

Submission to the UN Special Rapporteur on Freedom of Religion or Belief (FoRB)

For the Report to the United Nations General Assembly on Eliminating Intolerance and Discrimination Based on Religion or Belief and the Achievement of Sustainable Development Goal 16 (SDG 16)

Submission on behalf of the **South Asia Collective (SAC)**¹.

1. The SAC welcomes the opportunity to make this submission to the Special Rapporteur on FoRB. This submission covers six South Asian countries: Afghanistan, Bangladesh, India, Nepal, Pakistan, and Sri Lanka. Given length restrictions, the specific dynamics of each context are not elaborated in an exhaustive manner.² Yet each country overview seeks to underline the relationship between discrimination and intolerance based on religion or belief in legislation, policy, and practice with rising hostility and violence against religious minorities across South Asia.
2. The submission also notes how structural inequalities – such as poor socio-economic outcomes for religious minorities – and impunity for FoRB violations exacerbate underlying conditions which lend to tensions and conflict. There are concerns that these fragile foundations will be further undermined as a result of the socio-economic and political impact of the COVID-19 pandemic. In some contexts, this has already resulted in internal displacement of the marginalized, alongside discrimination against religious minorities who have been blamed for the spread of the disease, as well as denied proper funeral or burial rites.³
3. Intolerance and discrimination based religion or belief also has regional implications. For example, the rise of Hindu nationalism in India has contributed to the spread of intolerance in neighbouring Nepal⁴, while the emerging situation in Assam – which renders Bengali Muslims particularly vulnerable to statelessness – increases insecurity for minorities as well as the potential for regional instability. The submission also touches upon overlapping issues across the region, including the effects of anti-conversion and blasphemy laws.

Afghanistan

¹ The SAC is a regional network established in 2015 bringing together researchers, activists, and organisations from across South Asia to systematically track the conditions of minorities and their access to rights in line with international standards of FoRB, minority and human rights; and to engage in advocacy based on these findings to improve outcomes for marginalised communities. More details about the SAC, including the existing members, can be found here: <http://thesouthasiacollective.org/about-us/>

² More exhaustive coverage of these issues can be found in the SAC's annual reports <http://thesouthasiacollective.org/annual-reports/> and bulletin <http://thesouthasiacollective.org/bulletins/>

³ <http://thesouthasiacollective.org/wp-content/uploads/2020/04/InDepthCOVID-1.html>

⁴ Budhathoki, A. 'Indias Islamophobia Creeps Into Nepal', *Foreign Policy*, 16 June, 2020. <https://foreignpolicy.com/2020/06/16/india-islamophobia-hindu-nationalism-nepal/>

4. Aspects of the 2004 Afghan Constitution discriminate against religious minorities.⁵ Article 1 declares that Afghanistan ‘will be an Islamic State’; Article 2 states that ‘the religion of the State will be Islam’; Article 3 stipulates that ‘no law shall contravene the tenets of Islam’; and Article 62 states that ‘the president of Afghanistan shall be Muslim’. Although Article 22 prohibits discrimination, non-Muslims are restricted to performing their “religious rituals” within the “bounds of law”.⁶ In practice, religious minorities, particularly members of the Hindu and Sikh community, face significant difficulties in their daily lives which have led many to seek asylum in India and elsewhere.⁷
5. Amidst political instability and conflict in Afghanistan, those most marginalized, including religious minorities, face high levels of insecurity, including the threat of violence. Absent more fundamental changes to these structural conditions, even efforts which seek to address exclusion – such as increasing political representation – have seen a backlash. In a televised interview with a local TV channel on January 15, 2020, Mujibur Rahman Ansari, a cleric in Herat province said that the root to problems in Afghanistan is that “whenever an official comes to power he brings in a Shia with him”. Referring to the presence of Shi’as in the Afghan Parliament and the position of the Vice Afghan President, he said, “in such situation, security won’t come to Afghanistan”.⁸
6. Ansari is representative of a new wave of efforts to escalate religious divisions. Such efforts have culminated in direct violence, exacerbating existing insecurity in Afghanistan. In recent years, there have been a number targeted assassinations and bombings in Afghanistan orchestrated by terrorist groups, often directed at Hazaras (predominantly Shi’a Muslims). Most recently, a hospital ward in a neighbourhood home to many Hazaras was targeted in May 2020.⁹ In March, a gathering marking the death anniversary of Hazara leader, Abdul Ali Mazari, was attacked leaving many dead and injured.¹⁰ Soon after a Sikh Gurudawara in Kabul was targeted, killing over 20 people.¹¹ Ongoing political and social instability has helped enable these groups to operate with impunity, which in turn increases the threat of future violence and renewed conflict.

