

# **The Situation of Bengali-Speaking Muslims in Assam**

**Urgent appeal to CERD under its Early Warning and Urgent Action Procedure (CERD)**

*Urgent Appeal to the Committee on the Elimination of All Forms of Racial Discrimination (CERD), highlighting human rights violations and discriminatory practices against Bengali-speaking Muslims in India's Assam state, since the Bharatiya Janata Party (BJP) assumed power at the federal level in 2014 and in Assam in 2016.*

**SOUTHASIA  
JUSTICE  
CAMPAIGN**

[southasiajusticecampaign.org](http://southasiajusticecampaign.org)

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## **Urgent Appeal to CERD under its Early Warning and Urgent Action Procedure (EWUA)**

### **Introduction**

South Asia Justice Campaign<sup>1</sup> together with the Institute on Statelessness and Inclusion<sup>2</sup> and Nationality for All<sup>3</sup> submit this Urgent Appeal to the Committee on the Elimination of All Forms of Racial Discrimination (CERD) calling upon it to, as a matter of priority, look into the situation of Bengali-speaking Muslims in Assam, India, initiate an Urgent Action Procedure, and take necessary measures to address the situation.

As described in this submission, human rights violations and discriminatory practices by the State that are focused against Bengali-speaking Muslims in particular have intensified since the Bharatiya Janata Party (BJP) came to power in the Centre in 2014 and in Assam in 2016. These violations include *inter alia* the mass discriminatory deprivation of nationality caused by updating the National Register of Citizens (NRC), forced evictions and racist hate speech against Bengali-speaking Muslims in Assam, extra-judicial killings and mass arrests disproportionately targeting Muslims, closure of madrassas, and attempts at population control accompanied by hateful rhetoric against Bengali-speaking Muslims, including by state's top-most political leaders. With parliamentary elections, including in Assam, coming up in early 2024, further escalation in hate speech, discrimination and violence against the community, is likely, with its attendant consequences, creating the urgency.

The submission argues that this treatment can be considered racial discrimination in accordance with Art. 1(1) of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) because Bengali-speaking Muslims in Assam constitute a racial group which is being subjected to distinctions, exclusions and restrictions based on their race and ethnic origin with the purpose of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life. The forms of discriminatory exclusion and human rights violations addressed in this submission focus on mass nationality deprivation and the arbitrary declaration of citizens as foreigners, forced evictions, racist and hate speech, extrajudicial killings by the Assam police in violent encounters, mass arrest on the allegations of child marriage, and the closure of Islamic schools.

This warrants urgent actions by the CERD in light of the gravity and scale of the situation, the escalation of violations and the risk of irreparable harm that may be caused to the victims. The situation described in this submission meets the threshold of various indicators for the CERD's early warning and urgent action procedure.

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<sup>1</sup> South Asia Justice Campaign (<https://southasiajusticecampaign.org/>) is a collective working to raise awareness and seek policy change to further the human rights of vulnerable groups in South Asia.

<sup>2</sup> The Institute on Statelessness and Inclusion ([www.institutesi.org](http://www.institutesi.org)) is the first and only human rights NGO dedicated to promoting the right to a nationality and the rights of stateless people globally.

<sup>3</sup> Nationality For All (<https://www.nationalityforall.org/>) is the only regional organization working to end statelessness and promote right to nationality in the Asia Pacific. NFA is committed to supporting leadership and agency of persons with lived experience of statelessness by ensuring their meaningful participation in the planning, design, implementation, and monitoring of activities.

## Background

North-Eastern India comprises several religious and ethnic groups, with historical divisions between ethnic 'insiders' and 'outsiders' dating back to British colonial policies and labour migration from Bengal in the early 20th century. The state of Assam is particularly illustrative of these ethnic tensions. Historically, Bengali-speaking people in Assam have been considered 'foreigners' or 'outsiders' and are frequently targeted by Assamese nationalist groups who consider themselves to be 'indigenous Assamese'.

The three largest religious communities in Assam are Hindu (61.47 per cent of the state population), Muslim (34.22 per cent), and Christian (3.7 per cent).<sup>4</sup> The Muslim population belongs to two main categories: first, the numerically smaller 'Assamese Muslims' who, together with Assamese Hindus, see themselves as part of the Assamese-speaking community, and second the numerically larger group of 'Bengali-speaking Muslims' with a history of migration from Bengal,<sup>5</sup> who are often referred to as 'Miyas'.<sup>6</sup> The Bengali-speaking Muslims with their distinct culture and traditions, are perceived as a threat to the 'indigenous Assamese' and met with hostility. This is evidenced by the statement by Himanta Biswa Sarma, current Chief Minister (CM) of Assam, insisting that the assertion of identity by Bengali-speaking Muslims amounts to aggression,<sup>7</sup> as well as the response to 'Miya poetry' which even led to criminal complaints being registered against the poets.<sup>8</sup>

## Serious human rights violations targeting Bengali-speaking Muslims in Assam

The particular group of Bengali-speaking Muslims have been subjected to a pattern of continuous human rights violations because of their membership to this particular minority group in Assam.

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<sup>4</sup> Ministry of Home Affairs, 2011 Census Data - Population Enumeration Data (Final Population) (Government of India, 2011) available at: [www.censusindia.gov.in/2011census/population\\_enumeration.html](http://www.censusindia.gov.in/2011census/population_enumeration.html) [accessed 2 June 2023].

<sup>5</sup> Kabir Firaque & Tora Agarwala, Assam's Muslims: why some have been declared 'indigenous' and some left out (The Indian Express, 13 July 2022) available at: <https://indianexpress.com/article/explained/explained-who-are-assam-indigenous-muslims-8022121/> [accessed 7 July 2023].

<sup>6</sup> 'Miya', a word that means 'gentleman' in Urdu, has been used derogatorily in Assam to refer to Bengali-speaking Muslims, virtually becoming an ethnic slur. However, in recent years, there has been an attempt by Bengali-speaking Muslims in Assam to reclaim the word 'Miya', particularly through resistance poetry in Bengali dialects, expressing pride in the 'Miya' identity and highlighting the discrimination faced. Please refer to: Deborah Grey, Resurgence of anti-CAA wave in Assam, BJP in denial? (Sabrang India, 4 December 2020) available at: <https://sabrangindia.in/article/resurgence-anti-caa-wave-assam-bjp-denial/> [accessed 7 July 2023]; Profile of 'Sheikh Abdul Baten' by Prisoners of Conscience India, available at: <https://pocindia.org/sheikh-abdul-baten/> [accessed 7 July 2023]; Gitanjali Gurlhosur, On the Riverine Islands of Assam : the Resistance of Miyah Poetry and the Women Writing It (Ritimo, 4 April 2022) available at: <https://www.ritimo.org/On-the-Riverine-Islands-of-Assam-the-Resistance-of-Miyah-Poetry-and-the-Women> [accessed 7 July 2023].

<sup>7</sup> Himanta Biswa Sarma: NRC, CAA no longer the discourse... Issue now is conflict of cultures, this claim of Miya identity (The Indian Express, 23 November 2020) available at: <https://indianexpress.com/article/india/himanta-biswa-sarma-nrc-caa-no-longer-the-discourse-issue-now-is-conflict-of-cultures-this-claim-of-miya-identity-7061653/> [accessed 2 June 2023].

<sup>8</sup> Shoaib Daniyal, 'I am Miya': Why poetry by Bengal-origin Muslims in their mother tongue is shaking up Assam (Scroll.in, 14 July 2019) available at: <https://scroll.in/article/930416/i-am-miya-why-poetry-by-bengal-origin-muslims-in-their-mother-tongue-is-shaking-up-assam> [accessed 2 June 2023].

