

P.O. Box 4278
Sydney NSW 2001
Australia
Tel: +61-2-9221-9422
Fax: +61-2-9221-7136

Australia Office

Elaine Pearson, *Australia Director*
Yuko Narushima, *Associate*
Lualhati Hopkins, *Operations Associate*

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HRW.org

May 13, 2015

Human Rights Sub-Committee
Joint Standing Committee on Foreign Affairs, Defence and Trade
P O Box 6022
House of Representatives
Parliament House
Canberra ACT 2600

Re: Inquiry on Women's Rights in the Asia-Pacific

Dear Members of the Sub-Committee,

Thank you for giving us the opportunity to contribute to the inquiry on the human rights concerns of women and girls in the Indian Ocean – Asia Pacific region. Based on our research in Cambodia, Bangladesh, Nepal and Sri Lanka, we are raising key concerns that we hope will influence Australian policy and aid decisions. This submission builds on an earlier submission made by Human Rights Watch on May 22, 2014.

Cambodia

Human Rights Watch released a report on garment workers' rights in Cambodia, "*Work Faster or Get Out*": Labor Rights Abuses in Cambodia's Garment Industry¹ in March 2015.

The report documents poor enforcement of Cambodia's labor laws in 73 factories, including subcontractors, and key labor abuses such as forced overtime, pregnancy discrimination, the repeated use of short-term contracts to control and intimidate workers, and harassment of independent unions. Women bear the brunt of these labor rights violations since they comprise about 90 percent of the garment industry's workforce.

Among other things, the report documents the important role played by Better Factories Cambodia (BFC), the International Labour Organization's factory-monitoring and advisory program supported by Australia until January 2014. Our research indicates that BFC has been able to play an important role monitoring

s Watch, "*Work Faster or Get Out*": Labor Rights Abuses in Cambodia's Industry, March 2015, <http://www.hrw.org/reports/2015/03/11/work-faster-or->

factories with export licenses, given that it has a government-backed mandate to do so, with potential legal penalties for factories with poor compliance. As of January 2015, BFC was monitoring 548 factories.

We are aware that the Australian government stopped funding the Better Work Programme and BFC in January 2014. We are also aware that Better Work is currently negotiating a proposal for funding with DFAT and that the proposal includes BFC. We strongly urge DFAT to re-consider funding the Better Work Programme, particularly the BFC proposal. BFC will be critical to ensuring some credible third-party labour law monitoring in Cambodia.

BFC will be conducting a strategic review later this year, which makes it an opportune time to resume funding and raise concerns that will help build BFC's capacity to inspect more factories and perform increased advisory services. In this regard, it should be noted that while BFC's government-backed mandate to monitor export factories has improved its clout, BFC's mandate is limited to factories with export licenses. Their monitoring largely excludes sub-contractor factories (without export licenses) that perform cut-make-trim functions for larger factories with export licenses. We would therefore encourage you to:

- Provide support that would assist BFC to progressively expand its monitoring to cover smaller, subcontractor factories;
- Urge the BFC to include a concrete plan for the progressive expansion of its services to non-export licensed factories as part of their strategic review: our report documents in detail how the working conditions in sub-contractor factories without export licenses are often the worst in the sector. Of the 25 subcontractor factories in our research, at least 14 were not monitored by BFC and had problems including child labour, forced overtime, minimum wage violations, and anti-union practices. We believe that it is critical for BFC to expand their services to factories without export licenses;
- Communicate to Prime Minister Hun Sen the importance of expanding BFC's mandate to cover all factories and the need for a consolidated, publicly available database of factories and better co-ordination amongst ministries: currently the Cambodian government does not maintain a database of factories and different ministries have different figures for the numbers of factories operating in Cambodia. The lack of co-ordination amongst ministries hampers BFC's effectiveness and its ability to monitor factories properly.

Child marriage in Bangladesh

Bangladesh has the fourth-highest rate of child marriage in the world. In the period 2005 to 2013, according to UNICEF, 29 percent of girls in Bangladesh married before the age of 15 and 65 percent married before the age of 18. Child marriage is associated with many harmful consequences, including health dangers associated with early pregnancy, lower educational achievement for

girls who marry earlier, a higher incidence of spousal violence, and an increased likelihood of poverty.