Bangladesh

7. Secularism is one of the fundamental principles of Bangladesh’s constitution while several articles proclaim freedom of religion and belief. Yet discrimination against religious minorities persists in law, policy, and practice.
8. Long-standing issues include those related to the Vested Property Return (Amendment) Act 2011. The slow and cumbersome process for the return of seized property has contributed to the poor socio-economic conditions facing Hindus in particular, increasingly frustrated on account of these delays. More recently, vaguely worded provisions of the Digital Security Act 2018 make this Act rife for abuse, in particular to justify the targeting of religious minorities and secular bloggers.¹² This includes Article

⁵ Islam is the official religion of Afghanistan. Around 99.7% of Afghanistan’s population is Muslim (80-85% Sunni Muslim, 15-19% Shi’a Muslim). Less than one percent of Afghanistan’s population is non-Muslim (including Hindus, Sikhs, Baha’is, Christians, Ahmadis, Buddhists, Zoroastrians and others).

⁶The Constitution of the Islamic Republic of Afghanistan (2004) <https://president.gov.af/en/wp-content/uploads/sites/4/2017/01/TheConstitution.pdf-english.pdf>

⁷ Abdali, Mina Habib. ‘Tough Time for Afghan Hindus and Sikhs’, *The Institute for War and Peace Reporting*, 11 July, 2013.

⁸ <https://www.refworld.org/docid/51e3a4734.html>

⁹ <https://twitter.com/samrereports/status/1217355353119170563>

¹⁰ ‘Newborns among 40 killed in attacks on Afghan hospital and funeral’, *The Guardian*, 12 May, 2020.

<https://www.theguardian.com/world/2020/may/12/gunmen-attack-kabul-hospital-used-by-medecins-sans-frontieres>

¹¹ ‘UN condemns deadly attack in Afghan Capital’, *UN News*, 7 March 2020 <https://news.un.org/en/story/2020/03/1058931>

¹² ‘Gunmen in Afghanistan kill 25 at Sikh Complex, Islamic State Claims Responsibility’, 25 March, 2020.

<https://uk.reuters.com/article/uk-afghanistan-attack/gunmen-in-afghanistan-kill-25-at-sikh-complex-islamic-state-claims-responsibility-idUKKBN21C0IG>

¹² Digital Security Act 2018, <https://www.cirt.gov.bd/wp-content/uploads/2018/12/Digital-Security-Act-2018-English-version.pdf>

28, which prohibits publication of information that “hampers religious sentiment or values” and is in violation of the ICCPR.¹³

9. These structural conditions lend to societal divisions along religious lines, as well direct targeting of religious minorities who are subject to hate speech and direct violence. The use of social media in such cases is increasingly common: a pattern is evident, in which incendiary remarks about Islam are falsely posted from alleged Facebook accounts of religious minority individuals. These individuals are subsequently targeted, and this often devolves into wider violence and hostility. Examples include: October 2016 in Nasirnagar where Hindu temple and homes were targeted following a defamatory Facebook post allegedly by a Hindu youth¹⁴; November 2017 in Rangpur district where homes of Hindus were attacked and looted following a Facebook post from the account of a young Hindu¹⁵; and in October 2019 in Bhola District where violence between Hindus and Muslims subsequent to a social media post left four Muslims dead.¹⁶ Members of the Ahmadi community have also been subject to hate speech and violence; for example in February 2019 in Panchagar District¹⁷ and January 2020 in Brahmanbaria district¹⁸.