Discrimination targeting Bengali-speaking Muslims in Assam constitutes “racial discrimination” under article 1(1) of the ICERD as it is not only based on their religion but also linked clearly to their ethnic origin. This is evidenced by a government-appointed committee’s recommendation in June 2022 to officially separate “indigenous or Assamese Muslims” from “Bengali-speaking Muslims”, which led to the grant of indigenous status to five Assamese-speaking Muslim communities in Assam in July 2022, placing Bengali-speaking Muslims with their distinct language, culture, ethnic roots, and history of migration at further risk of marginalisation.<sup>10</sup> The applicability of the ICERD in cases where religion is linked with race or ethnicity as in the case of Bengali-speaking Muslims in Assam, is evidenced by article 5(d)(vii) ICERD which requires States to prohibit and eliminate racial discrimination in the enjoyment of the ‘right to freedom of thought, conscience and religion’, as well as the CERD’s reporting guidelines to States Parties which highlight that the possible intersectionality of racial and religious discrimination could lead to discrimination on ethnic grounds against members of specific religious communities.<sup>11</sup> In this context, it is also relevant to note that the List of issues prior to reporting (LOIPR) for India issued by the CERD in August 2021 makes a specific reference to Assam and the consequences of updating the NRC for individuals who are excluded from the final NRC as well as individuals declared foreigners by Foreigners’ Tribunals in Assam.<sup>12</sup>

## **1. Mass discriminatory deprivation of nationality caused by updating the NRC**

1.1. Over 140,000 people have been ‘Declared Foreigners’ through the implementation of an arbitrary and controversial legal framework to identify “illegal migrants” in the state of Assam. Assertions that they are Bangladeshi citizens have been rejected by Bangladesh, and with no other nationality, these people are stateless. Further, almost two-million people in Assam are at risk of statelessness, having been excluded from the NRC. The below paragraphs (1.2 – 1.5) provide the relevant international human rights law framework relating to the right to nationality and the prohibition of arbitrary deprivation of nationality, as well as relevant recommendations made to India by human rights review mechanisms. From paragraph 1.6, the root causes of the mass deprivations are explained, as well as current developments which illustrate the most

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<sup>9</sup> Rokibuz Zaman, Why many in Assam are unhappy with a proposal to count ‘Assamese Muslims’ (Scroll.in, 2 June 2022) available at: <https://scroll.in/article/1025237/why-many-in-assam-are-unhappy-with-a-proposal-to-count-assamese-muslims> [accessed 7 July 2023].

<sup>10</sup> Kabir Firaque & Tora Agarwala, Assam’s Muslims: why some have been declared ‘indigenous’ and some left out (The Indian Express, 13 July 2022) available at: <https://indianexpress.com/article/explained/explained-who-are-assam-indigenous-muslims-8022121/> [accessed 7 July 2023]; Angana Chakrabarti, ‘Natives’ vs Bengali-speaking ‘Miyas’: Why Assam govt has named 5 Muslim groups as indigenous (The Print, 6 July 2022) available at: <https://theprint.in/politics/natives-vs-bengali-speaking-miyas-why-assam-govt-has-named-5-muslim-groups-as-indigenous/1027848/> [accessed 7 July 2023]; Assamese Muslims recognised as a distinct indigenous community (The Hindu, 6 July 2022) available at: <https://www.thehindu.com/news/national/other-states/assamese-muslims-recognised-as-a-distinct-indigenous-community/article65606802.ece> [accessed 7 July 2023].

<sup>11</sup> ‘Guidelines for the CERD-specific Document to be submitted by States Parties under Article 9, paragraph 1, of the Convention’ CERD/C/2007/1 (2007) p. 10, available at: <https://digitallibrary.un.org/record/630532?ln=en> [accessed 7 July 2023].

<sup>12</sup> CERD/C/IND/QPR/20-21 (2021), para 19 available at: [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/SessionDetails1.aspx?SessionID=2483&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/SessionDetails1.aspx?SessionID=2483&Lang=en) [accessed 7 July 2023].

extreme violation of the right to nationality protected under article 5(d)(iii) of the ICERD, and violations of article 3 which condemns racial segregation.

- 1.2. Under international law, states have traditionally had broad discretion in the regulation of nationality matters. This is not, however, an absolute discretion, and has been gradually limited by the evolution of international human rights law. In addition to article 5 (d)( iii) CERD, the right to a nationality is also protected in the following treaties to which India is a party: the International Covenant on Civil and Political Rights (ICCPR) (Article 24.3), International Covenant on Economic, Social and Cultural Rights (ICESCR) (Articles. 2.2 and 3), Convention on the Rights of the Child (CRC) (Articles 2, 3, 7 and 8), Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (Article 9), and the Convention on the Rights of Persons with Disabilities (CRPD) (Article 18).
- 1.3. Further, states must be adherent to a number of international standards and principles in relation to deprivation of citizenship, including the prohibition of arbitrary deprivation of nationality, non-discrimination, and the avoidance of statelessness. The Principles on Deprivation of Nationality as a National Security Measure, provide important guidance on the questions of deprivation of nationality.<sup>13</sup> The Principles restate or reflect international law and legal standards under the UN Charter, treaty law, customary international law, general principles of law, judicial decisions and legal scholarship, regional and national law and practice.<sup>14</sup> Furthermore, the impact of nationality deprivation on the enjoyment of other human rights, humanitarian and refugee law obligations and standards must be taken into consideration when assessing the legality of citizenship deprivation. These include the right to enter and remain in one's own country, the prohibition of refoulement, the prohibition of torture and cruel, inhuman or degrading treatment or punishment, the liberty and security of the person the right to private and family life, legal personhood and the rights of the child.<sup>15</sup> Any measures to deprive nationality must also comply with due process safeguards and the right to a fair trial.<sup>16</sup>
- 1.4. India has been subject to international human rights reviews by several mechanisms, including the Universal Periodic Review (UPR). India was most recently reviewed in November 2022 during the 4<sup>th</sup> UPR cycle, at which States recommended that India:
  - 1.4.1. Repeal the Armed Forces (Special Powers) Act, the Jammu and Kashmir Public Safety Act, National Security Act, Citizenship (Amendment) Act 2019, and the National Register of Citizens (Pakistan);

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<sup>13</sup> Principles on Deprivation of Nationality as a National Security Measure, March 2020. Available at: <https://files.institutesi.org/PRINCIPLES.pdf>. The Principles were developed over a 30-month research and consultation period, with input from more than 60 leading experts in the fields of human rights, nationality and statelessness, counter-terrorism, refugee protection, child rights, migration and other related areas, in a process facilitated by ISI in collaboration with the Open Society Justice Initiative and with support from the Asser Institute and Ashurst LLP.

<sup>14</sup> A detailed Commentary to the Principles provides an in-depth analysis and overview of the international law norms and standards, which underlie the Principles. This Commentary can be found here: [https://files.institutesi.org/Principles\\_COMMENTARY.pdf](https://files.institutesi.org/Principles_COMMENTARY.pdf)

<sup>15</sup> Ibid. Principle 9.

<sup>16</sup> Ibid. Principle 8.

- 1.4.2. Review the design and implementation of the National Registry of Citizens to avoid statelessness, deprivation or denial of nationality, arbitrary detentions or expulsions (Mexico);
  - 1.4.3. ‘Ratify all the international instruments that it had signed and consider signing and ratifying those to which it was not yet a party, including the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Convention for the Protection of All Persons from Enforced Disappearance, the Optional Protocols to the International Covenant on Civil and Political Rights, the Convention relating to the Status of Refugees and the Protocol relating to the Status of Refugees, the Convention relating to the Status of Stateless Persons and the Convention on the Reduction of Statelessness (South Africa);
  - 1.4.4. Accede to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness and take all necessary measures to implement these conventions (Luxembourg).<sup>17</sup>
- 1.5. The Committee on the Rights of Persons with Disabilities (CRPD) also expressed concern about ‘the situation of persons with disabilities, including Muslim persons with disabilities, rendered **stateless** as a result of the registry process undertaken in the State of Assam and currently in detention camps’ and recommended India to ‘Ensure respect for and the protection of all human rights of persons with disabilities rendered **stateless**, including those in detention camps, urgently adopting measures to allow the reacquisition of **nationality**, and ratify or accede to the Convention relating to the Status of **Stateless** Persons (1954) and the Convention on the Reduction of **Statelessness** (1961)’.
- 1.6. The NRC has its roots in the Assam Accord of 1985, an agreement between the leaders of the Assam Movement and the Indian government to accept all migrants who entered Assam prior to 1 January 1966 and identify and deport all refugees and migrants who entered after 25 March 1971 (the formal end date of Bangladesh’s Liberation War against Pakistan). Individuals who came to Assam between 1966 and 1971 were to be detected as ‘foreigners’ and deleted from electoral rolls, denying them voting rights for 10 years, but allowing them to enjoy other rights of citizenship. In December 2014, implementation of this agreement took the form of updating of the NRC after a key ruling by the Supreme Court of India (SC) ordering the Assam government to carry out this update.<sup>18</sup> This ruling was backed by the central government led by the BJP, and a large-scale administrative exercise was started in 2015 to verify the citizenship of Assam residents in order to identify and distinguish ‘genuine’ Indian citizens from ‘infiltrators’ or ‘illegal immigrants’, so that the government could ‘detect and deport undocumented immigrants from Bangladesh’.<sup>19</sup>

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<sup>17</sup> OHCHR, Extranet Universal Periodic review, India,

[www.uprmeetings.ohchr.org/Sessions/41/India/Pages/default.aspx](http://www.uprmeetings.ohchr.org/Sessions/41/India/Pages/default.aspx).

