

Report on Child Labour in the Mines of Meghalaya

Fact Finding Mission of Human Rights Now to India



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Human Rights Now

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Human Rights Now (HRN) is an international human rights NGO based in Tokyo with over 700 members of lawyers and academics. HRN dedicates to protection and promotion of human rights of people worldwide.



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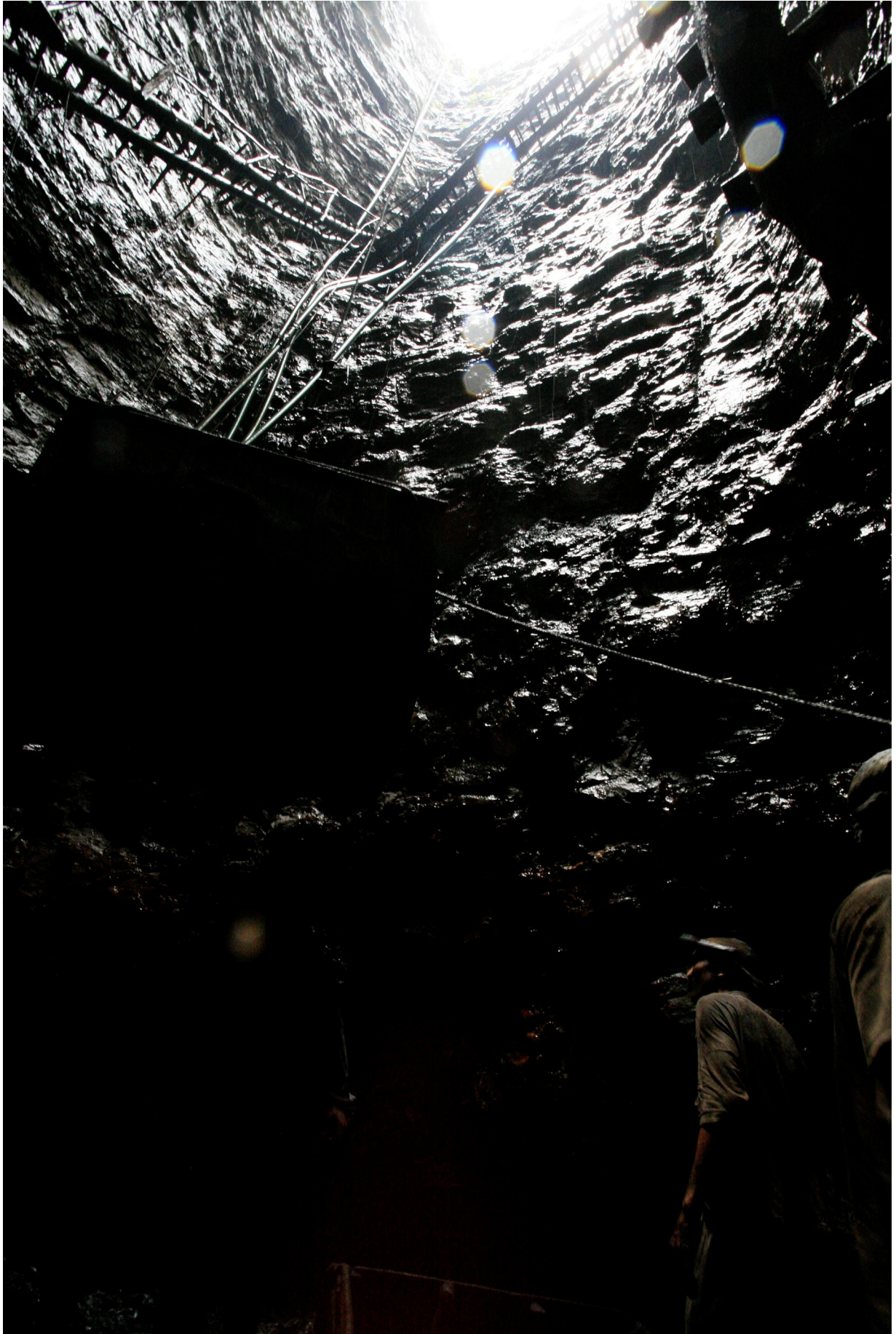


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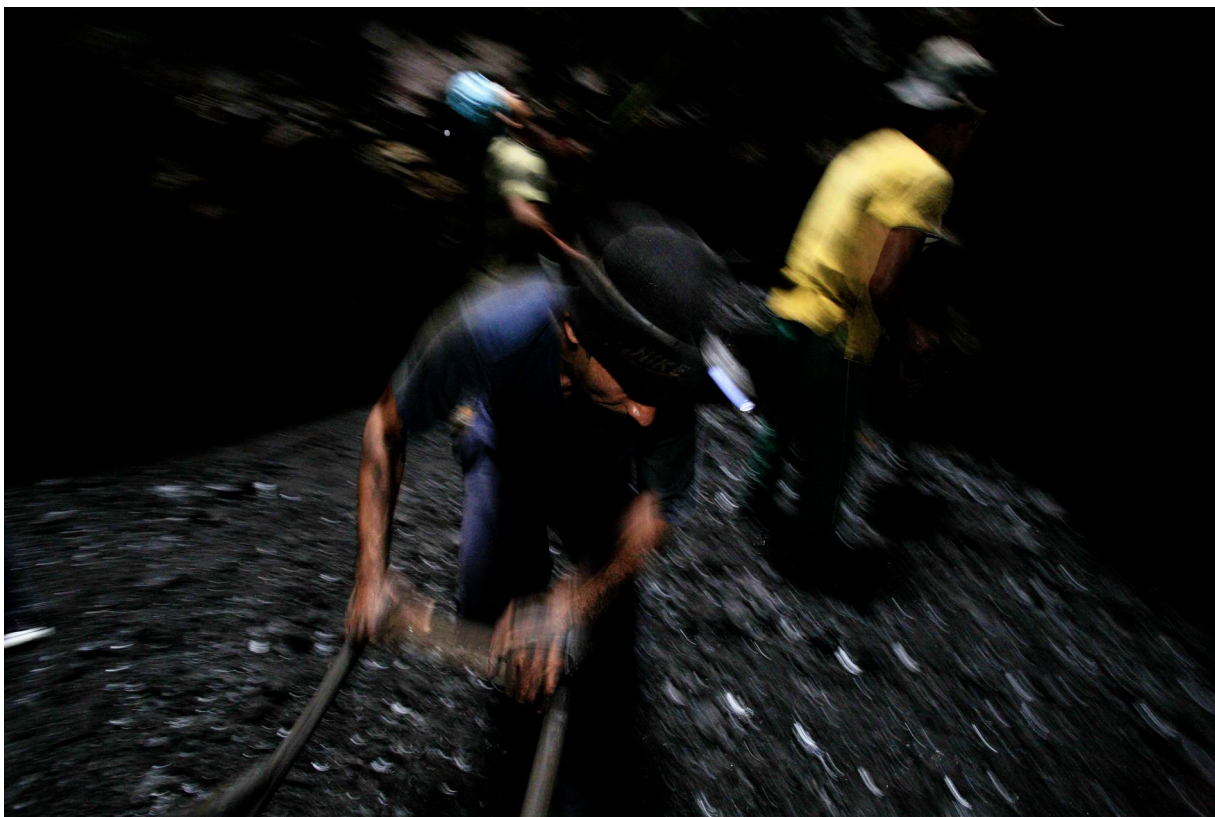
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Summary

In Jaintia Hills in the state of Meghalaya, India, the mining industry has grown over the past thirty years sustained by labour from neighbouring countries Nepal and Bangladesh, as well as from other areas of India. Following an invitation from the Impulse NGO Network (based in Shillong, Meghalaya), Human Rights Now (HRN), a Tokyo-based international human rights NGO, sent a fact-finding mission to investigate the labour situation at the mines in Jaintia Hills from 31 May to 2 June 2010.

Over the course of three days the fact-finding mission conducted interviews with labourers at three different coal mining sites in Jaintia Hills. The fact-finding team conducted interviews with more than 50 people including workers, children, families, supervisors, managers and owners. The team also went down a mine shaft to interview labourers inside the mine itself, and to assess the structure and condition of the mines. In order to gain a balanced and thorough picture of conditions at the mines, the team interviewed a mine owner, a manager, two supervisors, a coal deliverer and a labourer's wife. Among over 50 interviews, in total 39 interviews were included in this report.

The HRN fact-finding team found that extremely hazardous and inhumane labour conditions are in operation at the mines and that child labour constitutes a significant proportion of the labour force. Many of the child labourers have been brought from Nepal and Bangladesh. Human Rights Now has grave concerns about these child labourers and the appalling conditions in which they are being put to work.

First, the age of the child labourers is extremely young. In only three days the fact-finding team interviewed three 12-year-old and three 13-year-old labourers, and some of them had been working from as young as 8 and 9 years old. Many of the adult labourers interviewed had also been working in the mines since they were young children.

Second, the team found that the working conditions at the mines are extremely hazardous. The children are sent deep inside the mines to cut coal, working in tunnels so small they are known as 'rat holes'. The rat holes are deep underground and there is little oxygen or ventilation. Furthermore the majority of interviewees, including a mine manager and supervisor, reported a total lack of safety regulations that frequently results in serious, often fatal, accidents. The rat holes are prone to collapse and flooding, the ladders into the mine are extremely hazardous, and machinery is poorly maintained and operated by unqualified workers. Children working deep in the mines are often the victims of accidents, but mine owners do not report deaths to the authorities, nor do they provide medical support or compensation for bereaved families.

Third, the fact-finding team found that brokers are involved in recruiting child labour for the mines from Nepal and Bangladesh. Children trafficked to the mines have no option but to stay and work as they do not have the financial means to get home and often do not even know the way. Furthermore, children are often enticed to the mines under false pretences, told only of the opportunity to earn money but not about the terrible conditions in which they will have to work.

Fourth, the team received reports of workers suffering severe corporal punishment, including extrajudicial execution. Workers, including children, are locked inside rat holes as punishment, which has caused deaths due to lack of oxygen. Local police do not deal with these human rights violations so the perpetrators are rarely brought to justice. Knowing about these killings, children wishing to leave the mines are undoubtedly intimidated into staying.

Fifth, the living conditions of the children are inhumane and unsanitary. There is a lack of safe drinking water and no proper sewage system. As a result the workers suffer from various diseases while their employers provide no medical facilities, and workers must pay for any necessary treatments themselves. Furthermore, children working on the mines are not permitted to go to school.

In terms of the number of child labourers, an exact figure is unknown and difficult to calculate due to the temporary and itinerant nature of labour at the mines. However, Impulse NGO Network estimates that there are 70,000 child labourers in the area, and HRN suspects the number may be even higher. According to one manager interviewed, there are approximately 100,000 mines in the area, and the fact-finding team saw that the large mines employ as many as 25 child labourers.

HRN is greatly concerned that in spite of the facts stated above no interventions or initiatives by central or local government have been implemented. The Impulse NGO Network has officially reported the problem to relevant national government authorities, such as the Social Welfare Department and Labour Department, as well as to the National Human Rights Commission, yet no action has been taken. The National Commission on Protection for Child Rights has visited the state of Meghalaya and has been informed of the situation, but there has been no follow-up response so far. It is clear that the numerous mechanisms that exist in India to address the problem of child labour are failing to make an impact effectively on the ground.

The practice of child labour violates Indian domestic law, namely, the Indian Constitution and the Child Labour Act, which both explicitly prohibit child labour by those who are under 14 years old in mines or in any other hazardous employment.

Child labour in Jaintia Hills also involves violations of International Labour Organisation (ILO) conventions and human rights law. The situation in Jaintia Hills violates the ILO Minimum Age (Underground Work) Convention No.123 (1965), which has been ratified by India and which prescribes that "the minimum age shall in no case be less than 16 years." Furthermore, the practice of child labour in Jaintia Hills constitutes grave violations of the Convention on the Rights of the Child; the International Covenant on Economic, Social and Cultural Rights; and the International Covenant of Civil and Political Rights. Some of the rights that the practice of child labour in Jaintia Hills violate are: the right to life, the prohibition on extrajudicial execution, the right to the highest attainable standard of health (including access to safe drinking water and sanitation), the right to education, the right to be protected from harmful work and economic exploitation, and the right to an adequate standard of living.

In Jaintia Hills the mines are operated by private actors, and the government of India has an obligation to protect children from such grave human rights violations committed by private sectors, by intervening the situation and taking all necessary measures.

The Indian government and State government of Meghalaya should immediately conduct a large-scale investigation of labour practices in Jaintia Hills with the full participation of victims; invite and accept international monitoring; protect and rescue child labourers and provide effective remedies including rehabilitation, education, restitution and compensation; clarify the roles of various ministries and departments working to eliminate child labour and ensure that there is a clear party tasked with enforcement of regulations; and provide affordable or free education to children.

Furthermore, the federal Indian government should fully implement the Indian Constitution and the Child Labour Act; conduct a nation-wide study of child labour and human trafficking and relevant laws; ratify ILO Conventions 138 and 182; expand the scope of the Immoral Trafficking Prevention Act to all forms of trafficking; enact bilateral agreements with the governments of Nepal and Bangladesh on prevention,

protection, and prosecution related to child trafficking; and apply the National Child Labour Programme to the whole of Meghalaya.

The international community should be aware of this issue and take steps to address it. In particular HRN recommends that international experts, such as the UN Special Rapporteurs and the ILO, investigate and intervene in the situation.

The international business community should also take note of this issue. It is probable that the coal produced in Jaintia Hills is exported to third party countries and purchased by business sectors throughout the world. It is recommended that companies purchasing coal should assess their supply chains and avoid endorsing these gross violations of human rights by purchasing the coal products.

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I. Introduction

In Jaintia Hills in the state of Meghalaya, India, the mining industry has grown over the past thirty years, sustained by labour from neighbouring countries Nepal and Bangladesh as well as from other areas of India. Following an invitation from the Impulse NGO Network (based in Shillong, Meghalaya), Human Rights Now (HRN), a Tokyo-based international human rights NGO, sent a fact-finding mission to investigate the situation of children at the mines in Jaintia Hills from 31 May to 2 June 2010.

The HRN fact-finding mission conducted three days of extensive investigation in three areas of coal mines. HRN visited actual working places, including deep underground *ōrat holes*, and observed the working situation. It also conducted interviews with more than 50 people including workers, children, families, supervisors, managers and owners.

This report includes 39 interviews out of the total number of interviews. Within these 39 interviews, 26 are children, three children each at ages 12, 13, 14, 15 and 16 years old respectively (totaling fifteen children), five 17-year-old children, and six 18-year-olds, all of whom are involved in coal mining.

At the completion of the investigation, the HRN fact-finding team found that extremely hazardous and inhumane child labour practices have been widely practiced in the coal mines owned by individuals in Jaintia Hills. Significant numbers of the children are trafficked from Nepal and Bangladesh.

Many of the children, including those under the age of 14, are placed in extremely dangerous working environments, with situations indeed involving slavery-like practices. At the same time, these children are exploited and usually given half the wages of an adult.

This report describes the reality of labour conditions, human rights violations, exploitation, and the trafficking of children involved with this situation. It also asks both the Indian government and the international community to immediately address the situation and save the victimized children, as well as adopt comprehensive measures to end the vicious circle of child labour in coal mines in the area.

II. Activities of the Fact Finding Team

1 Activities

The HRN fact-finding team conducted a thorough investigation of cases involving child labours and child trafficking related to the coal mines in Jaintia Hills. The team visited coal mines in three areas of Jaintia Hills for three days and observed the working conditions and living conditions of child labourers, as well as conducted interviews with persons concerned. Upon completion of the mission, the team held a press conference in Delhi. The team also had chance to meet some governmental officials of India. HRN greatly appreciates the cooperation of all persons involved.

Table 1

DATE	TIME	SCHEDULE
30 May 2010	Afternoon.	Meeting with Impulse NGO, Shilling Hearing with the NGO
31 May 2010	Morning Afternoon	Shilling- Jowai- Jaintia Hills Interview with Children working at a Coal Cutting Site Mines near the Cement Factory (Field work) Visiting a rats hole Interview with workers and supervisor Interview with Children working in the Coal mines Interviews Continue Visit to Samasi Mines (Field Work) Interview with Children working in the Coal mines
1 June 2010	Morning Afternoon Night	Jaintia Hills Mines near to the Cement Factory (Field work) Interview with Children working in the Coal mines Interviews Continue Mines at 8 kilo Interview with Children working in the Coal mines Interview with a mine Owner
2 June 2010	Morning Afternoon	Jaintia Hills Interview with a manager Mines around nonjury area (Field work) Interview with Children working in the Coal mines Interviews Continue Interview with Children working at a Coal Cutting Site Interview with Children working around the ògeneral marketö (market of coal)
3 June 2010	Morning Afternoon	Shillong, Visiting a Shelter for trafficking victims Move to Delhi Meeting with people working at the Japan Embassy
4 June 2010	Morning Afternoon	Press Conference Meeting with an Indian Government official

2 Methodology

1) Fact finding

In order to gather information, the team adopted an inclusive approach. Information-gathering methods included: (a) interviews with victims of child labour, adult workers and their families, mine owner and managers and other persons having relevant information; (b) site visits to various coal mines in Jaintia Hills, coal cutting sites and markets, workers' houses and all relevant locations; (c) the review of reports, documents from different sources including government reports, and media reports; (d) the analysis of videos of child labour taken by the media and the Impulse NGO Network.

The team was able to conduct onsite visits of coal mines in which child labourers were actually working and directly ask questions to children and adult workers. This allowed the team to observe first-hand the situation on the ground, and to speak to many children and other relevant persons. Thus, the team's fact-finding is primarily based on first-hand observation and interviews.

This report does not purport to be exhaustive in documenting all child labour in Jaintia Hills. Instead, the team selected three coal mines in the region and conducted extensive interviews in and surrounding them. An owner and a manager gave comprehensive information of the situation of child labour in Jaintia Hills. These statements, as well as media reports and Impulse's report, corroborate the information that the team was able to gather in its onsite visits. The team considers that this report is illustrative of the main patterns of child labour and child trafficking in mines in Jaintia Hills.

On this basis, the team has, to the best of its ability, determined what facts have been established. The team's final conclusions on the reliability of the information received were based on its own assessments of the credibility and reliability of the persons it interviewed. There were cases where the team concluded that some interviewees were not telling the entire truth on some points, and the team examined their credibility and reliability based on other interviewees' remarks and the total circumstances of the situation.

Based on the facts recognized, the team conducted an independent and impartial analysis of any violation of Indian domestic and international law. The normative framework for the team has been general international law, international human rights law and International Labour Organisation (ILO) conventions, as well as the Indian Constitution and all relevant domestic law and regulation in India.

III. Background

1. Meghalaya, Jaintia Hills and the coal mining industry

(1) The State of Meghalaya

Meghalaya is a northeastern Indian state which shares borders with Nepal, Bangladesh, Bhutan, China and Burma, and it is connected with the rest of India through the Siliguri Corridor in West Bengal. Meghalaya is the southernmost state in the region, facing Bangladesh to the south and east, and the state of Assam, India, to the north-west. There is great ethnic and religious diversity in the region; the majority of the population in Northeast India are members of Scheduled Tribes, and Meghalaya is no exception. According to the Census of India (2001), the population of the Meghalaya was 2,318,822 in 2001 and was predicted to be about 2,536,000 by 2008.¹ The Scheduled Tribes account for 86% of this population, and 80.4% live in rural areas.² Meghalaya is primarily an agrarian economy with 65.8% of the working population working in the agriculture industry.

¹ Office of the Register General & Census Commissioner, Ministry of Home Affairs, Government of India, *Census of India (2001)*

² According to the Ministry of Tribal Affairs, *the Constitution of India does not define Scheduled Tribes as such. Article 366(25) refers to scheduled tribes as those communities who are scheduled in accordance with Article 342 of the Constitution. According to Article 342 of the Constitution, the Scheduled Tribes are the tribes or tribal*



Map 1: The location of Meghalaya in India.

(2) Jaintia Hills District

Jaintia Hills district is one of seven districts in Meghalaya situated in the east of the region, with Bangladesh to the south and the state of Assam to the north and the west. According to the Census of India (2001), the district, with a population of 299,108, is similar in its societal structure to Meghalaya as a whole.³ It shows an even higher concentration of the Scheduled Tribes, with almost 95.9% of the population belong to the Scheduled Tribes, and 91.6% of the population live in rural communities. The district has retained an indigenous administrative system which still works as an authoritative governing structure. Approximately 49% of the district population live under the poverty line, and the literacy rate is around 53%. The majority of the working population (75.7%) is involved in agriculture.

communities or part of or groups within these tribes and tribal communities which have been declared as such by the President through a public notification. The Ministry of Tribal Affairs was constituted in October 1999 with the objective of providing more focused attention on the integrated socio-economic development of the most under-privileged sections of the Indian society namely, the Scheduled Tribes (STs).

URL: <http://tribal.nic.in/index1.asp?linkid=324&langid=1>

As per the 1991 Census, the Scheduled Tribes account for 84,32 million representing 8.19 percent of the country's population.

³ *Census of India (2001), supra note 1.*



Map 1: The location of Jaintia Hills within Meghalaya state.

(3) Coal Mining Industry

The Meghalaya region is rich in natural and mineral resources such as coal, limestone, fireclay and phosphorite. Coal mining in particular has been a growing industry since the Supreme Court's ban on the sale of timber for commercial purposes in 1981, which had been an important source of income for many farmers. According to a report by the Impulse NGO Network, the total reserves of coal in Meghalaya is estimated to be about 640 million tonnes (about 40 million tonnes of which is in the Jaintia Hills District), which accounts for approximately 1.1% of the total coal reserves in India.⁴ Between 1997 and 2003, coal production in Meghalaya increased by 36%, and in 2002-03 coal production in Meghalaya accounted for approximately 0.7% of that of the whole country. The mining industry contributes 8-10% of GDP in the state of Meghalaya.

However, mining activities in the Jaintia Hills district are small-scale ventures run by individual landowners. Coal is generally extracted and supplied in raw form to markets in Bangladesh, which is located to the south. There has been little industrial growth related to coal mining since the coal processing industries are largely underdeveloped. Still, the coal mining industry boosts the local economy, increases employment, and boosts the incomes of the local population.⁵

2. Child Labour in India and Meghalaya

(1) Child Labour in India

Child labour has been a well-recognised problem in India for years. There are various estimates of child labourers on a national level. However, due to lack of access to the original sources of statistics, and thus a lack of descriptions of definitions and methods employed in surveys, it is not easy to see the whole picture of child labour in India.

⁴ Impulse NGO network, *An Exploratory Study of Children Engaged in Rat Hole Mining in the Coal Mines of Jaintia Hills District, Meghalaya* (2010)

⁵ *Ibid.*, p. 46.

India's population, the second largest in the world, is both very young and rapidly growing. In 2010, according to the UN's calculation, the total population of India was 1,214,464,000, with children aged 0-14 years accounting for 30.8% of that total (20.5% aged 5-14 and 10.3% aged 0-4).⁶ Child labour has been a well-recognised problem in India for many years; yet whilst statistics and estimates are available regarding the scale of the problem, it remains difficult to obtain accurate figures. Surveys differ in their definitions of child labour and in the methodologies employed, which prevents direct comparison between the available statistics.

According to the Census of India 1991 and 2001,⁷ the number of children aged 5-14 engaged in work⁸ increased during that decade from 11.3 million to 12.7 million, a rise of 12.23%.⁹ In contrast, the National Sample Survey Organization (NSSO) states that the number of working children dropped during that period, from 13.3 million in 1993-94 to 10.4 million in 1999-00, and further to 8.6 million (3.4%) in 2004-05.¹⁰ UNICEF also estimates a slight decline in the proportion of children aged 5-14 involved in child labour, from 14% (1999-2003) to 12% (2000-2009); however, UNICEF's estimate of the child labour rate is more than double that of the Census of India, around 29 million.¹¹ These differences may be due to different definitions of child labour,¹² and to the fact that UNICEF used data from the Multiple Indicator Cluster Survey (MICS)¹³ and Demographic and Health Surveys (DHS).¹⁴

⁶ Population Division, UN Department of Economic and Social Affairs, *World Population Prospects: The 2008 Revision Population Database*, Demographic Profile of India, Medium Variant, URL: <http://esa.un.org/unpp/p2k0data.asp>

⁷ The Indian Census is the most credible source of information and the only source of primary on demography and other various economic and socio-cultural figures conducted by the Federal government of India under the provisions of the Census Act 1948 and Rules made there.

⁸ Work is defined by the Census as *participation in any economically productive activity with or without compensation, wages or profit. Such participation may be physical and/or mental in nature. Work involves not only actual work but also includes effective supervision and direction of work. It even includes part time help or unpaid work on farm, family enterprise or in any other economic activity. All persons engaged in 'work' as defined above are workers. Persons who are engaged in cultivation or milk production even solely for domestic consumption are also treated as workers.*

⁹ National Commission for the Protection of Child Rights (NCPCR), *State-wise Distribution of Working Children according to 1971, 1981, 1991 and 2001 Census in the age group 5-14 years*, URL: http://www.ncpcr.gov.in/Reports/Data_on_Child_Labour_Census_1971_to_2001.pdf

¹⁰ ILO, *Accelerating action against child labour*, 2010, para 325. *The original data of the NSSO surveys are not accessible online and the methodology and the definition of child labour are not given on the ILO report.

¹¹ UNICEF, *Progress for Children*, No.8, 2009, p.26

¹² *Percentage of children aged 5 to 14 years of age involved in child labour activities at the moment of the survey. A child is considered to be involved in child labour activities under the following classification: (a) children 5 to 11 years of age that during the week preceding the survey did at least one hour of economic activity or at least 28 hours of domestic work, and (b) children 12 to 14 years of age that during the week preceding the survey did at least 14 hours of economic activity or at least 42 hours of economic activity and domestic work combined.*

¹³ *The MICS was originally developed in response to the World Summit for Children to measure progress towards an internationally agreed set of mid-decade goals. MICS surveys are typically carried out by government organizations, with the support and assistance of UNICEF and other partners.*

URL: http://www.unicef.org/statistics/index_24302.html

¹⁴ *Demographic and Health Surveys (DHS) are nationally-representative household surveys that provide data for a wide range of monitoring and impact evaluation indicators in the areas of population, health, and nutrition. The DHS is funded by the U.S. Agency for International Development (USAID).*

URL: <http://www.measuredhs.com/start.cfm>

General trends also fail to represent localized variations. The National Commission for the Protection of Child Rights (NCPCR) points out that according to the Census of India, child labour increased in the eastern and northern Indian States and Union Territories, whilst declining in the south and west.¹⁵ In particular in the northeast states of India, which includes Meghalaya, there was a rise in the incidence of child labour between 1991-2001.¹⁶ In Meghalaya the number of child labourers increased from 34,633 in 1991 to 53,940 in 2001 (see next section).¹⁷

It is also possible that a significant number of working children are not covered by the Census. According to the 2001 Census of India, 65.65% of children aged 5-14 go to school (166 million), yet the Work Participation Rate of children aged 5-14 is only 5%.¹⁸ There is therefore a gap between the number of children who receive no education and the number of children engaged in work. The National Commission for Enterprises in the Unorganized Sector (NCESS) also raised the possibility that out-of-school children may be a potential labour pool.¹⁹ According to the NCESS (2004-5), the total number of out-of-school children in India is as high as 45 million, which constitutes almost 18% of the children in the age group 5-14.²⁰ This means that in addition to the children recognised as child labourers (8.6 million in total, 3.4% of children aged 5-14) there are about 36.4 million out-of-school children who may either be unidentified labourers or at high risk of entering the labour force. Similarly the Second National Commission on Labour recommended that the definition of child labour include all children not going to school and indicated that being out of school should be regarded as a denial of a child's right to education.²¹ The Commission argued that this more protective understanding of school attendance and the right to education should be considered a required condition in order to combat child labour, emphasizing the strong link between the elimination of child labour and universalising elementary education.