India

10. Religious minorities in India, particularly Muslims and Christians, have been targeted with increasing frequency since 2014 when the BJP government came to power. This has accelerated since it's re-election in 2019, with increased anti-minority provocations, hate mongering and violence by majoritarian groups, and authorities' failures of omissions and commissions, denying minorities equal protection of the law.
11. This situation is enabled by discriminatory laws and measures, including but not limited to: (a) tightening cow protection laws (in 24 of 29 states) that create criminal offences against slaughter, trade consumption of beef; (b) Anti-conversion laws (in 7 states) that restrict the right to practice and profess the religion of one's choice; (c) Citizenship Amendment Act 2019 along with all-India Nation Register of Citizens to 'detect, and detain 'infiltrators', a dog whistle description for Muslims, while opening a pathway to Indian citizenship for non-Muslim “illegal immigrants”, the two thus being patently discriminatory against Muslims; (d) Jammu & Kashmir Reorganisation Act 2019, which enabled the abrogation of Article 370 and Art 35A of the constitution that had provided limited autonomy for the Muslim-majority state and protection for its residents; and (e) Unlawful Activities (Prevention) Amendment (UAPA) Act 2019 which empowers authorities to declare individuals as terrorists before they have been convicted of a crime, used as a tool by authorities to target dissent, mostly used against minorities and other targeted groups.¹⁹

¹³ Specifically, this is incompatible with the ICCPR on the basis of General Comment no. 34

<https://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>

¹⁴ 'Investigation into Nasirnagar attack cases yet to complete', *Dhaka Tribune*, 30 October, 2019.

<https://www.dhakatribune.com/bangladesh/nation/2019/10/30/investigation-into-nasirnagar-attack-cases-yet-to-complete>

¹⁵ 'Mob sets upon Hindu village in Rangpur over rumoured Facebook post', *Dhaka Tribune*, 10 November, 2017.

<https://www.dhakatribune.com/bangladesh/nation/2017/11/10/one-killed-angry-go-berserk-rangpur-hindu-village-facebook-status/>

¹⁶ 'After deadly clashes with police, Muslims also attacked Hindu homes, temple in Bhola', *bdnews24.com*, 29 October, 2019.

<https://bdnews24.com/bangladesh/2019/10/24/after-deadly-clashes-with-police-muslims-also-attacked-hindu-homes-temple-in-bhola>

¹⁷ '50 Ahmadiyyas injured in co-ordinated attack on the community in Panchagarh', *Dhaka Tribune*, 13 February, 2019,

<https://www.dhakatribune.com/bangladesh/nation/2019/02/13/sunnis-attack-ahmadiyyas-in-panchagarh>

¹⁸ 'Ahmadiyya mosque, houses attacked in Brahmanbaria', *New Age Bangladesh*, 16 January 2020

<https://www.newagebd.net/article/96747/ahmadiyya-mosque-houses-attacked-in-brahmanbaria>

¹⁹ 'South Asia State of Minorities 2019' in *South Asia State of Minorities Report 2019: Migrants, Refugees, and the Stateless* (2020),

<http://thesouthasiacollective.org/wp-content/uploads/2020/03/2019StateofSouthAsianMinorities.pdf>

12. Religious minorities also face structural inequalities linked to economic, social and cultural discrimination. Contributing to this is legislation including the Constitutional (SC) Order, 1950 which deprives adherents of ‘non-indigenous faiths’ – particularly Muslims and Christians – of Scheduled Caste status and therefore access to benefits of affirmative action. Despite the degree of exclusion being well-documented – for example, in the Sachar Commission Report 2006 – poor outcomes for religious minorities persist, exacerbating marginalization and socio-economic divisions.
13. Hindu vigilante groups invoke cow-protection and anti-conversion laws to target primarily Muslims and Dalits, but also Christians. Lynching of minorities has become increasingly common in several northern states. Perpetrators operate with impunity and frequently degrees of state collusion, further alienating minorities. Authorities have also enabled violence through hate speech; recently, incendiary remarks by a BJP official regarding anti-CAA protesters were directly followed with violence in North East Delhi resulting in the death of over 50 people, widespread destruction of property, and displacement (all primarily affecting Muslims).²⁰ This is part of wider systematic targeting by authorities against those speaking against CAA 2019, resulting in large numbers of killings, injuries, destruction of property (including places of worship), and mass detentions, particularly in Uttar Pradesh and Delhi.²¹
14. In Kashmir, the scale and degree of human rights violations have worsened since mid-2016, characterized by internet shutdown, curfews, use of pellet shotguns, arbitrary detentions, custodial torture, and violence against children. This has the potential to fuel further violence both within Kashmir and the wider region. In Assam, the NRC process has called into question the citizenship status of 1.9 million people, and with the CAA now in place concerns Muslims will be rendered stateless.
15. Continued targeting of minorities in India is the outcome of a permissive environment for anti-minority hate mongering, nurtured by senior politicians, working in sync with mainstream and social media, that act as amplifiers of hate. This is has been fed by the hollowing out of institutional safeguards, resulting in weak rule of law, poor working of the criminal justice system, and a culture of impunity against atrocity crimes.

