women, debit and credit card facilities with female-focussed privileges, low-cost loan facilities for female entrepreneurs, business support advisory services for women, and consumer loans offered at preferential interest rates.

Amongst these initiatives are Citibank's 'City Alo', Green Delta Insurance's 'Nibedita Comprehensive Insurance Policy for Women', the joint partnership between bKash and Shakti

Foundation providing direct credit to women, and the legal and pro bono services of A4ID's in-country partner, The Legal Circle.

THE WORK OF THE LEGAL CIRCLE

The Legal Circle is a corporate and commercial law firm based in Dhaka, Bangladesh. Improving financial inclusion is a central part of the firm's offerings and involves providing access to affordable and reliable financial services to underserved and marginalised populations, including women, with the aim of improving their economic and social well-being.



“Law societies, bar associations, and lawyer associations can play a fundamental role in encouraging their members to adopt and implement policies that tackle gender inequality”

THE LEGAL CIRCLE

As part of their commitment to gender equality (SDG 5), The Legal Circle advocates for the role of the legal sector in changing attitudes and creating more opportunities for public participation amongst Bangladeshi women. As such, the firm’s work on female inclusion has included developing new financial products and services targeted specifically towards female entrepreneurs to foster greater upward mobility. These efforts come in the wake of a stark lack of progression that has historically been seen amongst women working in sectors such as the RMG sector.¹⁶

Ms. Anita Ghazi Rahman (the firm’s Founder and Managing Partner) states:

“Gender inequality is one of the most urgent challenges of today. As we better understand and make the critical connections between gender and social equity, it is time we take action towards solutions. From increasing women’s representation in leadership and decision-making to redistributing care-work and productive resources, progress needs to be made in all sectors to achieve gender equity for a sustainable future.”

As one of the most startup friendly law firms, the firm utilises their in-house expertise to elevate the position of female innovators, providing pro bono advice to many female-led companies and female founders. In doing so, the firm recognises the financial roadblocks that are still present within Bangladesh’s private sector, particularly for start-up enterprises, and is leveraging the power of digital infrastructure to do so. For instance, Bangladesh is currently experiencing a rise in the use of online social platforms alongside the development of an f-commerce¹⁷ and e-commerce based economy, with much of this activity being conducted by female entrepreneurs. In recognition of these trends, the firm has played a vital role in shaping the f-commerce ecosystem by advising many women on how best to set up their organisation and guiding them with legal compliance advice.

In addition, The Legal Circle has also engaged in various pro bono mentorship programmes by partnering with business incubators and accelerators across Bangladesh, including: Startup Bangladesh Limited, Bangladesh Youth Leadership Center, Light Castle Partners, North South University Startup Next, Orange Corners Bangladesh, YYVentures, Roots of Impacts, and Betterstories Ltd. As part of this, the firm has held mentoring sessions on a variety of topics, including some well-received sessions on securing investment from venture capitalists, angel investors, banks, and non-bank financial institutions. These sessions have served to empower women by encouraging, informing, and elevating their involvement with economic activities in the country, and helped bolster their financial inclusion.

Attesting to the power of pro bono to boost financial inclusion and women's rights across Bangladesh, the firm outlines two examples of instances where they have collaborated with persons and organisations across the country and internationally. The challenges and impacts made through these contributions are also explored.

“Gender equality is not only good for business but will also increase the fairness with which society treats all its citizens. This in turn will help to increase equal representation as well as facilitating access to justice, higher public trust in the judiciary & legal system & respect for the rule of law”

THE LEGAL CIRCLE

VIDEO GUIDES FOR COMPANY FORMATION



Photo Credit: Dominic Chavez, World Bank

In March 2023, Ms. Anita Ghazi Rahman, Managing Partner of The Legal Circle began participating in an educational initiative in collaboration with the Standard Chartered Bank Bangladesh and Kaizen Research Specialists. The initiative involved producing video guides on the fundamental aspects of establishing and incorporating a company, and ensuring its continued adherence to legal requirements. The videos were disseminated as part of Standard Chartered Bank's online learning platform for entrepreneurs, and used to support aspiring women to develop their skills as part of a wider programme seeking to enhance entrepreneurial and business competencies.

CHALLENGES: The programme faced numerous challenges, particularly in reaching its intended audience and gaining sufficient access for generating genuine impact among aspiring female entrepreneurs. To overcome these barriers, the firm outlines two approaches in particular that helped, providing lessons learnt for others who may be facing similar constraints.

LESSONS LEARNED: Firstly, by designing the project in collaboration with a number of female business leaders across Bangladesh, a direct network of persons and resources were made available to help reach aspiring entrepreneurs across the country. This was important in engaging a wider pool of women across Bangladesh to increase impact and inclusivity. Once again, this approach attested to the importance of collaboration and partnership working in mobilising progress towards the SDG agenda. Secondly, to ensure that the videos were as inclusive as possible, they were released in Bangla (or Bengali) so that they could be understood by a wider group of individuals. This, coupled with the approach of using video formats to improve legal literacy, helped considerably in increasing access and engagement among the intended audience.

IMPACT: The initiative enjoyed a successful roll-out, having reached and assisted a number of female entrepreneurs, providing them with the necessary foundational legal skills to begin a legally compliant business. The firm also described the value of the programme in creating a cohort of like-minded businesswomen, united in their desire for growth and collaboration. By lending their legal expertise on company formation and by collaborating with a number of leaders and organisations across Bangladesh, The Legal Circle was able to help cultivate a new generation of female entrepreneurs. As part of this, pro bono legal support was crucial in elevating the status and opportunities available to Bangladeshi women, both as part of broader initiatives on financial inclusion, and within the wider remit of the sustainable development framework in pursuing gender equality.

CLIMATE ADAPTATION INFOGRAPHICS



Photo Credit: Scott Wallace, World Bank

A second initiative highlighted by the firm began in March 2021, and formed as part of a collaborative exercise amongst female leaders from The Legal Circle, the University of Eastern Finland, and an illustrator/architect, who set out to raise awareness of gender responsive measures to climate adaptation. While barriers to data access initially hindered progress in the project, the group were able to jointly create a number of infographics, detailing the legal history of international climate action measures, and working as a call to action for climate related solutions.

The initiative was further used to raise awareness of the socio-economic and climate vulnerabilities that specifically impact Bangladeshi women – advocating for the adoption of gender-responsive approaches to climate adaptation.

IMPACT

Public response to the infographic was immensely positive, highlighting the importance of continued research and awareness on these issues. Through its design and focus, the project also highlighted the cross-cutting nature of the SDG Agenda, in which goals relating to gender equality (SDG 5) necessarily overlap with wider ambitions around climate action (SDG 13) for the country.



Photo Credit: Shehzad Noorani, World Bank

RECOMMENDATIONS

The Legal Circle notes the importance of law and legal reform in driving change, and remains mindful of the challenges ahead:

“Bangladeshi women have been struggling to establish their rights in family, society and in the State. Inequitable laws and policies hinder formal

equality and socio-political conditions prevent women from exercising their rights.”