<sup>18</sup> Judgment dated 17 December 2014 in Assam Sanmilita Mahasangha & Ors v. Union of India & Ors. (Writ Petition (C) 562 of 2012) available at: <https://main.sci.gov.in/jonew/judis/42194.pdf> [accessed 7 July 2023].

<sup>19</sup> Saif Khalid, ‘India excludes nearly 2 million people from Assam citizen list’ (Al Jazeera, 31 August 2019) available at: [www.aljazeera.com/news/2019/8/31/india-excludes-nearly-2-million-people-from-assam-citizen-list](http://www.aljazeera.com/news/2019/8/31/india-excludes-nearly-2-million-people-from-assam-citizen-list) [accessed 2 June 2023].

- 1.7. The controversial process of updating the NRC in Assam, administered by the central Registrar General of India under close supervision of the SC, was completed and the ‘final’ NRC was published on 31 August 2019. This list excluded 1,906,657 Assam residents, comprising about 6 per cent of the state’s population, as having doubtful nationality.<sup>20</sup> A majority of those excluded were Bengali-speaking Hindus and Bengali-speaking Muslims.<sup>21</sup> Experts had warned of the procedural flaws of the NRC exercise and its potential discriminatory impact on Bengali-speaking Muslims. For instance, four UN Special Rapporteurs jointly addressed a letter to the Government of India in June 2018, communicating concerns that the discrimination experienced by “*members of the Bengali Muslim minority in Assam*” was predicted to “*escalate as a result of the NRC*” and that “*local authorities in Assam, deemed particularly hostile towards Muslims and people of Bengali descent, may manipulate the verification system in an attempt to exclude genuine Indian citizens from the updated NRC*”, warning that “*if these allegations are founded, the updated register poses a dire risk to thousands of Indian citizens who may wrongfully be declared as “foreigners” and consequently rendered stateless*”.<sup>22</sup> However, the letter was not given due regard by the Indian authorities and the NRC exercise continued regardless.
- 1.8. The exclusion of such a large number of persons from the NRC was due to a mix of procedural and capacity failures of the authorities involved, including the NRC State Coordinator’s Office. In a specified time period in 2015, the entire population of Assam was required to file applications for inclusion in the NRC along with two types of documents as proof: List A ‘legacy’ documents proving presence of the applicant’s ancestors in Assam prior to 24 March 1971, and List B ‘linkage’ documents proving the relationship of the applicant with the ancestors.<sup>23</sup> The application was reviewed and supporting documents were then ‘verified’ by government officials, who decided on the applicant’s inclusion or exclusion in the NRC. Challenges included documents having been lost or destroyed by the numerous floods in the region of Assam, or historic records having been poorly created and maintained, and thus containing errors and inconsistencies.
- 1.9. Additionally, systemic discrimination and arbitrariness lay at the heart of the NRC’s failure.<sup>24</sup> Populations were segregated into ‘original’ and ‘non-original’ inhabitants – with Bengali and

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<sup>20</sup> Office of the State Coordinator of National Registration, Press Brief Publication of Final NRC (Government of Assam, 31 August 2019) available at: [www.nrcassam.nic.in/pdf/English%20-Press%20Brief%2031st%20August%202019.pdf](http://www.nrcassam.nic.in/pdf/English%20-Press%20Brief%2031st%20August%202019.pdf) [accessed 25 May 2023]; Biswa Kalyan Purkayastha, Assam foreigners’ tribunal says NRC is final (The Hindustan Times, 21 September 2021) available at: <https://www.hindustantimes.com/indianews/assam-foreigners-tribunal-says-nrc-is-final-101632222612470.html> [accessed 25 May 2023].

<sup>21</sup> Harrison Akins, The Religious Freedom Implications of the National Register of Citizens in India (United States Commission on International Religious Freedom, 2019) available at: [www.uscirf.gov/sites/default/files/2019%20India%20Issue%20Brief%20-%20Religious%20Freedom%20Implications.pdf](http://www.uscirf.gov/sites/default/files/2019%20India%20Issue%20Brief%20-%20Religious%20Freedom%20Implications.pdf) [accessed 25 May 2023].

<sup>22</sup> Special Rapporteur (SR) on minority issues; SR on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance; SR on the Promotion and Protection of the Right to Freedom of Opinion and Expression; and SR on Freedom of Religion or Belief, joint letter to Government of India, 11th of June 2018.

<sup>23</sup> What Is Legacy Data? (Office of the State Coordinator of National Registration (NRC), Assam) available at: <http://nrcassam.nic.in/what-legacy.html#1> [accessed 2 June 2023].

<sup>24</sup> Institutional Discrimination and Statelessness in India: A report by human rights organisations and professionals in response to the call for submissions by the Special Rapporteur on Freedom of Religion or Belief, Mr. Ahmed Shaheed (1

Nepali-speaking minorities making up the bulk of the latter category. In the absence of a definition of ‘original inhabitants’ or a procedure for their identification,<sup>25</sup> authorities commonly based their determination on the assumption that only Assamese-speaking and some indigenous groups were ‘original’, while the rest of the population, mainly persons of Bengali and Nepali descent, besides Hindi speakers, were considered ‘non-original’ inhabitants. Bengali-speaking minorities, who made up most of the ‘non-original’ category, were reportedly subject to more stringent standards than ‘original’ inhabitants by government officials; most of the government officials were from the linguistic and religious majority community.

- 1.10. Application of differential criteria resulted in mass rejections of applications from inhabitants deemed ‘non-original’. This particularly impacted married women and children deemed as ‘non-original’ inhabitants. Approximately 23% of Indian women get married before they turn 18,<sup>26</sup> and their first official document is often a voter identification card carrying their married name. This made it impossible to prove the link to their parents, compelling these women to rely on residency certificates issued by the local gram panchayat (village council). However, around 2.25 million Bengali and Nepali-speaking married women who submitted such certificates as their proof of residence were put through an additional, discriminatorily more rigorous two-step verification process after being identified as ‘non-original’ inhabitants of Assam.<sup>27</sup> The two-step verification placed an unfair and unrealistic burden on the person producing the document, as they had to ensure that the authority who issued the document would appear in person to confirm the contents of the document.<sup>28</sup> Similarly, children without birth certificates were also impacted, a large number considering that in 2016, 38 per cent of children in India under five years of age did not have a birth certificate.<sup>29</sup>
- 1.11. Close on the heels of the publication of the NRC in Assam, the Parliament of India passed the Citizenship Amendment Act, 2019 (CAA) in December 2019, opening a route to expedited nationality for non-Muslim migrants from neighbouring countries. The CAA exacerbates the

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June 2020) available at:

<https://www.ohchr.org/sites/default/files/Documents/Issues/Religion/Submissions/CSOs/11.barak-huma-rights-protection-committee.pdf> [accessed 7 July 2023].

<sup>25</sup> Supreme Court of India, Writ petition (c) No. 1020 of 2017, order dated 5th December 2017.

<sup>26</sup> Ending Child Marriage: A profile of progress in India (UNICEF, 5 May 2023)

<https://data.unicef.org/resources/ending-child-marriage-a-profile-of-progress-in-india-2023/#:~:text=Nearly%20one%20in%20four%20young,and%20union%20territories%20in%20India> [accessed 5 June 2023].

<sup>27</sup> “Shoot the Traitors”: Discrimination Against Muslims under India’s New Citizenship Policy’ (Human Rights Watch, 9 April 2020) available at: [www.hrw.org/report/2020/04/09/shoot-traitors/discrimination-against-muslims-under-indias-new-citizenship-policy](http://www.hrw.org/report/2020/04/09/shoot-traitors/discrimination-against-muslims-under-indias-new-citizenship-policy) [accessed 1 June 2023]; Mandates of the Working Group on Arbitrary Detention: Concerns about the impending deadline of 31 December 2018 for the closure of the Claims and Objections period with regards to the National Register of Citizens (NRC) in the State of Assam. (OHCHR, 13 December 2018) (Joint Communication) OL IND 29/2018.

<sup>28</sup> Designed to Exclude: How India’s Courts Are Allowing Foreigners’ Tribunals to Render People Stateless in Assam (Amnesty International, 2019) (see section on Complicity of Courts) available at: [https://www.amnesty.be/IMG/pdf/rapport\\_inde.pdf](https://www.amnesty.be/IMG/pdf/rapport_inde.pdf) [accessed 7 July 2023].