Nepal

16. Article 4 of the Constitution of Nepal 2015 describes Nepal as secular, but defines secularism partly as the protection of traditional religions and customs ‘practised from ancient times’, a shorthand for Hinduism, the country’s dominant religion (81.3% of the population).²² Contradictory laws that disadvantage certain communities over others also still exist in Nepal such as the criminalisation of slaughtering of cows. In 2018/19, 34 such cases were registered in the Supreme Court.²³ Acts of religious conversion are prohibited by the Constitution as a criminal offence. In 2019, there were two separate instances of Christians being arrested under the suspicion of converting people to Christianity.²⁴ Furthermore, Nepal’s criminal code that came into effect in August 2018 imposed

²⁰ ‘Why was Delhi Police unprepared for violence even after BJP leader Kapil Mishra’s threats?’, *Scroll.in*, 25 February 2020

<https://scroll.in/article/954241/why-was-delhi-police-unprepared-for-mondays-violence-even-after-bjp-leader-kapil-mishras-threats>

²¹ ‘Everyone has been silenced: Police excesses against Anti-CAA Protesters in Uttar Pradesh, and the Post-violence Reprisal’, *Citizens Against Hate*, March 2020, <http://citizensagainsthate.org/wp-content/uploads/2020/03/Citizens-Against-Hate-Everyone-Has-Been-Silenced.pdf>

²² Chiara Letizia, “Secularism and statebuilding in Nepal,” in *Two steps forward, one step back: The Nepal peace process*, ed. Deepak Thapa and Alexander Ramsbotham (London: Conciliation Resources, 2017), 109-111.

²³ 2018/19 spans the Nepali fiscal year 2075 BS. See: Shiva Hari Gyawali, ‘Criminalization of cow-slaughter is a tool of caste terror’, *The Record*, June 14, 2019, <https://www.recordnepal.com/podcast/criminalization-of-cow-slaughter-is-a-tool-of-caste-terror>.

²⁴ ‘Christians seized by police while training pastors in Nepal’, *Barnabas Fund*, April 24, 2019,

<https://barnabasfund.org/en/news/christians-seized-by-police-while-training-pastors-in-nepal>; ‘Three Foreigners Arrested Over Religious Conversion Accusations In Nepal’, *New Spotlight Online*, July 24, 2019, <https://www.spotlightnepal.com/2019/07/24/three-foreigners-arrested-over-religious-conversion-accusations-nepal>.

punishments on those ‘harming the religious sentiment’ of any caste, ethnic community, or class²⁵ which is open to broad and potentially harmful interpretations to the detriment of religious minorities, particularly, Muslims (4.4%) and Christians (1.4%). Other religious minorities such as Kirat (3%) also face obstruction in observing the last rites for their deceased, specifically in the urban areas of the country.²⁶

17. Contributing to this shaky foundation of secularism has been the electoral victory of Hindu nationalist BJP in India in 2014, which has enabled the growth of strong anti-secular forces in Nepal²⁷ - mostly targeting Muslims and Christians. The 2017 and 2018 Pew Research Center reports on freedom of religion indicate that ‘levels of social hostilities towards religious minorities in Nepal rose from moderate levels in 2014 to high levels in 2015 and 2016’.²⁸
18. The pattern has continued over the years. In 2019, elements of Hindutva made religious minorities in Janakpur, mostly Muslims, feel a heightened sense of insecurity as saffron, ‘a colour associated with Hindu nationalism’, was distributed for free by the local government to paint public and private properties in the city.²⁹ Negative public sentiments have also become visible against Muslim Rohingya refugees, including online comments following news reports routinely depicting them as ‘locusts’, ‘terrorists’ and ‘ISIS’.³⁰ In April 2018, a Catholic church in Banke District was arsoned, while ‘members of Hindu Jagaran Nepal, reportedly a small pro-Hindu group trying to make a name for itself, threatened to bring it down altogether.’³¹
19. The adoption of Hindu symbolic and ritual apparatus by government leaders has not fundamentally impacted religious harmony in Nepal at this stage, and dissent to discriminatory characterisation of religious minorities can be seen in national media.³² Yet it remains an alarming trend which threatens to harm the country’s social fabric.