It would be reasonable to assume that the actual number of child labourers in India could potentially be far higher than suggested in the surveys discussed above.

¹⁵ National Commission for the Protection of Child Rights (NCPCR), *ABOLITION OF CHILD LABOUR IN INDIA: Strategies for the Eleventh Five Year Plan (2007)*, URL:

[http://www.ncpcr.gov.in/Reports/Abolition of Child Labour in India Strategies for 11th 5 Year Plan Submitted to Planning Commission.pdf](http://www.ncpcr.gov.in/Reports/Abolition%20of%20Child%20Labour%20in%20India%20Strategies%20for%2011th%205%20Year%20Plan%20Submitted%20to%20Planning%20Commission.pdf)

¹⁶ The northeast states of India and the percentage of increase in the incidence of child labour during 2001 as compared to 1991 are the followings; Assam (7.27%), Tripura (32.03%), Meghalaya (55.75%), Mizoram (60.05%), Manipur (74.84%), Arunachal Pradesh (49.11%), Sikkim (193.98%).

¹⁷ National Commission for the Protection of Child Rights (NCPCR), *State-wise Distribution of Working Children according to 1971, 1981, 1991 and 2001 Census in the age group 5-14 years*,

URL: [http://www.ncpcr.gov.in/Reports/Data on Child Labour Census 1971 to 2001.pdf](http://www.ncpcr.gov.in/Reports/Data%20on%20Child%20Labour%20Census%201971%20to%202001.pdf)

¹⁸ Work Participation Rate is defined as *the percentage of total workers (main and marginal) to total population*. Main Workers are defined as *those workers who had worked for the major part of the reference period (i.e. 6 months or more)* and Marginal Workers as *those workers who had not worked for the major part of the reference period (i.e. less than 6 months)*.

¹⁹ The National Commission for Enterprises in the Unorganized Sector (NCEUS) has been set up by the government of India as an advisory body and a watchdog for the informal sector to bring about improvement in the productivity of these enterprises for generation of large scale employment opportunities on a sustainable basis, particularly in the rural areas. URL: <http://nceuis.nic.in/>

²⁰ National Commission for Enterprises in the Unorganised Sector, *Report on Conditions of Work and Promotion of Livelihoods in the Unorganised Sector (2007)*, URL: [http://nceuis.nic.in/Condition of workers sep 2007.pdf](http://nceuis.nic.in/Condition%20of%20workers%20sep%202007.pdf)

²¹ The Second National Commission on Labour, *Report of The Second National Commission on Labour Vol.-II*

(2002), URL: <http://www.indialabourarchives.org/usr/local/gsd1/cgi-bin/library?e=d-000-00---0ncl-ncl%2caituc%2chemant%2cindrani%2cwet%2coral%2cbms%2ctexah%2cramjas-01-0-0-0prompt-14-Document---0-11-1-en-50---20-about---001-001-1-1-0isoZz-8859Zz-1-0&a=d&c=ncl&cl=CL1.6.1&d=HASH2665d1ac79bf437e4712.2>

(2) Child Labour in Meghalaya

According to the Census of India 2001, the number of workers aged between 5-14 years in Meghalaya increased dramatically in the decade 1991-2001, from 34,633 to 53,940 (an increase of 55.75%). During that period the number of workers who had worked for more than 6 months over the past year fell from 30,730 in 1991 to 25,483 in 2001, whilst the number of children who had worked for less than six months in the past year increased considerably, from 3,903 in 1991 to 28,457 in 2001. The number of children aged between 5-14 years in Meghalaya is 656,000, which makes up approximately 28.3% of the total state population. Of those 5-14 year olds, 8.22% were engaged in work in the 2001 census, which made up 5.56% of the total number of workers in Meghalaya. Amongst those 5-14 year olds engaged in work, 47.24% had worked for more than six months in the past year (i.e., classified as main workers), and the rest had worked for less than six months in the past year. The proportion of workers in Meghalaya aged 5-17 years in the state was 10.95%, which suggests that there are many labourers aged between 14 and 17.

3. Child Trafficking in India, Nepal and Bangladesh

The problem of child trafficking in India is inseparable from that of child labour. A great number of child labourers are victims of trafficking and brought from India's neighbouring countries, Nepal and Bangladesh. As Meghalaya shares borders with these states, the proportion of child labourers from neighbouring countries is estimated to be significantly high. Unfortunately, however, little research has been conducted with a specific focus on the state of Meghalaya. Therefore, to comprehend the problem of child trafficking in Meghalaya, it is helpful to first of all understand the general situation of child trafficking between Nepal, Bangladesh and India.

Given the secret nature of trafficking, exact figures to illustrate the magnitude of the problem in South Asia are difficult to obtain. National statistics differ from those produced by NGOs and media sources, and more importantly most cases of trafficking go unreported. What is known is that trafficking in Nepal and Bangladesh occurs both internally and externally, with children migrating not only across borders, namely to India, but also to different urban and semi-urban areas within their own countries.²² Furthermore, a 2002 report by the *International Programme on the Elimination of Child Labour* (IPEC) showed that children trafficked from Nepal to India were not sourced from a few specific regions, but rather the problem afflicts the whole nation.²³ Similarly in Bangladesh, boys who are trafficked to India are recruited from all over the country.²⁴ A number of factors contribute to the ongoing problem of child trafficking in this region, including economic pressure, the absence of a legal framework, and social perceptions.²⁵

(1) Economic pressures

²² Rapid Assessment on Trafficking in Children for Exploitative Employment in Bangladesh, ILO/IPEC Trafficking in Children of South Asia (TICSA), *INCIDIN Bangladesh* (February, 2002), URL:

<http://www.ilo.org/legacy/english/regions/asro/newdelhi/ipec/download/resources/subregion/subpubl02eng4.pdf> p.xviii, indicates that in Bangladesh, internal trafficking is a much larger problem than external trafficking.

²³ Cross Border Trafficking of Boys, Field Work 2002, *IPEC* (March, 2002),

URL: <http://www.ilo.org/legacy/english/regions/asro/newdelhi/ipec/download/resources/subregion/subpubl02eng3.pdf>, p. 33

²⁴ *Ibid.*, p33

²⁵ Rapid Assessment on Trafficking in Bangladesh, *supra*, note 22, p.xix

The latest UN Human Development Report ranks Bangladesh and Nepal as low level development countries, while India is ranked as a medium development country.²⁶ Levels of poverty in all three countries remain high; in India and Nepal, between 2000 and 2008, approximately 30% of the population was below the national poverty line in India,²⁷ while in Bangladesh as many as 40%.²⁸ In addition, it was found that more than half of the populations of all three countries suffered severe deprivations in health,²⁹ while over 75% of the populations of Bangladesh and Nepal were severely deprived in living standards.³⁰ Furthermore, many people in all three countries have no access to education ó India 37.5% of the population, Nepal 38% and Bangladesh 31.4%.³¹ According to the 2002 report of Integrated Community and Industrial Development in Bangladesh (INCIDEN), a development research NGO based in Dhaka, this high level of abject poverty and lack of economic opportunity was the main reason for a willingness to migrate amongst the young Bangladeshi boys interviewed. Motivated by the same economic pressures as adult migrant workers, the seasonal migration of adults has a direct impact on child migration in South Asia.³² Furthermore, boys who migrate individually or with families for economic reasons are at high risk of being coerced into trafficking.

(2) Perceptions

Economic pressures affect perceptions of trafficking. Those interviewed in the IPEC report did not initially consider themselves victims of trafficking but considered migration an opportunity to earn money to support their families back home. It was also found that there is a general attitude of acceptance amongst Nepali villagers when boys in the area are trafficked for purposes of labour ó often it is considered a necessity to earn their livelihood and support their families as there is a lack of income generating activities in Nepal.³³ In Bangladesh it was found that 83% of the respondents of the INCIDEN report thought that 10 years old is an appropriate age for boys to leave home, while 17% agreed to the same with boys aged 5-9 years old.³⁴

There is also a lack of awareness and political will regarding the issue of trafficking boys in South Asia amongst politicians because trafficking is primarily seen as an issue affecting girls and women. It is clear, however, that boys as well as girls are victims of trafficking; an IOM report showed that out of 3,397 children up to 16 years of age from Bangladesh who were trafficked between 1990 and 1999, 1,683 were boys and 1,714 were girls.³⁵

(3) The trafficking chain

²⁶ United Nations Development Programme, *Human Development Report 2010: The real wealth of nations: Pathways to human development* (<http://hdr.undp.org/en/reports/global/hdr2010/chapters/en/>)

²⁷ India, 28.6%, Nepal 30.9%. Ibid.

²⁸ Ibid.

²⁹ India 56.5%, Bangladesh 53.1%, Nepal 58.3%. Ibid.

³⁰ India 58.5%, Bangladesh 76.3%, Nepal 77.2% Ibid.

³¹ Ibid., 162.

³² Ibid.

³³ Ibid., p. 2

³⁴ Ibid., p. 55

³⁵ Ishrat Shamim, Mapping of Missing, Kidnapped and Trafficked Children and Women: Bangladesh Perspective, International Organisation for Migration, not dated. It must be noted that these figures followed statistics stated in media reports and hence do not address the issue of unreported cases, of which there are many.

Traffickers are not the only agents involved in the process of child trafficking. Indeed management personnel at border area transit cities³⁶ as well as the employers themselves are part of an extended trafficking chain, and corruption within law enforcement and border security officials seriously exacerbates the trafficking problem. The stakeholders in these chains make large profits from trafficking children and their subsequent exploitation. In many cases in Bangladesh, the recruiting agents for trafficked boys also include relatives and neighbours.³⁷ At the end of the trafficking chain are the employers and clients (in cases where the child is employed in a service industry). The main industries in which trafficked boys end up working in South Asia include mining, quarrying, fishing, domestic work, factory work such as in *bidi* (tobacco) rolling factories or carpet factories, and working in hotels or on the streets. It was found in the IPEC report that the jobs that they had been promised were entirely different from the labour they were to perform once reaching their destination points.

(4) Conditions of labour

As detailed by the IPEC report, trafficked children lose control over mobility, choice of employment, as well as contact with family and familiar environment.³⁸ This can involve physical and psychological abuse meant to subjugate them further into a state of dependence on those with control over them and to break their resistance.³⁹ In many instances children are made to work in hazardous work environments for up to 17 hours a day.⁴⁰ The majority of the Nepali boys interviewed in the IPEC report stated instances of physical abuse by employers (95%), while 40% reported psychological abuse and 10% sexual abuse. The same respondents were found to earn IRs. 600 per month, and only 10% of the respondents stated that they could save money from their salary.⁴¹ Many of the children who work in these hazardous work conditions develop health conditions. Similarly, in industries such as mining and stone quarrying, children are exposed to health risks due to the hazardous nature of the work.

4 Legal Framework

(1) India's obligations under federal law

The Indian Constitution prohibits the employment of children (those under the age of 14) in mines, and obliges the government to ensure that no children are being subjected to such work. Additionally the Constitution obliges the government to ensure that children are not forced to engage in work unsuited to their age or strength as a result of economic necessity.

Under federal law, the Child Labour (Prohibition and Prevention) Act (1986) applies to Meghalaya state and prohibits the employment of children under 14 in mines or other hazardous work. The Mines Act (1952) as a general rule prohibits the employment of those under 18 in mines. The Mines Rules (1955) contains a similar clause. The Coal Mines Regulations (1957) and the Mines Act (1952) codify safety rules and procedures and labour conditions to ensure the health and safety of workers.

With respect to child trafficking, the Immoral Traffic Prevention Act (1986) is in force in India. This act prohibits forms of sex trafficking and prescribes penalties which range from seven years to life

³⁶ Ibid. p.xx

³⁷ Ibid., p. 26

³⁸ Rapid Assessment on Trafficking in Bangladesh, supra, note 22, p. 29

³⁹ Ibid.

⁴⁰ Ibid.

⁴¹ Cross Border Trafficking of Boys, supra note 23, p. 14.

imprisonment.⁴²

The federal Indian parliament is vested with the exclusive power under the Indian Constitution to legislate on matters of labour and safety in mines and can be considered to have the authority to act on issues related to mining in Meghalaya state. Thus, Meghalaya should be bound by federal labour laws, but there is some dispute on this point due to the Sixth Schedule of the Constitution.

The Sixth Schedule provides some autonomy for tribal districts, allowing local councils to enact laws in order to preserve traditions and customs. However, this power is often misused and interpreted excessively loosely to justify ignoring all federal legislation, and it has become one of the major obstacles to implementing federal law in the state of Meghalaya. This problem will be discussed in a later chapter.

(2) Obligations under international law

1) Child labour and other human rights of children

India has legal obligations to the eradicate child labour under the following International Labour Organisation (ILO) Conventions:

- Minimum Age (Industry) Convention, 1919 (C5);
- Night Work of Young Persons (Industry) Convention, 1919 (C6);
- Forced Labour Convention, 1930 (C29);
- Abolition of Forced Labour Convention, 1957 (C105); and
- Minimum Age (Underground Work) Convention, 1965 (C123).

However, C6 has been replaced by the Night Work of Young Persons (Industry) Convention (Revised), 1948 (C90), and C5 and C123 are now outdated and replaced by the Minimum Age Convention 1973 (C138). India has not yet ratified any of these new Conventions. In addition, the principal ILO Convention on child labour, the Worst Forms of Child Labour Convention, 1999 (C182) has not been ratified by India. The ILO, UNICEF, the World Bank and Committee on the Rights of the Child have recommended that India ratify C138 and C132.

In addition, India is a signatory to both the International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights (ICESCR), as well as the Convention on the Rights of the Child (CRC).

2) Child Trafficking

India has signed the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (the Protocol) in 2002. However, it has not yet been ratified.

India is a state party of the CRC, under which India has an obligation to take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form (Article 35). India has also ratified the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography.

(3) Recommendations made by international bodies

⁴² US Department of State, Trafficking in Persons Report 2010, p. 192.

UN treaties bodies have recognised the problem of child labour in India and have given some recommendations to India in their concluding observations. (See, Appendix 2). Recent recommendations made by treaty bodies are as follows.

3) Committee of the Right of the Child

In the Concluding Observation on India in 2004, the Committee of the Right of the Child stated that it is extremely concerned at the large numbers of children involved in economic exploitation, many of whom are working in hazardous conditions, including as bonded labourers, especially in the informal sector, in household enterprises, as domestic servants and in agriculture, and is further very concerned that minimum age standards for employment are rarely enforced and appropriate penalties and sanctions are not imposed to ensure that employers comply with the law.⁴³

The Committee recommended that India:

- (a) Ensure the full implementation of the Child Labour (Prohibition and Regulation) Act, 1986, the Bonded Labour (System Abolition) Act, 1976 and the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993;
- (b) Amend the Child Labour Act, 1986 so that household enterprises and government schools and training centres are no longer exempt from prohibitions on employing children;
- (c) Promote community-based programmes for the prevention of child labour;
- (d) Ratify ILO Conventions No. 138 concerning the Minimum Age for Admission to Employment, and No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour;⁴⁴

With respect to human trafficking, the Committee recommended that India:

- (a) Extend the scope of the Immoral Traffic Prevention Act to all forms of trafficking of children and ensure that all trafficked children are always treated as victims;
- (b) Conduct a comprehensive study to assess the causes, nature and extent of trafficking and commercial sexual exploitation of children;
- (c) Provide sufficient human, financial and technical resources for the implementation of the National Plan of Action;
- (e) Ensure that perpetrators are brought to justice;
- (g) Ratify the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime;

4) The Committee on Economic, Social and Cultural Rights

The Committee, in its Concluding Observation on India in 2008, notes with concern the prevalence of bonded labour, the worst forms of child labour and other exploitative labour conditions in the State party. The Committee is concerned about the insufficient enforcement of existing labour legislation at the federal and the state levels, as well as the lack of awareness among employers of the existing rules and standards.⁴⁵

⁴³ CRC/C/15/Add.228, para. 72.

⁴⁴ Ibid, para. 73.

⁴⁵ E/C.12/IND/CO/5, para. 19

The Committee recommends that India

take effective measures to ensure that violations concerning prohibited labour practices, such as bonded labour, manual scavenging and the worst forms of child labour are stringently prosecuted and employers duly sanctioned⁴⁶. The Committee further recommends that measures to rehabilitate affected children, to monitor their work conditions and their living conditions following removal from such work, be strengthened and significantly expanded to cover all children engaged in the worst forms of child labour. The Committee also recommends that the State party consider ratifying the following ILO Conventions: No. 182 (1999) on the Worst Forms of Child Labour; No. 138 (1973) on Minimum Age; and No. 174 (1993) on Prevention of Major Industrial Accidents.⁴⁶

To date, however, despite the numerous recommendations made by international bodies, India has not fully implemented these recommendations and has not yet ratified any of the above Conventions; nor has it amended domestic law.

(4) Regional framework on anti-trafficking

The South Asian Association for Regional Cooperation (SAARC), founded in 1989, is a regional organization composed of India, Bangladesh, Bhutan, Maldives, Nepal, Pakistan, Sri Lanka and Afghanistan.⁴⁷ SAARC created the Convention on Preventing and Combating Trafficking in Women and Children for Prostitution in 2011. The SAARC Convention obliges Member States to take effective measures to ensure that trafficking in any form is an offence under national criminal law.

India also ratified the SAARC Convention on the Regional Arrangements for the Promotion of Child Welfare in South Asia, together with other member states. The Convention also obliges states parties to take appropriate action to ensure that legal and administrative mechanisms are in place to give effect to national laws which protect children from exploitation, degrading treatment, trafficking and violence. In addition states parties should ensure that social safety nets are in place to discourage children from undertaking hazardous labour.⁴⁸ However, the Convention lacks effective provisions for regional cooperation in the investigation, prosecution and punishment of those responsible for trafficking, as well as in the prohibition and prevention of child trafficking for the purpose of forced labour.

(5) Outline of anti-trafficking laws in Nepal and Bangladesh

Both Nepal and Bangladesh have ratified international instruments that prohibit trafficking in children, in addition to creating legislation that addresses some issues related to child trafficking.

Nepal is a party to the latest ILO Conventions prohibiting child labour, C138 and C182, in addition to the UN Convention on the Rights of the Child (CRC) and its optional protocol on the sale of children. Nepal has also ratified the regional SAARC instruments, the Convention on Preventing and Combating Trafficking in Women and Children for Prostitution, and the SAARC Convention on Regional Arrangements for the Promotion of Child Welfare. Domestically, Nepal passed the Human Trafficking Control Act (1986), the Human Trafficking Act (2007) and has as one of its policies the National Plan of Action against Trafficking in Children and Women for Sexual and Labour Exploitation. Legislation

⁴⁶ Ibid, para. 59

⁴⁷ The CRC places an obligation on states parties to take appropriate bilateral and multilateral measures to prevent trafficking in children under article 35.

⁴⁸ *Id.* at Part 2, Article IV

which legally defines human trafficking exists in Nepal, but its definition is narrow and inconsistent with the UN Palermo Protocol,⁴⁹ which contains a comprehensive definition of child trafficking.⁵⁰

Bangladesh has ratified C182, the CRC and its optional protocol on the sale of children. It has also ratified both the SAARC Convention on Preventing and Combating Trafficking of Women and Children for Prostitution and the SAARC Convention on Regional Arrangements for the Promotion of Child Welfare in South Asia. Bangladesh has established the Women and Children Repression Prevention Act (2000), which criminalizes trafficking in women and children.

IV. Overview of Findings

1 Structure of the coal mines

The coal mines in Jaintia Hills are constructed by digging an approximately 10 m² vertical hole down to the coal seam (to a depth of 70-80 m) and then digging narrow tunnels, known as ‘rat holes’, horizontally along the seam.

According to the Impulse NGO Network, approximately 5,000 such coal mines exist in the area. However, a manager of a mine in the Hills estimated that there are approximately 100,000 mines in the entire region of the Hills. The mines are neither constructed nor maintained in accordance with any safety regulations, and no safety training or equipment is provided for workers.

Each mine has wooden steps running down the wall from the entrance of the mine to the bottom of the shaft. As the Meghalaya region has high level of rainfall, the wooden steps are often slippery and prone to rotting. Slips, falls, injuries, and even deaths result, and structural collapse is not uncommon.



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⁴⁹ Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the UN Convention against Transnational Organized Crime (2000).

⁵⁰ UNICEF Innocenti Research Centre, *South Asia in Action: Preventing and Responding to Child Trafficking Summary Report* (2008) (http://www.unicef.org/rosa/ROSA_IRC_CT_Asia_Summary_FINAL4.pdf), p 11.



2 Rat holes and work deep inside

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The horizontal rat holes are approximately a kilometer long and only tall enough for children to crouch in whilst working. The holes wind around like a network of mole burrows, and at various points they connect with other rat holes issuing from other vertical access shafts. There are no measures in place to protect against cave-ins, and no lighting is provided.



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The miners carry into the mine a small pickaxe and a cart to load the coal into, and they work at the coal face. When they have mined enough coal to fill the cart, they drag it back to the base of the access shaft. If the mine has a crane, the coal is scooped into a metal box which the crane takes to the surface. If there is no crane, the coal is put into a bamboo-weaved basket and carried up the stairs to the surface on a worker's back.



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3 The Reality of the Labourers' Situation

(1) Extremely young labourers

The fact-finding team found a high prevalence of child labour in the mines, and the age of child labourers is notably young, as demonstrated by the fact that during only a short-term investigation the team interviewed three 12-year-olds and three 13-year-olds. Girls are engaged in the work as well as boys, and in addition to the children interviewed the team witnessed many children aged about 10 years old working at coal sorting sites alongside the road.

One 12 year old boy told HRN that he has been working in the mines since he was as young as 8 years old (Interview 17).



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(2) Dangerous working environment

The working conditions at the mines are extremely hazardous. The ladders that labourers climb in order to enter the mine are incredibly dangerous, especially when wet. The children are sent deep into the rat holes to extract coal for many hours at a time, and at times there is little oxygen as the holes are extremely deep and there is insufficient ventilation. The general working environment is significantly lacking in technology, and there is a total lack of safety measures to prevent accidents, which occur frequently and are often fatal. No equipment, apart from headlamps, is provided to protect labourers from accidents. Flooding also occurs; existing tunnels become filled with water and are sometimes dug into by labourers constructing a new hole, causing the water to flood through and drown them. A manager told HRN that at the end of 2009, labourers dug into a river and the ensuing accident killed more than 80 people, including children (Interview 37).

Although accidents often cause deaths and injuries, incidents are not reported to the police and mine owners provide no compensation or medical expenses for victims or their families. Mine managers do not record labourers' home address or family details, so when a labourer dies families are often not informed of their loss. Unclaimed bodies are cremated and buried around the mines. The deaths of missing children go unreported.



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(3) Solicitation and movement of child workers through deceptive practices

There are many cases in which children working in mines are taken from their homes by fraudulent means. According to Impulse NGO Network, approximately 70,000 children are brought from Nepal and Bangladesh every year a manager and several workers told HRN that brokers are involved in trafficking children from abroad to work at the mines in Jaintia Hills (interview 37).

Also, in many cases, children are deceived and brought to mines. When they are induced to work, they are only told that they can earn money and not told about the terrible and dangerous working conditions. They discover the reality when they arrive at mines.



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A 16 year old boy from Nepal said

I came here to earn and help my parents but didn't know about the dangerous work before getting here. I wasn't told that I would work under these conditions. I'm scared of the cave-ins that often happen and so I want to quit and go home. But I have no money to go home. I have to keep working till I save up enough to go home. It's difficult to save up because living expenses are so high. I didn't tell my parents about the dangerous work and won't tell them when I get home. (Interview 8, Ramchandra)

(4) Extrajudicial execution

The team received information regarding human rights violations such as extrajudicial executions. Some interviewees reported that labourers including children have been left inside closed rat holes as punishment and died due to oxygen deficiency. Although such acts are intentional killings, the perpetrators are rarely brought to justice. There is no doubt that other child labourers feel fear upon learning of such executions and are intimidated into obeying their managers and working at the mines even if they wish to leave.



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One boy (on the left in the picture) reported

I know that a boy was killed in the rat hole. A manager found that the boy working in the same mine was selling coal at the back. As a punishment, the manager confined the boy inside the mine for a couple of days and then he died. I also heard workers died for similar punishment in other mines around here. (Interview 11, Ashu)

(5) Poor and unsanitary living conditions

The living conditions of labourers at the mines, including children, are inhumane and unsanitary. There is a lack of safe drinking water or a proper sewage system, and residents suffer from various diseases as a result. In spite of this, mine owners provide no medical facilities for labourers.



V. Interviews

1 Summary of interviews

The HRN fact-finding teams conducted over 50 interviews with child labourers, workers, their families, supervisors, managers and even owners.

The HRN team interviewed three children each at ages 12, 13, 14, 15 and 16 respectively involved in coal mining. The HRN team also interviewed five 17 year old children and six 18-year-olds who are involved in coal mining, for a total of 26 children in all.

The table below notes the interviews that HRN recognized as noteworthy to this report. For the full transcript of all 39 interviews, please see Appendix 1. Due to the security concerns over the interviewees, HRN intentionally changed all the names of interviewees. Thus all of the names of persons involved in coal mine industry in Jaintia Hills listed in this report are not actual names.

Table 1

Case Number	Name	Age	Country
Interview 1	Hurditya	12	Meghalaya, India
Interview 2	Alok	13	Nepal
Interview 3	Hep	13	Shilling, Meghalaya, India
Interview 4	Amar	14	Meghalaya, India
Interview 5	Madan	15	Kotang, Nepal.
Interview 6	Padma	15	Bhojpur, India
Interview 7	Yogesh	15	Beltahl, Nepal
Interview 8	Ramchandra	16	Nepal
Interview 9	Bimal	16	Nepal
Interview 10	Ahagh	16	Wapung, Nepal
Interview 11	Ashu	17	Assam, India
Interview 12	Bishwa	17	Ochnlonga, Nepal
Interview 13	Dir	17	Udaipur, Nepal

Interview 14	Dinkar	18	Nepal
Interview 15	Rajit	18	Kasar, Assam, India
Interview 16	Jarjit	18	Badarpur, Assam India
Interview 17	Durk	12	Meghalaya, India
Interview 18	Das	12	India
Interview 19	Sahaj	14	Wapung, Meghalaya, India
Interview 20	Hemant	14	Wapung, Meghalaya, India
Interview 21	Darpan	40	Nepal
Interview 22	Panna	13	Nepal
Interview 23	Biswas	40	Assam, India
Interview 24	Kapur	38	Unknown
Interview 25	Gopal	unknown	
Interview 26	Tara	21	Silchar, Assam India
Interview 27	Jung	19	Dolakha, Nepal
Interview 28	Suresh	30	Silchar, Assam India
Interview 29	Ragendra	27	Nepal
Interview 30	Lakshmi	Unknown	Nepal
Interview 31	Chetan	21	Nepal
Interview 32	Santosh	20	Nepal
Interview 33	Kabir	18	Nepal
Interview 34	Anita	Unknown	
Interview 35	Kiran	22	Nolbari, India
Interview 36	Ajith	22	Udipul, Nepal
Interview 37	Kushwant	23	Dhenaji, Assam, India

Interview 38	Anonymous (Male) Manager of a coal mine	35	Nepal
Interview 39	Anonymous (Male) Owner of a coal mine	Unknown	Meghalaya, India

Alongside the children we successfully interviewed, there were numerous other children we observed working inside the coal mines and engaged in very dangerous and hazardous work.