In order to broaden the participation of women, reduce gender-based discrimination, and improve female empowerment, the firm provides a number of recommendations for how lawyers can proactively engage, and work towards advancing gender equality in Bangladesh:

DECREASING THE LEVEL OF VIOLENCE AGAINST WOMEN AND NURTURING ITS VICTIMS

- Lawyers can build awareness of domestic violence and its impacts through educational outreach programmes to communities and affected families.
- Lawyers, as representatives of both victims and perpetrators, can support the development of advocacy efforts focusing on both sides when combating violence against women.
- Law firms can build networks with influential community, faith-based and educational leaders to educate communities and vulnerable women on their rights.
- Lawyers can support the creation of new avenues for justice, such as through enhanced pro bono contributions.
- Law firms can develop strategic partnerships with government and public entities to combat female trafficking.

FOSTERING EQUALITY IN DECISION-MAKING

- Lawyers can advocate for female empowerment in the workplace and community.
- Lawyers can encourage the inclusion of women in decisions relating to shared assets and resource management.
- Lawyers can grow capacity amongst gender-focused community groups by educating members on the rights of women.

REDUCING DISCRIMINATION AND ENSURING EQUAL ACCESS TO SERVICES

- Lawyers can support policy and law reform for improved access to social services for women.
- Law firms can partner with institutions of influence on issues relevant to female rights and empowerment.
- Lawyers can build capacity and awareness on the causes of gender inequality and injustice.
- Lawyers can work with government and public sector institutions to help identify and analyse core deficits and opportunities on women's rights and inclusion.
- Lawyers can provide targeted support services to widows and vulnerable women escaping violence.

“The legal profession is also driven by clients, who can be positive drivers for gender equality, placing greater significance on diversity and inclusion. With the increasing challenges to women and girls across the globe, the situation of women in law is as important as ever. There is no room for regression or complacency”

THE LEGAL CIRCLE.

BANGLADESH: END NOTES

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Chapter Cover Photo Credit: Marcel Crozet, ILO

NEPAL: CLIMATE ACTIVISM THROUGH PUBLIC INTEREST LITIGATION



In 2015, the same year that global leaders adopted the SDG agenda, Nepal was hit by the devastating Ghorka earthquake, in which almost 9,000 people lost their lives. Since then, the country remains at acute risk of environmental impacts, facing dangerous exposure to floods, droughts, and earthquakes; all of which are exacerbated by Nepal's climate-related coping capacities.¹ Accordingly, the country is considered among the world's most vulnerable to climate-related disasters.²

Concurrently, wholesale reforms to the national, political, and governance frameworks have presented interrelated, long-standing challenges and opportunities for climate action. For instance, 2015 witnessed a newly federated government system and constitution in Nepal, concluding a number of widespread reforms proffered following the Nepalese Civil War. With this new system, came an increase in public spending, rapid decentralisation, and the granting of extensive regional and local government autonomies, bringing opportunities for a more joined-up national development approach.

More broadly, Nepal inherited an impressive developmental trajectory from preceding successes under the MDGs. While not all were achieved, most had been partially completed by 2015. Priority areas for the SDGs were thus identified in relation to the country's growing rate

of urbanisation, its dependence on international remittances, the increase in digital technologies, and its high youth population.³

Given Nepal's reliance on both remittance payments and the services sector, the COVID-19 pandemic had a disproportionately severe economic impact on the country, stifling the tourism industry and reducing remittance inflows. As with many other developing nations therefore, progress toward the SDGs has been severely stunted since 2020, and by some estimates, the number of people in poverty in Nepal may even increase relative to the 2015 baseline.⁴ Despite this, according to latest data, the country displays no overarching negative SDG trends; progress is either stagnating or moderately improving, though significantly more work needs to be done if the SDGs are to be achieved by the 2030 target. One positive exception is that improvements to the availability of clean water and sanitation (SDG 6) across the population mean that this target is on track to be achieved.⁵

While the challenges facing Nepal are immense, the country holds great potential to build up more sustainable resilience and development measures under the new governance structure, and has been identified under UNESCAP's 2023 progress report as a regional pace leader in SDGs 11 (Sustainable Cities and Communities) and SDG 17 (Partnerships for the Goals). Given

the need for holistic engagement, particularly in building sustainable infrastructure for a country with one of the highest rates of urbanisation in

Asia,⁶ progress across these indicators represents a positive step for Nepal's green and inclusive development.

POLICY LANDSCAPE

In achieving greater climate action for the country, a number of key policy challenges and developments have also emerged for Nepal in recent years. Of note are the series of new commitments that the country has made for encouraging climate adaptation and building resilience. These include:

CHALLENGES

Land Rights Enforcement

Despite protections in law on land ownership and control many communities are still unable to effectively exercise their land rights. Limited expertise on environmental matters, with very few environmental lawyers in the country exacerbates these challenges when seeking justice.

Exclusion of indigenous communities

Although indigenous communities have been conferred Adivasi Janjati status by the Nepalese constitution, the majority continue to be excluded from the cultural and political mainstream.

Heavy reliance on tourism

Given Nepal's heavy reliance on tourism, particularly for communities along the Himalayan belt, the impact of climate change and receding glaciers compromises livelihoods as well as climate resilience.

DEVELOPMENTS

Political will

Recent years have seen an increase in government engagement on climate and environmental matters. For example, various ministries (primarily forests, environment, water, and tourism) have established cross-sectoral working groups on climate- and environment- related matters.

Climate Change Laws and Policies

Several recent developments, instigated by both the courts and the Nepali government (outlined below) have sought to encourage climate adaptation, renewable energy, and resilient infrastructure.

CHALLENGES

Overseas Investment

Whilst large-scale overseas investment offers opportunity for growth in Nepal, these often take place with little to no government oversight leading to challenges of minimal investor accountability and transparency.

Illegal timber trade

Illegal timber trade has seen the unregulated removal of natural resources and habitats from the Churia range, increasing risks of flooding and compromising agricultural security.

Overmining of river-bed minerals

In the absence of proper regulation, overmining of river-bed minerals is compromising the health and fertility of land, particularly in Terai.

DEVELOPMENTS

Civil Society engagement

Civil society actors have expressed willingness to work more closely on environmental and climate matters, especially those who traditionally work on fundamental freedoms and human rights (e.g.: Amnesty International)

SECTOR OVERVIEW: HYDROPOWER

In encouraging green and inclusive development, one particularly bright spot for the country is its burgeoning hydropower industry, which has staved off economic contraction in the industrial sector.⁷ This sector represents a core element of the country's pledge to achieve net zero by 2045, and is central to its climate action ambitions.⁸ The growth of hydropower in the country comes

amidst a high dependency on fossil fuel imports from India and the use of traditional biomass fuel for the majority of its energy needs, leaving Nepal vulnerable to issues of energy security and regional geopolitics.⁹ However, a study by the Asian Development Bank found that if Nepal could develop just one fifth of economic potential in its hydropower industry, it could boost GDP by 87% above the counterfactual, satisfy its growing energy needs,¹⁰ and selling excess energy back to India. This in turn, would enable significant

reductions in India’s own CO2 output, by an estimated 224,000 tonnes per day.¹¹

However, realising these benefits is not straightforward. In Nepal’s wet season, hydropower facilities produce excess energy due to an abundance of viable water supplies, while in the dry season, water flows are insufficient to meet demand.¹² While smoothening out this inefficiency is possible, a general lack of investment and continuing deficiencies in political administration mean that benefits are not being realised to their full potential. What’s more, is the prominence of extreme weather events in the country, whereby increased flooding and landslides have, and will continue to, cause damage to hydropower facilities, thereby reducing much-needed

generation capabilities and further undermining their viability for investment. Indeed, given that rising global temperatures are anticipated to greatly reduce glacier volumes in the Himalayas, the prevalence of climate risks is increasing, and the supply of flowing waters needed for sustainable hydroelectric energy generation is increasingly compromised.¹³

LEGAL DEVELOPMENTS

To mitigate the risks of climate change, build stronger climate resilience, and better protect the environment and natural assets, a number of recent laws and policy developments have been passed within the country. These developments demonstrate Nepal’s commitments to SDG 13.