Pakistan

20. Although there are constitutional guarantees and international commitments to uphold FoRB in Pakistan, these are undermined by discriminatory provisions and legislation. This includes measures which directly contradict Pakistan’s international commitments to upholding religious freedom and the rights of religious minorities, such as Article 41(2) and 91(3) which restrict political participation of minorities. Other measures such as the 1947 amendment of 298 (b) and (c) which declares Ahmadi’s as ‘non-Muslims’ known as the ‘anti-Ahmadi laws’ and Pakistan’s blasphemy legislation more directly provide a cloak of legality to documented vigilante violence against minorities. Anti-Terrorism Act also discriminates the protection of religious minorities and their beliefs. Provisions in the penal code such as Qisas, Diyat and the Hudood Ordinances restrict access to justice for other religious groups.

²⁵ United States Department of State Bureau of Democracy, *International Religious Freedom Report for 2018* (Washington D.C.: Bureau of Democracy, Human Rights, and Labor, 2018).

²⁶ Ibid.

²⁷ Chiara Letizia, ‘Secularism and statebuilding in Nepal,’ in *Two steps forward, one step back: The Nepal peace process*, ed. Deepak Thapa and Alexander Ramsbotham (London: Conciliation Resources, 2017), 109-111

²⁸ United States Department of State Bureau of Democracy, *International Religious Freedom Report for 2018* (Washington D.C.: Bureau of Democracy, Human Rights, and Labor, 2018).

²⁹ Sweksha Karna, ‘Janakpur is decked out in saffron, and not everyone is thrilled’, *The Kathmandu Post*, September 28, 2019, <https://kathmandupost.com/province-no-2/2019/09/28/janakpur-is-decked-out-in-saffron-and-not-everyone-is-thrilled>.

³⁰ Sagar Budhathoki, ‘Rohingya refugees say: either give us Nepali citizenship, or send us to a third-country,’ [Rohingya saranarathi bhanchan, ki Nepalko nagarikta deu, ki tesro muluk pathau] *Onlinekhabar*, June 05, 2019.

³¹ United States Department of State Bureau of Democracy, *International Religious Freedom Report for 2018* (Washington D.C.: Bureau of Democracy, Human Rights, and Labor, 2018).

³² Chiara Letizia, ‘Secularism and statebuilding in Nepal,’ in *Two steps forward, one step back: The Nepal peace process*, ed. Deepak Thapa and Alexander Ramsbotham (London: Conciliation Resources, 2017), 109-111; Mohammad Ayub, ‘Tablighi Jamaat and the precarity of global governance,’ *The Record*, April 12, 2020. <https://www.recordnepal.com/covid19/tablighi-jamaat-and-the-precariety-of-global-governance>.

21. Violence against minorities in Pakistan is therefore enabled by this backdrop of discrimination at the legal and institutional level, as well as widespread impunity. There have been over 1,000 cases registered under blasphemy laws since the late 1980s. Some of these accusations have led to direct violence against minorities (e.g. Gojra 2009; Josph Colony in 2013). Contributing to this is institutionalised discrimination coupled with social intolerance, which has meant that efforts to address the implications of Pakistan's blasphemy and anti-Ahmadi laws have themselves been met with violence, leading to appeasement of influential religious leaders who stoke anti-minority sentiments.
22. Intolerance against religious minorities also manifests in economic, social, and cultural realms, which reinforces social divisions, as well as contributes to the advancement of extremist ideology and insecurity for minorities. Discrimination against minorities in the educational system has been well documented, and is exacerbated by hate speech against minorities in public space, as well as in mainstream journalism and increasingly on social media. Measures to address these issues, such as the National Action Plan or the establishment and operation of a National Commission for Minorities, lack adequate implementation, reflecting fundamental lapses in governance which lead to minority distrust in state institutions. Meanwhile, measures continue to be introduced which escalate intolerance through the promotion of exclusionary nationalism and the privileging of a narrow understanding of Islam; for example, recent efforts in June 2020 to ban books in Punjab deemed derogatory to Islam.³³
23. Economic boycotts of some religious minorities have led to forms of segregation, as well as contributed to poor socio-economic outcomes. The COVID-19 response has also widely brought to the surface the worsening marginalization of religious minorities by making apparent their lack of equal access to services; for example, many members of minority communities are not registered with the National Database Registration. This restricts their access to social security and welfare, which threatens to exacerbate instability and exclusion.