When supervising adult workers were watching the interactions between the HRN team and children, the children often stayed silent or answered only with non-consequential statements such as “I voluntarily came here. I like this work.” Thus, HRN selected here only successful interviews in which children were somewhat able to report truthfully to the team.

Even in the interviews below, several children resisted telling us the truth for some questions, such as their age and origin. Children obviously appearing around 10 years old reported “I am 18 years old”. And children with obviously foreign accents answered, for example, “We came from Assam, India.” HRN concludes that supervisors or managers directed the children not to tell their actual age or origin in order to avoid any accusation of child labour and child trafficking.

2 Representative samples of interviews

(1) Overview of the working situation in mines

1) Interview 23: Biswas (male)

Age 40, worker (mine supervisor) from Assam, India.

【Working environment】 There are 500 people living in this village around the mines. However nobody is entitled to register as a resident here. There is no labour union and thus there are no safety measures, and workers’ insurance is provided at this working place. There are 100 people working in this mine.

【Child labour and Trafficking】 According to him, there are around 25 children working at the mine. He has seen that brokers bring groups of children to the mines. In return, the mine manager paid commissions to brokers. He is not sure the amount of commission.

【Working Conditions】 In the mine, the mineshaft is a hole 120-145 feet in depth (36-43.5 meters), vertically descending, in a square shape with each side measuring 50 feet (15 meters). .. The length of the rat holes are around 1000 feet, extending in every direction.

【Accidents】 He has witnessed dangerous conditions at his mine. Since there are no safety regulations at his mine, 10% of the labourers are hurt or killed in accidents every year. The manager has never paid for medical expenses for workers injured in the course of their work in the mine. The workers must pay by themselves. He recognized that these were not appropriate working conditions and wanted to improve the situation.

【Wages】 Salary is not fixed but paid piece by piece according to output, and it is not stable. 1500 -1600 rupees are paid for 12 boxes. The size of one box is 1 meter x 0.5 meter.

2) Interview 24: Kapur (male)

Age 38, worker (mine supervisor), from Nepal, working for four years in the Meghalaya mines

【Child labour】 He reported that there are 65 labourers at his mine, of which eight to ten are children. Most of the child labourers are from Nepal and Assam, India.

【Accidents】 Kapur spoke of frequent accidents at the mine. Recently, a crane with faulty brakes fell on and killed a child labourer. Another child labourer died recently when a mine roof fell on him as he was cutting coal. Kapur stated that accident compensation for a victim or the victim's family is never guaranteed.

3) Interview 25: Gopal (male)

Adult, delivering coal from the Meghalaya mines for two years

【Child Labour】 Gopal has worked for two years delivering coal from his mine to customers in Guwahati. He estimated that approximately 100 child labourers work at his mine. The majority of these children are from Nepal. Gopal estimated that more than 1000 child labourers from Bangladesh are working in other mines in Meghalaya.

(2) Extremely Young Workers

1) Interview 1: Hurditya (male)

Age 12, from Meghalaya, India, working for 4 weeks in a mine in Meghalaya.

【Background】 Hurditya, 12, is from Meghalaya, India. He does not attend school because he is poor and cannot afford to, so he works in the mines instead. He lives with his family in a village about 20 minutes away from the mines and commutes to the mines for work. At the time of his interview, Hurditya had been working at one of the Meghalaya mines for 4 weeks.

【Working condition】 Hurditya is a coal cutter, which requires him to go deep inside of rat holes to cut coal. He works about four to five hours per day and earns 400 to 500 rupees (approximately US\$9 to US\$11 or ¥700 to ¥900) per week. When asked if he liked the work, Hurditya indicated that he had no comment.

2) Interview 17: Durk (male)

Age 12, from Meghalaya, working for 4 years in various mines in Meghalaya.

【Background】 Durk, 12, is from Meghalaya. His mother is Khasi, and his father is Nepali. He has 3 sisters and 2 brothers. He was born in the Meghalaya region. He attended nursery school but was not able to continue his studies due to his family's financial difficulties. He started working in the mines when he was 8 years old. He indicated that his parents were very happy when he told them that he wanted to work in the mines.

【Working conditions】 Durk has been working as a coal cutter in the underground rat holes since he was 8 years old. Currently, he is engaged in coal cutting work and earns about 100 to 200 rupees (approximately US\$2 to US\$4 or ¥185 to ¥400) per day.

(3) Children at dangerous working places

1) Interview 2: Alok (male)

Age 13, from Nepal, working for 4 years in various mines, including mines in Meghalaya.

The fact-finding mission went down a mine shaft and found significant numbers of children working in rat holes. The mission tried to interview the children, but Alok is the only child that the mission was able to actually interview.

【Background】 Alok, 13, is from Nepal. He has been working as a coal cutter in various mines since he was 9 years old.

【Working conditions】 As a coal cutter, Alok works underground in rat holes all day long. His daily work involves going right to the end of the rat holes to dig coal, and then transferring the coal to the center of the quarry with his colleagues. He indicated that about ten children under the age of 18 worked as coal cutters and coal transporters in the mine where he works.

【Dangerous environment and Accidents】 During his time as a mine labourer, Alok has witnessed two accidents. One accident involved a crane that fell. The crane driver was unskilled and not qualified to operate the crane. While in operation, the crane fell and hit a person working underneath it on the head. The worker was rushed to a hospital in the area but the medical staff was unable to save him. A second accident resulted in the death of several children who died when the ceiling of the hole they were digging collapsed. He stated that the mines at which he works have no safety standards.

2) Interview 6: Padma (male)

Age 15, from Bhojpur, Nepal, working for six months in the Meghalaya mines.

【Background】 Padma, 15, is from Bhojpur, Nepal. He has worked in the Meghalaya mines for six months. Vinod came to the mine with friends through a sardar (a mine foreman, acting as a broker) in his village.

【Working conditions】 Vinod earns between 500 and 1000 rupees (US\$11 to US\$22 or ¥900 to ¥1800) per day for cutting coal. Vinod was shocked by the working conditions upon arriving in Meghalaya. He stated that the work is very difficult and that there are no safety procedures at his mine. Although he does not know of any specific mining accidents, he fears for his safety; *“I am very scared and it is very difficult”, he said.* Vinod indicated that he was planning on returning to Nepal in two weeks.

3) Interview 5: Madan (male)

Age 15, from Khotang, Nepal, working for 1.5 years in various mines, including mines in Meghalaya.

【Background】 Madan is a 15-year-old male from Khotang, Nepal, which is located in the north-eastern region of Nepal. His family is poor, and they still live in Nepal. When he was around 13 years old, he decided to leave his family and his hometown to look for work so that he could help support his family. He worked in mines in other areas of India for more than one year before moving to mines in the Meghalaya area, where the interview was conducted.

【Working conditions】 In his interview, Madan indicated that he did not know beforehand that the rat holes extended so far underground. He expressed his initial fear of entering into such rat holes and said that sometimes there is a lack of oxygen in the rat holes. In these conditions, he typically works seven to eight hours per day and sometimes more than seven days straight, including Sundays. Three to four times a month he receives a break in the form of a so-called “Market Day”.

4) Interview 31: Chetan (male)

Age 21, from Nepal, working in the Meghalaya mines for nine years.

【Background】 Chetan, from Nepal, attended school until the age of 8 and began cutting coal when he was 12.

【Working condition】 Chetan earns between 500 and 1000 rupees (US\$11 or ¥900) per day depending on the number of hours he works. He sends his income to his parents in Nepal.

【Dangerous environment and Accidents】 Chetan spoke of extremely dangerous working conditions in the mines. Once, a mine roof collapsed while he was working. He managed to escape with slight injuries. Another time, he saw four fellow workers die when a wall in their mine broke and flooded with water. One of the victims was a 16-year-old boy from Assam.

Chetan reported that assistance for accident victims and their families is limited. Ambulance services exist for local inhabitants of Meghalaya, but not for labourers. In the event of a fatal accident, the mining manager provides compensation to the families of victims. The manager does not, however, inform police about any fatalities. In addition, the manager cremates the bodies of victims who have no known family.

(4) Reports of Accidents

1) Interview 26: Tara (male)

Age 21, from Silchar, Assam, India working for 9 years in various mines, including mines in Meghalaya.

【Background】 Tara, 21, is from *Silchar, Assam, India*. He attended school until he was 8 years old, but quit because of his family situation. He has been working in mines since he was 12 years old. He continues to work in mines to help support his family.

【Working Condition】 Tara works about eight hours per day. He indicated that the crane in the current mine at which he works is broken, so the workers now carry the coal out of the mine, which makes the work day even more difficult and dangerous. He earns 500 to 1000 rupees (approximately US\$11 to US\$22 or ¥900 to ¥1800) per day. He uses his earnings to buy food and other essential items for his family, and he sends some money to his parents.

【Accidents】 During his time as a coal worker, Tara has witnessed several accidents, some of which have resulted in deaths. At one coal mine, as four labourers were digging and cutting coal inside of one of the rat holes, water from a neighboring hole, which was unused and unknown to said labourers, flooded into the rat hole in which the labourers were working, killing all four of them. He indicated that one of the labourers was a 16- to 17-year-old student who came to the mine to work and help his father before entering school.

Tara was also in an accident where the ceiling collapsed. He was able to escape with minor injuries, but his friend was seriously injured in the accident. He sincerely believes that if his timing had been a little delayed, he would have been killed in that accident.

2) Interview 27: Jung (male)

Age 19, from Dolakha, Nepal, working for 9 months in various mines, including mines in Meghalaya.

【Background】 Jung, 19, is from Dolakha, Nepal, which is located in central Nepal. He attended school through the third grade. Jung first began working at another mine in the region, to which he was brought by a broker along with seven other children around his age. He came to work at the current mine upon the recommendation of his sister, whose husband works in the same mine. Jung works as a coal cutter.

【Working Conditions】 In his interview, Jung indicated that during the peak season (October through April) there are around 50-60 workers in the mine, about 20 of which are child labourers. During the off-season, most of the workers return to their home towns.

【Accidents】 As of the date of the interview, Jung noted that he has not personally witnessed any accidents at the mines at which he works, but he had heard accounts of several accidents.

He recalled one particular accident as follows: as four labourers were digging and cutting coal inside of one of the rat holes, water from a neighboring hole, which was unused and unknown to said labourers, flooded into the rat hole in which the labourers were working killing all four of them. After the accident, the dead bodies were removed from the flooded hole via a crane. According to what Jung was told, the manager did not report the incident to the local police and did not compensate the families of three of the four deceased miners. As for one of the four deceased miners, his father also worked at the mine and was present when the accident occurred. This deceased miner's father received a payment of 50,000 rupees (approximately US\$1125 or ¥91,000) in exchange for not reporting the incident to the authorities. Jung seemed to indicate that from what he has heard accidents are typically addressed in this manner.

Other than these interviews, the fact finding team also received short reports from two workers regarding accidents around the mine:

- **Interview 28: Suresh (male)**, Age 30, from Silchar, Assam, India, working for 12 years in various mines, including mines in Meghalaya.

There was an accident two years ago, and four workers were killed. Because they weren't registered employees, nothing was done for them. They were simply buried and forgotten.

- **Interview 30: Lakshmi (female)**, Age unknown, from Nepal.

Lakshmi has been working in mines for 10 years. Her husband also works in coal mines.

During her time as a coal worker, Lakshmi has witnessed accidents more than five times, some of which have resulted in deaths. In one accident the ceiling collapsed causing one of the rat holes to flood. Lakshmi witnessed that some of the labourers trapped inside the mine were children. She tried to help the trapped children but failed to rescue them.

Her husband was also involved in the accident but suffered only minor injuries. Lakshmi indicated that there are no safety standards at the mines at which she works.

(5) Extrajudicial Killing

1) Interview 11: Ashu (male)

Age 17, from Assam, India, working for more than a few years in various mines, including mines in Meghalaya.

【Background】 Ashu, 17, is from Assam, which is a northeastern state of India. Ashu completed the sixth grade but quit attending school when he was 11. Ashu has been working in coal mines for several years. He has been working in coal mines in the Meghalaya area for about one year. Ashu has two older brothers (ages 22 and 23) who are also working in coal mines. He did not indicate whether his brothers work in the same coal mines as he does or how long they have been working in mines, but he did indicate that his parents are living in Assam and that he is currently living with his aunt.

【Working conditions and Accidents】 When Ashu first starting working in coal mines, he was engaged in coal cutting in the rat holes. During his work as a coal cutter, he saw about three to four people die when an upper layer of coal fell on the miners as they worked. He no longer does that task, but he did not specify exactly what job he does now. Ashu indicated that he does not like mine work and that it is dangerous.

【Extrajudicial execution】 Ashu further reported on extrajudicial execution. According to him, a boy working in the mine was killed in a rat hole by a manager. The manager found that the boy working in the mine was selling coal at the back independently. As punishment, the manager confined the boy inside the mine for a couple of days, where he ultimately died. Ashu said he also heard about workers dying from similar punishments in other mines around here.

【Salary and conditions】 In his interview, Ashu indicated that he chooses his working hours, which range from 7 to 11 hours per day. He typically works from 8:00 am to 7:00 pm six days a week and earns 5,000 to 6,000 rupees (approximately US\$110 to US\$135 or ¥9,000 to ¥11,000) a week. In the event he is injured on the job or becomes ill, the manager of the mines will take him to a medical facility in Shillong. The manager will pay the travel expenses and the hospital bill upfront and then deduct said expenses from his salary.

2) Interview 29: Ragendra (male)

Age 27, from Nepal, working for 6 years in various mines, including mines in Meghalaya.

【Background】 Ragendra, 27, is from Nepal. He has been working in various mines for six years. He came to work at the current mine in search of earning more money. His work is coal cutting deep in the mines.

In his interview, he did not disclose his current salary, but he did note that although Ragendra is working harder and more hours, he is getting paid less than before. He noted that if he had the money, he would have quit working in a mine by now.

【Child labour】 While engaged in coal cutting deep in the mines, Ragendra has seen children as young as 8 and 9 in the rat holes cutting coal. According to him, young children are often brought to the mines to work. If they decide not to work, they must pay out-of-pocket for their food and transportation to the mines, so many children eventually remain at the mines to work because they lack other options to earn money.

He said, “Children are often brought here when they are age 8-9. They are too young to remember the location of their village, and thus they cannot return. They have no choice other than to stay and work here no matter how they hate this work”.

【Punishment, Extrajudicial killing】 Ragendra seemed very nervous about his future at the mine. He indicated that he believes the mine owners plan to replace all of the Nepalese labourers. The Nepalese labourers, however, have no voice and cannot speak out against the mine owners.

Ragendra recalled one incident in April 2009 where a labourer at another mine got into a disagreement with one of the mine owners over money. As punishment for speaking out against the owner, the labourer was locked in a rat hole which led to the labourer’s death. The manager of the mine ordered him to go into the rat hole and take out the dead body, which he did. According to Ragendra, such types of punishment are common, especially against foreign workers, and even if labourers contact the police, the police protect the mine owners, not the labourers.

(6) Domestic and medical conditions

1) Interview 34: Anita ,

Coal mine worker’s wife (female)

Anita reported that her husband’s mine manager does little to improve the welfare of the labourers. The manager provides almost no medical care. The mine has very poor sanitation, and labourers must carry water to the mining site from a well far away.

Anita reported dangerous and unhealthy working conditions at the mine. She has witnessed at least five serious accidents, including one in which a large stone fell into a hole where several labourers had been working. In addition, her husband’s health has deteriorated as a result of working in the mine: he often coughs and falls ill due to long-term exposure to the mining environment.

(7) Interview with management and owners

The HRN fact-finding team had an opportunity to interview a manager (Age 35, from Nepal), who spoke truthfully on the topic of the operation of coal mines and child labour in Meghalaya. He asked that his name and the mine he managed not be disclosed. The HRN team also gained an opportunity to interview a small mine's owner. He provided us with a broad picture of mines manufactured in Jaintia Hills and the perceptions of owners.

1) Interview 37: Interview with a manager

【Background】 He is 35 years old from Nepal. He has managed a mine in Meghalaya for five years.

【Overview of Mining in Jaintia Hills】 The interviewee's mine employs about 250 labourers, the majority of whom are Nepalese nationals. A minority of labourers at the mine are from Bangladesh. He estimated that there are 1 *lakh* or 100,000 coal mines across Meghalaya. The mines vary considerably in size. Large mines typically employ 200 labourers, half of whom cut coal and half of whom carry and upload it onto trucks. Small mines, meanwhile, typically employ between 35 to 40 labourers.

'5 years back there were smaller mines because the cutting is on the top level, but now there are bigger mines because they are going 150 feet inside.'

【Trafficking】

His labourers hear about work opportunities at his mine by word of mouth. He has heard, however, that some managers recruit in villages, paying inhabitants a small commission to work in their mines for six-month terms.

In addition, although he does not use them himself, he knows of the existence of brokers who recruit labourers, including child labourers. He has tried to persuade other managers to refrain from using brokers because of the potential for exploitation, particularly with respect to child labourers.

【Child labour】 According to him, while no children work in his mine, he has heard of eight- to ten-year-olds from Assam and Silchar working in other area mines. Despite these reports of child labour, however, he believes that awareness of children's rights is growing among mine managers and owners, and that the number of children working in the mines has decreased since he first arrived five years ago.

【Working conditions】 He described a total lack of occupational safety regulations and labour organization at the mines. He said that the mine owners do not abide by any form of safety procedures or labour standards. In addition, there are no workers unions or any other form of organization among the labourers that could enable them to raise grievances with management.

In this unregulated and unsupportive work environment, accidents are frequent and mine owners continually fail to improve safety and respond adequately after accidents happen. Since the mines in Meghalaya are built by manual labourers who usually have no professional engineering expertise, they are very fragile and liable to collapse. He stated that ceilings often cave in, and steps and bridges inside the mines break. Water buildup in mine cavities is a constant and deadly threat to labourers. The buildup creates pressure on mine walls, causing stones to fall on and crush workers. In addition, the pressure can break the walls, flooding mine cavities and drowning labourers.

【Accidents】 To illustrate the serious dangers that miners face, he described an accident at a mine named Setu that occurred in 2009. In that accident, 81 labourers were killed when subterranean water from a nearby river flooded a mine cavity. Since no warning system existed at the mine, none of the victims had time to escape. Following the accident, the mine owner failed to drain the accident site and remove the victims' bodies. The owner provided no monetary compensation to the victims' families.

He said that mine managers and owners commonly keep a register of their labourers' identities and wages. Since these registries do not typically include home addresses or family information, however, contacting family members in the event of the injury or death of a labourer is difficult. Although he knows of a few

managers and owners who do attempt to reach family members of accident victims even without any contact information, most do not.

【Other human rights violations】

Labourers' safety and health concerns extend far beyond mine accidents. When he came to the mine five years ago he quickly became aware of serious rights abuses; '*human get raped, human get tortured*' he said. He spoke of physical abuse by mine owners and managers against labourers. Some owners and managers corporeally punish labourers, most frequently for committing theft, for fighting, and in retaliation for unpaid debts. In addition, he reported trafficking for prostitution of children in the areas surrounding the mines. Local authorities often fail to investigate and prosecute these serious rights abuses.

【Lack of medical care and nutrition】 Finally, he spoke of a total lack of adequate medical care and nutrition for labourers in area mines. The medicines labourers use to treat workplace injuries or illnesses frequently have expired validity dates. Furthermore, labourers often take the wrong medicine after seeking treatment advice from unlicensed pharmacists. As a result, many labourers who seek treatment become more ill or even die. In addition, some labourers fall ill or die after eating spoiled or improperly prepared food.

2) Interview 39: Interview with a owner of a mine

Anonymous, owner of a small mine for fifteen years

【Background】

The owner, who has a university education, inherited from his family the land on which his mine is located. He began exploiting the land fifteen years ago. He estimates that a full quarter of the population in the local area owns mines.

The owner earns 5000 rupees (US\$115 or ¥9500) per week from his mine, which he reported provides just enough income to survive. The mine is between 30,000 and 40,000 square feet in area.

The weekly coal output from his mine sells for 20000 rupees (US\$455 or ¥37000). Labour costs 15000 rupees (US\$340 or ¥28000) a week.

The owner sells the coal at a local market to buyers from Assam, Guwahati, and Bangladesh. He has also sold coal to a Japanese company, Nippon Dendro Ispat Limited, in the past.

【Situation of Labours】

The owner employs four or five labourers who produce approximately ten tons of coal per week.

The owner does not recruit labourers; they come from Silchar (Assam, India), Bangladesh and Nepal at their own initiative in search of work.

The labourers are not organized, nor do they have a welfare or assistance programme upon which to rely in the event of workplace accidents. The owner mentioned that workers have rarely died in his mine, and that all on-site injuries were the result of falls.

The owner stated that he does not keep an employment registry and that he does not know the names of his labourers. He believes that keeping a registry would be a waste of time since many workers quit after working for a short period.

The owner explained that he pays his mine manager, or sardar (often translated as foreman), a commission for various tasks. These include recruiting labourers, keeping track of their work hours, counting boxes of coal, and maintaining the mines. Sardars also collect commissions from labourers. The owner stated that labourers can become managers, provided that they 'work hard' in the mine for a prolonged period of time.

【Perception toward law and regulation of workers' rights】

The owner spoke of a lack of governmental regulation in the Meghalaya mining sector. He noted that because of the Sixth Schedule of the Constitution of India, which grants governmental autonomy to Meghalaya, national mining and occupational health regulations do not apply to local mines. In addition, mine owners do not register with the state government, and the government provides no form of

assistance to either owners or labourers. Finally, draft state mining legislation has been heavily opposed by the mine owners.

VI. Conclusion of Findings

1 Child Labour

The interviews reveal the high prevalence of child labour in the Meghalaya mines and that many of the child labourers are extremely young, some as young as 8 years old. In only three days HRN interviewed three 12-year-olds (Interview 1, Hurditya / Interview 17, Durk / Interview 18, Lam) and three 13-year-olds (Interview 2, Alok / Interview 3, Har / Interview 22, Panna) who all work deep underground cutting coal. Furthermore, those interviews were only a small sample of the total number of young children the fact-finding team witnessed working in the mines, many of whom did not want to give interviews. 13-year-old Alok (Interview 2), for example, told HRN that there are about ten other children under the age of 18 working in the same mine as him. Similarly 18-year-old Dinkar (Interview 14) told HRN that there are three more children working at his mine, aged 12, 14 and 16.

Some children who looked only 10 years old sometimes told us that they were 18 years old or 15 years old, and it is reasonable to assume that the manager or supervisor directed them not to tell their real age in order to avoid trouble. While HRN reports children's age based on the children's statement, some labourers are presumably younger than the age listed in the report.

Besides the interview, HRN witnessed many children including girls working in the mines. It seemed that using child labour is considered 'business as usual', and a necessity, and it is a deeply embedded practice within the Jaintia Hills region. Due to time constraints the fact-finding team was not able to interview all the child labourers at the mines it visited, but it is clear that those children who were interviewed are representative of a very widespread child labour problem in Jaintia Hills.

Mine supervisors and managers confirmed the high prevalence of child labour at the Jaintia Hills mines. Mine supervisor Biswas told HRN that about 25 children are employed at his mine, which is as much as a quarter of the total labour force (Interview 23). At the mine of mine supervisor Kapur there are 8 to 10 children working, out of a total of 65 labourers (Interview 24). Coal deliverer Gopal (Interview 25) reported approximately 100 child labourers at his mine, and estimated that more than 1000 child labourers from Bangladesh work in other mines in Meghalaya. Finally, whilst the mine manager (Interview 38) denied child labour at his own mine, he confirmed hearing reports of children as young as 8 and 10 from Assam and Silchar (India) working in other mines in the area. The manager was optimistic however that awareness of children's rights is growing amongst mine managers and owners, and he claimed that the number of children working in the mines has decreased since he arrived five years ago.

Some of the child labourers working in Jaintia Hills are as young as 8 years old; one 12 year old interviewee (Interview 17, Durk) had been working since he was 8 years old, and one 13 year old (Interview 2, Alok) had been working since he was 9. One adult labourer, Ragendra, who has been

working for six years in various mines, also reported seeing children as young as 8 and 9 in the rat holes cutting coal (Interview 29).

Many of the older children interviewed had started working in the mines at a very young age. HRN interviewed three 14-year-olds, three 15-year-olds, three 16-year-olds, three 17-year-olds and three 18-year-olds. Amar (Interview 4) was 14 at the time of interview but said that had been working in the Meghalaya mines for two to three years, which means he started working when he was aged 11 or 12. Madan (Interview 5) was 15 years old but had already worked for 1.5 years, from the age of 13. Ashu (Interview 11) was 17 years old but had been working for more than a few years in various mines in the area; Bishwa (Interview 12) was 17 and had been working since he was 15; Badahur (Interview 13) was 17 and had been working since he was 14; Rajit (Interview 15) was 18 but had been working since he was 15; Jarjit (Interview 16) was 18 but had been working since he was 14 or 15; and Kabir (Interview 33) was 18 but had been working for 3 years, since he was only 15 years old.

HRN also met adult labourers that had starting working in the mines as young children. 21-year-old Chetan (Interview 31) told HRN that he had begun cutting coal at the age of 12. Other adult labourers told HRN of the high number of children working with them in their mine; 19-year-old Jung for example told HRN that during peak season (October through April) about 20 of the 50-60 workers in his mine are children (Interview 27). This suggests that the prevalence of child labour at the mines may vary in parallel with the seasonal flow of adult labourers.

To conclude, the fact-finding team not only witnessed endemic child labour at the mines in Jaintia Hills, but received confirmation that the problem is severe and widespread from the children themselves, from adult labourers, and from mine managers, coal deliverers and supervisors.

2 Children in danger in the work place

As many as 25 interviewees (out of 39) spoke to HRN about extremely dangerous working conditions at the Meghalaya mines due to a total lack of safety regulations. The fact-finding team witnessed this reality first-hand. The vast majority of child labourers is sent to work deep inside the rat holes cutting coal and is therefore fully exposed to these dangerous working conditions.

In the coal mine, safety equipment and safety devices are not installed in the mines at all. In the rat holes, lack of adequate lighting and lack of oxygen expose children high risk of death and injury.

Mine supervisors, managers, and the mine owner confirmed the lack of safety measures at the mines. Supervisor Biswas. (Interview 23) told HRN there are no safety regulations at his mine, which leads to very dangerous conditions for workers. The mine manager (Interview 38) described a total lack of occupational safety regulations; the mines are built by manual labourers who usually have no professional engineering expertise, and so the mines are liable to collapse; the steps and bridges inside the mines often break; and water builds up inside cavities underground which is a constant threat to workers.

Female labourer Lakshmi, who has been working in the mines for 10 years with her husband, explained that there are no safety standards at the mine where she works (Interview 30). Similarly adult labourers, Kushwant (Interview 37) and Chetan (Interview 31), both spoke of extremely dangerous working conditions at their mines.

It is particularly revealing that the mine owner (Interview 39) attributed the lack of government regulation to the Sixth Schedule of the Constitution of India, which, he said, meant that national mining and occupational health regulations do not apply to local mines. This demonstrates how widely the Sixth Schedule is misunderstood and misused in the mining industry.