Photo Credit: Marcel Crozet, International Labour Organization

RECENT LAW AND POLICY DEVELOPMENTS ON CLIMATE ACTION IN NEPAL

ENVIRONMENT PROTECTION ACT, 2019: Through an order of Mandamus, the Supreme Court in *Shrestha v. Office of Prime Minister et. al* (2017), prompted the Government to draft the Environment Protection Act (EPA) of 2019. The Act primarily consolidated and amended laws relating to the environment and incorporated the terminology of “climate change” in Nepali law. As a result, the Act better reflects Nepal’s commitments under multilateral climate change treaties and Article 30 of the Nepalese Constitution in national law.

FORESTS ACT, 2019: Also issued after the Supreme Court decision in *Shrestha v. Office of Prime Minister et. al* (2017), came the Forests Act 2019 which sought to amend and consolidate laws relating Nepal’s forests. Of note, are provisions relating to unclaimed timber, forest protections in development projects and land ownership rights.

DISASTER RISK AND MANAGEMENT ACT, 2017: Repealing a previous act from 1982, the Disaster Risk and Management Act 2017 was passed to ensure that national legislation would be more effective to deal with the Nepal 2015 earthquake. The Act established the National Reconstruction Authority (NRA) and emphasised the need to adopt the Sendai Framework and build disaster resilient infrastructure. Policies and projects were subsequently established for reducing the impacts of landslides, flooding, and other climate-related disasters.

In addition to the above-mentioned laws and guidelines, the Government of Nepal has also introduced other targeted policies and initiatives to prioritise climate action:

NATIONAL ADAPTATION PLAN (NAP): Nepal has been working on its NAP to outline strategies and actions to adapt to climate change impacts, particularly in sectors like agriculture, water resources, and infrastructure.

NEPAL'S LONG-TERM STRATEGY FOR NET ZERO EMISSIONS (LTS): In October 2021 the government published a new long-term strategy for achieving carbon neutrality by 2045. The strategy outlines possible net zero and clean energy trade scenarios to support in these commitments.

THE CLIMATE CHANGE POLICY, 2019: This new climate policy aims to guide climate-resilient development and increase adaptation efforts. The policy was also conceived as an inter-sectoral policy involving the Ministry of Forests and Environment, the National Planning Commission and various line agencies.

INTERNATIONAL COLLABORATION: Nepal has been making concerted efforts to work with neighbouring countries in the Hindu Kush Himalayan region to address shared climate challenges. As a result, initiatives such as the Koshi Basin Program aimed at enhancing transboundary cooperation in managing water resources, have been established. From a recipient perspective, Nepal has also become one of the biggest beneficiaries of the Green Climate Fund (GCF).

Nevertheless, whilst the Government of Nepal has paid increasing attention to the importance of climate justice in the country, competing interests for large-scale investment projects risk limiting state capacity to effectively oversee and enforce safeguards. As a result, there is a growing need for the legal community to support the country's climate ambitions: helping maximise on the opportunities that sectors such as hydropower offer, without compromising wider rights and environmental protections. Here the work of A4ID's in-country partner, Youth Empowerment in Climate

Action Platform (YECAP), highlights some of the ways that legal activists are helping to support climate action (SDG 13) across the country.

THE WORK OF YOUTH EMPOWERMENT IN CLIMATE ACTION PLATFORM

Youth Empowerment in Climate Action Platform (YECAP) is a platform for dialogue and information sharing amongst Nepal's youth population, allowing many young activists to play

a part in shaping the country's future.¹⁴ Today, a lot of these contributions focus heavily on climate action, driven by Nepal's sizable youth population and growing concerns amongst the younger generation of climate-related risks. Of note are the impacts that environmental degradation and climate change have already made: increases in glacial lake outburst floods (GLOFs) now pose severe risks to downstream communities; the once fertile plains of the Terai and Madhesh regions have become barren, owing to illegal timber logging and overmining; and a heavy

focus on energy and infrastructure investment lacks the environmental accountability needed to safeguard local community interests.

For YECAP, the need to protect the environment from climate related disasters requires a combination of environmental, social, and human rights based advocacy, particularly in empowering local communities, including indigenous populations, to have greater agency and authority over land use.

To promote green and inclusive development,

“The right to a clean and healthy environment is embodied in the Constitution of Nepal and a plethora of statutory provisions lend support to this right. However, the reality is that mining/ extraction operations often take place through an organised syndicate that yields considerable political influence. Government officials, as a result, are active co-perpetrators in the destruction of the environment. In keeping with this, refuge has been sought in the courtroom which has been successful to a certain extent”

YECAP

some of the ways YECAP has been progressing towards SDG 13 (and SDGs 14 and 15 through environmental lobbying), have focused on the importance of partnership working to raise awareness of climate justice issues. This has included work to build coalitions of support and action amongst Nepal's youth population, organising peaceful protests for climate action,

and working collaboratively with civil society organisations to develop public education initiatives. From a human-rights perspective, the group has also worked to lobby parliamentarians and parliamentary working groups on the nexus between climate law and human rights, and has been working with the National Human Rights Commission (NHRC) to bolster the authority of

“Review of Nepali land ownership and control patterns reveal that they inevitably turn on the axes of caste, ethnicity, and gender, despite protections in the law. Although indigenous communities have been conferred Adivasi Janjati status by the Nepalese constitution, most continue to be excluded from the cultural and political mainstream. As the predominant farmers for the country’s 30 million people, indigenous communities in Nepal are highly dependent on rain-fed agriculture and are acutely vulnerable to water-related stress. As a community, they are therefore disproportionately impacted by a changing and a rapidly warming climate”

YECAP

human rights bodies to address the climate crisis under their respective mandates.

More specific to the legal sector are the ways in which YECAP have been working with the legal community to raise awareness and build capacity for local communities on environmental matters. Through legal training programmes, local populations – specifically indigenous youth – have access to information and expertise on procedural rights. In turn, by adopting a ‘Training of Trainers’ approach, these individuals

“There remains tremendous potential for lawyers to get involved. In fact, Nepal doesn’t have environmental lawyers, save for one or two who litigate almost all cases”

YECAP

“Lawyers can get involved by actively advocating for communities that are going to be impacted by [large-scale investment] projects, ensuring that people are held liable for any transgressions made”

YECAP

are then able to disseminate teachings to a wider audience, maximising the outreach of public legal education initiatives.