<sup>29</sup> Swagata Yadavar and Disha Shetty, Birth Certificates Are Citizenship Proof, Govt Says. But 38% Under-5 Children Don’t Have One (IndiaSpend, 3 January 2020) available at: [www.indiaspend.com/birth-certificates-are-citizenship-proof-govt-says-but-38-under-5-children-dont-have-one/](http://www.indiaspend.com/birth-certificates-are-citizenship-proof-govt-says-but-38-under-5-children-dont-have-one/) [accessed 1 June 2023].

already divisive dynamics of the NRC process in Assam by making distinctions on the basis of religion and providing expedited citizenship to non-Muslim migrants from Bangladesh, Afghanistan and Pakistan. As mentioned above, a majority of the 1.9 million or so persons excluded from the NRC were Bengali-speaking Hindus and Bengali-speaking Muslims.<sup>30</sup> However, those excluded from the NRC who are included in the CAA will still have a potential pathway to acquiring Indian citizenship, while Muslims similarly left off the NRC will have no such option. This has been highlighted by the Chief Minister of Assam as well.<sup>31</sup>

- 1.12. Another point to note is the situation of around 120,000 individuals who were designated as ‘doubtful voter’ or ‘D-voter’ at the time of application for inclusion in the NRC. The category of ‘D-voters’ is not recognised under the Indian citizenship law, but has been used since 1977 after political mobilisation by nationalist groups in Assam.<sup>32</sup> In theory, this requires door-to-door surveys by Election Commission officials to verify individuals’ citizenship documents. However, there are reports of arbitrary and random marking as ‘D-voter’ by officials, resulting in the loss of citizenship rights such as the right to vote and restricted access to welfare schemes.<sup>33</sup> Removal of ‘D-voter’ status and inclusion in the NRC required these individuals to prove their citizenship before a Foreigners Tribunal (FT). This determination by FTs was put on hold during the preparation of the NRC, leading these individuals to be excluded from the final NRC in 2019 without their status, application and documents being considered. Some of these individuals were left in complicated situations where despite being declared as ‘Indian’ by the FT, they were excluded from the NRC because the NRC authorities did not consider their cases.<sup>34</sup> Further, concerns have been raised regarding the members and mechanisms of the FTs including insufficient training,<sup>35</sup> lack of independence in appointment and decision-making,<sup>36</sup>

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<sup>30</sup> Harrison Akins, *The Religious Freedom Implications of the National Register of Citizens in India* (United States Commission on International Religious Freedom, 2019) available at: [www.uscirf.gov/sites/default/files/2019%20India%20Issue%20Brief%20-%20Religious%20Freedom%20Implications.pdf](http://www.uscirf.gov/sites/default/files/2019%20India%20Issue%20Brief%20-%20Religious%20Freedom%20Implications.pdf) [accessed 25 May 2023].

<sup>31</sup> Bikash Singh, *No one must do injustice to Bengali Hindus who have come to India from Bangladesh: Assam CM* (The Economic Times, 31 May 2023) available at: <https://m.economictimes.com/news/india/no-one-must-do-injustice-to-bengali-hindus-who-have-come-to-india-from-bangladesh-assam-cm/articleshow/100638095.cms> [accessed 2 June 2023].

<sup>32</sup> Bikash Singh, *Doubtful voters can make it to NRC only if names cleared by foreigners’ tribunal* (The Economic Times, 28 May 2019) available at: <https://economictimes.indiatimes.com/news/politics-and-nation/doubtful-voters-can-make-it-to-nrc-only-if-names-cleared-by-foreigners-tribunal/articleshow/69546320.cms> [accessed 2 June 2023].

<sup>33</sup> Abdul Kalam Azad, *‘The Struggle of ‘Doubtful Voters’ Has Intensified in BJP’s Assam’* (The Wire, 12 July 2017) available at: <https://thewire.in/law/assam-doubtful-voters-sonowal> [accessed 2 June 2023].

<sup>34</sup> Arshu John, *Foreigners Tribunals need new procedures for hearing NRC appeals: Activist Abdul Batin Khandekar* (The Caravan, 28 November 2019) available at: <https://caravanmagazine.in/policy/foreigners-tribunals-need-sop-nrc-appeals-abdul-khandekar> [accessed 2 June 2023].

<sup>35</sup> *Designed to Exclude: How India’s Courts Are Allowing Foreigners Tribunals to Render People Stateless in Assam* (Amnesty International, 2019) (see section on Complicity of Courts) available at: [https://www.amnesty.be/IMG/pdf/rapport\\_inde.pdf](https://www.amnesty.be/IMG/pdf/rapport_inde.pdf) [accessed 25 May 2023].

<sup>36</sup> Talha Abdul Rahman, *Identifying the ‘outsider’: an assessment of foreigner tribunals in the Indian state of Assam* (Statelessness & Citizenship Review, 2021) available at: <https://ssrn.com/abstract=3723694> [accessed 25 May 2023]; Fatima Khan, *‘Job in Assam Foreigners Tribunal depends on conviction rate, says civil rights group report’* (The Print, 19 September 2019) available at: [www.theprint.in/india/job-in-assam-foreigners-tribunal-depends-on-conviction-rate-says-civil-rights-group-report/294030/](http://www.theprint.in/india/job-in-assam-foreigners-tribunal-depends-on-conviction-rate-says-civil-rights-group-report/294030/) [accessed 25 May 2023].

lack of oversight<sup>37</sup> and allegations of bias<sup>38</sup>. As of February 2020, a Ministry of Home Affairs report to the Parliament disclosed 63,959 persons have been declared foreigners through *ex-parte* proceedings at FTs.<sup>39</sup> Unlike courts, each FT has the power to devise and regulate its own procedure, which leaves them without effective oversight and has created inconsistencies in how they function. These procedural irregularities can be observed particularly in trials involving Muslims, who often face additional oral procedures during the trial despite producing all documents required by the procedure to prove their citizenship.<sup>40</sup>

- 1.13. It is these same quasi-judicial FTs that are empowered to consider appeals from individuals excluded from the NRC. The FTs have the power to declare individuals as ‘foreigners’ and confirm their exclusion from the NRC,<sup>41</sup> leading to possible deportation or incarceration in detention centres reported to have sub-standard prison-like conditions with children separated from parents.<sup>42</sup> Those excluded from the NRC are already facing exclusion from several state programmes. However, even three years after publication of the ‘final’ NRC, people excluded from this list have not been issued ‘rejection slips’ which would then allow them to file an appeal before the FTs.<sup>43</sup> The process has been in a logjam with the finality of the NRC published on 31 August 2019 questioned before the Supreme Court of India, leaving millions in a state of uncertainty regarding their citizenship and unable to appeal their exclusion.
- 1.14. As discussed above, the current NRC has its origins in the Assam Accord of 1985 which had as its principal demand, the preservation of Assamese ethnic identity and dominance in the state of Assam, predicated on an ‘anti-immigrant’ agenda primarily targeting those of Bengali origin. Thus, the very essence of the NRC updating process runs contrary to the basic principles and

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<sup>37</sup> Gautam Bhatia, The judicial presumption of non-citizenship (The Hindu, 23 July 2019) available at: <https://www.thehindu.com/opinion/lead/the-judicial-presumption-ofnon-citizenship/article28660624.ece> [accessed 25 May 2023]; Foreigners’ Tribunals: Why were they established and how do they operate? (Citizens for Justice and Peace, 15 April 2021) available at: <https://cjp.org.in/all-you-ever-wanted-to-know-about-foreigners-tribunals/> [accessed 25 May 2023].

<sup>38</sup> Designed to Exclude: How India’s Courts Are Allowing Foreigners Tribunals to Render People Stateless in Assam (Amnesty International, 2019) (see section on Complicity of Courts) available at: [https://www.amnesty.be/IMG/pdf/rapport\\_inde.pdf](https://www.amnesty.be/IMG/pdf/rapport_inde.pdf) [accessed 25 May 2023].

<sup>39</sup> Assam: Since 1985, Ex-Parte Tribunal Orders Have Declared Almost 64,000 People as Foreigners (The Wire, 2 July 2019) available at: <https://thewire.in/government/assam-since-1985-ex-parte-tribunal-orders-have-declared-almost-64000-people-as-foreigners> [accessed 2 June 2023].

<sup>40</sup> Parliament of India, Question No. 3558 (10 December 2019) available at: <http://164.100.47.194/Loksabha/Questions/QResult15.aspx?qref=10079&lsno=17> [accessed 31 May 2023]; Gautam Bhatia, The judicial presumption of non-citizenship (The Hindu, 23 July 2019) available at: <https://www.thehindu.com/opinion/lead/the-judicial-presumption-ofnon-citizenship/article28660624.ece> [accessed 31 May 2023]; Foreigners’ Tribunals: Why were they established and how do they operate? (Citizens for Justice and Peace, 15 April 2021) available at: <https://cjp.org.in/all-you-ever-wanted-to-know-about-foreigners-tribunals/> [accessed 31 May 2023].

<sup>41</sup> Arshu John, Foreigners Tribunals need new procedures for hearing NRC appeals: Activist Abdul Batin Khandekar (The Caravan, 28 November 2019) available at: <https://caravanmagazine.in/policy/foreigners-tribunals-need-sop-nrc-appeals-abdul-khandekar> [accessed 2 June 2023].