From labourers themselves, HRN heard about numerous very severe hazards which daily threaten the health and wellbeing of the children working at the mines. These include poor machinery operated by unqualified workers. HRN heard that the cranes used to lift the coal from the bottom of the mine shaft to the surface are often operated by unqualified and unskilled workers, which can lead to fatal accidents (13-year-old Alok / Interview 2). Machinery is also often faulty and poorly maintained (Darpan / Interview 21). Faulty machinery operated by unskilled workers poses a very severe threat to workers; mine supervisor Kapur (Interview 24) told HRN of an incident in which a crane with faulty breaks killed a child labourer.

When the crane machinery is not in operation, labourers' work becomes even more difficult and dangerous as they have to carry the coal out of the mine on their backs via the extremely hazardous stairs that go down the side of the mine shaft (Tara / Interview 26). Adult labourer Darpan (Interview 21) also complained to HRN of the dangers of the faulty stairs into the mines. The stairs are not constructed or maintained according to any safety regulations, they are made from wood and are prone to become very slippery, and they rot due to the high level of rain that falls in the area. When the cranes are in operation, labourers do not have to carry coal to the surface, but they still have to traverse these stairs several times each day in order to enter and exit the mine.

Another severe hazard is the lack of oxygen in the rat holes in which children work for hours at a time. 15-year-old Madan (Interview 5) complained of a lack of oxygen to HRN, as did the adult labourer Darpan (Interview 21), and Purkash (Interview 32) who explained that it is often very dry and hot inside the mines and there is not enough oxygen.

For those that survive the daily hazards faced at the mine, HRN was told that long-term exposure to the mining environment has a serious impact on the health of labourers. An adult labourer's wife, Anita, explained that her husband's health has deteriorated markedly from working at the mine over a prolonged period of time, and he now frequently coughs and gets ill regularly (Interview 34).

Finally, although many of the child labourers had not been told about the dangerous working conditions at the mines before they were brought to work, once at the mines the children are well aware of the dangers they face and feel very scared as a result. 16-year-old Bimal, for example, told HRN that he realized the ceiling of the mine could collapse at any time (Interview 9). 17-year-olds Anim (Interview 11) and Bicash (Interview 12), and 18-year-old Dinkar (Interview 14) also all commented upon how dangerous the mines are, and many of children, such as 15-year-old Madan (Interview 5) and Badahur (Interview 13), told HRN how afraid they feel when they enter the rat holes. 15-year-old Padma (Interview 6) admitted "*I am very scared and it is very difficult*", because there are no safety procedures at his mine.

The children know that by working in the mines their lives are at risk; in the words of 15-year-old Ramchandra (Interview 8), *There is no guarantee of life. You can just die inside.*

3 Accidents

The lack of safety regulation at the mines results in frequent, often fatal, accidents; as many as 15 interviewees spoke to HRN about the occurrence of serious accidents. In particular two types of accident were reported; first, the collapse of rat holes, in which workers die crushed by coal and rock, and the second is flooding when workers unknowingly dig into underground pockets of water gathered in disused mine tunnels. One mine supervisor (Biswas, Interview 23), who supervises a mine of 100 labourers, told HRN that conditions are so dangerous at his mine that 10% of labourers are hurt or killed in accidents every year.

The mine manager (Interview 38), who has been managing a mine employing 250 labourers for five years, explained that accidents are very frequent and yet mine owners continually fail to improve safety and respond adequately when they happen. There was one particularly serious accident at a mine named Setu in 2009. Miners unknowingly dug into a river, and the subsequent flood killed over 80 labourers. As no warning system existed at the mine labourers had no chance of escape. Following the accident, the owner did not even drain the site or remove the victims' bodies.

Mine supervisor Kapur (Interview 24) confirmed from his four years experience that accidents are frequent at the mines, and furthermore that children are often the victims of these accidents. The supervisor told HRN that very recently two child labourers had been killed in accidents, one child died when a crane with faulty brakes fell on him, and another died when the rat hole collapsed.

It is of great concern that children themselves are killed in these accidents. One of the several accidents witnessed by adult labourer Tara was a flood that killed four labourers, among them a 16 or 17-year-old student who had come to the mine to help his father before entering school (Interview 26). Tara was also personally involved in an incident of ceiling collapse that very nearly killed him and seriously injured his friend. Chetan (Interview 31) also witnessed a 16-year-old labourer die in a flood.

Lakshmi, a female adult labourer who has witnessed more than five accidents over the course of her 10 years at the mines, also saw a flood in which some of the labourers trapped in the mine were children. In spite of Lakshmi's best efforts, she was unable to save the children and they died in the flood (Interview 30).

Child labourers witness other children die in mine accidents. Alok is only 13 years old himself but has witnessed two fatal accidents, and in one of them he saw several other children killed (Interview 2). In the first accident, a crane operated by an unqualified worker fell and killed the person working underneath. Alok then witnessed several children die when the ceiling of their rat hole collapsed.

Children are not the only victims of these frequent and often fatal accidents. 17-year-old Bishwa reported an accident at a nearby mine that occurred only a week before the HRN mission was conducted; four or five people, all adult labourers, were killed when the ceiling collapsed (Interview 12). Ashu, also aged 17, saw three to four people die in another accident where the ceiling collapsed (Interview 11). 19-year-old Jung reported an accident in which four labourers were killed in a flooded rat hole, and their bodies were lifted from the flooded mine by a crane (Interview 27), and the coal miner's wife, Anita told HRN she has

witnessed at least five serious accidents, including one in which a large stone fell into a hole where several labourers were working (Interview 34). Adult labourer Darpan has witnessed several accidents (Interview 21), and adult labourer Suresh reported an accident two years ago that killed 4 workers (Interview 28). Kushwant has not been in an accident himself but has heard of coal cutters getting crushed (Interview 37).

It is clear that the lack of safety regulations at the mines has very serious consequences; whilst working at the mines the lives of the labourers, including the many child labourers, are constantly in danger. A large number of workers are killed in accidents every year, and yet mine owners and managers do nothing to address the situation. Children are frequently involved in accidents, both as witnesses and victims.

4 Lack of worker registration

Mine managers and mine owners in Jaintia Hills do not keep a proper register of their employees, and as a result when labourers are killed in accidents their family members are often not informed. HRN heard from the owner of a mine (Interview 39) that he does not keep an employment registry, nor does he even know the names of his workers. The owner's excuse was that keeping such a registry would be a waste of time because workers often quit after working for a short period.

A mine manager with five years experience at a mine employing 250 labourers (Interview 38) explained that usually managers only keep record of labourers' identities and wages. Family information and home address are not typically recorded, and as a result when fatal accidents occur managers do not know how to contact victims' families. Apparently some managers do attempt to reach family members of victims even without contact information, but most do not.

The result of this is that families may never know that they have lost a relative in the mines, and the bodies of those victims go unclaimed and uncared for. One adult labourer (Chetan, Interview 31) told HRN that unclaimed bodies are cremated or buried nearby the mines, and Suresh (Interview 28) spoke of four workers killed in an accident who were simply '*buried and forgotten*' because they were unregistered. In the very terrible accident at Setu in 2009, when 80 labourers were killed in a flood from a river, the owner of the mine did not even drain the site to remove the bodies (Manager, Interview 38).

Lack of employee registration helps managers and owners conceal the extent of the casualties and fatalities at their mines, and it prevents them from being held accountable for the terrible conditions suffered by adults and children working in their mines.

5 Extrajudicial killing

HRN heard very serious allegations of corporal punishment and even extrajudicial execution of labourers by mine managers and owners.

A mine manager (Interview 38) told HRN that he quickly became aware of serious rights abuses when he first came to the mine five years ago. '*Human get raped. Human get tortured,*' he said. According to the manager, labourers suffer physical abuse from mine owners and managers. Some managers corporally punish labourers, most frequently for committing theft, for fighting, and in retaliation for unpaid debts.

That corporal punishment extends to the extrajudicial killing of labourers by mine managers and owners. One adult labourer, Ragendra (Interview 29), who has been working in various mines in the region for six years, had personally removed the dead body of a labourer from a rat hole in April 2009 after the labourer had been locked in the hole as punishment. The labourer had been shut in the rat hole for speaking out against the owner after a disagreement about money. Ragendra was ordered by his manager to remove the body from the hole. According to Ragendra such punishment is common, and if labourers consult the police, the police protect the mine owners.

Child labourers are also subject to such terrible abuse by mine managers and owners. 17-year-old Ashu (Interview 11) witnessed the extrajudicial execution of a child labourer. The child was confined inside the mine for several days as punishment after the manager found him independently selling coal. Unsurprisingly, given the lack of oxygen and water, prolonged confinement in the mine led to the child's death. HRN has reason to believe that this was not an isolated incident. Ashu told HRN that he has heard of other workers in the area being killed in this way.

6 Lack of medical care in case of accidents

It is of particular concern that in spite of the many severe hazards at the mines and the high rate of accident and injury, labourers receive no medical support from their employers; and in the event of injury they must pay their own medical expenses.

The mine owner (Interview 39), who has been mining his land for fifteen years, confirmed that his workers have no welfare or assistance programme upon which to rely in the event of workplace accidents.

As mine supervisor Biswas (Interview 23) explained, the mine manager never pays for the medical expenses of workers injured at the mine, and therefore the workers have no choice but to try to pay for the expenses themselves. This is particularly alarming as conditions are so dangerous at his mine that 10% of labourers are hurt or killed in accidents every year.

Furthermore, the local ambulance services exist only for local inhabitants of Meghalaya, not for labourers, many of whom have come from Nepal, Bangladesh and other parts of India (Adult labourer, Chetan, Interview 31). According to mine supervisor Biswas (Interview 23), nobody is entitled to register as a resident, which means that the 500 people living in his village around the mines have no welfare insurance (Interview 23).

As most of the child labourers interviewed by HRN were barely earning enough money to survive on a daily basis, it is clear that they would be unable to cover the costs of any necessary medical expenses on their own.

There is also no guarantee of compensation for victims injured down the mines, nor for their families in cases of death. In the terrible accident at Setu in 2009, where 80 labourers died in a flood from a river, no monetary compensation was provided for families (Mine manager, Interview 38). Several labourers reported similar cases. 17-year-old Bishwa (Interview 12) reported an accident at a nearby mine that happened the week before the HRN fact-finding mission; four or five people, all adult labourers, had been killed when the mine ceiling collapsed but no compensation had been paid.

It appears compensation may be paid in some cases; according to mine supervisor Kapur (Interview 24) whilst compensation for a victim's family is never guaranteed, it sometimes may be paid but the amount varies hugely, from very little (3000 rupees, US\$70, ¥5500) to rather more (20000 rupees, \$450, ¥37000). Kapur also stated that if the manager fails to provide compensation, or provides only a little, the local community may offer financial assistance. Chetan (Interview 31) also suggested that in the event of a fatal accident, the manager provides compensation to the families of the victims, but the manager does not inform police about any fatalities and cremates the bodies of victims who have no known family.

Some managers and owners pay compensation only in return for incidents not being reported to the authorities. 19-year-old Jung (Interview 27) reported that after an accident that killed four labourers, the manager did not report the incident to the local police and did not compensate the families of the deceased miners, with the exception of one father who worked at the same mine and was present when the accident took place. The father was paid 50,000 rupees (US\$1125, or ¥91,000) in exchange for not reporting the incident to the authorities. Jung indicated that accidents are typically addressed in this manner.

7 Poor living conditions – Education, Water, Housing, Health

(1) Education

HRN learned that child labourers in Jaintia Hills are not attending school and suffer seriously deprived living standards; they lack sufficient access to water, they live in poor, unsanitary conditions, and they have insufficient nutrition and access to healthcare. Labourers often fall ill from eating soiled or improperly prepared food, and the medicines used to treat illness and injury are issued by unlicensed pharmacists, frequently have expired validity dates and make labourers ill or even die. Their employers are doing nothing to address this situation.

None of the child labourers interviewed by the fact-finding team were attending school. Seven of the children interviewed had never had any formal education, and the explanation always given was because their families face financial difficulties. The twelve-year-old labourers Hurditya and Lam (Interview 1 and 18), for example, both told HRN that they have never been to school because their families are poor and they have to work at the mines instead. Fourteen-year-old Hemant would really like to go to school, but cannot because his family is poor and he has to work (Interview 20). Other children that have never gone to school include Ahagh (Interview 10), Bishwa (Interview 12), Badahur (Interview 13), and Rajit (Interview 15). Many of these children are trying to help support their families by working at the mines.

Ten of the labourers interviewed had had some education, but all of them left school early to start working at the mines because of their family's poverty. Twelve-year-old Durk, for example, attended nursery school but couldn't continue because of his family's financial difficulties, and instead he started working at the mines at the age of 8 (Interview 17). The others left school at different times; Jung (Interview 27) only attended school until third grade, Chetan (Interview 31) attended school until the age of 8 and began cutting coal when he was 12, Ajith (Interview 36) and Ashu (Interview 11) completed the sixth grade and left school when they were 11, Bimal (Interview 9) and Jarjit (Interview 16) attended school until seventh grade, then left to work in the mines to support their families, Dinkar (Interview 14) and Santosh (Interview 32) attended school until eighth grade, and Kushwant (Interview 37) had a ninth grade education.

Thus, even though some of the labourers had attended school for a time, many of them did not complete primary education and none of them had completed secondary education. All had had their education cut short because their families' financial situation and the absence of effective state provision to keep them in education. Instead these children began working to support themselves and to help their families from an incredibly young age, and furthermore, the work they are doing is in the incredibly dangerous environment of the mines where their lives are at risk on a daily basis. Education is a fundamental human right and plays an essential role in safeguarding children from exploitative and hazardous labour. Therefore this situation is of great concern.

(2) Housing, Water and Health

The living conditions of the children and workers are inhumane and unsanitary.

The HRN team observed the condition of houses in which workers and their families are living. Most workers were living in very small, wooden houses provided by owners around the coal mines. The conditions of the houses were very poor and fragile, insufficient to protect people from rain and wind, and they had poor sanitation systems. The space for workers was not enough to enjoy an adequate and human living standard.

There is also a lack of safe drinking water and no proper sewage system. HRN heard from the interview with Anita, a mine labourer's wife, that child labourers do not have sufficient access to safe drinking water, as water has to be carried to the mining site from a well far away (Interview 34).

In a mine area near to a cement factory, HRN observed workers living around a creek contaminated by coal. The team witnessed workers' families frequently using the creek to wash dishes or cloth. This suggests that there was poor water supply and no washing machine in their houses.

As a result the workers suffer from various diseases, while their employers provide no medical facilities, and workers must pay for any necessary treatments themselves.

Anita (Interview 34) reported that her husband's health has deteriorated as a result of working in the mine: he often coughs and falls ill due to long-term exposure to the mining environment. She also reported that the manager provides no medical care and does very little to improve the welfare of labourers.

The mine manager (Interview 38) told HRN that the workers and children suffer very deprived living standards at the mines. The manager reported that there is a total lack of adequate medical care and nutrition for labourers at the mines in the area. In addition, some labourers fall ill or die after eating spoiled or improperly prepared food.

The medicines used to treat workplace injuries or illnesses frequently have expired validity dates. There are unlicensed pharmacists operating in the area who supply labourers with incorrect and dangerous advice and medicines. As a result, many labourers who seek treatment from such pharmacists become more ill or even die.

8 Unfair wages for the youngest child labourers

HRN realizes that the evidence gathered on the issue of wages in this report is far from comprehensive; the focus of the fact-finding team was to assess the general working conditions at the mines, rather than the wages paid to labourers. It is also difficult to compare workers' wages because, as explained by mine supervisor Biswas (interview 23), mine labourers in Jaintia Hills are not paid a fixed wage but paid according to the amount of coal they cut, and the rate of payment per amount of coal is unstable.

However, it is notable that two of the youngest labourers interviewed reported that they earn less than 200 rupees per day. Hurditya, aged 12 (interview 1) said he earned only 400-500 rupees per week (less than 80 rupees per day if Hurditya works a 6 day week), and Durk, also aged 12 (interview 17) said he earned 100-200 rupees per day. The first is well below the 2010 national minimum wage of RPS 100 a day and the second skirting it. In comparison, all other labourers that gave information about their wages said they earn more than 200 rupees, and many earn more than twice as much. Their earnings varied, but of those that gave information they earned on average approximately 650 rupees per day.

The following table shows the interviewees that spoke to HRN about their wages and the amounts earned, ordered by age. Notice that the two lowest salaries, under RPS 100 and 200 a day respectively (highlighted in yellow), are those of the two youngest labourers(12). Five of the six interviewees making RPS 350 or less a day (highlighted in yellow and blue) are 16 or younger.:

No.	Name	Age	RPS/day
1	Hurditya	12	66.6-83.3*
17	Durk	12	100-200
4	Amar	14	900
19	Sahaj	14	200
6	Padma	15	500-1000
7	Yogesh	15	350
8	Ramchandra	16	750-1500
9	Bimal	16	520
10	Ahagh	16	200-300
11	Ashu	17	833-1000
12	Bishwa	17	500-666*
13	Dir	17	700-800
15	Rajit	18	200-300
16	Jarjit	18	500
27	Jung	19	600*
32	Santosh	20	400-500
26	Tara	21	500-1000
31	Chetan	21	500-1000
35	Kiran	22	1000-1166*
36	Ajith	22	1000

** Interviewees that stated their earnings per hour, in which case their earnings per day have been calculated according to their stated working hours, or they stated their earnings per week, in which case daily earnings have been calculated on the assumption that they work a 6 day week. Ordered by age.*

Thus while wages were not a focus of the fact-finding team's research, these findings suggest that the youngest and most vulnerable labourers may be being paid substantially less than older workers. Further

investigation should be done into this matter because if that is the case, the vulnerability of these incredibly young labourers will be heightened by their lack of financial means to pay for essentials such as food, medical treatment, and transport.

I. Child Trafficking

(1) Children from neighboring countries

Many of the children working at mines in Jaintia Hills come from Nepal and Bangladesh; 11 of the 22 interviewees aged 18 or younger came from Nepal, the majority of the 100 child labourers at the mine where coal deliverer Gopal works are from Nepal (Interview 25), and Gopal estimates there are more than 1000 child labourers from Bangladesh in other mines in Meghalaya. HRN also interviewed 11 child labourers from India, most notably from Assam (3) and from Meghalaya itself (6).

(2) Manner of seduction. Children are deceived

HRN is very concerned about the manner in which child labourers are brought to work at the mines. The mine manager, supervisors, and labourers all reported that there are brokers working to bring children to the mines in return for a commission from mine managers. In recruiting child labourers, brokers deceive children about the nature of the work at the mines. Many of the children come to the mines willingly having been enticed by the prospect of earning money, but upon arrival they are shocked to discover the reality of the incredibly dangerous conditions under which they have to work.

From the labourers themselves, HRN found that many of the children had been deceived when they were brought to the mines. They had been told only about the opportunity to earn money, and not about the very dangerous working conditions that they would have to endure. Many children reported being shocked by the conditions at the mines upon arrival, and working every day in fear for their safety but feeling unable to leave due to financial constraints.

Padma, 15 years old from Bhojpur in Nepal, for example, did not know about the working conditions at the mine before he came and was shocked upon arriving at Meghalaya (Interview 6). Bishwa, 17 years old, was told the work was easy before coming to the mines from Nepal (Interview 12). He was therefore very shocked when he arrived in Meghalaya and saw the reality of work in the rat holes.

Dinkar, 18 years old, came with a group of friends from Nepal to work at the mines four months ago because his neighbours in Nepal told him that he could earn money by doing such work. He did not realize that the work would be so dangerous, and now truly regrets leaving Nepal and would like to return to Nepal and live with his parents (Interview 14). Ramchandra, 16 years old (Interview 8) and 16-year-old Bimal (Interview 9) came with a group of friends in Nepal and prior to arriving had not been informed about the details of the work or that it would be such dangerous.

When they realize the reality of the situation at the mines, many child labourers regret their decision to come and want to return home.

Yet, as Ragendra explained, returning home is not at all easy for children once they have been brought to the mines (Interview 29). Ragendra, who has been working for six years in various mines, explained that young children are often brought to the mines to work, and if they then decide not to work they are made to pay for the costs they incurred when they were brought to the mines, such as food and transportation. As a result many children stay at the mines to work because they cannot afford not to. Leaving the mines is simply not an option because the children could not otherwise pay for food, let alone transport home. Furthermore, many of the children are brought to the mines at such a young age, as young as 8 or 9, that they do not even know the location of their home village. Due to these serious financial and logistical constraints, the children brought to the mines have no choice but to stay and work, no matter how much they hate the work and fear for their safety.⁵¹

Under the United Nations *Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children*, the use of deception and fraud as a means of recruitment for exploitation constitutes trafficking in persons.

(3) Brokers' involvement

A mine manager (Interview 38), told HRN that he knows of the existence of brokers who recruit child labourers, although he does not use such brokers himself. The manager claimed that he has tried to persuade other managers to refrain from using such brokers because of the potential for exploitation, particularly with respect to child labourers.

Mine supervisor Biswas (Interview 23) told HRN that he has seen brokers bringing groups of children to the mines and being paid a commission by mine managers in return, though he did not know the amount of commission involved in the transaction.

The mine owner (Interview 39) made contradictory statements on this issue. First he told HRN that he does not recruit labourers, they come from Silchar (Assam, India), Bangladesh and Nepal upon their own initiative in search of work. However, he later said he pays his mine manager, or *sardar* (often translated as foreman, but also involved in recruiting labourers), a commission for various tasks including labour recruitment, and that *sardars* collect commissions from labourers.

Three labourers told HRN that they had been recruited from their hometowns by a *sardar* (a mine foreman acting as a broker). Jarjit, an 18-year-old from Assam, India, (Interview 16) heard about coal mine work from a *sardar* in his village, and 19-year-old Jung was brought to the mines from Nepal by a broker along with seven other children his age (Interview 17). Purkash, 20 years old (Interview 32), also heard about

⁵¹ *Trafficking for Prostitution*: HRN heard that further serious abuse of children is occurring in areas surrounding the mines, where children are being trafficked for prostitution. As the focus of the fact-finding team's investigation was the situation of the children working down the mines, the team was not able to investigate the child prostitution situation in any depth. However, the report that child trafficking for prostitution is taking place came from the mine manager (Interview 38) who has been managing a mine employing 250 labourers for five years. It should therefore be taken seriously and the situation must be investigated further. Given the large number of unregistered, itinerant workers in the region, the unregulated environment at the mines, the severe lack of concern that mine owners and managers have for the welfare of their employees, and the failure of local authorities to investigate and prosecute the serious human rights abuses at the mines, the area surrounding the mines is one in which children are highly vulnerable and one in which child prostitution could easily flourish.

coal mine work from a sardar in his home town in Nepal but was not informed about the details of the work. As a result he was very surprised to learn how difficult it is to work in a coal mine, where, he said, the working conditions are horrible. Purkash does not like the work and would like to return to his home town in Nepal.⁵²

10 Number of child labourers

In terms of the number of child labourers, an exact figure is unknown and difficult to calculate due to the temporary and itinerant nature of labour at the mines.

The HRN team witnessed many child labourers almost everywhere throughout mines and coal cutting sites in Jaintia Hills. For example, the fact-finding team saw at least 25 child labourers at one large mine. That suggests quite a large number of child labourers in coal mines in Jaintia Hills.

Gopal (interview25), a coal deliverer between Meghalaya and Guwahati with two years working experience, estimated that approximately 100 child labourers work at his mine, and a majority of these children are from Nepal. Gopal estimated that more than 1000 child labourers from Bangladesh are working in other mines in Meghalaya. The Impulse NGO Network estimates a much higher number of child labourers, estimating that there are 70,000 child labourers in the area.

The statement made by a manager that HRN team interviewed suggests further. He said that there are approximately 100,000 mines in the area. Even if the manager is over-estimating the number of mines, the manager's statement suggests a much larger scale of child labour than the Impulse estimation.

11 Destination of coal

HRN tried to identify the destination of coal product extracted from coal mines in Jaintia Hills but was unsuccessful.

Several sources told us that coal is brought to the Port of Chittagong, the largest seaport in Bangladesh, and shipped from there to foreign countries. Yet, to date, no reliable data or evidence to support these remarks have been found. HRN, together with Impulse NGO, continue to search for the final destinations, and attempt to determine if coal products are sent third countries and purchased by large companies in the world.

VII. Violation of India's Domestic Law and International Law

⁵² HRN also found a number of children working at the mine with relatives. This may be another consequence of migration of groups from the same village, where children are brought along with older labourers. 15-year-old Yogesh, for example, is working at the same mine as his father and many other people from the same village in Nepal (Interview 7). 14-year-old Amar told HRN that his father used to work in the same mine (Interview 4). HRN also interviewed a father and son, Darpan (Interview 21) and Panna (Interview 22); originally from Nepal, 13-year-old Panna had been brought to the mines when he was only 3 years old by his father, Chamber, and they now work at the same mine.

The movement of child labourers is therefore very closely related to the movement of adult labourers to the mines in Meghalaya, and in some cases family links continue at the mines and influence the movement of child labour.

This chapter examine whether above situation of child labour in Jaintia Hills constitutes violation of domestic and international law.

1 India's obligations under federal law

(1) Overview and problems

The federal Indian parliament is vested with exclusive power under the Constitution to legislate on matters of labor and safety in mines, and it can be considered to have the authority to act on issues related to mining in Meghalaya state.

The Constitution prohibits the employment of children (those under the age of 14) in mines, and it obliges the government to ensure that no children are being subjected to such work. Additionally the Constitution obligates the government to ensure that children are not forced to engage in work unsuited to their age or strength as a result of economic necessity.

Federal laws enacted by Parliament include: the Child Labour (Prohibition and Prevention) Act (1986), which prohibits the employment of children under 14 in mines or other hazardous work; the Mines Act (1952), which as a general rule prohibits the employment of those under 18 in mines; and The Mines Rules (1955), which contains clauses similar to the Mines Act. In addition, the Coal Mines Regulations (1957) and the Mines Act (1952) codify safety rules and procedures and labor conditions to ensure the health and safety of workers.

However, these federal laws have not yet been adequately implemented throughout India. In particular, in Meghalaya state, notwithstanding the aforementioned Acts of Parliament which should be applicable to the mines in the state, a widely held misinterpretation of the Sixth Schedule in conjunction with the lack of will to enforce the laws have prevented the enforcement of international and union laws in Meghalaya.

The Sixth Schedule of the Constitution provides autonomy for tribal districts, allowing local councils to enact laws in order to preserve traditions and customs. Although there are numerous judicial cases which have limited the authority of the Sixth Schedule, the Sixth Schedule continues to be used to justify the ignoring of all federal legislation. This section focuses on the Indian obligation under federal law and its applicability in Meghalaya state.

(2) India's Constitutional Obligations

India's Constitution does not ban all forms of child labour. The Union Government of India does, however, have a legal obligation to ensure that children are not in hazardous employment, both as a matter of enforcing the constitutional prohibitions and also to protect the constitutionally guaranteed rights of the children. There are several provisions under Part III-Fundamental Rights (Article 24) and Part IV-Directive Principles of State Policy (Articles 38, 39, 41, 45 and 47) which address the rights of children and which oblige the Union Government to take action.