Similarly, working alongside universities and educational institutions, robust curriculums have been developed on climate change education with discussions on topics such as: International Environmental Laws (including the Paris Agreement, UNCLOS, Kyoto Protocol and the Rio Declaration) and UN process (including

the UN Special Procedures Mechanism, the UNEA, and COP). Open source resources have also been developed through UNDP's Legal Advocacy/Academic Taskforce, charged with authoring legal reports on environmental law and climate change, including the most recent "Youth Climate Justice Handbook." However the organisation urges that there still remains ample

scope for lawyers to contribute further.

Below are two examples of instances where legal representation and advocacy has been key to protecting community interests and the environment in Nepal. Notably, the challenges and impacts made through these contributions are also explored.



Photo Credit: Narendra Shrestha

THE KHIMTI-DHALKEBAR TRANSMISSION LINE



Photo Credit: Accountability Counsel

From 2013 to 2017, Accountability Counsel and LAHURNIP (the Lawyers' Association for Human Rights of Nepalese Indigenous Peoples) advocated on behalf of local communities and indigenous peoples in response to the Khimti-Dhalkebar 220 kV Transmission Line. The transmission line had begun construction in 2005, following funding secured by the World Bank two years earlier, and was developed in order to help transport electricity imports from India to Nepal.

However, the line was also designed and implemented without proper consultation with local stakeholders, and without any information or transparency on benefit sharing. On the contrary, no adequate compensation for those affected was made, notwithstanding concerns raised on the impacts of power lines to agricultural-based livelihoods, environmental degradation, and private land holdings, with banks refusing to provide mortgages on any land under the right of way. Consequently, more than 114,000 people were directly impacted by construction but unable to contribute to decisions made or exert their rights and interests.

CHALLENGES: In voicing these issues, peaceful protests from affected communities were held, but were soon met with police brutality. In seeking recourse under more official channels, LAHURNIP advocated for a suspension of project activities until all social and environmental impacts had been addressed, taking the matter to the Nepalese Supreme Court. However national attempts to resolve the matter proved fruitless.

To overcome these barriers to justice, LAHURNIP and local communities sought the support of Accountability Counsel (a US based organisation), and international routes were pursued instead with complaints filed directly to the World Bank's Inspection Panel. The complaint resulted in an action plan from the World Bank to encourage proper compliance with international best practice.

However, in 2016, when the project recommenced it still possessed the same deficiencies as before. Again protests were held, and again police violence ensued. To help mediate tensions, Accountability Counsel helped foster dialogue between the project developers and affected communities, marking the first time the Nepalese government had engaged in a collaborative dispute resolution process with communities affected by its development efforts.

LESSONS LEARNED: The case highlighted the dual recourse available to stakeholders, via

both international and domestic avenues, in representing socio-economic actors. However, it also illuminated some of the shortcomings of legislative frameworks where there is an absence of support and backing by change-makers. Where such challenges were faced, international coalitions of support between local and foreign legal organisations helped amplify local interests and increase political pressure for public investment projects to remain accountable for their actions.

IMPACTS: As a result of the combined efforts of international and national legal activists, the case established a new precedent on best practice for public infrastructure projects. As a result, a starting point of 10% of the value of land under the right of way was offered as compensation for affected landholders. For those within the Sindhuli district, where the community movement was strongest, compensation even reached 100% of the land value for affected landholders.

In addition, abuses and violations experienced by local communities since the project's inception was formally recorded by the Accountability Counsel and publicly recognised by the World Bank Inspection Panel, holding the project accountable for its socio-environmental impacts.



Photo Credit: UPDP, Nepal

THE CLOSURE OF NIJGADH INTERNATIONAL AIRPORT



Photo Credit: Petr Meissner, Flickr

The Nijgadh International Airport is a long proposed government ambition to build the largest airport in South Asia in Nijgadh, Bara. Despite initial proposals for the airport dating back to 1992, it was only in 2015 that concrete steps materialised when the Nepalese government authorised the Civil Aviation Authority of Nepal to begin the land acquisition process for the project.

However, issues were raised concerning the impacts of the proposed project in the absence of proper environmental impact assessments. Concerns included the likely loss of more than 2 million trees that would compromise the ability for surrounding forests to absorb rainwater, creating severe flooding risks for up to four districts. Given the location's significance as a key migratory corridor for wildlife, there were also anticipated impacts to biodiversity in the region, coupled with the potential displacement of 1,500 indigenous communities. Cross-disciplinary action and the use of public interest litigation were therefore leveraged to challenge construction.

IMPACTS: Over 500 youth actors came together, organising youth-led protests and an editorial in the national daily which raised serious doubts about the viability of the project. Following this, a petition was delivered, signed by forest experts, journalists, entrepreneurs, industrialists, environmental activists, and other critics of the project. The petition was signed by over 200 prominent individuals from varied walks of life.

These efforts in activism, coupled with public interest litigation brought by two senior advocates questioning the lack of proper environmental impact assessment, saw the Supreme Court of Nepal order construction to be halted in 2022.

CHALLENGES: In 2023, the Nepalese Government reprioritised the airport amongst its budgetary plans, committing to commence construction in the near future. It is still yet to be seen the extent to which environmental impact assessments and mitigation measures will be adopted under the new government's leadership, with the potential for ongoing challenges to arise.

RECOMMENDATIONS

In light of the significant progress still yet to be made on improving environmental conservation and climate resilience within Nepal, a number of recommendations are outlined below for how the international and national legal community can get involved to further support climate action in the country:



“[Today] there are ongoing criticisms about Supreme Court justices engaging in judicial activism and the judiciary being far too ‘pro-environment.’ My hope is that the government works in line with each other, as opposed to levying criticisms against one another”

YECAP

Photo Credit: Simone D. McCourtie, World Bank

BOLSTERING ENVIRONMENTAL LAWS & BEST PRACTICE

- Lawyers can build partnerships with UNDP, alongside other public and regional bodies to contribute expertise in identifying legislative gaps and opportunities for stronger environmental legislation.
- Lawyers can work with public bodies to develop stronger regulatory and oversight mechanisms to combat improper practices (e.g.: illegal timber logging, overmining, exploitation of land).
- Lawyers (both local and international) can promote the use of environmental impact assessments when advising clients on investment decisions.
- Lawyers can urge corporate clients to recognise their accountability and responsibilities to local stakeholders as part of business operations and risk management strategies.
- International lawyers can advocate for best practice on environmental safeguarding when representing overseas clients looking to invest in Nepal.

INCREASE CITIZEN AWARENESS ON LAND RIGHTS

- Lawyers can work with universities and academic institutions to create public educational tools/ resources on land rights protection.
- Lawyers can contribute to the development of new courses and curriculums for the next generation on climate justice, strengthening the pipeline of environmental lawyers to come.
- Lawyers can engage in opportunities for dialogue building on climate action, such as by participating with UNDP roundtable discussions, to learn from and with other key stakeholders.

USE STRATEGIC LITIGATION TO ADVANCE CLIMATE JUSTICE

- Lawyers can make the most of the Public Trust doctrine to protect natural assets from public/private encroachment.
- Lawyers can utilise strategic litigation for the legal recognition and protection of sites with important religious and cultural significance.
- Lawyers can contribute to creative solutions for environmental litigation, such as considering the use of legal personhood in protecting natural assets (e.g.: river bodies).
- Lawyers can work with local groups to bring class actions to represent community interests and provide legal services to those who are less able to access representation independently.
- Lawyers can advocate for the recognition of environmental protections as a basic human right.