Bangladesh's government has responded to the growing global attention to child marriage by promising swift action. In 2014, Prime Minister Sheikh Hasina pledged to reduce child marriage in Bangladesh and to ultimately end it by 2041. She committed, by 2021, to end marriage for girls under 15 and reduce by more than one-third the number of girls between the ages of 15 and 18 who marry. As part of this effort, she pledged to revise Bangladesh's law which prohibits child marriage, the Child Marriage Restraint Act (CMRA) before 2015, develop a national plan of action on child marriage by the end of 2014, and take other steps to change social norms and engage civil society in the fight against child marriage.

Sheikh Hasina's efforts to follow through on her commitments have already been marred by delay. One reason for this was a debacle over a proposal to revise the CMRA by lowering the age of marriage to 16 years old for girls and 18 years old for boys. This proposal was vigorously opposed by civil society activists in Bangladesh, as well as international experts. The government still appears to be pushing forward with this proposal, while the process of reforming the law has been delayed. The development of a national plan of action on ending child marriage has also been delayed and is not complete at the time of writing.

We would urge DFAT to:

- Encourage the Bangladesh government to develop a comprehensive national strategy to end child marriage through a broad consultative process, participate in its development, and support its implementation.
- Encourage the Bangladesh government to pass a reformed CMRA in 2015 which complies with international law and best practices.
- Include scrutiny of Bangladesh's efforts to end child, early, and forced marriage in human rights monitoring, reporting, and bilateral and multilateral dialogues.

In addition, we would also encourage Australia to:

- Support a target on ending child marriage under goal 5 on gender equity and empowering all women and girls in the post-2015 Sustainable Development Goals.
- Establish or strengthen financing and technical support for ending child, early, and forced marriage in high-prevalence countries, including Bangladesh, and ensure it is integrated as a cross-cutting issue in other donor assistance including on education, health, natural disaster management, and economic development.
- Integrate strategies to prevent child, early, and forced marriage and to support married girls into assistance programs. These could include incorporating attention to child marriage in education, maternal health,

poverty-alleviation, disaster preparedness/response, climate change adaptation and economic development programs. Strategies include improving girls' access to education, including those supporting married girls to return to school; enhancing access to sexual and reproductive health information and services for adolescent girls; expanding income-generating opportunities for girls and their families, including married girls; building community awareness about the harms of child marriage and the importance of delaying marriage; and helping girls at risk of, and in forced marriages, to access protection, justice, and redress.

- Support nongovernmental organizations to implement programs to better understand the root causes of child and forced marriage in Bangladesh and actions needed to address it, and to monitor and evaluate the effectiveness of programs addressing child and forced marriage, share information about effective approaches, and use this information to improve programming.
- Support the replication and expansion of programs and strategies proven to be effective.

Sexual violence in conflict in Nepal and Sri Lanka

Human Rights Watch has documented sexual violence during the conflicts in both Nepal and Sri Lanka and the lack of accountability for these crimes. We are aware of the key role played by the Australian government during their tenure on the Security Council to advance and support implementation of the women, peace and security agenda. We therefore urge you to continue to engage in these efforts and to integrate women, peace and security concerns into your development aid to Nepal and Sri Lanka.

Nepal

Human Rights Watch published a report in September 2014 on sexual violence in Nepal's decade-long civil war between government forces and the Communist Party of Nepal (CPN-M). The report, *Silenced and Forgotten: Survivors of Nepal's Conflict-Era Sexual Violence*,² documents the largely undisclosed sexual violence that occurred during the conflict. While Nepal's government has acknowledged the rape of women and girls, it has failed to end impunity for abuses or to seek justice and reparations for the victims of these abuses. It has also failed to introduce a comprehensive medical and psycho-social programme to benefit survivors and help them deal with the long-term consequences of sexual violence.

We urge DFAT to:

² Human Rights Watch, *Silenced and Forgotten: Survivors of Nepal's Conflict-Era Sexual Violence*, September 2014, <http://www.hrw.org/reports/2014/09/23/silenced-and-forgotten-0>.