Article 24 of the Constitution states as a fundamental right that "[n]o child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment."⁵³ This section does still allow those between the ages of 14 and 18 to work in mines and those under 14 to work in any occupation deemed non-hazardous (other than factories and mines). The Supreme Court of India addressed the government's obligation to enforce article 24, in *People's Union for Democratic Rights v. Union of India*, stating: "This is a constitutional prohibition which, even if not followed up by appropriate legislation, must operate proprio vigore.... no child below the age of 14 years can be employed in construction work and the Union of India and also every State Government must ensure that this constitutional mandate is not violated in any part of the country."⁵⁴ The Court placed special emphasis on article 24, even among the other fundamental rights set forth in the Constitution stating, in contrast to fundamental rights which limit state power and are enforceable only against the state, that: "there are certain fundamental rights conferred by the Constitution which are enforceable against the whole world and they are to be found inter alia in articles 17, 23 and 24."

In addition to article 24, articles 38 (the State is to promote welfare of the people), 39 (health of children is not to be abused; children are not to be forced into unsuitable work by economic necessity), 41 (right to education), 45 (free education) and 47 (duty to improve health) are directives under the Constitution which obligate the Union to protect and promote the livelihood of children. Although article 37 of the Constitution states that these articles are not in themselves enforceable, the court in *M.C. Mehta v. State of T.N.* stated

Though other articles are part of directive principles, they are fundamental in the governance of our country and it is the duty of all the organs of the State (a la Article 37) to apply these principles. Judiciary, being also one of the three principal organs of the State, has to keep the same in mind when called upon to decide matters of great public importance. Abolition of child labour is definitely a matter of great public concern and significance.⁵⁵

Although only the hiring of children under 14 would be per se illegal under the Constitution, the employment of any children is counter to the spirit of the Constitution and the Union should take measures to minimize this occurrence. Reading the directives in the context of the protection of fundamental rights, it is clear that it not only makes it illegal to hire a child under the age of 14 in a mine, but there is also a duty on the government to ensure that no child is being subjected to such labour.

(3) Other National Laws on Child Labour

The Union Government has exclusive power to make laws on the regulation of labour in mines; therefore, national laws should also apply to all autonomous districts.⁵⁶ In addition to the Constitution, there are a number of acts of parliament that make it clear that children (whether defined as under 14 as in the Constitution, or as under 18 in line with international standards) may not be employed in mines.

⁵³ Constitution of India. Part III, Article 24.

⁵⁴ *People's Union for Democratic Rights v. Union of India*: [(1982) 3 SCC 235; AIR 1982 SC 1473]

⁵⁵ *M.C. Mehta v. State of T.N.*: [(1991) 1 SCC 283]

⁵⁶ See Note 5 *supra*.

- 1) The Child Labour (Prohibition and Prevention) Act of 1986, which applies to all of India, states clearly that children under 14 may not be employed in mines or any other hazardous processes.⁵⁷
- 2) The Mines Act of 1952 (Updated to 1983) goes further, prohibiting the employment of those under 18 in mines, unless working as an apprentice under the supervision of a manager, in which case they must be 16.⁵⁸
- 3) The Mines Rules of 1955 has a similar clause.⁵⁹ Indeed, individuals under the age of 18 (with the exception of apprentices) may not even be present in a mine when mining operations are in effect.⁶⁰ Mines are required to keep records of all of their employees, including their age, name, and father or husband's name if applicable, and complete information on each employee is required before they may begin work.⁶¹ The central government of India has the authority to appoint a Chief Inspector who would be tasked with ensuring compliance with the regulations of the Mines Act, and it has a legal obligation to ensure compliance and protection of children, by means of an Inspector or otherwise.⁶²
- 4) The Coal Mines Regulations (1957) further codifies safety rules and procedures for the mines. Although not specifically speaking to the use of child labour, the Regulations do provide that "No adolescent or woman shall descend or ascend a shaft in a cage or other means of conveyance unless accompanied by one or more adult males."⁶³ This suggests that adolescents are working inside the mines, and the only time when supervision is necessary is when they are descending into the mine via the mine shaft. Nonetheless, the use of adolescents cannot be said to be in contravention to the system of apprenticeship. However, unlike the Mine Rules, no minimum age is set and the term adolescent is not defined.
- 5) With regard to the case of children between the ages of 16 and 18 legally working in mines as apprentices, India has the obligation to ensure that the mines are reasonably safe and that adequate precautions are taken in order to protect the health of the employees. Under the Mines Act, every mine must provide cold drinking water at convenient, sanitary points in the mines, first aid supplies must be available, and mines must ensure that the mining operations are conducted safely.⁶⁴ Employees are only permitted to work a limited number of hours a day in order to minimize the risk of error or ill effect on health due to fatigue.⁶⁵ Inspectors are given the authority to require correction

⁵⁷ Child Labor (Prohibition and Prevention) Act 1986, Part III.

Found online at <http://labor.nic.in/cwl/ChildLaborAct.doc>

⁵⁸ Mines Act of 1952, Chapter VI Section 40. Found online at http://coal.nic.in/weboflife-minenessafety/ma_1952.pdf

⁵⁹ Mine Rules (1955), Page 70. "A person below 18 years of age shall not work in any part of a mine unless he is an apprentice or a trainee in which case he may be below 18 years not below 16 years of age."

⁶⁰ Mines Act of 1952. Section 45

⁶¹ *Id.* Section 48. See also the Mines Rules (1955), Section 71. The Mines Rules provide a procedure for the Mine Inspector to disallow any individual whom he believes is under the age of 16 from working, until a qualified doctor confirms his age.

⁶² *Id.* Chapter II.

⁶³ The Coal Mines Regulations (1957), 52

⁶⁴ Mines Act of 1952. Chapter V, Sections 19-22.

⁶⁵ *Id.* Chapter VI, Sections 30 & 31.

of any unsafe work environments, and they have the authority to shut down a mine which has failed to comply.⁶⁶ The government of India has the obligation to ensure that these enforcements are adequately carried out, and that violations are appropriately prosecuted and punished.

- 6) The Immoral Traffic Prevention Act (1986) is in force in India. This act prohibits forms of sex trafficking and prescribes penalties which range from seven years to life imprisonment.⁶⁷ However, this act focuses solely on trafficking in relation to prostitution and ignores the issue of trafficking for other types of exploitation. This means that there is a gap in protection over children who are not trafficked for the purposes of prostitution. Additionally, this act does not define trafficking.⁶⁸

(4) Federal Safety and Protection Laws for Mines and Mine Workers

India's Mines Rules of 1955 and Coal Mines Regulations of 1957 both provide numerous protections for mine employees and labourers. The Mines Rules of 1955 further provides for the appointment by the central government of India of a Chief Inspector, other inspectors, and for large mines dedicated workmen's inspectors, all tasked with ensuring compliance with the safety and protective regulations of these acts and any other relevant legal obligations such as protection of children. Coal Mine Regulations 1957 further provides for regional inspectors tasked with ensuring compliance, and compliance and oversight obligations of mine managers and safety officers at the mines themselves. In practice this layered network of oversight and obligation has completely failed at all levels to prevent rampant violations of the safety and protective regulations in the mines of Jaintia Hills, however.

Under the Mines Rules of 1955, mines are required to keep records of all of their employees, including their age, name, and father or husband's name if applicable, and complete information on each employee is required before they may begin work.⁶⁹ In Jaintia Hills, the mines we investigated totally failed to make record of workers, and there is no indication that the Chief Inspector's office or regional inspectors offer any deterrent at all to the violations.

As for the safety rules and procedures of the Coal Mines Regulations (1957), the interviews indicate or suggest that there have been violations of virtually every safety procedure for which there is a rule, including violations of the requirement to notify Regional Inspectors after accidents and illness with a specific report, including details of those injured or killed (Articles 9, 10; Forms 4A, 4B, 5); a prohibition on preventing or threatening anyone complying with any safety rule (Art 38(b)); requirements of safety duties and procedures by managers, safety officers, and sardars (foremen), including inspections, providing safety classes, instructions and information, investigating complaints, and conducting mandatory investigations and reports of accidents (Articles 31, 41, 113); requirements to supply safety

⁶⁶ Id. Chapter V, Section 22

⁶⁷ US Department of State, Trafficking in Persons Report 2010, p192.

⁶⁸ Goa State has enacted a state law prohibiting child trafficking. The Goa Children's Act (2003) defines and prohibits trafficking and includes terms of imprisonment of up to three months and/or a fine for child trafficking. While the Goa's Act is a welcome development, it can be seen that the penalties that it prescribes are not sufficiently stringent.

gear to workers such as protective shoes and helmets (Article 190); requirements for those in specialist positions, such as machinery operators and engineers, to ensure safe operation of all machinery, proper ventilation of all parts of the mine, structural integrity of the mine, the safe conveyance of all material and personnel into and out of the mine, etc (Chapter 5), with requirements for qualification certificates (given by examination, Chapter 3) and competence requirements (20 years or older, Article 2(7)) for such specialist positions; structural requirements for safe movement into, out of, and within mines such as safe and secure lifts, ladders, inclines, tunnels, and support pillars, with a duty to maintain them in good repair (Chapter 7); and special precautions for fire, dust, gas, and water risks (Chapter 11), ventilation (Chapter 12), safety with explosives and shotfiring (Chapter 14), and all machinery and equipment (Chapter 15). Article 190 specifically prohibits any person from negligently or willfully do[ing] anything likely to endanger life or limb in the mine, which directly prohibits punitive measures that put workers' lives at risk. It also requires closing off any unsafe areas to workers such as unsafe shafts and passages (Article 70(2)), or following accidents to prevent further accidents, allow for rescues, and remove bodies (Article 199).

All of these safety violations are particularly troubling in the context of child labourers, exacerbating their already vulnerable situation in terms of safety, health, lack of experience, development, and wellbeing. Again, there is no indication that the Chief Inspector's office, other inspectors, or regional inspectors offer any effective deterrent at all to the violations, making them a failure of meeting obligations at all levels of administration, from the mines to the regional and central levels of oversight.

(5) Applicability of Federal Laws to the Mines

In order for the Union Government to have legal obligations to eliminate child labour in Meghalaya, it must have jurisdiction in the state – that is, its laws must apply.

Many governmental authorities, local authorities,⁷⁰ mine owners (see Interview 39) and managers (see Interview 38), and even NGOs mistakenly believe that the Constitution and Acts of Parliament as well as the national mining and occupational health regulations do not apply to mines located in areas designated in the Sixth Schedule. However, there is no judicial or legislative precedent that supports this position, and this remains a fundamental misunderstanding that must be corrected in India.

1) Part XI of the Constitution

Part XI of the Constitution enumerates the relations between the national government and the state governments. Article 245 of the Constitution provides that the Union Parliament is empowered to make laws for the whole or any part of the territory of India and that "No law made by Parliament shall be deemed to be invalid on the ground that it would have extra-territorial operation."⁷¹ Article 246 of the

⁷⁰ But see, statement by State of Meghalaya "Indian Labor Laws are applicable throughout the country," <http://meghalaya.nic.in/industry/human.htm>

⁷¹ Constitution of India, Article 245. (1) Subject to the provisions of this Constitution, Parliament may make laws for the whole or any part of the territory of India, and the Legislature of a State may make laws for the whole or any part of the State. (2) No law made by Parliament shall be deemed to be invalid on the ground that it would have

Constitution follows on this by clearly delineating three general categories of exclusivity in law-making power between Parliament and State legislatures, separated according to subject matters listed in Schedule VII of the Constitution.⁷² List I sets forth matters over which Parliament has exclusive power to make laws; List II sets forth matters regarding which the Legislature of any State has exclusive power to make laws; and List III sets forth matters over which both the Parliament and the Legislature of any State have concurrent power to make laws. In addition, Parliament has the power to make laws over any matter not listed in Schedule VII.⁷³ In List I, two items vest the federal Parliament with exclusive power to regulate working conditions in mines. These are, namely, Item 54 (Regulation of mines and mineral development to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest) and Item 55 (Regulation of labor and safety in mines and oilfields). Parliament has explicitly stated that it is expedient in the public interest that the central government should take under its control the regulation and development of coal mines in some of its legislation.⁷⁴ Thus, any federal law which has at its object the safety of mines in Meghalaya should apply within Meghalaya state.

2) *The Structure of the Autonomous Districts and the Sixth Schedule*

Many people in India perceive the applicability of federal laws as being limited due to the Sixth Schedule. Under the Indian Constitution, certain regions of Meghalaya are designated as tribal areas where the Sixth Schedule applies.⁷⁵ The Sixth Schedule was established with respect to certain tribes in northeast India to account for the distinct community structures and attitudes of the tribes.⁷⁶ The Sixth Schedule of the Indian Constitution divides the tribal areas within the State of Meghalaya into the three areas of Khasi Hills District, Jaintia Hills District and the Garo Hills District.⁷⁷ The Sixth Schedule vests a local governing council (District Council or Regional Council) with legislative authority over certain matters that in other non-tribal states are delegated to the state legislature.⁷⁸ Pursuant to Paragraph 3(1) of

extra-territorial operation.

⁷² Constitution of India, Article 246. (1) Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the Union List).

⁷³ Constitution of India, Article 245. (1) Parliament has exclusive power to make any law with respect to any matter not enumerated in the Concurrent List or State List.

⁷⁴ Coal Mines (Conservation and Development) Act of 1974, Article I section 2. Found online at <http://coal.nic.in/ccda6.pdf>. However, it has not done so in others, choosing instead to simply state that the act applies to all of India. (See the Mines Act (1952). http://coal.nic.in/weboflife-minesafety/ma_1952.pdf. See also the Child Labor (Prohibition and Prevention) Act (1986). <http://labor.nic.in/cwl/ChildLaborAct.doc>) It is unclear whether such acts are binding in jurisdictions governed under the fifth or sixth schedules, or if there is an implicit except in autonomous districts clause.

⁷⁵ Const. of India, Article 244(2) (2) The provisions of the Sixth Schedule shall apply to the administration of the tribal areas in 2[the States of Assam 3[, 5[Meghalaya, Tripura and Mizoram]]].

⁷⁶ Apoorv Kuroo, p. 91.

⁷⁷ Const. of India, Sixth Schedule, Paragraph 20(1) The areas specified in Parts I, II 2[, IIA] and III of the table below shall respectively be the tribal areas within the State of Assam, the State of Meghalaya 2[, the State of Tripura] and the 3[State] of Mizoram.

⁷⁸ The Regional Provident Fund Commissioner etc. vs. Shillong City Bus Syndicate & ANR, etc (1996)

The District and Regional Councils are vested with legislative authority on specified subjects and allotted fields of legislative power on taxation and they are given power to set up and administer their system of justice and maintain administration and welfare services in respect of the subjects enumerated in paragraph 3 of the Schedule, in particular in respect of land, revenue, forest, education, public health, etc.

the Sixth Schedule, the Regional Council (or District Council) has the power to make laws with respect to: (a) the allotment, occupation or use, or the setting apart, of land; (b) the management of any forest not being a reserved forest; (c) the use of any canal or water-course for the purpose of agriculture; (d) the regulation of the practice of jhum or other forms of shifting cultivation; (e) the establishment of village or town committees or councils and their powers; (f) any other matter relating to village or town administration, including village or town police and public health and sanitation; (g) the appointment or succession of Chiefs or Headmen; (h) the inheritance of property; (i) marriage and divorce; and (j) social customs.

3) *Limited Powers of Sixth Schedule: Text and Judicial Cases*

The powers delegated to the local councils under the Sixth Schedule are generally limited and cannot in any case be used as a shield allowing the continuation of exploiting labourers in mines. This narrow interpretation of the powers of the local council is supported by the text of the Constitution, legislative intent and judicial cases.

The text of the Sixth Schedule limits the scope of the authority of the local councils. First, the local councils are only granted legislative authority with respect to matters enumerated in Paragraph 3(1) of the Sixth Schedule. Second, Section 12A(b) of the Sixth Schedule establishes that acts of Parliament are applicable to the autonomous districts unless the President directs that it shall not apply or apply with subjections to a specific autonomous region in the State of Meghalaya.⁷⁹ Since the President has not explicitly exempted the tribal areas of Meghalaya from the acts, rules and regulations enacted by the Parliament regarding labour and mining discussed above must be adhered to and enforced by local law enforcement officials.⁸⁰

Past judicial cases generally support the aforementioned position regarding the limited powers delegated to local councils under the Sixth Schedule. While earlier cases provide a broader interpretation of the powers delegated to local councils based on an expansive view of the Sixth Schedule,⁸¹ recent judicial cases have taken a limited interpretation of the powers of the local councils and take the position of the Sixth Schedule having to be read in the context of the entire Constitution. In discussing the legislative

⁷⁹Section 12A(b) of the Sixth Schedule provides: "the President may, with respect to any Act of Parliament, by notification, direct that it shall not apply to an autonomous district or an autonomous region in the State of Meghalaya, or shall apply to such district or region or any part thereof subject to such exceptions or modifications as he may specify in the notification and any such direction may be given so as to have retrospective effect."

⁸⁰Constitution of India Sixth Schedule, Section 12A. Contrast to Section 12 on Assam. Assam has been given greater possibilities for exemption. While there is some textual ambiguity since the Sixth Schedule does not place federal law over local laws in cases of conflict or note that no other laws are subject to exemption, the argument that there is essentially complete autonomy is not supported by the text. The wording of the statute seems to imply that, since the governor of Meghalaya is not given the explicit authority to exempt autonomous districts from acts of Parliament as in Assam, no such power exists, and that exemptions are limited to those clearly stated in the constitution.

⁸¹*Edwington Bareh v. State of Assam and Others*, the Supreme Court in discussing the application of the Sixth Schedule in the state of Assam stated "tribal areas in Assam would be governed not by the other relevant provisions of the Constitution which apply to the other constituent States of the Union of India, but by the provisions contained in the Sixth Schedule. These provisions purport to provide for a self-contained code for the governance of the tribal areas forming part of Assam and they deal with all the relevant topics in that behalf."

powers of the local councils in *District Council of United Khasi & Jaintia Hills & Ors. Etc. vs. Miss Sitimon Sawian, etc.* (1971), the Supreme Court stated, "It is clear from Para 12 of the Sixth Schedule read with para 3 (1) (a) that the District Councils, unlike the Parliament and the State Legislatures are not intended to be clothed with plenary power of legislation. Their power to make laws is expressly limited by the provisions of the Sixth Schedule which has created them and they can do nothing beyond the limits which circumscribe their power." In a recent case, *Pu Myllai Hlychho & Ors. vs State of Mizoram & Ors.* (2005) involving a dispute between the State Governor and the Regional Council, the Supreme Court adopted a similar position stating, "These councils are vested with legislative power on specified subjects, allotted sources of taxation and given powers to set up and administer their system of justice and maintain administrative and welfare services in respect of land, revenue, forests, education, public health etc." and that "It is impossible to visualize complete segregation of the Sixth Schedule from the rest of the Constitution. As regards the inclusion of the Sixth Schedule to the Constitution, there is a legislative history, but that by itself is not sufficient to hold that the Sixth Schedule is a 'Constitution within the Constitution'"⁸²

4) Purpose of Sixth Schedule: Legislative Intent

Using the Sixth Schedule as a shield to prevent the enforcement of national laws that are intended to protect people working in tribal areas runs counter to the purpose of the Sixth Schedule. The Supreme Court has repeatedly affirmed that the purpose of the Sixth Schedule is to protect the interests of the tribal people. In *State of Assam vs. Ka Brhyien Kurkalang & Ors.* (1971) the Supreme Court stated: "The object underlying paragraph 12 is to save the legislative powers of the District and Regional Council conferred under paragraph 3 and to safeguard the special characteristics of the people living in the autonomous districts and regions." Similarly in *Regional Provident vs. Shillong City Bus* (1996), the court stated, "The object of the Schedule is to preserve the autonomy of the tribals and groups of tribals in the autonomous District by automatic application of Acts of Parliament or State Legislature." In *Samatha vs. State of Andhra Pradesh* (1997) it stated, "Thus, the Fifth and Sixth Schedules an integral scheme of the Constitution with direction, philosophy and anxiety is to protect the tribals from exploitation and to preserve valuable endowment of their land for their economic empowerment to elongate social and economic democracy with liberty, equality, fraternity and dignity of their person in our political." In considering the legislative intent of the tribal people, the Sixth Schedule was established to promote their autonomy and protect certain traditions. The use of the Sixth Schedule to exempt the enforcement of international, constitutional and national laws to protect the labourers is unfounded in both judicial precedent and legislative intent.

(6) Conclusion

1) The State of Meghalaya has accepted and allegedly adheres to all federal laws governing mining, including, without limitation, federal laws regulating the age of employees, safety, and working conditions surrounding the mines. Notwithstanding the fact that the State of Meghalaya has agreed that the State has no power to make laws regulating labour as that is the jurisdiction of the Federal government, the Sixth Schedule of the Indian Constitution complicates the situation in the autonomous districts. Nonetheless, there is no reason to conclude that the Federal laws, regulations and/or acts pertaining to the

⁸²*Pu Myllai Hlychho v. State of Mizoram*, [2005] 2 S.C.C. 92.

use of child labour do not apply to the autonomous districts in Meghalaya. First, the Sixth Schedule does not vest the autonomous district and/or regional councils with the power to legislate on the issue of any type of labour or mining, but merely grants them the right to use the land in a way that they wish. To say that the use of exploitative use of child labour in a mine is a subset of use of land is a gross exaggeration and was no way intended by the framers. Generally, the Sixth Schedule is a list of enumerated powers, vesting the autonomous councils with said powers, all other power remaining with the state. Second, by virtue of the fact that the autonomous districts and/or regions cannot legislate on the use of labour, it is correct to conclude that said power remains with the State of Meghalaya. Third, the State of Meghalaya has accepted all Federal legislation regulating the mines.⁸³ Fourth, the Sixth Schedule provides that the laws governing the State of Meghalaya trump the laws of the autonomous regions and/or districts if said law is repugnant to the state law. Thus, by virtue of the foregoing, it is not only plausible but highly likely that the framers intended that autonomous regions follow the federal/state regulations on mining and similarly divest the autonomous councils from the ability to make laws regulating labour. This conclusion is further supported by the fact that the United Khasi-Jaintia Hills District has not published any legislation on labour or mining since 1952.⁸⁴

2) Thus, the situation in Jaintia Hills of using child labour under 14 years old constitutes a violation of article 24 (Prohibition of Child Labour) of the Constitution, as well as the Child Labour (Prohibition and Prevention) Act of 1986. Other constitutional violations include articles 38 (State to promote welfare of the people), 39 (health of children not to be abused; children not to be forced into unsuitable work by economic necessity), 41 (right to education), 45 (free education) and 47 (duty to improve health). Moreover, the situation in Jaintia Hills using children under 18 years old constitutes a violation of the Mines Act of 1952 (Updated to 1983) as well as the Mines Rules of 1955. As discussed above, the mines also rampantly violate safety and other rules for the protection of workers under the Mine Rules of 1955 and Coal Mine Regulations of 1957, which violations especially negatively impact child labourers.

2. International legal obligations

India has signed, ratified, or acceded to various international and regional human rights treaties, meaning that in many cases it has agreed to be bound by or agreed not to carry out acts against the purposes of these treaties on issues such as children's rights, child labour and trafficking.

(1) Obligation to prevent and protect children from child labour and economic exploitation

India bears obligations regarding child labour under several ILO conventions, the CRC and ICESCR. India's duties under the ILO and UN jurisdictions overlap, but the duties imposed by the instruments of the respective jurisdictions remain separate. These are discussed below.

1) International Labour Organization Conventions

India has ratified the following International Labour Organisation (ILO) Conventions:⁸⁵

⁸³ See Draft Mining Policy 2009. See also, Const. of India, Seventh Schedule, entry 54 and 55.

⁸⁴ See State of Meghalaya Website re: acts, rules, and regulations.

⁸⁵ In addition, India is a participant of the International Programme on the Elimination of Child labor (IPEC), which was initiated by the ILO in 1992 to reduce all forms of child labour and protect children. IPEC also aims to provide preparation for formal education after children have been stopped work, however, as India has not ratified C138 and C182 it is questionable whether IPEC is functioning efficiently in India.

- Minimum Age (Industry) Convention, 1919 (C5);
- Night Work of Young Persons (Industry) Convention, 1919 (C6);⁸⁶
- Forced Labor Convention, 1930 (C29);
- Abolition of Forced Labor Convention, 1957 (C105); and
- Minimum Age (Underground Work) Convention, 1965 (C123).⁸⁷

India has obligations regarding forced labour under all of the five ILO Conventions that it has ratified, but C5 and C123 are directly relevant to the issue of child labour, as they both stipulate minimum ages for the employment of children.

C5 and C123 are now outdated and have been replaced by The Minimum Age Convention 1973 (C138) and the principal ILO Convention on child labour, the Worst Forms of Child Labour Convention, 1999 (C182), both of which India has not yet ratified. Although the ILO, UNICEF, the World Bank and Committee on the Rights of the Child have recommended that India ratify C138 and C182, India has not yet changed its attitude toward the two conventions.

As a result of India not ratifying Conventions 138 and 182 on child labour, India continues to bear obligations towards children under C5 and C123.

Article 2 of C5 provides that:

Children under the age of 14 years shall not be employed or work in any public or private industrial undertaking,⁸⁸ or in any branch thereof, other than an undertaking in which only members of the same family are employed.

With respect to mining work, article 2 of C123 stipulates that:

1. Persons under a specified minimum age shall not be employed or work underground in mines.
2. Each Member which ratifies this Convention shall specify the minimum age in a declaration appended to its ratification.
3. The minimum age shall in no case be less than 16 years.

India is obliged to take all necessary measures, including the establishment of appropriate penalties, to ensure that persons under 16 are not employed or work underground in mines (Article 4(1)). Under article 4(2), India must maintain an appropriate inspection service to supervise the implementation of C123, and under article 4(3), India must define the people responsible for compliance with the Convention by national law or regulation. Article 4(4) requires employers to keep, and make available to inspectors, records of children who are less than 18 years older than the specified minimum age, including (a) the date of birth and (b) the date of employment.⁸⁹

Turning to the forced labour conventions, C29 and C105, under article 1 of both, have the primary discipline to undertake to suppress the use of forced or compulsory labour in all its forms (C29) and making use of forced or compulsory labour for political, economic, labour, punitive, or discrimination reasons (C105). The conventions apply to the forced labour of children as well, whether trafficked or not, and whether the employer is public or private. Notably, under C29, while there are a narrow set of

⁸⁶ C6 has been replaced by the Night Work of Young Persons (Industry) Convention (Revised), 1948 (C90).

⁸⁷ The Minimum Age (Underground Work) Recommendation, 1965 (R124) was adopted in 1965.

⁸⁸ "Industrial undertaking" is defined in article 1(a), C5 as including work in mines, quarries and extracting minerals from the earth.

⁸⁹ At the time of ratification, India voluntarily stipulated its minimum age for C123 as being 18. See India's Declaration accompanying its ratification of C123.

activities falling either outside the definition (Article 2, such as military service or service pursuant to a conviction) or exceptions where compulsory labour may be allowed in limited situations (Article 8, restricted to situations of immanent necessity for public benefit) these apply to either the listed jobs under article 2, or only adult able-bodied males who are of an apparent age of not less than 18 (Article 11(1)), with a further exemption specifically for school pupils (Article 11(1)(b)) under article 8. In any event, none of these situations apply to commercial activity such as mining.