NEPAL: END NOTES

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Chapter Cover Photo Credit: Silvia Martin, Flickr

INDIA: ACCESS TO JUSTICE THROUGH DEATH PENALTY REFORM



Being the world's largest democracy, and the largest economy in South Asia, India holds a unique position in effecting both its own development, and the wider socio-economic capacities of the region. Under the MDGs, impressive gains in poverty alleviation, maternal health, gender parity in education, and water availability were contrasted against severe regional disparities across the country. For example, challenges persisted in youth unemployment, educational enrollment and completion, poor progress in women's emancipation, children's health, and insufficient sanitation facilities¹; making these core priorities for the country within the SDG framework.

Over the course of the SDG Agenda so far, India has made great strides in reducing poverty, halving those living under \$2.15 a day between 2011 and 2019,² and lifting 271 million people out of multidimensional poverty over the past decade.³ While this pace slowed somewhat during the COVID-19 pandemic, it has shown signs of recovery in the time since. This is particularly noteworthy given the country's sizable population, making it difficult to achieve consistent economic gains across all demographics. In SDG 12 (Responsible Consumption and Production), India also continues to perform positively, having already achieved its targets relating to this goal.⁴ Herein the country remains an important leader

in the South Asia region, highlighting potential to lead progress in areas such as South-South cooperation, as well as industrial and technological trade and development.

However, apprehensions have been raised by some commentators over the country's approach to geopolitics, governance, and institutional efficacy in general - all of which speak directly to SDG 16 (peace, justice and strong institutions).⁵ These concerns may be seen as part of broader discussions of a 'democratic recession' – a trend toward more authoritarian principles in the operation of legal and governmental institutions.⁶ For organisations such as Freedom House, V-DEM, and the Economist Intelligence Unit, they also speak to recent deteriorations in the protection of certain rights and civil liberties.⁷

SECTOR OVERVIEW: JUSTICE SYSTEM

Of specific relevance to the legal community, are the ways in which these trends intersect with the Indian justice sector. For example, the extent to which civil liberties and legal rights are upheld and enforced before the courts, the extent to which justice institutions remain accountable to high-level checks and balances that allow for the proper administration of justice, and the extent to which the rule of law is embodied within court processes and institutions.⁸

Herein, a number of challenges emerge within the Indian justice system as evidenced by The India Justice Report. The report, which collates publicly available government data to rank the capacity of Indian states when delivering justice, looks at various relevant sectors including the police, judiciary, prisons and legal aid systems. A key finding to materialise from the report centres around the wide array of volatilities that exist across all these sectors, particularly following the challenges and uncertainties caused by the COVID-19 pandemic. For example, whilst moderate increases in funding have been made available for the prison and legal aid sectors, systemic resource shortages, budget underutilisation, court backlogs, and an abundance of unfilled vacancies throughout the justice system have compromised the sector's ability to deliver justice in a timely manner.⁹

Of further note is that India's long pursuit of gender and caste equalities, whilst reflected in constitutional and other national laws, are not adequately represented in the court system. Accordingly, whilst the lower courts reasonably represent the country's demographic diversity, the upper echelons of the justice system remain notably underserved, with only 13% female representation in the high courts and 17% in states' human rights commissions. As a result the sector not only requires additional financing and resourcing, but a need to train and recruit a more

diverse pool of incoming talent.¹⁰

These concerns surrounding India's justice system and institutional efficacy are also echoed at an international level by organisations such as the World Justice Project (WJP),¹¹ though it is noted that the country's overall rule of law score has remained relatively stable since 2015 – below the global average, but above the regional average.¹² More broadly, and in line with these findings, is that progress against SDG 16 in India is stagnating. In particular, the number of unsentenced detainees saw a sharp uptick from 2019 to 2020, reaching 76.12% of the overall prison population.¹³



Photo Credit: Times Higher Education

POLICY LANDSCAPE

The below captures some of the key challenges and developments that have taken place more generally for the criminal justice system in India, particularly in the wake of seismic shifts to overhaul the sector in light of systemic challenges.

CHALLENGES

Court Backlogs

A significant number of cases are pending awaiting trial across the Indian justice system creating pressure on the system, as well as for court staff and the judiciary to serve justice fast.

Inconsistent Application of the Law

There are inconsistencies in the findings of the lower and upper courts, notwithstanding notions of precedence. Accordingly, the findings and practices of the Supreme Court are often unable to trickle down or effectively influence that of the lower courts, creating uncertainty across the criminal justice system.

Penal Populism

Tougher prison sentencing is forming a large part of political rhetoric in response to public outcry, particularly surrounding criminal activities such as sexual offence.

DEVELOPMENTS

Reforming the System

There are a number of new bills of parliament being debated to reform the Indian criminal justice system. These are, namely, the Bharatiya Nyaya Sanhita Bill 2023, the Bharatiya Nagarik Suraksha Sanhita Bill 2023, and the Bharatiya Sakshya Bill 2023; seeking to reform the Indian Penal Code (1860), Criminal Procedure Act (1898), and Indian Evidence Act (1872) respectively.

Whilst there are significant concerns surrounding a number of the proposed changes (including more lenient use of the death penalty and detainment), other changes are more hopeful, e.g.: digitising court processes, the introduction of community service as punishment and greater access to police services for registering complaints.

CHALLENGES

Use of Detention

Alongside the rising population of unsentenced detainees within the Indian criminal justice system, are concerns around the use of unlawful detainment particularly in response to political activism.¹⁴

DEVELOPMENTS

Reforming Prisons

The Model Prisons Act 2023, prepared by the Indian Home Ministry, has been put forth to reform prison conditions. Positive reform proposals include: provisions for greater access to legal aid, parole, furlough, and premature release; separate accommodation for women and transgender inmates; and a focus on vocational training for rehabilitation and reintegration into society.

However, among the Government's efforts to overhaul the criminal justice system and related institutions including prisons, concerns have been raised that some proposals could see more punitive sanctions introduced at the cost of justice outcomes. One organisation advocating against this trend is A4ID's in-country partner, Project 39A, who work on the most punitive measure of all: the death penalty.

THE WORK OF PROJECT 39A

Project 39A, formerly known as the Centre on the Death Penalty, was established in 2014 as part of the National Law University in Delhi. The research institute's first project involved interviewing all of India's death row prisoners and their families

between July 2013 to January 2015, building a dataset around use of the death penalty in India. The findings of this project culminated in the Death Penalty India Report (2016)¹⁵, and unveiled the level of poor quality legal representation received by those facing the death sentence. Today the organisation operates as a multidisciplinary unit at the nexus between academic research, advocacy, and legal practice, looking at ways to design interventions that would provide high quality legal representation to individuals sentenced to death.