- Assist the government of Nepal to establish an effective transitional justice mechanism to investigate sexual violence in conflict;
- Support civil society organisations that work with victims of sexual violence and assist them with legal aid and medical treatment for survivors, and broader advocacy efforts to reform Nepal's laws governing sexual violence.

Sri Lanka

Human Rights Watch documented sexual violence committed by members of the Sri Lankan security forces between 2006 – 2012 against men and women in state custody. The report, *"We Will Teach You a Lesson": Sexual Violence against Tamils by Sri Lanka Security Forces*³ shows that the Sri Lankan government has blocked reporting and investigation of sexual violence committed by its forces as well as access to medical and psycho-social care. Many Tamil Tiger suspects have been held under the Prevention of Terrorism Act, which effectively provides immunity to officials implicated in abuses and undermines the due process rights of detainees.

We urge DFAT to:

- Press the Sri Lankan government to investigate allegations of rape and sexual violence by security forces, prosecute those responsible, including persons with command responsibility and publicise the outcome of such prosecutions;
- Press the Sri Lankan government to ensure that victims of sexual violence receive prompt and adequate compensation.

Indonesia

The Indonesian government subjects female applicants for Indonesia's National Police and Indonesia's National Armed Forces to discriminatory and degrading "virginity tests."

Human Rights Watch interviewed⁴ female police and police applicants in six Indonesian cities who had undergone the "test," two of them in 2014. Applicants who "failed" were not necessarily expelled from the force, but all of the women described the "test" as painful and traumatic. Policewomen have raised the issue with senior police officials, who have at times claimed the practice has been discontinued. But the "test" is listed as a requirement for women applicants

³ Human Rights Watch, *"We Will Teach You a Lesson": Sexual Violence against Tamils by Sri Lankan Security Forces*, February 2013, <http://www.hrw.org/reports/2013/02/26/we-will-teach-you-lesson>.

⁴ "Indonesia: 'Virginity Tests' for Female Police," Human Rights Watch news release, November 18, 2014, <http://www.hrw.org/news/2014/11/17/indonesia-virginity-tests-female-police>.

on the official police recruitment website, and Human Rights Watch interviews suggest it is still being widely applied.

Regarding the armed forces, on November 19, 2014, Indonesia's Coordinating Minister for Politics, Law and Security, Tedjo Edhi, told reporters that such "tests" have long been obligatory for female military recruits. Human Rights Watch's research in recent months has confirmed Tedjo's statement, and has indicated that the military—the air force, the army, and the navy—has for decades also extended the "virginity test" requirement to the fiancées of military officers prior to marriage.

Human Rights Watch interviewed 11 Indonesian military wives and female officers who talked about the physical and psychological trauma of these tests. A doctor who worked at the Army Hospital in Jakarta explained how women are required to strip naked and submit to the "two-finger" test as part of the military medical screening examination.

So-called "virginity tests" have been recognized internationally as a violation of human rights, particularly the prohibition against cruel, inhuman or degrading treatment under article 7 of the International Covenant on Civil and Political Rights and article 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, both of which Indonesia has ratified. In November 2014 the World Health Organization stated unambiguously, "There is no place for virginity (or 'two-finger') testing; it has no scientific validity."

Human Rights Watch has documented the use of abusive "virginity tests" in several other countries including Egypt and Afghanistan. Human Rights Watch has previously criticized calls for "virginity tests" for school girls and policewomen in Indonesia, both as human rights violations and for being subjective and unscientific. Furthermore, subjecting female applicants to "virginity tests" is discriminatory and has no bearing on their ability to perform their job.

In order to protect women's rights to privacy, dignity, and freedom from violence and discrimination, we urge DFAT to:

- Raise with Indonesian authorities at all levels the need to immediately cease all "virginity tests" for police and military posts, as well for wives of military officers.

We hope you find this information useful. Please do not hesitate to contact us for additional information.

Sincerely,

Liesl Gerntholtz
Women's Rights Director

Elaine Pearson
Australia Director