Despite these obligations and widespread reports of forced labour in India, according to a 2008 US State Department report, only 19 arrests were made on suspicion of trafficking for bonded labour between April 2007 and May 2008, and in the years before 2007, while the State of Tamil Nadu convicted 803 employers under forced labour charges, none of them received any criminal or civil penalties.⁹⁰ The report continues:

despite widespread reports of fraudulent recruitment practices, the Indian government did not report any arrests, investigations, prosecutions, convictions, or punishments of labour recruiters who participate in or facilitate the trafficking of Indian workers into situations of forced labor abroad.⁹¹

With specific reference to forced child labour, one report noted that, as of 1996, no person has been convicted of a crime associated with conducting or planning forced child labour.⁹² And despite the Indian government sending 22 state and federal officers to an ILO programme on combating child trafficking in January 2008, the Indian government has not changed its law enforcement action against child trafficking or child bondage following the programme, nor has any individual been convicted or sentenced for either crime.⁹³ The government has also been deficient in its rehabilitation of children rescued from forced labour. According to the State Department report:

Although children trafficked for forced labor may be housed in government shelters and are entitled to 20,000 rupees (\$450), the quality of many of these homes remains poor and the disbursement of rehabilitation funds is sporadic.⁹⁴

2) *United Nations Convention on the Rights of the Child*

India acceded to the CRC in 1992.⁹⁵ In situations of child labour, article 32 (prohibition on economic exploitation) and article 39 (the obligation of states to take measures to promote the recovery and social integration of children who are victims of exploitation) are directly relevant. It must be noted that the CRC makes a distinction between economic exploitation and work. Child labour becomes economic exploitation when it threatens the physical, mental, emotional and social development of children.⁹⁶

Under article 32, children have a right to be protected from economic exploitation and from performing work that is likely to interfere with a child's education, or is harmful to their development (Article 32(1)). This requires protection of children from work that is likely to impact on the child's education.⁹⁷ States are under an obligation to take positive legislative, administrative, social and educational measures to ensure that children are protected from economic exploitation (Article 32(2)). The CRC requires that

⁹⁰ U.S. State Dept., Office of the Under Secretary for Democracy and Global Affairs and Bureau of Public Affairs: *Trafficking In Persons Rep.: India, Prosecution* (2008).

⁹¹ *Id.*

⁹² *Indian Laws Against Bonded Labor*, The South Asian, March 15, 2005

⁹³ U.S. State Department (Trafficking), *supra* note 90.

⁹⁴ *Id.*

⁹⁵ The Convention on the Rights of the Child is an international treaty establishing the rights of children (defined as being all persons under the age of 18).

⁹⁶ Geraldine Van Bueren, *International Law on the Rights of the Child* (Leiden: Martinus Nijhoff, 1994), p 264.

⁹⁷ *Id.*, 405

states parties establish minimum ages for admission to employment, establish systems to regulate hours and conditions of employment, and provide effective penalties so that article 32 is adequately enforced.⁹⁸ The Committee has indicated that minimum ages should be established in light of other international instruments, and in particular ILO C138, and it consistently refers to standards set by ILO C138, which India has not ratified.⁹⁹ In cases where children are permitted to work (where they are above the minimum ages and where work is not likely to be hazardous, interfere with the child's education or be harmful to the child's health or development), article 32(2) requires close regulation.¹⁰⁰ Effective enforcement required under article 32(2)(c) includes labour inspections, the establishment of a complaints procedure, and adequate penalties where laws are not complied with.¹⁰¹ Additionally, in order to fulfill the obligation to protect children from economic exploitation under article 32, states parties must provide education on the issue of economic exploitation of children to people within its jurisdiction to prevent its occurrence. Under article 39, states are obliged to take appropriate measures to promote the recovery and social reintegration of child victims of any form of exploitation.

Despite article 32's importance in tackling the problem of child labour in India, India has made a declaration regarding article 32 which affirms that it will make laws regarding child labour and minimum ages for employment etc. at its own pace.¹⁰² The effect of this declaration is that while India remains bound by article 32, India emphasizes that the speed with which it implements article 32 is entirely its own prerogative.

3) *United Nations International Covenant on Economic, Social and Cultural Rights*

In addition to the CRC, India acceded to the ICESCR on 10 April 1979, and has an obligation to implement the rights contained therein. Article 10 of the ICESCR provides that children should be protected from economic exploitation, and provides that states should establish laws that outlaw work which is harmful to children's health, dangerous to their lives, or hampers their normal development. Specifically, it provides that:

Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labor should be prohibited and punishable by law.

⁹⁸ Rachel Hodgkin and Peter Newell, *Implementation Handbook for the Convention on the Rights of the Child* (UNICEF, 2002), p 475.

⁹⁹ *Id.*, 488-9.

¹⁰⁰ *Id.*, 489.

¹⁰¹ *Id.*, 490.

¹⁰² India's declaration reads: "While fully subscribing to the objectives and purposes of the Convention, realising that certain of the rights of child, namely those pertaining to the economic, social and cultural rights can only be progressively implemented in the developing countries, subject to the extent of available resources and within the framework of international co-operation; recognising that the child has to be protected from exploitation of all forms including economic exploitation; noting that for several reasons children of different ages do work in India; having prescribed minimum ages for employment in hazardous occupations and in certain other areas; having made regulatory provisions regarding hours and conditions of employment; and being aware that it is not practical immediately to prescribe minimum ages for admission to each and every area of employment in India - the Government of India undertakes to take measures to progressively implement the provisions of article 32, particularly paragraph 2 (a), in accordance with its national legislation and relevant international instruments to which it is a State Party."

Therefore, India has an obligation under the ICESCR and CRC to protect children from economic exploitation by providing laws which define age limits for employment, establishing systems to investigate those who employ and economically exploit children, and providing education regarding the issue of child labor so as to prevent its occurrence. Where child labour or economic exploitation is found to exist, India has an obligation to establish systems for the prosecution of alleged perpetrators, and it has an obligation to rehabilitate victims and reintegrate them into society. While India bears the above obligations with regard to child labour, employers of child labourers and those involved in the economic exploitation of children are, in general, not state agents but third parties. Under general international law, states have an obligation to exercise due diligence in protecting children from and preventing child labour. This duty under general international law (as distinct from the obligations imposed by treaties) obliges states to take effective measures to protect rights of individuals, including in cases where violations of rights are perpetrated by non-state actors.¹⁰³ States have at the very least an obligation to prosecute perpetrators of human rights violations.¹⁰⁴ A state may violate human rights by tolerating the commission of human rights violations by third parties.¹⁰⁵ Thus, India has an obligation to prevent, investigate and punish non-state actors (e.g. employers) who violate children's right to be protected from child labour and economic exploitation.

(2) Obligation to protect children from violence: Extrajudicial killings and cruel and degrading forms of punishment

The team heard very serious allegations that children are victims of extrajudicial killings and cruel and degrading forms of punishment in Meghalaya's coal mines. India has undertaken duties under the ICCPR to ensure that the right to life of children is upheld, and under the CRC to ensure that children are not victims of cruel and degrading forms of punishment.

1) Right to life - Extrajudicial killings

The ICCPR in article 6 provides that: "Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life." Extrajudicial killings are clearly contrary to the right to life established by the ICCPR.

India's ratification of the ICCPR means that it is obliged to respect the right in principle and also to take positive measures to ensure that extrajudicial killings do not occur in practice. India must protect life by enacting legislation which aims to punish individuals who deprive others of their right to life, through murder, manslaughter, etc. This means that if authorities should have been aware of threats to a person's life, and the state should have taken adequate steps to protect their lives, they infringe the right to life.¹⁰⁶

¹⁰³ The leading case on the concept of due diligence in human rights law is the Inter-American Court of Human Rights case, *Velásquez Rodríguez* (*Velásquez Rodríguez Case*, Judgment of 29 July 1988, Inter-American Court of Human Rights (Ser. C.) No. 4 (1988)), a case against Honduras which brought into question state responsibility for involuntary disappearances caused by a third party. In this case, the Court held that Honduras' omission to prevent, investigate and punish a violation might be in breach of its obligations under a human rights treaty, even when a violation was not committed by a state agent.

¹⁰⁴ Peter Finell, *Accountability under Human Rights Law and International Criminal Law for Atrocities against Minority Groups Committed by non-state actors* (Åbo Akademi Institute for Human Rights, 2002), p. 18.

¹⁰⁵ Provost, p. 61 2002. This has also been recognised by the UN CEDAW in its jurisprudence regarding domestic violence perpetrated against women. CEDAW found that in discharging the obligation to exercise due diligence, states concerned should investigate the crime, punish the perpetrator and provide compensation. See CEDAW, Views: Communication No. 5/2005 (6 August 2007), paras 7.3, 12.1.1; CEDAW, Views: Communication No. 2/2003 (26 January 2005), para. 9.2.

¹⁰⁶ European Court of Human Rights, *Akkoc v Turkey*

In addition, states should also take measures to ensure that any deprivation of life is investigated in an open and transparent way.

2) Prohibition on cruel and degrading treatment

Article 37 of the CRC prohibits cruel and degrading punishment towards children. It provides that:

States Parties shall ensure that:

- (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;
- (b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;

The alleged perpetrators of extrajudicial killings and cruel and degrading punishments against child labourers in the coal mines of Meghalaya are the managers and owners of mines. While the alleged perpetrators of extrajudicial killings are non-state actors, the federal Indian government, under the ICCPR and CRC, must take measures to ensure that any allegations of deprivation of life as a result of extrajudicial killings or cruel and degrading punishment are fully investigated in an open and transparent way. The federal Indian government also has a duty under the CRC to ensure that non-state actors, such as employers of child labourers, are monitored to ensure that children are not subject to extrajudicial killings or cruel and degrading punishment, and it should prosecute the perpetrators of violations of the prohibition against these acts. At the same time, the Indian government has a concomitant duty to educate employers of child labourers on the issues of extrajudicial killings and cruel and degrading punishments. In addition, the Indian government must establish systems through which children can access child-sensitive advocacy and advice regarding cruel and degrading punishments.

(3) Obligation to respect children's social and economic rights

HRN's fact finding mission found that children working in coal mines are not regularly attending school, are inadequately housed, lack sufficient access to water, and do not have adequate access to health care. Child labour is, at the same time, a result and a cause of violations of economic and social rights. In the case of the Meghalayan child coal miners, violations to the right to education and the right to an adequate standard of living reflect the indivisibility of human rights and demonstrate the importance of respecting children's economic and social rights. India's obligations under the CRC and the ICESCR are the most relevant obligations with regard to child labourers' economic and social rights.

1) Right to education

As the Committee on Economic, Social and Cultural rights has observed, education plays an essential role in safeguarding children from exploitative and hazardous labour.¹⁰⁷ The right to education is non-derogable.¹⁰⁸ Both the CRC and ICESCR give states parties an obligation to make primary education compulsory and free to all and a duty to make secondary education available and accessible to every child.¹⁰⁹ Implementation of this right is progressive and carried out to the maximum of a state's party's

¹⁰⁷ CESCR, General Comment No 13: The right to education (E/C.12/1999/10), para 1.

¹⁰⁸ That is, it cannot be derogated from even in times of emergency. Geraldine Van Bueren, *International Law on the Rights of the Child* (Leiden: Martinus Nijhoff, 1994), p 233.

¹⁰⁹ CRC, art 28(1)(a), ICESCR art 13(2).

available resources. Violations of the right to education may occur through the direct acts of states parties, or the failure to take measures required by the ICESCR and CRC.¹¹⁰

CESCR has opined that states parties to the ICESCR have an obligation to avoid taking measures that hinder the enjoyment of the right to education.¹¹¹ The obligation imposed on states under the CRC would appear to be similar, as the wording of the right to education in both documents is similar. As a corollary to this, states parties must also take measures that prevent third parties from interfering with the right to education.¹¹² In this, the CESCR has stated, as an example, that states parties should protect the accessibility of education by ensuring that third parties, including employers, do not stop girls from going to school.¹¹³ As an extension of this statement, it can be seen that India has an obligation to ensure that employers in coal mines do not prevent children from going to school.

2) *Right to an adequate standard of living.*

The right to an adequate standard of living is contained in both the CRC and the ICESCR. Article 27(1) of the CRC provides that: “States Parties recognize the right of every child to a standard of living adequate for the child’s physical, mental, spiritual, moral and social development.” While the primary responsibility for the realisation of children’s right to an adequate standard of living lies with parents (article 27(2)), article 27(3) of the CRC provides that states must take appropriate measures to assist parents with implementing this right. This can take the form of material assistance and support programmes. In addition, in cases where children do not have parents who are present, and other relatives do not take over the responsibility, the state has a primary duty to ensure that such children have an adequate standard of living through appropriate institutions.¹¹⁴

ICESCR’s article 11(1) provides that states parties recognize the right of everyone to an adequate standard of living, including adequate food, clothing and housing, and it obliges states parties to take appropriate steps to ensure the realisation of this right. A number of rights emanate from the right to an adequate standard of living. Most relevant to the situation of child labour in Meghalaya’s coal mines are the rights to water, food and adequate housing.

3) *Right to the highest attainable standard of health*

Article 24(1) of the CRC provides that: “States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.” Similarly, article 12 of the ICESCR establishes that states parties to the ICESCR recognise the right of everyone to the enjoyment of the highest attainable standard of physical health, and it obliges states to ensure that no child is deprived of his or her right of access to healthcare services, to provide medical assistance and healthcare to all children, and to develop preventive healthcare.¹¹⁵

The obligation to protect this right requires states to take measures that prevent third parties from hindering enjoyment of the right to health.¹¹⁶ In addition, states are also obliged to give special

¹¹⁰ CESCR, General Comment No 13: The right to education (E/C.12/1999/10), para 58.

¹¹¹ Id., para. 47.

¹¹² Ibid.

¹¹³ Id., para 50.

¹¹⁴ Daniel Moeckli, Sangeeta Shah, Sandesh Sivakumaran (eds), *International Human Rights Law* (Oxford University Press, 2010), p. 247.

¹¹⁵ Ibid.

¹¹⁶ CESCR, *General Comment No. 14: The right to the highest attainable standard of health* (11 August 2000), E/C.12/2000/4, para. 33.

consideration to children's enjoyment of the right, and they should ensure that third parties do not limit people's access to health-related information and services.¹¹⁷ Violations of the obligation to protect the right to health arise from a state party's failure to take all necessary measures to safeguard enjoyment of the right to health by third parties. This includes states' failure to regulate the activities of individuals, groups, or corporations so as to prevent them from violating the right to health, and the failure to discourage observance of harmful traditional cultural practices. Thus, it can be seen that the federal Indian government has an obligation, in collaboration with the government of the state of Meghalaya, to ensure that children working in Meghalaya's coal mines have access to health services. The federal Indian government also has an obligation to regulate managers of coal mines which employ children, in order to prevent them from obstructing child labourers' right to access health services and information.

(4) Obligation to prevent and combat child trafficking

1) United Nations Convention on the Rights of the Child

Under the Convention on the Rights of the Child, where a situation of child trafficking exists India bears a duty to 'take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form' (Article 35). Thus, India has a duty to take measures to prevent the trafficking of children for the purposes of labour. This includes the adoption of legal and administrative measures to ensure that children cannot be sold into any form of bonded labour, adopting legislation which outlaws trafficking, ensuring that all relevant state agencies cooperate internationally in investigating and identifying all forms of cross-border trafficking in children, taking measures to ensure that child victims of cross-border trafficking can return safely to their country of origin, and adoption of measures to prosecute people engaged in trafficking outside India's jurisdiction.¹¹⁸ In addition, under the general international legal obligation of due diligence, the Indian government has an obligation to investigate and punish non-state actors violating children's right to be protected from trafficking.

2) Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography

India ratified the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (CRC-SC) on 16 August 2005. The CRC-SC requires states parties to prohibit the sale of children, child prostitution and child pornography.

The CRC-SC prohibits the sale of children (Article 1) and obliges each state party to ensure that acts of child trafficking are 'fully covered under its criminal or penal law' (Article 3(1)). Under the CRC-SC, the 'sale of children' is defined as 'any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration' (Article 2(a)) and 'acts of child trafficking' means '[t]he offering, delivering or accepting, by whatever means, a child for the purpose of: (i) [e]ngagement of the child in forced labour' (Article 3(1) (a)(i)(c)). Further, each state party is obliged to 'make these offences punishable by appropriate penalties that take into account their grave nature' (Article 3(3)) and to take measures to establish liability for trafficking (article 3(4)). Given the international nature of child trafficking, states parties are required to 'take all necessary steps to strengthen international cooperation by multilateral, regional and bilateral arrangements for the prevention, detection, investigation, prosecution and punishment' (Article 10(1)) and to 'promote international cooperation to assist child victims in their physical and psychological recovery, social

¹¹⁷ Id., para. 35.

¹¹⁸ Hodgkin and Newell, *Implementation Handbook of the Convention on the Rights of the Child* (Innocenti Research Centre, 1998), 530.

reintegration and repatriation (Article 10(2)). Also, each state party is under an obligation to submit, within two years following the entry into force of the Protocol for that state party, a report to the Committee of the Rights of the Child providing comprehensive information on the measures it has taken to implement the provisions of the Protocol (Article 12(1)).

India is a state party to the Protocol and thus India must prohibit any acts of child trafficking for the purpose of forced labour and investigate and prosecute perpetrators of child trafficking. Also, the amendments of its national law with regard to penalties for those acts must be considered in accordance with the Protocol.¹¹⁹

3) South Asian Association for Regional Cooperation Convention on the Regional Arrangements for the Promotion of Child Welfare in South Asia

India recently developed a mechanism for regional cooperation to address the problem of child trafficking through the South Asian Association for Regional Cooperation (SAARC).¹²⁰ The SAARC, founded in 1989, is a regional organization composed of by India, Bangladesh, Bhutan, Maldives, Nepal, Pakistan, Sri Lanka and Afghanistan. India ratified the SAARC Convention on the Regional Arrangements for the Promotion of Child Welfare in South Asia, together with other member states. This SAARC Convention reaffirms that children have rights established by international human rights treaties, most notably the CRC,¹²¹ and it emphasizes that states parties have a duty to implement the CRC.¹²² The Convention also obliges states parties to take appropriate action to ensure that legal and administrative mechanisms are in place to give effect to national laws which protect children from exploitation, degrading treatment, trafficking and violence. In addition states parties should ensure that social safety nets are in place to discourage children from undertaking hazardous labour.¹²³ However, the Convention lacks effective provisions for regional cooperation regarding the investigation, prosecution and punishment for those responsible for trafficking, and the prohibition and prevention of child trafficking for the purpose of forced labour.

(5) Conclusion

As a state party of the CRC, ICCPR, ICESCR, and ILO Conventions 5 and 123 on child labour and 29 and 105 on forced labour, the federal government of India has a due diligence obligation under general

¹¹⁹ In addition to India's ratification of the CRC and the CRC-SC, India has signed the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (the Protocol) in 2002. Despite a recommendation of the Committee of the Rights of the Child in 2004 and India's statement that it is in the process of ratifying the Protocol, it has not yet ratified it.

The Protocol is the first global legally binding instrument with a definition of trafficking in persons and was adopted with the aim of preventing and combating trafficking and protecting and assisting the victims of such trafficking (Article 2). It covers the problem of human trafficking comprehensively including exploitative child labor.

State parties are obliged to adopt such legislative and other measures as may be necessary as criminal offences the conduct set forth in article 3 of this Protocol, when committed intentionally (Article 5(1)), and establish comprehensive policies, programmes and other measures: (a) [t]o prevent and combat trafficking in persons; and (b) [t]o protect victims of trafficking persons, especially women and children, from revictimization (Article 9(1)). State parties must facilitate the return and acceptance of child victims of cross border trafficking (Article 8).

¹²⁰ The CRC places an obligation on states parties to take appropriate bilateral and multilateral measures to prevent trafficking in children under article 35.

¹²¹ SAARC Convention on Regional Arrangements for the Promotion of Child Welfare in South Asia, 2002

¹²² *Id.* at Part 1, Article III

¹²³ *Id.* at Part 2, Article IV

international law to protect children within its jurisdiction from child labour and the practice of slavery-like labour.

Under the ILO 5 and 123 Conventions, India shall ensure that no children under 16 are working at coal mines. However, there is no effective monitoring, investigation or sanction against the practice of child labour in Jaintia Hills. Using child labour under the age of 16 seems to be the prevailing phenomena all around Jaintia Hills. The central and local governments conduct no effort to ensure the ILO conventions are upheld in practice, and no protective measures have been taken for children.

The Indian government has also been deficient under its obligations under the ILO forced labour conventions, C29 and C105, by failing to convict or even report on persons involved in the forced labour of children.

At the same time, the Indian government is failing in its duty under the ILO conventions to ensure that employers keep records of workers. Thus it can be said that India has failed to adhere to its obligations to protect children from and prevent child labour under the international agreements it has ratified or acceded to, or fulfill its due diligence obligation under general international law.¹²⁴

Moreover, the right to life of children in Meghalaya's coal mines is being violated. It is of grave concern that punishments such as locking children in rat holes for days, which put children's lives at risk and often deprive them of life, were reported as a common practice by interviewees. As a state party of the ICCPR, the Indian government is obliged to take all necessary measures to protect children from extrajudicial killings, and to investigate, prosecute and punish perpetrators of those killings in cases where it occurs. The seriousness of these allegations requires the federal Indian government to take measures to investigate this issue as soon as possible.

It is also of grave concern that children are killed because of the dangerous working conditions of mines. Without any security measures or scientific method of mining, children are killed by numerous avoidable accidents, such as lack of oxygen, falling or floods in mines. Under the ICCPR, the Indian government shall discharge due diligence obligations to protect children's right to life and physical integrity by monitoring and investigating working conditions as well as implementing domestic laws and regulations with regard to safety and the inspection of coal mines.

With regard to children's economic and social rights, the right to education is violated as a result of children working in mines. The federal Indian government is not fulfilling its obligation under article 32(1) of the CRC, which requires it to ensure that children's education is not interfered with because of work, and the concomitant obligation to ensure that third parties do not obstruct children from enjoying the right to education.

HRN's mission also found that children are living in unsanitary conditions without access to adequate housing and safe drinking water. This violates another aspect of the right to an adequate standard of living, the rights to adequate housing and water. Another important right of child labourers that is infringed is the right to the highest attainable standard of health and the right to life under the CRC and ICESCR.

Finally, with regard to trafficking, trafficking in children for exploitative use is a widespread and systematic practice in Jaintia Hills. Some child labourers in the coal mines of Meghalaya interviewed by the fact-finding mission stated that they were brought to the mines from neighbouring states such as Nepal and Bangladesh by brokers. A large proportion of the children interviewed had not been fully informed of the details surrounding the work or even the type of work when they were "recruited" by the

¹²⁴ See, e.g., Case # 17 and Case # 33. See also, CRC Recommendations to Indian Government.

village ōsardarō, mine foremen acting as brokers. These brokers or sardars did not inform them of the true nature of the work which they are currently engaged in. Based on the information, these amount to serious violations of the CRC's Protocol on trafficking.

In light of such serious allegations, the Indian government must make more effort to implement the CRC's Protocol in the state of Meghalaya with regard to trafficking of children for labour by amending national legislation and/or enacting new legislation aimed at eradicating child trafficking for economic exploitation.¹²⁵ In addition, it must strengthen regional cooperation for investigation, prosecution, punishment of those responsible for child trafficking and the protection and repatriation of child victims.

VIII. Inaction of the Government

1 Overview: Governmental structure and inaction

(1) Governmental structure

Indian government demonstrates its willingness to eliminate child labour, enact many laws and regulations as described in chapter VII, and set up plans and mechanisms to eliminate child labour.

For instance, India has adopted national policies for the welfare of children such as the National Charter for Children (2003)¹²⁶ and the National Plan of Action for Children (2005).¹²⁷ The National Plan of Action for Children identifies the complete abolition of child labour and the termination of sale of children and all forms of child trafficking as primal goals and impose the primary responsibility for the implementation on the federal, state and local governments.

The government has established the Child Labor Technical Advisory Committee, the National Authority for Elimination of Child Labor, and the Central Advisory Board on Child Labor in order to implement the policy to eliminate child labour. These bodies were created to launch programmes and policies, reevaluate implementation, and advise the government in its child labour endeavors. The Central Monitoring Committee also has jurisdiction over issues concerning child labour, but it does not have the ability to act in Meghalaya as its power is limited to the National Child Labor Programs, which have not yet been applied in the state.¹²⁸ Additionally, the Mines Act allows for the appointment of Inspectors to ensure that various regulations regarding mines are followed. These inspectors have the authority to require that any violation be immediately ceased and to shut down operations of mines until such remedies have been taken.

¹²⁵ India has not, as at the time of writing of this report, submitted a report as required under Article 12(1) of CRC-SC, to the Committee of the Rights of the Child. This initial report was due in 2007, since its ratification of the Protocol in 2005. India, therefore, has not officially reported the progress of its implementation of the Protocol to the Committee yet. The Indian government should submit its report to the Committee immediately in conformity with the Protocol, so as to shed more light on the situation of child trafficking for the purposes of labor and also to clarify the measures that it is taking to address this problem.

¹²⁶ Department of Women and Child Development (Ministry of Human Resource Development, Government of India), National Charter for Children (2003), URL: <http://wcd.nic.in/nationalcharter2003.htm>

¹²⁷ Department of Women and Child Development (Ministry of Human Resource Development, Government of India), National Plan of Action for Children (2005), URL: <http://wcd.nic.in/NAPAug16A.pdf>

¹²⁸ <http://labor.nic.in/cwl/NclpDistricts.htm> - this site contains a list of all districts in which the NCLP is applied. Although no districts of Meghalaya are currently included, the government hopes to extend this to another 150 districts in the near future, possibly including several from Meghalaya.

In a 1996 judgment,¹²⁹ the Supreme Court ordered specific directions to state governments for eliminating child labour in hazardous industries, such as mining, including conducting surveys to identify working children, withdrawing children working in hazardous industries, gathering contributions of Rs. 20,000 per child paid by offending employers to the children, issuing other State financial and employment assistance to children's families, and implementing committees and measures for enforcing and monitoring child labour laws at State and Union levels. These directions were unfortunately promulgated only as a one-time order, rather than implementing effective lasting policies or actions, and even the one-time order failed to be effectively implemented in many areas, particularly in Meghalaya which fell towards the bottom in implementation.¹³⁰

Whilst these national policies have set progressive goals and objectives in regard with the issues of child labour and child trafficking, they have not been effectively implemented. The government failed to implement laws and regulations related to child labour, failed to monitor the system set up by itself, and displayed inaction toward the actual violations.

Despite the presence of these bodies and policies, child labour in mining seems to continue completely unchecked, to the extent that mining in the area has been called 'unregulated' in Indian news.¹³¹

(2) Independent bodies for the protection of children's rights

1) The National Human Rights Commission

The National Human Rights Commission was established in accordance with the Protection of Human Rights Act, 1993 (amended in 2006) as a national human rights institution (NHRI). The Commission is an independent human rights body in charge of all human rights violations committed in India, including child labour. It has noted that 'No economic or social issue has been of such compelling concern to the Commission as the persistence, fifty years after Independence, of widespread child labor in our country.' The commission has power to inquire into and intervene in any alleged human rights violation, to review policy, and to make recommendations to the Indian government.

2) The National Commission for Protection of Child Rights

The National Commission for Protection of Child Rights (NCPCR)¹³² is an autonomous statutory body set up by the federal Indian government under the federal Commissions for Protection of Child Rights Act¹³³ in March 2007 in order to accelerate efforts to protect, promote and defend child rights in India.