In the past few years, the organisation's review of final outcomes in death penalty cases at the Supreme Court have revealed serious problems with the administration of justice. Since 2021, out of the 30 death penalty cases heard, the Supreme

“Our death penalty representation involves an interdisciplinary team including lawyers, mitigation investigators trained in different social sciences, mental health professionals and forensic experts... We believe that lawyers are central to this process, and may contribute to the same by ensuring greater adoption of progressive standards in their practice”

PROJECT 39A

Court has acquitted (reversed the guilt of) 11 prisoners. Further, death sentences of 17 prisoners were commuted (reduced to life imprisonment). This trend however is not seen in the lower courts. In the year 2022 for instance, Trial Courts imposed 165 death sentences, the highest in a single year since 2020.¹⁶ As a consequence, there are currently over 500 prisoners on death row, the highest number since 2004.¹⁷

For Project 39A, the high degree of alienation that many of the accused on death row have faced from the legal process, combined with poor levels of legal representation, has significantly compromised their quality of defence. This, coupled with the tendency for death row inmates

to belong to marginalised communities, throws into question the ability of the Indian criminal justice system to ensure due process and fair treatment under the law. As a result, it is argued that the imposition of the death penalty is often awarded through unfair and unjust legal processes, with arbitrary sentencing by the courts often failing to consider the circumstances of the accused (as required by law).

Crucially, the organisation advocates for a multidisciplinary approach for strengthening India's criminal justice institutions, emphasising the value of other professions such as forensic experts, mental health professionals, and mitigation investigators with backgrounds in

“An overwhelming majority of death row prisoners belong to the most socio-economically marginalised sections of the society. The quality of representation provided to them is also very poor - for most prisoners at the Trial Court stage, their lawyers never discussed the case with them; for those at the Supreme Court, many did not even know their lawyer’s name”

PROJECT 39A

social science, to support in legal representations. From a litigation and public policy perspective, this also includes multidisciplinary efforts as an academic institution, with Project 39A co-authoring a report with the National Institute of Mental Health and Neurosciences (NIMHANS, Bangalore) to produce the first report of its kind documenting an empirical medico-legal study on the psychosocial realities of prisoners on death row.¹⁸ Other multidisciplinary projects to raise awareness of death row conditions, include their virtual art exhibition ‘Capital Letters from Death Row’¹⁹, in collaboration with artistic initiative reFrame which brought to light the lived experiences of death row prisoners in India through letters and other forms of artistic expression.

“We hope to create a better culture of protecting the fair trial rights of accused persons in the criminal process”

PROJECT 39A

In response to Project 39A's findings dating back to August 2014, the organisation has been providing pro bono legal representation to death row prisoners, expanding in its reach and scope. To date it has represented 194 death row prisoners and been involved in 60% of death penalty cases pending before the Supreme Court. Of representations made, 21 acquittals have been obtained and 39 commuted thus far.

Below are two examples of instances where the organisation's pro bono legal representation and advocacy have been key to ensuring the proper administration of justice for individuals on death row in India. Notably, the challenges and impacts made through these contributions are also explored.

“The death penalty in India operates in a criminal justice system that is riddled with systemic issues such as fabrication of evidence and wrongful determinations of guilt”

PROJECT 39A



Photo Credit: The Guardian

PROVIDING MITIGATION SERVICES FOR INDIVIDUALS ON DEATH ROW

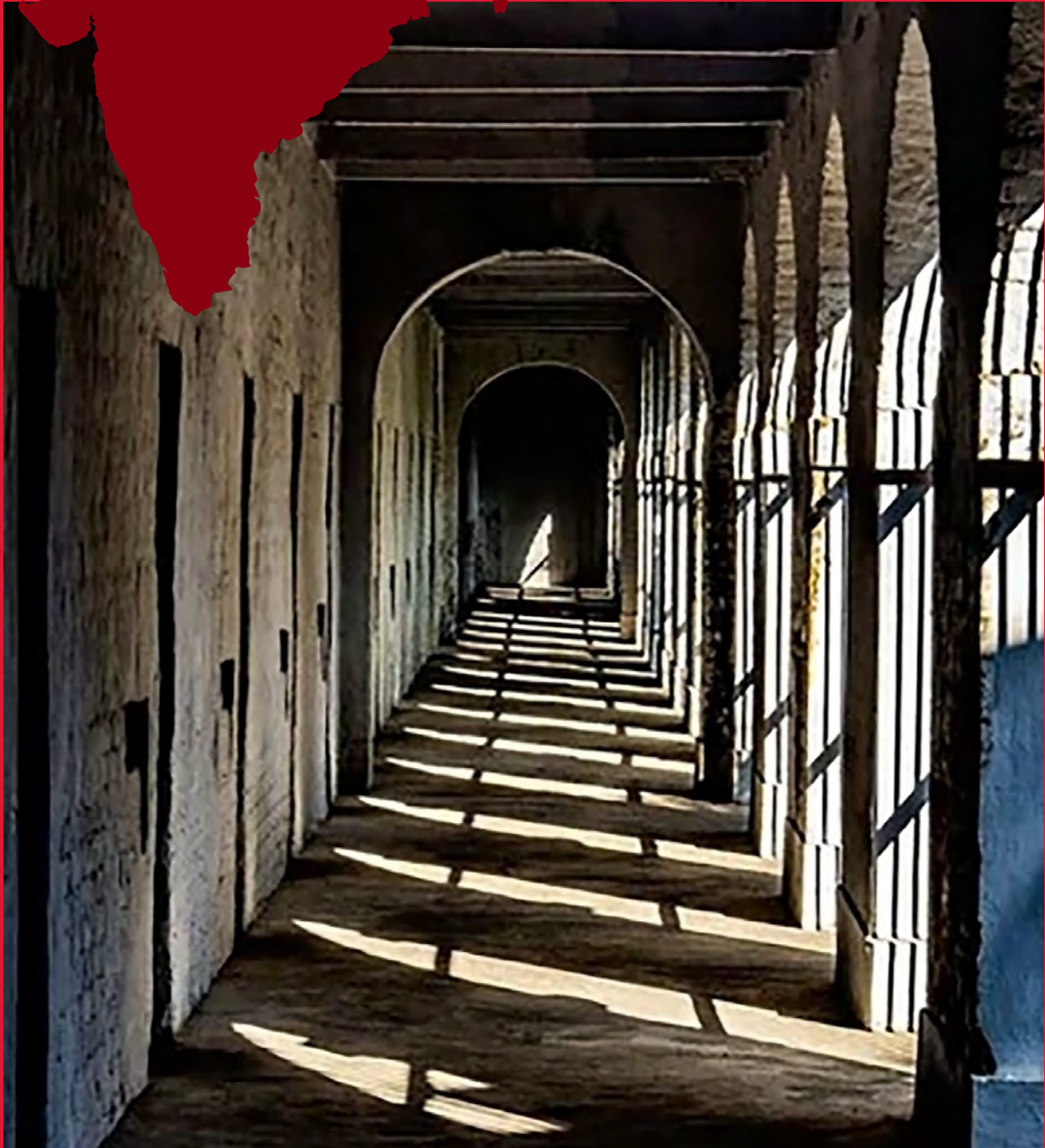


Photo Credit: NDTV

The death penalty in India is imposed only after consideration of circumstances relating to the crime and the criminal, and only where the probability of reformation is ruled out. While information about the crime is readily available from case records, information about the accused is not available or presented before the courts. This severely restricts the appreciation of mitigating circumstances, and can undermine the court's sentencing ability in the absence of important materials relating to the accused.