Sri Lanka

24. Although Sri Lanka's Constitutional provisions on FoRB broadly mirror international standards it affords a 'foremost place' to Buddhism (Article 9), creating a hierarchy of religions. In practice, Sri Lanka's religious minorities face violations to religious freedom in many forms, including hate speech, discriminatory practices, threats and intimidation, destruction of property as well as physical violence. This has been linked to institutional measures which have been widely criticized – for example, a 2008 contentious government circular which has been repeatedly misapplied to justify harassment of worshippers, particularly evangelical Christians. Moreover, it has been linked to the advancement of Buddhist nationalism, including the patronage of groups such as Bodu Bala Sena (BBS), particularly since the end of the war.
25. The Presidential pardon of BBS' Galagoda Aththe Gnanasara Thero in May 2019 just after anti-Muslim violence in North-Western Sri Lanka has contributed to fears amongst Muslims that they will be attacked further.³⁴ BBS has been at the forefront of advancing hate speech and instigating violence against religious minorities, particularly Muslims. Anti-Muslim sentiment has manifested in anti-Halal campaigns, calls to ban the niqab and boycott Muslim businesses, as well as false accusations of Muslims sterilising Sinhala women.

³³ 'PA speaker for banning books with derogatory remarks related to companions of Prophet (PBUH)', *Daily Times*, 6 June 2020, <https://dailytimes.com.pk/622488/pa-speaker-for-banning-books-with-derogatory-remarks-related-to-companions-of-prophet-pbuh/>

³⁴ Chathuri Dissanayake, 'President pardons Gnanasara Thero,' *Daily FT*, 23 May, 2019. <http://www.ft.lk/front-page/President-pardons-Gnanasara-Thero/44-678714>

26. While low-intensity violence against Muslim and Christians has been a consistent feature of the post-war landscape in Sri Lanka, hate speech against Muslims has played a role in instigating severe episodes of violence, for example in 2014 in Aluthgama; Ampara and Kandy in 2018; and following the Easter attacks in in 2019.³⁵ Government lapses and impunity following such incidents, alongside the absence of justice and reconciliation for wartime violations, has lent to distrust in state institutions as well as increased inter-ethnic and religious tensions. This has resulted in insecurity amongst Sri Lanka's minorities, as well as contributed to cycles of violence. Relations are particularly tense in Eastern Province, which have been exacerbated by the Government's favourable treatment of Buddhist monks who claim arable land as archaeological and historical sites to justify evictions of Muslims and Tamils. Reflecting the wider anti-minority sentiment of the Government, the Task Force established has no minority representation, and is comprised of military personnel, Buddhist monks, and some members of the Department of Archaeology.³⁶
27. There are concerns that, alongside political and economic instability, this overall situation will contribute to the appeal of extremist ideology amongst Muslims, the majority of whom do not adhere to this. The usage of the draconian Prevention of Terrorism Law, including its use arrest and detain Muslims since the Easter attack absent any charge, serves to exacerbate this. These issues have only been accelerated in the context of the COVID-19 pandemic, which has seen discriminatory discourse and practices leveled against Sri Lanka's Muslims in particular.

³⁵ Minority Rights Group International, *Confronting Intolerance: Continued violations against religious minorities in Sri Lanka* (London: Minority Rights Group International, 2016).

³⁶ P.K. Balachandran, 'Why the Presidential Task Force on Archaeology in Eastern Province has no Muslim or Tamil?', *Sri Lanka Brief*, 5 June, 2020.