<sup>42</sup> Report on NHRC Mission to Assam’s Detention Centres from 22 to 24 January 2018.

<sup>43</sup> Three years of NRC in Assam, uncertainty over citizenship continues (The New Indian Express, 31 August 2022) available at: <https://www.newindianexpress.com/nation/2022/aug/31/three-years-of-nrc-in-assam-uncertainty-over-citizenship-continues-2493471.html> [accessed 25 March 2023]

values set out in the ICERD, namely an obligation to eliminate discrimination on the basis of, *inter alia*, descent and national or ethnic origin and to protect minorities. Those finally excluded from the NRC process will be declared ‘foreigners’ by the FTs, rendered stateless, locked in detention centres, and excluded as disenfranchised citizens. There is no extradition treaty between India and Bangladesh, nor does Bangladesh or any other country recognise those excluded as its citizens, creating a risk of mass statelessness, which would result in the discriminatory deprivation of the right to a nationality protected under article 5(d)(iii) of the ICERD as well as running contrary to article 3 which condemns racial segregation.

## 2. Forced evictions targeting Bengali-speaking Muslims

2.1. The BJP-led government in Assam has pursued a policy of systematic forced evictions almost exclusively targeting Bengali-speaking Muslim families. Between 2019 and 2022, about 4,500 families<sup>44</sup>, primarily Bengali-speaking Muslims, were forcefully evicted from their homes without rehabilitation or compensation<sup>45</sup>. Eviction drives in Hojai<sup>46</sup>, Sonitpur<sup>47</sup> and Darrang<sup>48</sup> districts between 2020 and 2021 displaced over 2,500 families, also resulting in some deaths.<sup>49</sup> Despite this, the evictions continued.<sup>50</sup> In late 2022 and early 2023, further eviction drives were

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<sup>44</sup> Assam govt to carry out eviction drive in Nagaon district from Monday (Economic Times, 16 December 2022) available at: <https://economictimes.indiatimes.com/news/india/assam-govt-to-carry-out-eviction-drive-in-nagaon-district-from-monday/articleshow/96270379.cms> [accessed 25 May 2023].

<sup>45</sup> Rokibuz Zaman, Four months after violent Assam evictions, displaced families say they got no relief from government (Scroll.in, 28 January 2022) available at: <https://scroll.in/article/1015946/four-months-after-violent-assam-evictions-displaced-families-say-they-got-no-relief-from-government> [accessed 25 May 2023].

<sup>46</sup> Abdul Kalam Azad, In India’s Assam, Muslim families evicted weeks before elections (Al Jazeera, 25 March 2019) available at: <https://www.aljazeera.com/news/2019/3/25/in-indias-assam-muslim-families-evicted-weeks-before-elections> [accessed 25 May 2023]; Utpal Parashar, A Month and Half after Dhalpur Violence, Assam Evicts 562 Families from Reserve (Hindustan Times, 9 November 2021) available at: <https://www.hindustantimes.com/india-news/assamevicts-562-families-from-reserve-forest-101636429025025.html> [accessed 25 May 2023].

<sup>47</sup> 426 Families Evicted in Assam, BJP MLA Claims They Are Bangladeshi (The Quint, 10 January 2020) available at: <https://www.thequint.com/news/families-evicted-in-assam-bjp-mla-claims-they-are-encroacher-bangladeshi> [accessed 25 May 2023].

<sup>48</sup> Sadiq Naqvi, Muslims in India’s Assam in shock after deadly eviction drive (Al Jazeera, 29 September 2021) available at: <https://www.aljazeera.com/news/2021/9/29/assam/> [accessed 25 May 2023].

<sup>49</sup> 2 killed in police firing on Assam ‘encroachers’ (The Tribune, 24 September 2021) available at: <https://www.tribuneindia.com/news/nation/2-killed-in-police-firing-on-assam-encroachers-315364> [accessed on 25 May 2023]; Monideepa Banerjee and Ratnadip Choudhury, 2 Dead In Assam Protests; Man Beaten With Sticks, Shot on Camera (NDTV.com, 23 September 2021) available at: <https://www.ndtv.com/india-news/on-camera-assam-cops-thrash-protesters-open-fire-during-eviction-drive-2551083> [accessed 25 May 2023]; Arunabh Saikia, Moments before a 12-year-old fell to Assam police bullets, he had secured a crucial identity card (Scroll.in, 25 September 2021) available at: <https://scroll.in/article/1006164/moments-before-a-12-year-old-fell-to-assam-police-bullets-he-had-secured-a-crucial-identity-card> [accessed on 25 May 2023]; Abdul Kalam Azad, In India’s Assam, Muslim families evicted weeks before elections (Al Jazeera, 25 March 2019) available at: <https://www.aljazeera.com/news/2019/3/25/in-indias-assam-muslim-families-evicted-weeks-before-elections> [accessed 25 May 2023].

<sup>50</sup> Arunabh Saikia, Why evictions in Assam under Himanta Sarma have left Bengali Muslims more fearful than ever before (Scroll.in, 3 October 2021) available at: <https://scroll.in/article/1006718/why-evictions-in-assam-under-himanta-sarma-have-left-bengali-muslims-more-fearful-than-ever-before> [accessed 25 May 2023].

conducted in Nagaon<sup>51</sup>, Barpeta<sup>52</sup>, Lakhimpur<sup>53</sup> and Sonitpur<sup>54</sup> districts. Almost all families affected by the evictions were Bengali-speaking Muslims.<sup>55</sup>

- 2.2. The forced evictions targeting Bengali-speaking Muslims in Assam described above have resulted in the discriminatory deprivation of the right to housing protected under article 5(e)(iii) of the ICERD. The evictions were also accompanied by racist rhetoric, categorising those displaced as 'encroachers' or 'illegal settlers' to provide a false sense of legitimacy to the evictions. For instance, in connection with the evictions in January 2023, the Chief Minister expressed his happiness at freeing land from “encroachers”.<sup>56</sup>

### 3. Racist hate speech

- 3.1. Incendiary racist hate speech promoting hatred and racial discrimination against Bengali-speaking Muslims has been repeatedly used by BJP leaders in Assam in the context of the NRC<sup>57</sup> as well as in the lead up to elections<sup>58</sup>, equating the ethnic minority with ‘termites’<sup>59</sup> and referring

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<sup>51</sup> Assam eviction drive to clear over 1,200 bighas of alleged encroached land (National Herald, 19 December 2022) available at: <https://www.nationalheraldindia.com/national/assam-eviction-drive-to-clear-over-1200-bighas-of-alleged-encroached-land> [accessed 25 May 2023]; Assam Govt To Carry Out Eviction Drive In Nagaon District From Monday (Outlook, 16 December 2022) available at: <https://www.outlookindia.com/national/assam-govt-to-carry-out-eviction-drive-in-nagaon-district-from-monday-news-245426> [accessed 25 May 2023].

<sup>52</sup> Debraj Deb, Week on, another eviction drive in Assam; Congress MLA detained for protesting (Indian Express, 27 December 2022) available at: <https://indianexpress.com/article/north-east-india/assam/batadrava-anti-encroachment-drive-assam-barpeta-district-8345391/> [accessed 25 May 2023].

<sup>53</sup> Bulldozers being used to evict Bengali-speaking Muslims in Assam, 299 households put in the dark (Muslim Mirror, 11 January 2023) available at: <https://muslimmirror.com/eng/bulldozers-being-used-to-evict-bengali-speaking-muslims-in-assam-299-households-put-in-the-dark/> [accessed 25 May 2023]; Another Eviction Drive Starts in Assam's Lakhimpur, Over 500 Families Face Displacement (Outlook, 10 January 2023) <https://www.outlookindia.com/national/another-eviction-drive-starts-in-assam-s-lakhimpur-over-500-families-face-displacement-news-252329> [accessed 25 May 2023].

<sup>54</sup> Assam: Bengali-speaking Muslims most affected by Sonitpur eviction drive (Muslim Mirror, 15 February 2023) available at: <https://muslimmirror.com/eng/assam-bengali-speaking-muslims-most-affected-by-sonitpur-eviction-drive/> [accessed 25 May 2023].

<sup>55</sup> Anjan Pasricha, India's Assam Evictions Heighten Insecurities of Muslims (Genocide Watch, 15 November 2021) available at: <https://www.genocidewatch.com/single-post/india-s-assam-evictions-heighten-insecurities-of-muslims> [accessed 25 May 2023].

<sup>56</sup> Tweet by Assam CM Himanta Biswa Singh dated 14 January 2023, available at: <https://twitter.com/himantabiswa/status/1614296829470048259> [accessed 7 July 2023].