The NCPCR has the following functions:

- To examine and review the safeguards provided by or under any law for the time being in force for the protection of child rights and recommend measures for their effective implementation;
- To inquire into violation of child rights and recommend initiation of proceedings in such cases;
- To examine all factors that inhibit the enjoyment of rights of children affected by terrorism, communal violence, riots, natural disasters, domestic violence, HIV/AIDS, trafficking, maltreatment,

¹²⁹ Writ Petition (Civil) No. 465/1986[0], Supreme Court of India *M.C. Mehta v. State of Tamil Nadu and Others*. Dec. 10, 1996. 1997 AIR 699, 1996(9) Suppl.SCR 726, 1996(6)SCC 756, 1996(9)SCALE42, 1996(11)JT 685

¹³⁰ Child Labour Law in India, Gazette of India Extraordinary, Pt II, Sec 3(ii), Feb 5 1996, Annex V.

¹³¹ NDTV News. See http://www.tubaah.com/details.php?video_id=51217

¹³² National Commission for Protection of Child Rights, URL: <http://www.ncpcr.gov.in/index.htm>

¹³³ *Commissions for Protection of Child Rights Act (2005)* (4 of 2006)

torture and exploitation, pornography, and prostitution and recommend appropriate remedial measures; and

- To inquire into complaints and take notice of matters related to:
 - Deprivation and violation of child rights,
 - Non implementation of laws providing for protection and development of children,
 - Non compliance of policy decisions, guidelines or instructions aimed at mitigating hardships to and ensuring welfare of the children and to provide relief to such children.

The NCPCR, while enquiring into any matter, has all the powers of the Civil Court trying a suit under the Code of Civil Procedures (1908).

2 Situation of implementation in Meghalaya

Although state governments did act once under the 1996 Supreme Court order mentioned above to document all child labourers and provide them with an education,¹³⁴ at least to the extent of documentation, it seems to have had little or no lasting effect on the situation. HRN was unable to find any records of Supreme Court or Meghalaya High Court cases on child labour since 1996, suggesting that mine owners have not been prosecuted for child labour since that time.

From the number of children working in the mines, it is clear that the inspectors have either been ignoring violations or that they are so few in number that they are unable to effectively oversee the mines. Since there are so many mines and in close proximity, labourers are often able to leave a mine if an inspector is in the area and travel to another to work until there is no chance of being caught. Additionally, mines which are further from the cities and harder to access may never be visited. Thus, those tasked with enforcing the laws against child labour do not seem to be effectively doing their jobs.

Additionally, other government bodies that could have an effect claim that it is out of their jurisdiction. In an interview with Indian weekly magazine *Tehelka*, Meghalaya Deputy Chief Minister (the minister in charge of the mines) asserted that he had limited power (and perhaps an unwillingness to take responsibility) over the issue, stating that: "It is for the Department of Labour to take action. They should impose the labor laws, knowing that these little kids are employed there."¹³⁵

Finally, local police, rather than prosecuting and punishing those who employ and exploit children, seem to be on the side of the mine owners. One labourer testified that he went to the police for help when a fellow labourer was locked in a rat hole as punishment, but rather than assisting the worker, the police aided the mine owners. It was unclear whether corruption was the issue or whether it was a choice to get involved as little as possible. It is evident that, despite laws and policies regarding the elimination of child labour, the mechanisms in place are failing to protect child workers. No one is acting effectively in Meghalaya to prevent child labour or to punish its perpetrators.

3 No effective measures addressing child labour in Jaintia Hills

With respect to child labour in Jaintia Hills, Meghalaya, Impulse has been actively lobbying authorities concerned¹³⁶ at federal and state levels to intervene in the situation. Whilst some of those authorities have

¹³⁴ Supreme Court of India *M.C. Mehta v. State of Tamil Nadu and Others*, *supra* note 129.

¹³⁵ Kunal Majumder, *Half Life of a Coal Child*. *Tehelka Magazine* Vol. 7, Issue 26. July 3, 2010. Found online at http://www.tehelka.com/story_main45.asp?filename=Ne030710coalchild.asp

¹³⁶ Regarding this issue, IMPLUSE has contacted the following authorities, at the federal level, i) Planning Commission ii) National Commission

addressed the problem, their involvement has been very limited in extent, and they have produced no substantial results. Even in the cases where some authorities have intervened in the situation, their manner has been ineffective, characteristically consisting of one-time-only interventions with few follow-ups.

(1) NCPCR's intervention

1) On site visit

The National Commission for Protection of Child Rights (NCPCR) has once visited coal mines in Jaintia Hills, but what happened after the visit shows the ineffectiveness of their intervention.

According to the NCPCR's newsletter, *Infocus* (March 2010)¹³⁷ and its report of 8-11 August 2009,¹³⁸ the NCPCR team visited Meghalaya to investigate complaints received regarding a large number of children working in coal mines in Jaintia Hills. The NCPCR's investigation found the following:

- There has been a phenomenal demand for cheap labor in Jaintia Hills as a result of the growth of industry and township in the area. Children are preferred because they are the cheapest form of labor and can be forced to work in inhuman conditions.
- Although at the time of the NCPCR's visit no children were visible (the visit of the NCPCR team was well known in the area), the team received several reports that young children are engaged in the loading and size-sorting of coal, and that older children work inside the coal mines, entering through the small crevices to mine coal along with other adult workers. Several children also begin as apprentices to truck drivers, cleaning the trucks and helping the drivers. One NGO reporting to the NCPCR estimated that there are approximately 70,000 of children working in coal mines.
- The labor department admitted that child labor was a serious problem, but that a lack of personnel and facilities, and the local culture and mores were impediments to the department's ability to implement the law.

2) Recommendations

The NCPCR made the following recommendations in the same report:

- A sustained and comprehensive campaign should be carried out against all forms of child labor and a generation of public support for implementation of all the relevant laws.
- The labor department must enforce the Child Labour (Prohibition and Regulation) Act 1986, Juvenile Justice Act as well as the Bonded Labour System Abolition Act (1976) strictly and register cases against employers of children in domestic work, hotels, eateries and other establishments, mining and other sectors where child labor is prohibited and coordinate with the police and revenue departments for enforcement of the laws.
- Arrangements should be made for rescuing children from the labor force and preparing them for admission to age appropriate classes. The SSA¹³⁹ must develop a comprehensive plan for reaching out to out of school children through residential and non-residential bridge courses, and work towards integrating them in to schools.

for the Protection of Child Rights (NCPCR) iii) Delhi Commission for the Protection of Child Rights, and the state level, i) Governor, Government of Meghalaya ii) Chief Secretary, Government of Meghalaya iii) Commissioner and Secretary, Social Welfare Department, Government of Meghalaya iv) Director, Social Welfare Department, Government of Meghalaya v) Labor Commissioner, Labor Department, Government of Meghalaya.

¹³⁷ National Commission for Protection of Child Rights, *Infocus* (March 2010), URL: http://www.ncpcr.gov.in/Infocus/infocus_March_2010.pdf

¹³⁸ National Commission for Protection of Child Rights, *Child Rights in Meghalaya: Summary of findings and Recommendations of NCPCR*

¹³⁹ Sarva Shiksha Abhiyan (SSA), which means -Universalisation of Education in Hindi, is a flagship programme of the Indian government to provide elementary education for all children in the 6-14 age groups by 2010. It has been implemented in all districts of the country with special focus on educational needs of girls, SCs/STs and other children in difficult circumstances.

- A clear set of protocols should be developed with specification of roles for all departments including the Child Welfare Committees for identifying, rescuing and rehabilitation of all such children till they reach the logical conclusion of being enrolled and retained in full time formal schools. Protocols recommended by the NCPCR and adopted by the recent Delhi High Court should be used for this purpose.

3) Reaction of the central and local government

Impulse reported that despite the series of initiatives in this matter by the NCPCR, the government of Meghalaya has not made any substantive decisions to address the issue of child labour in coal mines in Meghalaya. The government has failed to adopt new mining regulations which had been discussed since 2009. The current draft of the regulations, surprisingly, does not even include provisions regarding the issue of child labour and their working conditions.

4) Evaluation

The NCPCR's investigation is a welcome development, but it must be noted that NCPCR's investigation is far from satisfactory in its fact-finding on the ground. According to its report, the NCPCR failed to even interview any children working in the coal mines in Jaintia Hills. The NCPCR's investigation is merely a first step, and thorough investigation shall be conducted in the future. Also, the issue of trafficking of children from Nepal and other parts of India was ignored in the report, in spite of the fact that Dr. Shantha Sinha, the Chairperson of the NCPCR, has pointed to the issue of child labourers from Nepal and other parts of India reportedly working in coal mines in Jaintia Hills and the surrounding areas.¹⁴⁰ The issue of child labour in the region is linked to the issue of child trafficking. It is critical to tackle child trafficking in order to improve the situation of child labour in coal mines in Meghalaya.

Furthermore, it must be noted that no follow-ups have been reported to realise the recommendations in the report. Without effective follow-up, the implementation of recommendations cannot be achieved. The NCPCR should take further measures to follow up on its report and recommendations in accordance with the powers granted to it.

(2) Intervention made by other authorities

1) Chief Labor Commissioner

Impulse also reported that in September 2010 the Chief Labor Commissioner of the Government of India visited Meghalaya to intervene in the matter, although the details of the visit have not been reported. The governments of India and Meghalaya have officially acknowledged that there are alleged grave violations of child rights in coal mines in Jaintia Hills as they responded to the issue at least as a matter of form. However, no effective measures has been announced or implemented by either government to solve the situation of child labour in Jaintia Hills.

2) Other authorities

The government has established the Child Labor Technical Advisory Committee, the National Authority for Elimination of Child Labor, and the Central Advisory Board on Child Labor in order to implement the policy to eliminate child labour. None of these bodies took action to intervene the situation in child labour in Jaintia Hills. In accordance with the Mines Act, Inspectors are responsible to ensure various laws and regulations are met, and they have the authority to require any violations be immediately ceased, as well as to shut down operations of mines until such remedies have been taken. Inspectors also have a

¹⁴⁰ National Commission for Protection of Child Rights, *Infocus* (March 2010), URL: http://www.ncpcr.gov.in/Infocus/infocus_March_2010.pdf

responsibility to discover and investigate violations, even (perhaps especially) those that will not be reported due to fear or self-incrimination. However, Inspectors have not yet intervened in the child labour situation. This demonstrates that despite numerous institution and authorities set up by the Indian government to protect children from child labour, these authorities are neither competent, able, nor willing enough to investigate the situation, cease the operation of child labour and protect victims immediately.

IX. Recommendations

The HRN fact-finding team found that there are grave human rights violations occurring through the practice of child labour in Jaintia Hills in State of Meghalaya, India. The practice of child labour is extremely hazardous and it is tantamount to a slavery-like practice.

Despite the numerous laws, regulations and mechanisms to eliminate child labour in India, the facts show that such laws, regulations and mechanisms are powerless to save the children in Jaintia Hills without proper implementation and political will to change the situation on the ground. It is urgent to fully implement domestic laws to prohibit child labour, punish employers who use child labour, support the functions of Inspectors to monitor and remedy the situation, and ultimately protect and save victimized children.

As a state party of the ICCPR, ICESCR, CRC and its protocol, ILO Conventions 5, 23, 29, and 105 on child and forced labour, and the SAARC Convention on the Regional Arrangements for the Promotion of Child Welfare in South Asia, India is required to take concrete and immediate measures to protect children from such inhuman child labour practices.

The Human Rights Now Fact-Finding mission has developed the following set of recommendations for the elimination of child labour, particularly in the mines of Meghalaya.

1. To the central government of India and the government of the state of Meghalaya

- Immediately conduct a thorough, effective, and transparent large-scale investigation of the child labour practice and human rights violations in Jaintia Hills, with the victims' full participation.
- Invite and accept international monitoring such as a Commission of Inquiry of the ILO as well as UN experts such as UN Special Rapporteurs on contemporary forms of slavery, trafficking in persons and extrajudicial execution.
- Immediately protect and rescue children from slavery-like practices and provide effective remedies including rehabilitation, education, restitution and compensation.
- Clarify the roles of various Ministries and departments in the elimination of child labour, and ensure that at least one body is mandated with the enforcement of regulations pertaining to child labour.

- Provide affordable or free education to all children under the age of 14, as is their right under the Constitution and under the international human rights treaties to which India is a party.
- Make a renewed effort to implement the economic, social and cultural rights of children working in coal mines, as those rights are significantly affected by their engagement in labour. In particular, the Indian government should recognise that it bears primary responsibility for the realisation of the rights of trafficked children, as their guardians are not present.
- Ensure that children have access to child-sensitive information regarding their rights, in particular with regard to child labour.
- Establish a system which will enable children to lodge complaints about violations of their labour rights, and concomitant violations of their civil, political, economic, social and cultural rights.
- Given the long history of child labour in India, and in light of India's reservation to article 32, it is arguable that child labour is a traditional practice in India. As such, India must make a renewed commitment towards reversing the widespread acceptance of this practice through measures such as awareness raising.

2. To the central government of India

- Ensure full and effective implementation of the Indian Constitution and the Child Labour Act as well as the ILO Conventions to which India is a party.
- Conduct a nation-wide comprehensive study of the causes, nature and extent of child labour and human trafficking; analyze the implementation of relevant laws and conventions on those laws; identify the causes of malfunctions; and take all necessary measures to solve problems.
- Ratify ILO Convention No.138 concerning Minimum Age and No.182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour.
- Expand the scope of the Immoral Trafficking Prevention Act to all forms of trafficking of children to prevent children from being trafficked as well as to protect victims.
- Enact bilateral agreements with the governments of Nepal and Bangladesh on prevention, protection, and prosecution related to child trafficking.
- Amend the Sixth Schedule of the Constitution, to clarify the extent to which tribal autonomy applies and to ensure that the Sixth Schedule cannot be used to justify noncompliance with federal safety in mining and child labour regulations.
- Apply the National Child Labour Programs to all districts within the state of Meghalaya.

3. To the international community

Considering the gravity of the human rights violations, we call upon the international community to be aware to the issue and address the problem immediately.

In particular the HRN fact-finding mission requests that:

- UN experts such as UN Special Rapporteurs on contemporary forms of slavery, trafficking in persons and extrajudicial execution conduct a fact finding mission in Jaintia Hills.
- The ILO investigate and intervene in the situation.

4. To the international business community

According to several sources, the coal product extracted from Jaintia Hills goes to Bangladesh and is sent to third party countries around the world. Although HRN cannot determine exact destinations of the coal products, it is presumed that numerous companies in the world might be purchasers of coal produced in these mines.

In this regard, we recommend that the business community be aware of the situation and be sensitive to the "supply chain". We believe that no end users wish to buy any product related to the slavery-like practice of child labour. We are convinced that the above situation is no better than sweat shop practices of the past.

Appendix 1. Interviews

I. Children working deep inside mine hole.

Interview 1

Hurditya (male), age 12, from Meghalaya, India, working for 4 weeks in a mine in Meghalaya.

Hurditya, 12, is from Meghalaya, India. He does not attend school because he is poor and cannot afford to, so he works in the mines instead. He lives with his family in a village about 20 minutes away from the mines and commutes to the mines to work. At the time of his interview, Hurditya had been working in the one of the Meghalaya mines for 4 weeks.

Hurditya is a coal cutter, which requires him to go deep inside of the rat holes to cut coal. He works about 4 to 5 hours per day and earns 400 to 500 rupees (approximately US\$9 to US\$11 or ¥700 to ¥900) per week. When asked if he like the work, Hurditya indicated that he had no comment.

Interview 2

Alok (male), age 13, from Nepal, working for 4 years in various mines, including mines in Meghalaya.

The fact finding mission went down a mine shaft and tried to interview significant numbers of children working in the rat holes. Alok was the only child the mission was able to interview. His

daily work involves going right to the end of the rat holes to dig coal, and then transferring the coal to the center of quarry with his colleagues.

Alok, 13, is from Nepal. He has been working as a coal cutter in various mines since he was 9 years old. He indicated that about ten children under the age of 18 work as coal cutters and coal transporters in the mine where he works.

During his time as a mine labourer, Alok has witnessed two accidents. One accident involved a crane that fell. The crane driver was unskilled and not qualified to operate the crane. While in operation, the crane fell and hit a person working underneath it on the head. The worker was rushed to a hospital in the area but the medical staff was unable to save him. A second accident resulted in the death of several children who died when the ceiling of the hole they were digging collapsed. Alok stated that the mines at which he works have no safety standards.

He did not indicate his working hours or his average salary.

Interview 3

Har(male), age 13; he is Kashi from Shillong.

Har's work is coal cutting and he spends all day long digging coal in the underground quarry. He works in the mine with his father. He did not want to disclose further information or discuss how he feels about his work.

Interview 4

Amar (male), age 14 was born in India. His family is originally from Katari, Nepal. He has worked for 2 to 3 years in various mines in Meghalaya.

Amar works in one of the in coal mines in the Meghalaya area as a coal cutter. His father also used to work in the same coal mine.

Amar typically works about eight hours per day and earns about 900 rupees (approximately US\$20 or ¥1700) per day.

Ajun appeared reluctant to go into details about his work life and the working conditions at the mine. He said he likes working in the coal mines even though the work is dangerous.

Interview 5

Madan (male), age 15, from Khotang, Nepal, working for 1.5 years in various mines, including mines in Meghalaya.

Madan is a 15-year-old male from Khotang, Nepal, which is located in the north-eastern region of Nepal. His family is poor, and they still live in Nepal. When he was around 13-years-old, he decided to leave his family and his hometown to look for work so that he could help support his family. He soon thereafter left with a group of three or four older friends, whose ages ranged from 21-years-old to 30-years-old, in search of work. The group left Nepal and went to India in search of work. He worked in mines in another

area of India for more than one year before moving to mines in the Meghalaya area, where the interview was conducted.

Prior to his move to the current mines, his friends decided to return to Nepal, but due to his family financial situation he decided to move to mines in the Meghalaya area in order to make more money, even though his parents asked him to return home. Madan indicated that it was his decision to move to the new mines and that miners such as himself often move to mines where they can make more money.

In his interview, Madan indicated that he did not know beforehand that the *ōrat holesō* extended so far underground. He expressed his initial fear of entering into such rat holes, and said that sometimes in the rat holes there is a lack of oxygen. In these conditions, he typically works seven to eight hours per day and sometimes more than seven days straight, including Sundays. Three to four times a month, he receives a break in the form of a so-called *ōMarket Dayō*. On Market Day, he and the other miners go to the market and purchase items they need.

For his efforts, Madan is paid weekly and the amount of pay depends upon how much coal he collects. He did not indicate what he averages weekly, but did state that he sends approximately 10,000 rupees (approximately US\$225 or ¥20,000) monthly to his parents back in Nepal.

Interview 6

Padma (male), age 15, from Bhojpur, Nepal, working for six months in the Meghalaya mines.

Padma, 15, is from Bhojpur, Nepal. He has worked in the Meghalaya mines for six months as a coal cutter. Padma came to the mine with friends through a sardar [a mine foreman, acting as a broker] in his village. Padma earns between 500 and 1000 rupees (US\$11 to US\$22 or ¥900 to ¥1800) per day for cutting coal.

Padma did not know about the working conditions at the mines before he came and was shocked upon arriving in Meghalaya. He stated that the work is very difficult and that there are no safety procedures at his mine. Although he does not know of any specific mining accidents, he fears for his safety; *“I am very scared and it is very difficult”*, he said. Vinod indicated that he was planning on returning to Nepal in two weeks.

Interview 7

Yogesh (male), age 15, from Nepal, working in various mines, including mines in Meghalaya

Yogesh, 15, is from Nepal. He and his father are working at the same mines. As of the time of his interview, he had been working at the mines in the Meghalaya region for a few weeks. Yogesh indicated that many people from his village in Nepal are working in the same mines.

Yogesh is a coal cutter and works together with a partner. He enters the rat hole to either cut coal or handle the trolleys as his partner cuts the coal. For this work, Yogesh earns 350 rupees (approximately US\$8 or ¥650) per day.

Interview 8

Ramchandra (male), age 16, from Nepal, working for 8 months in various mines, including mines in Meghalaya.

Ramchandra is a 16-year-old male from Nepal. He came with a group of friends to work at the mines. Prior to arriving at the mines, he was not informed about the details of the work. He assumed that the

work would be outside and above ground. He was surprised to learn that he would be going into the mines to cut out the coal.

Ramchandra works about 5 to 10 hours per day. He earns 150 rupees (approximately US\$3 or ₹300) per trolley of coal. He typically fills 5 to 10 trolleys per day, which equates to about 750 rupees to 1500 rupees (approximately US\$15 to US\$30 or ₹1500 to ₹3000) per day.

He indicated that he does not want to continue doing this kind of work and that he wishes he could quit. He feels this type of work is not worth risking his life; he said, *“when cutting the coal, there is no guarantee of life, you can just die inside you know because if you just keep on cutting like this it becomes so loose”*. However, he has no other job options so he continues to work in the mines. Ramchandra’s parents know that he is working, but they do not know that he is working in a coal mine.

Interview 9

Bimal (male), age 16, from Nepal, working for 8 months in the Meghalaya mines.

Bimal, 16, is from Nepal. He attended school until the seventh grade and is able to speak a little English. Bimal came with a group of friends to work at the mines. Prior to arriving at the mines, he was not informed about the details of the work or that it would be so difficult. He was only told that he would be working in a coal mine and that he could earn money.

He earns 130 rupees (approximately US\$3 or ₹300) per trolley of coal. He typically fills about 4 trolleys per day, which equates to about 520 rupees (approximately US\$12 or ₹1200) per day. He would like to send some of his earnings to his parents in Nepal, but his living expenses are very high, which leaves him with very little money to save.

Bimal indicated that he would like to continue working in the mines until he has saved enough money to return to Nepal, which will cost around 3,000 (approximately US\$67 or ₹5500) rupees, and enough money to take some courses to learn some skills when he returns to Nepal.

As of the date of the interview, Bimal had not witnessed any accidents. He said he is very cautious when working in the mines, as he realizes that the ceiling of the mine shaft could collapse at anytime.

Interview 10

Ahagh (male), age 16, from Wapung, India.

Most of his work consists of cutting coal and he earns 200-300 rupees a day.

He has never gone to school and has no family.

Interview 11

Ashu (male), age 17, from Assam, India, working for more than a few years in various mines, including mines in Meghalaya.

Ashu, 17, is from Assam, which is a northeastern state of India. He completed the sixth grade, but quit attending school when he was 11. He has been working in coal mines for several years. He has been working in coal mines in the Meghalaya area for about one year. He has two older brothers (ages 22 and 23) who are also working in coal mines. He did not indicate whether his brothers work in the same coal mines as he does or how long they have been working in mines, but he did indicate that his parents are living in Assam and that he is currently living with his aunt.

When Ashu first starting working in coal mines, he was engaged in coal cutting in the rat holes. During his work as a coal cutter, he saw about three to four people die when an upper layer of coal fell on the miners as they worked. He no longer does that task, but he did not specify exactly what job he does now. He indicated that he does not like mine work and that it is dangerous.

Ashu further described an extrajudicial execution. According to him, a boy working in the mine was killed in a rat hole by a manager. The manager found that the boy working in the mine was selling coal at the back independently. As a punishment, the manager confined the boy inside the mine for a couple of days and then he died. He said he also heard workers died for similar punishment in other mines around here

In his interview, Ashu indicated that he chooses his working hours, which ranges from 7 to 11 hours per day. He typically works from 8:00 am to 7:00 pm six days a week and earns 5,000 to 6,000 rupees (approximately US\$110 to US\$135 or ¥9,000 to ¥11,000) a week. In the event he is injured on the job or becomes ill, the manager of the mines will take him to a medical facility in Shillong. The manager will pay the travel expenses and the hospital bill upfront, and then deduct said expenses from his salary.

Interview 12

Bishwa (male), age 17, from Ochnlonga, Nepal, working for two years in the Meghalaya mines.

Bishwa, 17, has laboured in the Meghalaya mines for two years. He has never attended school. His work is coal cutting in rat holes. Bishwa works 6-12 hours per day and earns 3000 to 4000 rupees a week (US\$65 to US\$90 or ¥5500 to ¥7500), working six to twelve hours a day cutting coal.

Before coming here he was told that coal mining work was easy, so he was shocked when he arrived at the mine in Meghalaya and saw reality of work in the rat holes. However, he said he is not scared anymore because he always works with a buddy.

Bishwa said that the mines in his area are very dangerous and reported that he had heard of labourers being crushed to death in accidents.

He reported one particular accident that occurred a week ago. The accident was at another mine nearby, and workers died because the ceiling collapsed. His family told him that four or five people, aged about 30 years old, died in the accident. He stated that no compensation had been paid for the fatal accident since the workers were single.

Interview 13

Dir (male), age 17, from Udaipur, Nepal, working in the Meghalaya mines for three years.

Dir, 17, is from Udaipur, Nepal. Dir has never attended school. He has been working in coal mines since he was 14 years old. Dir finds the work quite difficult. He is often afraid to enter into the rat holes, but does so because he needs to earn a living and other job opportunities are unavailable to him.

He earns 700 to 800 rupees (approximately US\$15 to US\$18 or ¥1200 to ¥1400) per day, which he uses for recreational purposes.

Interview 14

Dinkar (male), age 18, from Nepal, working for 4 months working the mine in Meghalaya.

Dinkar, 18, is from Udaipur, Nepal. He attended school until the eighth grade. Dinkar came with a group of friends to work at the mines four months ago. He came to work at the mines because his neighbors in Nepal informed him that he could earn money by doing such work. He did not realize that the work would be so dangerous.

He truly regrets leaving Nepal to come work in the mines. He would like to return to Nepal and live with his parents.

Dinkar is a coal cutter. When he first started working as a coal cutter, he was afraid to enter into the rat holes to cut the coal. He has since gotten used to work of underground coal cutting. Dinkar said there were 4 children including him in his mine, age 12, 14 and 16.

He earns 4,000 to 5,000 rupees (approximately US\$112 to US\$135 or ¥9200 to ¥11,100).

Interview 15

Rajit (male), age 18, from Kasar, Assam, India, working for 3 years in various mines, including mines in Meghalaya.

Rajit is from Kasar, Assam, India. He has never attended school because his family is poor. To help support his family, Rajit left home alone when he was 15 years old to work in mines.

Rajit has been working in various mines for 3 years since he was 15 years old.

Rajit is coal cutter, which requires him to go deep inside the rat holes to cut the coal. He earns 200 to 300 rupees (approximately US\$4 to US\$7 or ¥400 to ¥550) per week.

He said, "I do not like to work but what to do, I have no other option to earn."

Interview 16

Jarjit (male), 18, from Badarpur, Assam, India, working for 3 to 4 years in various mines, including mines in Meghalaya.

Jarjit is from Badarpur, Assam, India. He attended school until the seventh grade. After he quit school, he started working in mines to help support his family, which is poor. He heard about coal mine work from a sardar in his village (a mine foreman acting as a broker), who informed him about the nature of the work. Jarjit earns 500 rupees (approximately US\$11 or ¥900) per day.

II. Extremely Young children

Interview 17

Durk (male), age 12, from Meghalaya, working for 4 years in various mines in Meghalaya.

Durk, 12, is from Meghalaya. His mother is Khasi and his father is Nepali. He has three sisters and two brothers. He was born in the Meghalaya region. He attended nursery school, but was not able to continue his studies due to his family's financial difficulties. He started working in the mines when he was 8 years old. He indicated that his parents were very happy when he told them that he wanted to work in the mines.

Durk earns about 100 to 200 rupees (approximately US\$2 to US\$4 or ¥185 to ¥400) per day. He would like to continue working in the mines.

Interview 18

Das, age 12.

Das has never been to school. He works around coal mines because his family is poor. His work is chopping coal with a hammer. He has 6 brothers and 2 sisters, most of whom are also working around the mining area.