In response to these procedural shortcomings, the litigation and mitigation teams of Project 39A have been working with criminal law practitioners across the country to visit death row prisoners in jail. The purpose of these visits is to conduct in-person interviews to collect information relevant to hearings on the death sentence.

By seeking permission for mitigation investigators to visit the accused in prison, Project 39A has sought to introduce, for the first time, a practice of rigorous collection and documentation of information relating to the individual. The findings obtained have subsequently been presented to several courts during death penalty hearings in the form of mitigation investigation reports.

CHALLENGES: Access to prisons has been difficult to achieve in many instances. Here, Project 39A attest to resistance by some High Courts in refusing permission to mitigation investigators to collect data ahead of death penalty hearings. This has included instances in the Calcutta High Court and the Bombay High Court. Consequently, notwithstanding efforts made, the project has been unable to provide a consistent level of mitigation to prisoners across all cases.

In addition, challenges arise as a result of the public pressure surrounding cases that evoke the utmost outrage and contempt by society. Excessive and exclusive reliance on the nature of the crime was therefore often considered adequate in determining an appropriate sentence, notwithstanding requirements under law to consider the circumstances of the accused as well as the crime.

LESSONS: In order to overcome these difficulties, Project 39A's emphasis on data driven approaches to advocacy, coupled with the use of a multidisciplinary team to highlight the realities of death row prisoners are critical to shifting mindsets and re-imagining the manner in which quality legal representation can be provided. Accordingly, changes can be realised gradually as new spaces and practices are encouraged within the criminal justice system for restoring the dignity of death row prisoners.

IMPACTS: These changes are already being witnessed. In January 2022, when permission was granted to one of Project 39A's mitigation investigators, it marked the first time that such an order had been made by the Supreme Court. Subsequently, through persistent efforts, permission is now granted as a matter of routine by the Supreme Court in all death penalty cases, and to date, has been granted on 18 occasions. This practice has subsequently spread to High Courts in the country (including the Bombay High Court at Aurangabad, and Kerala High Court), which have allowed access to mitigation investigators in 3 cases so far. The Kerala High Court has even gone a step further, requesting Project 39A to provide mitigation services for 6 death row prisoners (that had not previously been represented by the organisation).

At the same time, the contributions of Project 39A also unearthed the absence of guidelines for collecting mitigation material. As such, the Supreme Court, on its own motion, instituted a suo moto proceeding for enquiring into the same (*In Re: Framing Guidelines Re-garding Potential Mitigating Circumstances to be Considered While Imposing Death Sentences*). As a result of this action, the Supreme Court sought to address these concerns through a five-judge Constitution Bench focused on ensuring a uniform approach for sentencing hearings in death cases. The development is particularly significant given that this is the first time a Constitution Bench will sit on the issue of death penalty sentencing since 1980, when the constitutionality of the death penalty was upheld (in *Bachan Singh v. State*).



Photo Credit: PTI

CHALLENGING USE OF THE DEATH PENALTY FOR NON-HOMICIDAL OFFENCES



Photo Credit: Mukesh Gupta, Reuters

In 2022, Project 39A intervened in a proceeding challenging the legality and constitutionality of provisions which punish sexual offences with a mandatory minimum of life imprisonment. The organisation argued that it was an excessively punitive measure to establish a life sentence as a minimum or baseline standard. The litigation and research (death penalty sentencing) teams of Project 39A consequently worked with a senior advocate to bring the matter before the Supreme Court.

IMPACTS: The matter is currently pending, awaiting final hearing and adjudication, however if successful, it could see the court strike down provisions of law which provide for this punishment. This would be the first time for the Supreme Court to have engaged in determining the proportionality and constitutionality of a punishment other than the death sentence.

The case reflects wider legal trends, as in other jurisdictions such as Kenya, which have begun to recognise the cruelty of punishments such as mandatory life imprisonment as a violation to human dignity.

“These sentences are opposed to the principle of equality. They reduce an entire class of convicts to the circumstances of their crime and hold them irredeemable.”



Photo Credit: Mukesh Gupta, Reuters

LEGAL DEVELOPMENTS

As noted by the above contributions, Project 39A has successfully advocated for a number of legal reform efforts on the death penalty. However recent legislative changes at a state level have also been introduced that are often at odds with the trends seen within Supreme Court decisions.

The below snapshot highlights some of these underlying tensions. The developments hope to encourage and inspire involvement from the international legal community, and national law firms, on how they can contribute to strengthening SDG 16 in India, particularly with respect to safeguarding proper administration of justice within the Indian criminal justice system.



Photo Credit: The National News, Reuters

“We understand that institutional reforms are necessary to ensure the meaningful development of legal doctrine and due process for all. Currently, the reforms initiated by the Supreme Court often do not affect change in the practice before the High Courts and trial courts”

RECENT CASE LAW AND LEGISLATION ON THE DEATH PENALTY IN INDIA

INHUMAN CONDITIONS IN 1382 PRISONS, 2018 (SUPREME COURT): In this case the court found that death row prisoners retain the right to work and the right to education whilst on death row.

ACCUSED X V. STATE OF MAHARASHTRA, 2019: This landmark case saw the Court hold that prisoners who suffer from mental illnesses cannot be sentenced to death. The case precedence has since been built upon further, following the court's findings in Baburao Sangerao v. State of Maharashtra, Aurangabad High Court 2023, in which for the first time in India, a prisoner's Intellectual Disability diagnosis was considered when reducing his death sentence to life imprisonment.

MITIGATING CIRCUMSTANCES TO BE CONSIDERED WHILE IMPOSING DEATH SENTENCES, SUO MOTO CRL WRIT PETITION NO. 1 OF 2022: In a momentous development, the Supreme Court took note of fundamental gaps in the death penalty sentencing framework, which had led to inconsistent approaches within the Supreme Court itself. It then referred these issues to a Constitution Bench towards ensuring a uniform approach for sentencing hearings in death cases.

Further, Madhya Pradesh had a policy of promoting and rewarding public prosecutors for successful convictions and imposition of the death penalty. This policy was withdrawn by the state after submissions were made in this case about its effect of incentivising prosecutors to seek the death penalty; possibly undermining their independence, discretion and also affecting fair trial rights of the accused.

MANOJ & ORS. V. STATE OF MADHYA PRADESH, 2022: In this case the Supreme Court took note of the absence of a coherent legal and institutional framework for collecting and presenting mitigation circumstances in death penalty cases. The court proceeded to lay down detailed guidelines about the manner in which information about a prisoner had to be

collected before handing out the death sentence, placing onus on the state and court to elicit a wide range of information first. Pursuant to these guidelines, the Supreme Court has institutionalised the practice of calling for reports in death penalty cases, namely: (1) from Probation Officers, (2) from prison authorities regarding the prisoner's jail conduct, work done in jail etc. and (3) psychological and psychiatric evaluation reports including to ascertain presence of post conviction mental illness if any. It has also simultaneously allowed mitigation investigators, chosen by the defence, to interview the accused in person to collect information, and present the same before the court. Various High Courts have started issuing similar directions in death penalty cases pending before them.

RISHI MALHOTRA V. UNION OF INDIA, 2023: In this case, the Supreme Court is reconsidering whether hanging, the sole method of execution provided in Indian law, is a 'suitable' means for carrying out a death sentence. The Government of India submitted in response that it is considering setting up a review committee to consider this issue.