<sup>57</sup> Shofiul Alom Pathan & Munmun Jha, Miya Muslims of Assam: Identity, Visuality and the Construction of “Doubtful Citizens” (Journal of Muslim Minority Affairs, 2022) available at: <https://www.tandfonline.com/doi/abs/10.1080/13602004.2022.2051947> [accessed 25 May 2023].

<sup>58</sup> Top Assam Minister Himanta Biswa Sarma Opens Up about the Civilisational War Agenda of his Party (Indo-Asian News Service, 18 March 2021) available at: <https://www.youtube.com/watch?v=SO6bgwcVXH4> [accessed 25 May 2023].

<sup>59</sup> Bangladeshi migrants are like termites: Amit Shah (The Hindu, 22 September 2018) available at: <https://www.thehindu.com/news/national/bangladeshi-migrants-are-like-termites-amit-shah/article25017064.ece> [accessed 25 May 2023].

to them as a threat<sup>60</sup> or as illegal settlers<sup>61</sup>. The label of ‘Bangladeshi Muslim’ became a term of abuse on social media, particularly on Facebook, implying foreignness. During the NRC process, hate speech was rampant on social media, with Bengali-speaking Muslims commonly described as ‘criminals’, ‘rapists’, and ‘terrorists’, or termed as ‘mosquitoes’, ‘pigs’, and ‘dogs’.<sup>62</sup>

- 3.2. At a speech in Chirang, Assam on 26 April 2023<sup>63</sup>, Hindu far-right leader Pravin Togadia of the Antarrashtriya Hindu Parishad (loosely translated as ‘International Hindu Council’) called the increasing population of Muslims ‘a ticking time bomb’ and urged the citizens of Assam to join him in stopping this time bomb and protecting themselves.
- 3.3. As highlighted above, racist rhetoric was also used in connection with eviction drives targeting Bengali-speaking Muslims. In response to the death of two Muslims in connection with an eviction drive in Darrang district in September 2021,<sup>64</sup> the Chief Minister encouraged the continuation of such actions, labelling the attack as a ‘drive against encroachers’, which he insisted must continue.<sup>65</sup>
- 3.4. The Chief Minister also blocked the inclusion of Bengali-speaking Muslim communities in the government-run Kalakshetra Museum in Guwahati for being alien to Assamese culture.<sup>66</sup> When a separate museum was opened in the Goalpara district of Assam, it was shut down by the authorities on 25 October 2022, within two days of its inauguration.<sup>67</sup> BJP leaders used this opportunity to make derogatory statements and inciting violence against the community, including urging that the museum should be “*set ablaze*”.<sup>68</sup>

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<sup>60</sup> Kaushik Deka, Miyas are a threat to Assam’s culture and identity: BJP’s Himanta Biswa Sarma (India Today, 4 April 2021) available at: <https://www.indiatoday.in/india-today-insight/story/miyas-are-a-threat-to-assam-s-culture-and-identity-bjp-s-himanta-biswa-sarma-1787104-2021-04-04> [accessed 25 May 2023].

<sup>61</sup> Mahibul Hoque, In Assam village, BJP MLAs target Muslims in NRC; label them “illegal settlers,” government demolishes homes (The Caravan, 14 January 2021) available at: <https://caravanmagazine.in/communities/in-assam-village-bjp-mlas-target-muslims-in-nrc-label-them-illegal-settlers-government-demolishes-homes> [accessed 25 May 2023].

<sup>62</sup> Megaphone for Hate: Disinformation and Hate Speech on Facebook During Assam’s Citizenship Count (Avaaz, October 2019) available at: [https://avaazpress.s3.amazonaws.com/FINAL-Facebook%20in%20Assam%20Megaphone%20for%20hate%20-%20Compressed%20\(1\).pdf](https://avaazpress.s3.amazonaws.com/FINAL-Facebook%20in%20Assam%20Megaphone%20for%20hate%20-%20Compressed%20(1).pdf) [accessed 2 June 2023].

<sup>63</sup> Tanya Arora, Muslim population a “time bomb” to “Hindus take up arms”: A Seven-Day Hate Report (Citizens for Justice and Peace, 27 April 2023) available at: <https://cjp.org.in/muslim-population-a-time-bomb-to-hindus-take-up-arms-a-seven-day-hate-report/> [accessed 25 May 2023].

<sup>64</sup> Assam: Police Open Fire at Locals Protesting Eviction Drive, Two Killed (The Wire, 23 September 2021) available at: <https://thewire.in/rights/assam-police-open-fire-local-protesting-eviction-drive-darrang> [accessed 25 May 2023].

<sup>65</sup> Ratnadip Choudhury, “Evictions Will Continue In Assam”: Himanta Biswa Sarma After BJP Wins Big In Northeast (NDTV.com, 2 November 2021) available at: <https://www.ndtv.com/india-news/evictions-will-continue-in-assam-himanta-biswa-sarma-after-bjp-wins-big-in-northeast-2597621> [accessed 25 May 2023].

<sup>66</sup> Abhishek Saha, Himanta Biswa Sarma Dumps MLA Panel Report, Says Won’t Allow “Miya Museum” (The Indian Express, 28 October 2020) available at: <https://indianexpress.com/article/north-east-india/assam/himanta-biswa-sarma-dumps-mla-panel-report-says-wont-allow-miya-museum-6906145/> [accessed 25 May 2023].

<sup>67</sup> Rahul Karmarkar, Explained | Why was the Miya Museum in Assam sealed? (The Hindu, 30 October 2022) available at: <https://www.thehindu.com/news/national/other-states/explained-why-was-the-miya-museum-in-assam-sealed/article66074947.ece> [accessed 2 June 2023]; Assam: ‘Miya’ Museum Sealed, Three Persons Arrested Under Anti-Terror Law (The Wire, 27 October 2022) available at: <https://thewire.in/rights/goalpara-miya-museum-sealed> [accessed 2 June 2023].

<sup>68</sup> Shiladitya Dev makes derogatory remarks against ‘Miya Muslims’ (Sabrang, 3 November 2022) available at: <https://www.sabrangindia.in/article/shiladitya-dev-makes-derogatory-remarks-against-miya-muslims-assam-cjp-moves-ncm> [accessed 25 May 2023].

- 3.5. Hemant Biswa Sarma, the Chief Minister has often led the use of dog whistle and anti-Muslim tropes, normalising Islamophobia and anti-Bengali Muslim racism. His discriminatory attitude towards Muslims was most recently evident through his tweet on 23 June 2023<sup>69</sup>: in the context of former US president Barack Obama's remarks before a TV anchor regarding the protection of the Muslim minority in India. The CM commented that the Assam police would prioritise "taking care" of the "many Hussain Obama" in India ('Hussain' being a common Muslim name).
  - 3.6. These incidents of racist hate speech targeting Muslims, particularly Bengali-speaking Muslims in Assam, are indicative and not exhaustive. The incitement to racial discrimination has been propagated and encouraged by government officials themselves without any consequences, resulting in a violation of the obligation to prohibit and act against incitement of racial discrimination as set out in article 4 of the ICERD and elaborated further in the CERD's General Recommendation No. 35 on 'Combating racist hate speech'.
4. **Extra-judicial or 'encounter' killings of alleged criminals in Assam disproportionately targeting Muslim (including Bengali-speaking Muslims) and other ethnic minority communities.**
    - 4.1. Since May 2021, there has been a spate of extrajudicial killings by the Assam Police in violent 'encounters'. An April 2022 report reveals that at least 35 men were shot dead by the police since May 2021<sup>70</sup>, with a majority of the victims belonging to religious or ethnic minorities. Of the 30 identified men, 14 (47 per cent) were Muslims and 10 (33 per cent) were from minority tribal communities.<sup>71</sup> In June 2022, in an affidavit before the High Court, the government stated the number of extrajudicial killings since May 2021 to be 51.<sup>72</sup>
    - 4.2. The police involved in these extrajudicial killings have not been held accountable, and an application seeking inquiry by an independent agency was dismissed by the High Court of Assam in January 2023 on the basis that investigations are underway.<sup>73</sup>
    - 4.3. The arbitrary deprivation of life without following due process, and the disproportionate targeting of ethnic minorities results in the discriminatory deprivation of the right to security of person and protection against violence or bodily harm protected under article 5(b) of the ICERD.

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<sup>69</sup> 'Hussain Obama': Assam CM Himanta Targets, Threatens US Ex-Prez With Islamophobic Slur (The Wire, 23 June 2023) available at: <https://thewire.in/communalism/hussain-obama-himanta-biswa-sarma> [accessed 26 June 2023].