Interview 19

Sahaj (male), age 14, from Wapung, Meghalaya, India, working for a few days in a Meghalaya mine.

Sahaj, 14, is from Wapung, Meghalaya, India. At the time of the interview, he had been working at one of the Meghalaya mines for a few days. He typically works from 9:00 a.m. to 5:00 p.m. and earns about 200 rupees (approximately US\$4 or ¥400) per day.

Interview 20

Hemant (male), age 14, from Wapung, Meghalaya, India, working for a few days in a Meghalaya mine.

Hemant, 14, is from Wapung, Meghalaya, India. At the time of the interview, he had been working at one of the Meghalaya mines for a few days. His job is to carry the coal. He makes about 150 single trips per work day. Hemant would like to attend school, but he cannot because his family is poor, so he has to work. Hemant did not indicate how long he works each day or his salary.

Interview 21

Darpan (male), age 40, from Nepal, working for 10 years in mines in Meghalaya.

The fact-finding mission conducted an interview with a worker named Darpan and his son, Panna, who had just finished their work for the day around their camp. Panna is a 13-year-old child who works in mines. Because of his father's presence, Panna did not want to speak about his situation to the mission.

Darpan, 40, is from Nepal. 10 years ago he came to Meghalaya with his 3 year old son, Panna. He works in the mines with his son, Panna (described in Interview 22).

Darpan indicated that the working conditions in the mines are quite dangerous. During his time as a coal worker, Darpan has witnessed several accidents, such as collapsing ceilings of the rat holes, machinery breakdowns, oxygen running out, faulty stairs into mines, and so forth.

Interview 22

Panna (male), age 13, from Nepal, working for 2 months in various mines, including mines in Meghalaya

Panna, 13, from Nepal, came to the Meghalaya mines when he was 3 years old with his father. He and his father are currently working in the coal mines. Panna had been working in the mines for several months as of the time of his interview.

III. Overall Working situation reported by workers.

Interview 23

Biswas (male), mine supervisor, age 40.

Biswas, 40, is a mine supervisor who has witnessed child labour and dangerous conditions at his mine.

There are 500 people living in this village around the mines. However nobody is entitled to register as residents here. There is no labour union, and thus there is no safety measures and workers' insurance provided at this working place. There are 100 people working in this mine.

According to him, there are around 25 children working at the mine. He has seen that brokers bring groups of children to the mines. In return, mine manager paid commissions to brokers. He is not sure the amount of commission.

In the mine, the mineshaft is a hole 120-145 feet in depth (36-43.5 meters). vertically descending, in a square shape with each side measuring 50 feet (15 meters). The length of the rat holes are around 1000 feet, extending in every direction.

He has witnessed dangerous conditions at his mine. Since there are no safety regulations at his mine, 10% of the labourers are hurt or killed in accidents every year. The manager never paid for the medical expenses for workers injured in the course of their work in the mine. The workers have to pay by themselves. He recognized that these were not appropriate working conditions and wanted to improve the situation.

Salary is not fixed but paid piece by piece according to output, and it is not stable. 1500-1600 rupees is paid for 12 boxes. The size of one box is 1 meter x 0.5 meter.

Interview 24

Kapur, mine supervisor, age 38, from Nepal, working for four years in the Meghalaya mines.

Kapur, 38, has worked for four years in the Meghalaya mines. He reported that there are 65 labourers at his mine, of which eight to ten are children. Most of the child labourers are from Nepal and Assam, India.

Kapur spoke of frequent accidents at the mine. Recently, a crane with faulty brakes fell on and killed a child labourer. Another child labourer died recently when a mine roof fell on him as he was cutting coal.

Kapur stated that accident compensation for a victim or victim's family is never guaranteed. A mine manager could provide anywhere between 3000 and 20000 rupees (US\$70 to US\$450 or ¥5500 to ¥37000) in compensation. If the mine manager provides little or no compensation, the local community may offer financial assistance.

Interview 25

Gopal, delivering coal from the Meghalaya mines for two years.

Gopal has worked for two years delivering coal from his mine to customers in Guwahati. He estimated that approximately 100 child labourers work at his mine. The majority of these children are from Nepal. Gopal estimated that more than 1000 child labourers from Bangladesh working in other mines in Meghalaya.

IV Report of accident

Interview 26

Tara (male), age 21, from Silchar, Assam, India working for 9 years in various mines, including mines in Meghalaya.

Tara, 21, is from *Silchar, Assam, India*. He attended school until he was 8 years old, but quit because of his family situation. He has been working in mines since he was 12 years old. He continues to work in mines to help support his family.

Tara works about eight hours per day. He indicated that the crane at the current mine at which he works is broken, so the workers now carry the coal out of the mine, which makes the work even more difficult and dangerous. He earns 500 to 1000 rupees (approximately US\$11 to US\$22 or ¥900 to ¥1800) per day. He uses his earnings to buy food and other essential items for his family, and he sends some money to his parents.

During his time as a coal worker, he has witnessed several accidents, some of which have resulted in deaths. At one coal mine, as four labourers were digging and cutting coal inside of one of the rat holes, water from a neighboring hole, which was unused and unknown to said labourers, flooded into the rat hole in which the labourers were working, killing all four of them. He indicated that one of the labourers was a 16- to 17-year-old student who came to the mine to work and help his father before entering school. He was also in an accident where the ceiling collapsed. He was able to escape with minor injuries, but his friend was seriously injured in the accident. He sincerely believes that if his timing had been a little delayed he would have been killed in that accident.

Interview 27

Jung (male), age 19, from Dolakha, Nepal, working for 9 months in various mines, including mines in Meghalaya.

Jung, 19, is from Dolakha, Nepal, which is located in central Nepal. He attended school through the third grade. Jung first began working at another mine in the region, to which he was brought by a broker along with seven other children around his age. He came to work at the current mine upon the recommendation of his sister, whose husband works in the same mine. Jung works as a coal cutter.

In his interview, Jung indicated that during the peak season (October through April) there are around 50-60 workers in the mine, about 20 of whom are child labourers. During the offseason, most of the workers return to their home towns.

Jung typically works from 6:00 a.m. to noon, breaks for lunch, and then works until 2:00 p.m. or 3:00 p.m. He earns about 3500 rupees (approximately US\$80 or ¥6300) per week. The more hours he works, the more he can make. He uses about 700 rupees (approximately US\$16 or ¥1300) per week for living expenses. He is saving the rest to give to his parents when he returns to his hometown in Nepal someday.

As of the date of the interview, Jung noted that he has not personally witnessed any accidents at the mines at which he works, but he had heard accounts of several accidents. He recalled one particular accident: as

four labourers were digging and cutting coal inside of one of the rat holes, water from a neighboring hole, which was unused and unknown to the labourers, flooded into the rat hole in which the labourers were working killing all four of them. After the accident, the dead bodies were removed from the flooded hole via a crane. According to what Jung was told, the manager did not report the incident to the local police and did not compensate the families of three of the four deceased miners. As for one of the four deceased miners, his father also worked at the mine and was present when the accident occurred. Jung said the deceased miner's father received a payment of 50,000 rupees (approximately US\$1125 or ¥91,000) in exchange for not reporting the incident to the authorities. Jung seemed to indicate that from what he has heard accidents are typically addressed in this manner.

Interview 28

Suresh (male), age 30, from Silchar, Assam, India, working for 12 years in various mines, including mines in Meghalaya.

There was an accident 2 years ago, and 4 workers were killed. Because they weren't registered employees, nothing was done for them. They were simply buried and forgotten.

Interview 29

Ragendra (male), age 27, from Nepal, working for 6 years in various mines, including mines in Meghalaya.

Ragendra, 27, is from Nepal. He has been working in various mines for six years. He came to work at the current mine in search of earning more money. His wife is a teacher in a school near the mines and his brother-in-law, Jung (Interview 27), is also a coal miner.

Ragendra cuts coal deep in the mines and has seen children as young as 8 and 9 in the rat holes cutting coal. According to Ragendra, young children are often brought to the mines to work. If they decide not to work, they must pay out-of-pocket for their food and transportation to the mines, so many children eventually remain at the mines to work because they lack other options to earn money.

He said, "Children are often brought here when they are age 8-9. They are too young to remember the location of their village, and thus they cannot return. They have no choice other than to stay and work here no matter how they hate this work."

In his interview, Ragendra did not disclose his current salary, but he did note that although he is working harder and more hours, he is getting paid less than before. He noted that if he had the money, he would have quit working in a mine by now.

Ragendra seemed very nervous about his future at the mine. He indicated that he believes the mine owners plan to replace all of the Nepalese labourers. The Nepalese labourers, however, have no voice and cannot speak out against the mine owners. Ragendra recalled one incident in April 2009 where a labourer at another mine got into a disagreement with one of the mine owners over money. As punishment for speaking out against the owner, the labourer was locked in a rat hole which led to the labourer's death. The manager of the mine ordered Ragendra to go into the rat hole and take out the dead body, which Ragendra did. According to Ragendra, such type of punishment is common, and even if the labourers contact the police, the police protect the mine owners, not the labourers.

Interview 30

Lakshmi (female), age unknown, from Nepal, has been working in mines for 10 years. Her husband also works in the coal mines.

Lakshmi has been working in mines for 10 years. Her husband also works in coal mines.

During her time as a coal worker, Lakshmi has witnessed accidents more than five times, some of which have resulted in deaths. In one accident the ceiling collapsed causing one of the rat holes to flood. Lakshmi witnessed that some of the labourers trapped inside the mine were children. She tried to help the trapped children, but failed to rescue them.

Her husband was also in said accident, but only suffered minor injuries. Lakshmi indicated that there are no safety standards at the mines at which she works.

V Former victims of Child Labour

Interview 31

Chetan (male), age 21, from Nepal, working in the Meghalaya mines for nine years.

Chetan, from Nepal, attended school until the age of 8 and began cutting coal when he was 12. He earns between 500 and 1000 rupees (US\$11 or ¥900) per day depending on the number of hours he works. He sends his income to his parents in Nepal.

Chetan spoke of extremely dangerous working conditions in the mines. Once, a mine roof collapsed while he was working. He managed to escape with slight injuries. Another time, the labourer saw four fellow workers die when a wall in their mine broke and flooded with water. One of the victims was a 16-year-old boy from Assam.

Chetan reported that assistance for accident victims and their families is limited. Ambulance services exist for local inhabitants of Meghalaya, but not for labourers. In the event of a fatal accident, the mining manager provides compensation to the families of victims. The manager does not, however, inform police about any fatalities. In addition, the manager cremates the bodies of victims who have no known family.

Interview 32

Santosh (male), age 20, from Nepal, working for years in various mines, including mines in Meghalaya.

Santosh, 20, is from Nepal. He attended school until the eighth grade. He heard about coal mine work from a sardar (a foreman acting as a broker) from his home town, but he was not informed about the details of the work. He was surprised to learn how difficult it is to work in a coal mine. He complained that the working conditions are horrible and that it is often very dry and hot inside of the mines and not enough oxygen inside of the rat holes.

Santosh typically works from 7:00 a.m. to 10:30 a.m. and earns about 400 to 500 rupees (approximately US\$9 to US\$11 or ¥700 to ¥900) per week.

He indicated that he does not like the work and would like to return to his home town in Nepal.

Interview 33

Kabir (male), age 18, from [Nepal], working for 3 years in mines in Meghalaya.

Kabir, 18, is from [Nepal]. Kabir came with a group of friends in Nepal to work at the coal mines in India. He has been engaged in the coal cutting work in the mine hole.

VI. Living Conditions

Interview 34

Anita, Coal mine worker's wife.

Anita's husband has worked as a mine labourer for 15 years. She reported that his mine manager does little to improve the welfare of the labourers. The manager provides almost no medical care. The mine has very poor sanitation, and labourers must carry water to the mining site from a well far away.

Anita reported dangerous and unhealthy working conditions at the mine. She has witnessed at least five serious accidents, including one in which a large stone fell into a hole where several labourers had been working. In addition, her husband's health has deteriorated as a result of working in the mine: he often coughs and falls ill due to long-term exposure to the mining environment.

VII. Others

Interview 35

Kiran (male), age 22, from Nalbari, Assam, India, working for two months in the Meghalaya mines.

Kiran, 22, is from Nalbari, Assam, India. He attended school until the twelfth grade. Kiran has worked in the Meghalaya mines for two months.

Kiran came to Meghalaya, along with others from his village, after hearing that obtaining work there was easy. He did not pay a commission in exchange for receiving work.

Kiran cuts coal four to five hours a day, six days a week, along with 30 to 40 other labourers. He receives 1.5 days' vacation per week. He earns 6000 to 7000 rupees (US\$135 to US\$160 or ¥11000 to ¥13000) a week. He first reported that he enjoyed his work, but later stated that he fears being crushed in a mining accident. He has heard reports of, but has not seen, such accidents. At the time of the interview, he intended to quit work and return to his village in two or three weeks. After that he will come back to work.

Interview 36

Ajith (male), age 22, from Udaipur, Nepal, working for two weeks in the Meghalaya mines.

Ajith, 22, is from Udaipur, Nepal. He has a sixth-grade education. He had worked in the Meghalaya mines only for two weeks at the time of the interview.

Ajith works at the mine to support his wife, and spends most of his disposable income on food, clothing, and gambling. He stated that he did not pay a commission to work at the mine. He works six days a week, cutting and carrying coal, and earns 1000 rupees (US\$22 or ¥1800) a day.

Ajith reported that he is happy with his work. He had no complaints about the labour conditions or management. He does not know of any labourers under 18 at the mine.

Interview 37

Kushwant (male), age 23, from Dhenaji, Assam, India, working for 18 months in the Meghalaya mines.

Kushwant, 23, is a former driver from Dhenaji, Assam, India. He has a ninth-grade education.

Kushwant started working at the mines 18 months ago after his driver's license was stolen and he could no longer drive. He earns 4000 to 5000 rupees (approximately US\$112 to US\$135 or ¥9200 to ¥11,100)

per week. Kushwant plans to return to Assam in a couple of months to obtain another driver's license and return to his previous work as a driver.

Kushwant reported that working in the mine is dangerous. His parents know this kind of work is dangerous but they do not know that he is working this job. Although he has not been injured in an accident himself, he has heard of coal cutters getting crushed under falling mine walls and they died.

VIII. Manager

Interview 38

Anonymous

【Background】 He is 35 from Nepal. He has managed a mine in Meghalaya for five years.

【Overview of Mining in Jaintia hills】 His mine employs about 250 labourers, the majority of whom are Nepalese nationals. A minority of labourers at the mine are from Bangladesh. He estimated that there are 1 *lakh* or 100,000 coal mines across Meghalaya. The mines vary considerably in size. Large mines typically employ 200 labourers, half of whom cut coal, and half of whom carry and upload it onto trucks. Small mines, meanwhile, typically employ between 35 to 40 labourers.

'Five years back there were smaller mines because the cutting is on the top level but now there are bigger mines because they are going 150 feet inside'

【Trafficking】

His labourers hear about work opportunities at his mine by word of mouth. He has heard, however, that some managers recruit in villages, paying inhabitants a small commission to work in their mines for six-month terms.

In addition, although he does not use them himself, he knows of the existence of brokers who recruit labourers, including child labourers. He has tried to persuade other managers to refrain from using brokers because of the potential for exploitation particularly with respect to child labourers.

【Child labour】 According to him, while no children work in his mine, he has heard of eight- to ten-year-olds from Assam and Silchar working in other area mines. Despite these reports of child labour, however, he believes that awareness of children's rights is growing among mine managers and owners, and that the number of children working in the mines has decreased since he first arrived five years ago.

【Working condition】 He described a total lack of occupational safety regulations and labour organization at the mines. He said that the mine owners do not abide by any form of safety procedures or labour standards. In addition, there are no workers' unions or any other form of organization among the labourers that could enable them to raise grievances with management.

In this unregulated and unsupportive work environment, accidents are frequent and mine owners continually fail to improve safety and respond adequately after accidents happen. Since the mines in Meghalaya are built by manual labourers who usually have no professional engineering expertise, they are very fragile and liable to collapse. He stated that ceilings often cave in, and steps and bridges inside the mines break. Water buildup in mine cavities is a constant and deadly threat to labourers. The buildup

creates pressure on mine walls, causing stones to fall on and crush workers. In addition, the pressure can break the walls, flooding mine cavities and drowning labourers.

【Accident】 To illustrate the serious dangers that miners face, He described an accident at a mine named Setu that occurred in 2009. In that accident, 81 labourers were killed when subterranean water from a nearby river flooded a mine cavity. Since no warning system existed at the mine, none of the victims had time to escape. Following the accident, the mine owner failed to drain the accident site and remove the victims' bodies. The owner provided no monetary compensation to the victims' families.

He said that mine managers and owners commonly keep a register of their labourers' identities and wages. Since these registries do not typically include home addresses or family information, however, contacting family members in the event of the injury or death of a labourer is difficult. Although he knows of a few managers and owners who do attempt to reach family members of accident victims even without any contact information, most do not.

【Other human rights violations】

Labourers' safety and health concerns extend far beyond mine accidents. When he came to the mine five years ago he quickly became aware of serious rights abuses, '*human get raped, human get tortured*', he said. He spoke of physical abuse by mine owners and managers against labourers. Some owners and managers corporeally punish labourers, most frequently for committing theft, for fighting, and in retaliation for unpaid debts. In addition, he reported trafficking for prostitution of children in the areas surrounding the mines. Local authorities often fail to investigate and prosecute these serious rights abuses.

【Lack of medical care and nutrition】 Finally, he spoke of a total lack of adequate medical care and nutrition for labourers in area mines. The medicines labourers use to treat workplace injuries or illnesses frequently have expired validity dates. Furthermore, labourers often take the wrong medicine after seeking treatment advice from unlicensed pharmacists. As a result, many labourers who seek treatment become more ill or even die. In addition, some labourers fall ill or die after eating spoiled or improperly prepared food.

IX. Owner

Interview 39

Anonymous

The owner, who has a university education, inherited from his family the land on which his mine is located. He began exploiting the land fifteen years ago. He estimates that a full quarter of the population in the local area owns mines.

The owner earns 5000 rupees (US\$115 or ¥9500) per week from his mine, which he reported provides just enough income to survive. The mine is between 30,000 and 40,000 square feet in area.

The weekly coal output from his mine sells for 20000 rupees (US\$455 or ¥37000). Labour costs 15000 rupees (US\$340 or ¥28000) a week. The owner sells the coal at a local market to buyers from Assam, Guwahati, and Bangladesh. He has also sold coal to a Japanese company, Nippon Dendro Ispat Limited, in the past.

The owner employs four or five labourers who produce approximately ten tons of coal per week. They come from Silchar (Assam, India), Bangladesh and Nepal upon their own initiative in search of work.

The labourers are not organized, nor do they have a welfare or assistance programme upon which to rely in the event of workplace accidents. The owner mentioned that workers have rarely died in his mine, and that all on-site injuries were the result of falls.

The owner stated that he does not keep an employment registry, and that he does not know the names of his labourers. He believes that keeping a registry would be a waste of time since many workers quit after working for a short period.

The owner explained that he pays his mine manager, or sardar, a commission for various tasks. These include recruiting labourers, keeping track of their work hours, counting boxes of coal, and maintaining the mines. Sardars also collect commissions from labourers. The owner stated that labourers can become managers, provided that they work hard in the mine for a prolonged period of time.

The owner spoke of a lack of governmental regulation in the Meghalaya mining sector. He noted that because of the Sixth Schedule of the Constitution of India, which grants governmental autonomy to Meghalaya, national mining and occupational health regulations do not apply to local mines. In addition, mine owners do not register with the state government, and the government provides no form of assistance to either owners or labourers. Finally, draft state mining legislation has been heavily opposed by the mine owners.

Appendix 2. Recommendations of international bodies

Various international bodies have made recommendations to the federal Indian government with respect to violations of rights stemming from the issue of child labour in India.

1. Committee on the rights of the child

The Committee on the Rights of the Child has published two concluding observations on children's rights in India, one in 2000 and the other in 2004. In 2004, the Committee on the Rights of the Child noted that child labour and economic exploitation remained a serious problem in India, and it voiced its concern that minimum age standards in India were rarely enforced and that appropriate penalties were not imposed to ensure that employers comply with the law.¹⁴¹ The Committee thus recommended the following:

¹⁴¹ Committee on the Rights of the Child, Concluding Observations: India, CRC/C/15/Add.228 (2004), para 72. The Committee's 2004 recommendations to India remained largely the same as the recommendations it made regarding child labor in its 2000 Concluding Observations. See Committee on the Rights of the Child, Concluding Observations: India, CRC/C/15/Add.115 (2000), para 65-69.

(a) Ensure the full implementation of the Child Labour (Prohibition and Regulation) Act, 1986, the Bonded Labour (System Abolition) Act, 1976 and the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993;

(b) Amend the Child Labour Act, 1986 so that household enterprises and government schools and training centres are no longer exempt from prohibitions on employing children;

(c) Promote community-based programmes for the prevention of child labour;

(d) Ratify ILO Conventions No. 138 concerning the Minimum Age for Admission to Employment, and No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour;

(e) Strengthen its efforts to raise awareness of the public at large, especially parents and children, of work hazards and to involve and train employers, workers and civic organizations, government officials, such as labour inspectors and law enforcement officials, and other relevant professionals; and

(f) Continue its collaboration with ILO/IPEC.

The Committee also recommended that the federal government of India withdraw its declaration to article 32.¹⁴² Significantly, in 2000, the Committee recommended that a national mechanism to monitor the implementation of standards at state and local levels be established and empowered to receive and address complaints of violations of children's right to be protected from economic exploitation.¹⁴³ In the same document, the Committee recommended that India extend the scope of the Immoral Traffic Prevention Act to include all forms of trafficking of children, and ratify the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the UN Convention against Transnational Organized Crime.¹⁴⁴ In addition the Committee recommended that India ensure that the competent authorities cooperate and coordinate their activities, including with respect to education and rehabilitation programmes.¹⁴⁵ These recommendations involve inter-governmental collaboration, and highlight the need for federal-state level cooperation for the eradication of child labour and economic exploitation.

In 1993, the Committee held a Day of General Discussion on the Economic Exploitation of Children and made recommendations for states to strengthen their systems of prevention of economic exploitation of children.¹⁴⁶ In this, the Committee recommended that all Governments ratify ILO Conventions 138 and 182. It recommended that systems of inspection of work places be implemented in each country, and it called for systematic control of the informal sector of the economy as well as for the penalization of the violations of rights of working children.¹⁴⁷ This is a highly relevant recommendation in the Indian context.

2 *Human Rights Committee on the International Covenant on Civil and Political Rights*

¹⁴² Committee on the Rights of the Child, Concluding Observations: India, CRC/C/15/Add.228 (2004), para 8.

¹⁴³ Committee on the Rights of the Child, Concluding Observations: India, CRC/C/15/Add.115 (2000), para 69.

¹⁴⁴ *Id.*, para 75.

¹⁴⁵ *Id.*, paras. 70-71

¹⁴⁶ <http://www.ohchr.org/EN/HRBodies/CRC/Documents/Recommandations/exploit.pdf>

¹⁴⁷ <http://www.ohchr.org/EN/HRBodies/CRC/Documents/Recommandations/exploit.pdf>

The Human Rights Committee expressed concern in its 1997 Concluding Observations on India that:

despite actions taken by the State party, there has been little progress in implementing the Child Labour (Prohibition and Regulation) Act of 1986. In this respect: the Committee recommended India that urgent steps be taken to remove all children from hazardous occupations, that immediate steps be taken to implement the recommendation of the National Human Rights Commission that the constitutional requirement that it should be a fundamental right for all children under 14 to have free and compulsory education be respected, and that efforts be strengthened to eliminate child labour in both the industrial and rural sectors. The Committee also recommended India to consider establishing an independent mechanism with effective national powers to monitor and enforce the implementation of laws for the eradication of child labor and bonded labor.¹⁴⁸

3 *The Committee on Economic, Social and Cultural Rights*

CESCR, in its Concluding Observation on India in 2008, noted that:

the prevalence of bonded labor, the worst forms of child labor and other exploitative labor conditions in the State party. The Committee is concerned about the insufficient enforcement of existing labor legislation at the federal and the state levels, as well as the lack of awareness among employers of the existing rules and standards.¹⁴⁹

CESCR thus recommended that India:

take effective measures to ensure that violations concerning prohibited labor practices, such as bonded labor, manual scavenging and the worst forms of child labor are stringently prosecuted and employers duly sanctioned. The Committee further recommends that measures to rehabilitate affected children, to monitor their work conditions and their living conditions following removal from such work, be strengthened and significantly expanded to cover all children engaged in the worst forms of child labor. The Committee also recommends that the State party consider ratifying the following ILO Conventions: No. 182 (1999) on the Worst Forms of Child Labor; No. 138 (1973) on Minimum Age; and No. 174 (1993) on Prevention of Major Industrial Accidents.¹⁵⁰

The CESCR's recommendation emphasises India's duty, in accordance with the due diligence obligation under general international law, to pursue action against third parties such as employers who engage in the practice of using child labour.

4 *ILO Committee of Experts*

The ILO Committee of Experts has examined the issue of child labour in India several times under C29; it has the power to examine this issue as there are many labour conditions which are sufficiently hazardous or arduous that the work concerned cannot be counted as voluntary.

In 2001 the ILO Committee drew attention to the fact that the Committee on the Rights of the Child, in its 2000 Concluding Observations on India, was concerned that many children were working in hazardous conditions, and it also recommended that India ratify C138 and C182. In 2005, the ILO Committee

¹⁴⁸ CCPR/C/79/Add.81, para 34

¹⁴⁹ E/C.12/IND/CO/5, para. 19

¹⁵⁰ Ibid, para. 59

pointed out that there was a lack of coherent statistics on child labour in India, stating that it hopes that: 'the Government will redouble its efforts [to eliminate child labor]', and that such efforts were 'particularly important with regard to the identification of working children and strengthening the law enforcement machinery, in order to eradicate exploitation of children, especially in hazardous occupations.'

In 2008, the ILO Committee pointed out that while the number of children working had increased between 1991 and 2001, the Child Labour (Prohibition and Regulation) Act 1986 (CLPRA) had been amended to outlaw more forms of work for children, there was a steep drop in the detection of violations and prosecutions between 2004-5 under the Act, and that no data was produced by the Indian federal government on the nature of sanctions or sentences imposed where convictions were achieved under the CLPRA. In 2010, the Committee stated that it hoped that the government of India would fully implement the CLPRA through state-level plans.

The ILO Committee of Experts' comments with regard to child labour under C29 point out that the Indian federal government has an obligation to eradicate child labour, and it indicated the importance of identifying working children and strengthening law enforcement mechanisms to do so. The ILO Committee's repeated requests for more information and statistics regarding the situation of child labour, and the number of prosecutions under laws prohibiting child labour, etc., reveal the utmost importance of statistics in the fight against child labour. The recommendations and comments indicate that the federal Indian government should make a real effort to acquire reliable and accurate data on child labour in India, and collaborate with state governments to implement its international obligations under the ILO Conventions to which India is a party.

The Committee recommends that the State party undertake a national study on the nature and extent of child labour, and that disaggregated data, including violations, be compiled and kept up to date to serve as a basis for designing measures and evaluating progress. The Committee further recommends that the State party continue its efforts to carry out campaigns to inform and sensitize the general public, especially parents and children, of work hazards; and to involve and train employers', workers' and civic organizations, government officials, such as labour inspectors and law enforcement officials, and other relevant professionals.



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