In contrast to the above-mentioned case law, the Government of India has introduced other legislation on the death penalty, many of which act to create greater leniency of its usage within the criminal justice system.

SECTION 376DB, INDIAN PENAL CODE, 1860; SECTION 6, PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012: The Indian Penal Code was revised in 2018 after political pressure following incidents of child sexual abuse came to light. New legislation was therefore introduced to expand the scope of the death penalty to include the crimes of rape of children, even where such crimes did not result in death.

PUNJAB EXCISE (AMENDMENT) ACT, 2021 (07 OF 2021), SECTION 61A; MADHYA PRADESH EXCISE (AMENDMENT) ACT, 2021 (28 OF 2021), SECTION 49A; SHAKTI CRIMINAL LAWS (MAHARASHTRA AMENDMENT) BILL, 2020 (LI OF 2021): In recent years, a number of States have introduced the death penalty for wider criminal offences including: sexual offences and the sale of spurious liquor that is likely to cause grievous harm or death.

BHARATIYA NYAYA SANHITA BILL, 2023: In 2023, the Government of India proposed to completely overhaul the Indian Penal Code 1860 (the primary penal statute in the country) and replace it with the Bharatiya Nyaya Sanhita Bill. The Bill contains provisions for imposition of the death penalty in new offences, including: terrorist activities, organised crime, and mob-lynching.

RECOMMENDATIONS

In light of the shifting landscape on criminal justice and the use of the death penalty in India, a number of recommendations are outlined below for how the international and national legal community can get involved to strengthen progress towards SDG 16:



Photo Credit: Office of High Commissioner for Human Rights (OHCHR)

“The death penalty operates in a criminal justice system that is rife with systemic issues like prevalence of torture and use of unreliable forensic reports. This results in the imposition of the death penalty as an arbitrary, unfair and unjust outcome of a broken criminal justice system”

PROJECT 39A

DEVELOPING AN UNDERSTANDING OF FAIR AND DUE PROCESSES

- Legal institutions can work with lower levels of the judiciary through capacity building initiatives to encourage due process in sentencing decisions. This includes recognising and understanding the right to a fair trial.
- Lawyers can participate in training workshops and courses to develop their client care skills and deepen their understanding of due process within the criminal justice system.
- Lawyers can work with mitigation investigators and other professionals to better represent their clients where additional expertise is required.
- Law firms can embed a culture of high quality client care in daily practice, ensuring that clients are always well informed and kept up to date on their case particulars.

PROVIDING PRO BONO LEGAL REPRESENTATION

- Lawyers can extend quality pro bono legal representation across the criminal justice system, strengthening access to justice for marginalised groups (both on the prosecution and defence).
- Lawyers can advocate for stronger legal aid institutions to address unmet legal need.

ENGAGING ON TOPICAL REFORM EFFORTS

- Lawyers can work with public institutions and government to provide their expertise on criminal sentencing, particularly where they have experience representing both the prosecution and defence.
- Lawyers can work with academic institutions and multidisciplinary teams to contribute insights into the day-to-day workings of the criminal justice system.
- Lawyers can support reform efforts on issues including: the appropriateness of the death penalty, methods of execution and improved conditions for grant of parole for death row prisoners.
- Lawyers can contribute their expertise to the development of new sentencing frameworks and court guidelines for the proper functioning of the criminal justice system.
- Lawyers can raise awareness of the importance of due process to the criminal justice system, helping to shift public perceptions and understanding away from a simple victim (good)-perpetrator (bad) mindset.

INDIA: END NOTES

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Photo Credit: Media India

CONCLUSION

The world is facing a polycrisis. The COVID-19 pandemic, geopolitical conflicts, and sharp rises to the global cost of living have all hindered progress toward a sustainable future. However, it has also witnessed impressive efforts from stakeholders across the development spectrum. From law firms to youth activists, there is ample willpower and motivation to see the 17 SDGs realised in full.

As we enter the next phase of the SDG Agenda, there are clear avenues for change. The focus of this report has been to uncover some of these opportunities for lawyers, in all walks of life, to actively play their part. In celebration of the work of A4ID in-country partners within the South Asia region, the case studies outlined here demonstrate that even for nations witnessing major setbacks — be they economic, social or environmental — there remain viable avenues for progression.

Most notably, this report highlights that:

- The coming years present a complicated landscape for multilateralism, making it even more pressing for regional and international cooperation to take place. For South Asian nations, cross-border partnerships provide a distinct opportunity to pool resources and expertise in

the wake of competing priorities and limited fiscal capacity to see progress against all 17 SDGs.

- The role of the private sector, particularly in encouraging sustainable investment, will only grow and solidify as the 2030 deadline grows nearer. A suite of incentives and regulations are likely to emerge as countries look to diversify avenues to sustainable development in order to meet their international commitments.

Against this landscape, pro bono contributions are an avenue to facilitating both cross-border partnerships and advising on private sector interests. The international legal community then, has a crucial role to play in advancing the SDG Agenda, and considerable opportunity to align themselves with SDG impact. These contributions do not have to take place simply in the guise of pro bono hours worked, but are already being integrated within legal practices in a plethora of innovative ways, including through:

- The development and delivery of new services that satisfy unmet legal need, finding inventive avenues for collaboration whilst progressing key SDG goals and targets, as evidenced by The Legal Circle;

- The use of strategic litigation to remedy inequalities and unequal relations of power, as seen in the engagement of lawyers within the activist efforts of Youth Empowerment in Climate Action Platform (YECAP); and
- The contribution of legal expertise and jurisprudential understanding to correct institutional failures within the justice system, advocating for greater adherence to rule of law as with Project 39A.

The case studies explored within this report are testament to the contributions of the legal community towards SDG progress, and are but a snapshot of the efforts that countless legal institutions and law firms across South Asia are making.

To contribute to this growing body of lawyers working on the SDGs, lawyers across the globe can learn from these examples by taking action in the numerous ways already outlined in this report, or seeking inspiration to generate new forms of engagement borne of their own distinct expertise.

Immediate steps that can be taken drawing on the key findings of this report include:

- **Cross-border cooperation:** lawyers can build coalitions of support within the international legal community to build dialogue and initiatives relevant to the SDG Agenda. Work in this space is already underway, and open networks such as A4ID's SDG Legal Initiative provide a chance for all legal professionals to get involved regardless of their practice area, job role or where they are located. To join and find out more about the initiative, see: <https://sdglegalinitiative.a4id.org/join-the-initiative/>
- **Private sector investment:** lawyers with a deep understanding of the SDG Agenda can better advise private sector clients on how to build best practices within their investment decisions. Doing so will not only help them seize new opportunities relating to sustainable development, but also how to mitigate risks through effective due diligence.
- **Pro bono contributions:** lawyers can build on the examples provided within this report, and within their wider networks, to innovate new ways in which their offerings can make an effectual SDG impact. In order to do this, it is critical to build an understanding of the developmental context of the regions in which they operate, understanding where the country's growth and development has historically emerged, and how this has shaped present-day priorities. To develop a stronger awareness and understanding of the SDGs, lawyers can also maximise on the open and free resources available to them by proxy of A4ID's SDG Legal Guides, available here: <https://sdglegalinitiative.a4id.org/sdg-legal-guide/>