<sup>70</sup> Syeda Ambia Zahan, Assam: Families Face Threats and Ostracism as Extrajudicial Police Encounters are on a Rise (Outlook, 22 April 2022) available at: <https://www.outlookindia.com/national/assam-families-face-threats-and-ostracism-as-extrajudicial-police-encounters-are-on-a-rise-news-188594> [accessed 25 May 2023].

<sup>71</sup> Rokibuz Zaman, In BJP rule, 31 killed in Assam's alleged encounters – most belong to ethnic or religious minorities (Scroll.in, 16 December 2021) available at: <https://scroll.in/article/1012903/framed-most-people-killed-in-assams-alleged-encountersbelong-to-ethnic-or-religious-minorities> [accessed 25 May 2023].

<sup>72</sup> 51 killed, 139 injured in Assam police's action since May 2021: Government informs Gauhati high court (NE Now News, 21 June 2022) available at: <https://nenow.in/north-east-news/assam/killed-injured-assam-police-action-may-2021-government-gauhati-high-court.html> [accessed 25 May 2023].

<sup>73</sup> Utpal Parashar, 'Probe underway': Gauhati HC disposes PIL on alleged fake encounters in Assam (Hindustan Times, 28 January 2023) available at: <https://www.hindustantimes.com/cities/others/probe-underway-gauhati-hc-disposes-pil-on-alleged-fake-encounters-in-assam-101674886185233.html> [accessed on 25 May 2023].

## 5. Mass arrests on allegations of child marriage

- 5.1. Following a statement by Assam's Chief Minister Himanta Biswa Sarma about acting on child marriage and underage pregnancies, in February 2023, police forces targeted Bengali speaking Muslims in Assam and register over 4200 cases, with 6707 people accused, and Muslim majority districts being particularly targeted.<sup>74</sup> The police action resulted in four deaths, including two suicides by women fearing that they would be arrested.<sup>75</sup>
- 5.2. The Chief Minister cited a ratio of Muslims to Hindus as 55:45<sup>76</sup> among those arrested, evidencing the disproportionate targeting of Muslims who only comprise 34% of the population in Assam as compared to Hindus who comprise 61%<sup>77</sup> While making these comments, the Chief Minister said that some of “*our people*” (referring to Hindus) had to be picked up solely to ward off allegations of communal targeting.
- 5.3. Reports also indicate differences in the manner of processing the cases of Hindu and Muslim accused, for instance there were cases of Muslim men being denied bail while Hindu men were granted bail within a day for the same offences on the same grounds,<sup>78</sup> which is a violation of the right to equal treatment before all organs administering justice, as set out in article 5(a) ICERD.

## 6. Closure of madrassas providing Islamic education in Assam

- 6.1. The government in Assam has been taking steps towards the closure of madrassas (Muslim religious schools), which activists and experts fear may lead to a mass dropout of Assam's female Muslim students<sup>79</sup>. In April 2021, all government-funded madrassas providing Islamic education in Assam, were converted to regular schools, dropping all theological components from their syllabi.<sup>80</sup> Experts and activists warned of an impact on Assam's female Muslim students as a

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<sup>74</sup> Sanskrita Bharadwaj, Solutions to Assam's Child-Marriage Problem in Schools, Not in Mass Arrests Ordered by CM (Article 14, 17 February 2023) available at: <https://article-14.com/post/solutions-to-assam-s-child-marriage-problem-in-schools-not-in-mass-arrests-ordered-by-cm-63eeea6e577cb> [accessed on 25 May 2023]; Rokibuz Zaman, In Assam, a police crackdown on child marriage leaves a trail of crying women and broken families (Scroll.in, 7 February 2023) available at: <https://scroll.in/article/1043378/in-assam-a-police-crackdown-on-child-marriage-leaves-a-trail-of-crying-women-and-broken-families> [accessed on 25 May 2023].

<sup>75</sup> Nanda Ghosh, Crackdown on child marriage claims four lives, including three women and one child (Sabrang India, 14 February 2023) available at: <https://www.sabrangindia.in/article/crackdown-child-marriage-claims-four-lives-including-three-women-and-one-child> [accessed on 25 May 2023].

<sup>76</sup> Sukrita Baruah, 55:45 Muslim-Hindu arrests in child wedding cases: Assam CM Himanta Biswa Sarma (The Indian Express, 16 March 2023) available at: <https://indianexpress.com/article/cities/guwahati/5545-muslim-hindu-arrests-in-child-wedding-cases-assam-cm-himanta-biswa-sarma-8499757/> [accessed on 1 June 2023].

<sup>77</sup> Ministry of Home Affairs, 2011 Census Data - Population Enumeration Data (Final Population) (Government of India, 2011) available at: [www.censusindia.gov.in/2011census/population\\_enumeration.html](http://www.censusindia.gov.in/2011census/population_enumeration.html) [accessed on 31 May 2023].

<sup>78</sup> Zoya Mateen, Assam: India child brides desperate after mass arrests (BBC News, 10 February 2023) available at: <https://www.bbc.com/news/world-asia-india-64564861> [accessed on 1 June 2023].

<sup>79</sup> Makepeace Sitlhou, In Assam, ban on state-run madrassas may force girls to drop out (Al Jazeera, 11 March 2021) available at: <https://www.aljazeera.com/features/2021/3/11/shut-down-of-madrassas-in-indias-assam-could-see-girls-drop-out> [accessed on 26 May 2023].

<sup>80</sup> The Assam Repealing Act, 2020, available at: <https://ghconline.gov.in/General/Notification-30-01-2021-11.pdf> [accessed on 25 May 2023].

consequence.<sup>81</sup> In March 2023, the Chief Minister declared his intent to shut down all madrassas in Assam which is likely to have a more significant effect.<sup>82</sup>

6.2. These actions result in interference by the State with enjoyment of the right to education and to freedom of religion as set out under articles 5(d)(vii) and 5(d)(v) of the ICERD.

## 7. Attempts at controlling population

7.1. The BJP government in Assam has emphasised population control, with a particular emphasis on Bengali-speaking Muslim families. In June 2021, the Chief Minister blamed Assam's 'immigrant Muslim community' for various 'social ills', and announced his intention to mandate a two-child policy to be eligible for various welfare benefits.<sup>83</sup> In July 2021, claiming that the state's 'indigenous' Muslims were also concerned about population growth among 'immigrant' Bengali-speaking Muslims – the government announced in the state legislature that it would create a 'Population Army' to create awareness about family planning in Muslim-dominated areas.<sup>84</sup> It is relevant to note that the alarmist rhetoric around Muslim population growth is a polarisation tactic.<sup>85</sup>

7.2. In 2018, those with more than two children were barred from contesting local government elections.<sup>86</sup> In 2019, those with more than two children were deemed ineligible for government jobs.<sup>87</sup>

7.3. These measures are likely to disproportionately affect those from disadvantaged and poorer backgrounds. Moreover, the rhetoric preceding these measures strongly indicates that Bengali Muslim families will be scrutinised particularly stringently for their reproductive choices,

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<sup>81</sup> Makepeace Sitlhou, In Assam, ban on state-run madrassas may force girls to drop out (Al-Jazeera, 11 March 2021) available at: <https://www.aljazeera.com/features/2021/3/11/shut-down-of-madrasas-in-indias-assam-could-see-girls-drop-out> [accessed on 2 June 2023].

<sup>82</sup> 'Intend to shut all madrassas': Himanta Biswa Sarma draws Oppn fire (Indian Express, 18 March 2023) available at: <https://indianexpress.com/article/political-pulse/intend-to-shut-all-madrasas-himanta-biswa-sarma-8503952/> [accessed on 25 May 2023]; Have Closed 600 Madrasas in Assam, Intend to Close Them All: Himanta Biswa Sarma (The Wire, 17 March 2023) available at: <https://thewire.in/communalism/have-closed-600-madrasas-in-assam-intend-to-close-them-all-himanta-biswa-sarma> [accessed on 25 May 2023].

<sup>83</sup> Abhishek Saha, Adopt Family Planning: Assam CM to "Immigrant Muslims" in State (The Indian Express, 11 June 2021) available at: <https://indianexpress.com/article/north-east-india/assam/adopt-family-planning-assam-cm-himanta-biswa-sarma-toimmigrant-muslims-in-state-7353591/> [accessed on 25 May 2023].

<sup>84</sup> Indigenous Muslims Agree Population Rise a Threat to Development: Himanta Biswa Sarma (The Indian Express, 5 July 2021) available at: <https://indianexpress.com/article/north-east-india/assam/himanta-meeting-indigenous-muslims-assampopulation-7388843/> [accessed on 25 May 2023]; Ratnadip Choudhury, Assam "Population Army" to Help Curb Birth Rate in Muslim-Majority Areas (NDTV, 20 July 2021) available at: <https://www.ndtv.com/india-news/assam-to-have-population-army-says-chief-minister-himanta-sarma-2490218> [accessed on 25 May 2023].

<sup>85</sup> Ziya Us Salam, The propaganda in India that Muslims will outnumber Hindus by 2035 is governed by prejudice, not facts (Frontline, 28 July 2021) available at: <https://frontline.thehindu.com/cover-story/propaganda-muslims-minority-outnumber-hindus-majority-by-2035-not-facts/article35520061.ece> [accessed on 2 June 2023]; Kavita Chowdhury, Contrary to Hindutva Claims, India's Muslim Fertility Rate is Declining Sharply (The Diplomat, 31 May 2022) available at: <https://thediplomat.com/2022/05/contrary-to-hindutva-claims-indias-muslim-fertility-rate-is-declining-sharply/> [accessed on 2 June 2023].

<sup>86</sup> The Assam Panchayat (Amendment) Act, 2018 available at: [https://prsindia.org/files/bills\\_acts/acts\\_states/assam/2018/2018Assam3.pdf](https://prsindia.org/files/bills_acts/acts_states/assam/2018/2018Assam3.pdf) [accessed on 25 May 2023].

<sup>87</sup> Government of Assam, Population & Women Empowerment Policy of Assam available at: [https://hfw.assam.gov.in/sites/default/files/swf\\_utility\\_folder/departments/](https://hfw.assam.gov.in/sites/default/files/swf_utility_folder/departments/) [accessed on 25 May 2023].

interfering with the enjoyment of human rights and fundamental freedoms by these individuals, resulting in a violation of the State's obligation under article 2(1) of the ICERD to not engage in 'racial discrimination' as defined under article 1(1) of the ICERD.

### **Urgent Action by the CERD Required**

The facts detailed above demonstrate a serious pattern of violations of the ICERD, and the situation of Bengali-speaking Muslims in Assam meets the overarching requirements of (1) gravity and scale of the situation, (2) escalation of violence, (3) risk of irreparable harm, and several of the underlying indicators, as set out by the CERD in paragraph 12 of the revised 2007 Guidelines for EWUA.

#### ***Gravity and scale of violations***

The violations targeting Bengali-speaking Muslims described above are wide-ranging and affect a large segment of this minority group. Taken together, they constitute a "significant and persistent pattern of racial discrimination" (see indicator (a) in 2007 Guidelines for EWUA) as this treatment has been on-going since the BJP came to power in the Centre in 2014 and in Assam in 2016, and restricts various fundamental rights, including the right to life and security of person, right to non-discrimination, right to housing, right to nationality, right to equal treatment before the law, right to education and right to freedom of religion.

#### ***Escalation of violence***

As described above, the marginalisation and exclusion of Bengali-speaking Muslims has taken a turn for the worse since the BJP came to power for a second term the Centre in 2019 and in Assam in 2021. This is particularly apparent in the escalating publicly expressed racial hatred and appeals to racial intolerance (see indicator (b) in 2007 Guidelines for EWUA), including by elected officials, that are widely disseminated on social media. This type of hate-mongering is encouraged by the complete impunity from any form of punishment or prevention by the authorities (see indicator (f) in 2007 Guidelines for EWUA). In addition, since 2021, the discriminatory targeting has expanded to the fields of education and reproductive rights indicating an encroachment into socio-economic rights, in particular of women.

Election season in India is typically marked by intense campaigning and an increasing reliance on religious polarisation.<sup>88</sup> As such, a further escalation in hate speech, discrimination and violence is likely in the next nine months or so, in the run-up to the 2024 general elections in the Centre and in Assam, expected to take place in or before May 2024. In addition to the issues highlighted in the submission, this trend towards escalation can also be seen from the frequency of communally divisive and inciteful statements by the Assam CM targeting Bengali-speaking Muslims.<sup>89</sup> Recent examples

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<sup>88</sup> Malavika Parthasarathy, The Supreme Court on Hate Speech in Elections (Supreme Court Observer, 9 March 2022) available at: <https://www.scobserver.in/journal/the-supreme-court-on-hate-speech-in-elections/> [accessed 26 July 2023].

<sup>89</sup> 'Taking Recourse to Communal Politics': Oppn Parties Slam Assam CM Himanta Sarma Over 'Miya' Remark (ABP News Bureau, 16 July 2023) available at: <https://news.abplive.com/northeast/opposition-parties-slam-assam-chief-minister-himanta-biswa-sarma-over-miya-muslim-remark-1616312> [accessed 26 July 2023].

include blaming price hikes on farmers belonging to this community<sup>90</sup> and making claims of ‘fertiliser jihad’ to indicate that farmers from regions predominantly populated by Bengali-speaking Muslims use ‘dangerous chemicals’<sup>91</sup>. The linkage between the 2024 elections and religious divisiveness is also evidenced by the draft proposal released in June 2023 for a delimitation exercise to redraw the geographical boundaries of constituencies in Assam with the likely result of diluting the share of Muslim voters in many constituencies.<sup>92</sup> While the Supreme Court will examine the constitutional validity of this process, it has declined to intervene at present.<sup>93</sup>

### ***Risk of irreparable harm***

The discriminatory measures set out above can lead to irreparable harm if not urgently addressed. The forced removal of Bengali-speaking Muslims from their lands will result in the permanent loss of property and potentially a place to live. The closing of madrassas in turn may deprive a generation of Bengali-speaking Muslims from adequate education. In addition, the NRC process carries the risk of rendering thousands of Bengali-speaking Muslims stateless. These violations already lead to a *de facto* exclusion of members of Bengali-speaking Muslims from political, economic, social and cultural life (see indicator (d) in 2007 Guidelines for EWUA), potentially driving the group to emigrate to find alternative living space.

### ***India’s failure to report to the CERD***

It has been more than 16 years since India’s last report to the CERD, which was in February 2007. While CERD issued the LOIPR in relation to India in 2021, India does not appear to have responded. India also does not have any scheduled State report or examination in forthcoming CERD sessions. The absence of CERD supervision has contributed to the critical situation of ethno-religious minorities in Assam, prompting the submitting organisations to invoke the EWUA mechanism in order to hold India accountable under the ICERD.

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<sup>90</sup> Assam Chief Minister Himanta Biswa Sarma blames ‘Miya’ Muslims for price hike (The Hindu, 15 July 2023) available at: <https://www.thehindu.com/news/national/other-states/assam-cm-blames-miyas-for-costlier-vegetable-opposition-slams-sarma/article67084075.ece> [accessed 26 July 2023]; Assam CM Himanta Now Blames Miya Muslims for Price Rise, Threatens to ‘Vacate’ Markets (The Wire, 15 July 2023) available at: <https://thewire.in/communalism/himanta-biswa-sarma-vegetable-price-rise-miya-muslim-market> [accessed 26 July 2023].

<sup>91</sup> Sukrita Baruah, A new weapon in Assam CM Himanta Sarma’s arsenal: ‘fertiliser jihad’ (The Indian Express, 11 June 2023) available at: <https://indianexpress.com/article/political-pulse/assam-cm-himanta-sarma-fertiliser-jihad-bengali-muslim-8656703/> [accessed 26 July 2023].

<sup>92</sup> Several Assam Leaders Will Need New Constituencies if Delimitation Draft Is Finalised: Reports (The Wire, 26 June 2023) available at: <https://thewire.in/government/assam-delimitation-leaders> [accessed 26 July 2023]; Kaushik Deka, Assam delimitation | Shrinking the minority vote (India Today, 10 July 2023) available at: <https://www.indiatoday.in/magazine/up-front/story/20230710-assam-delimitation-shrinking-the-minority-vote-2399859-2023-06-30> [accessed 26 July 2023].

<sup>93</sup> Process already on, Supreme Court refuses to stay delimitation of seats in Assam (The Indian Express, 25 July 2023) available at: <https://indianexpress.com/article/india/sc-refuses-to-stay-ongoing-delimitation-of-ls-assembly-seats-in-assam-8857740/> [accessed 26 July 2023].

## Recommended Measures

In light of the information provided to the CERD in this Urgent Appeal, and given the continuing violations of the ICERD as well as various other provisions of international law, we urge the CERD to initiate an EWUA and take the following measures:

- a. Request the government of India to urgently submit information to the CERD on the situation of Bengali-speaking Muslims in Assam, in relation to the specific areas mentioned above.
- b. Request the government of India to report to the CERD in accordance with its treaty obligations under article 9(1)(b) ICERD. In case of a failure to do so, considering that India has not submitted a report to the CERD since 2007, the CERD could engage, as a priority, its review procedure in relation to India.
- c. Request the Secretariat to collect information from field presences of the Office of the High Commissioner of Human Rights and specialized agencies of the United Nations, national human rights institutions, and non-governmental organizations on the situation of Bengali-speaking Muslims in Assam in all the areas mentioned above, in order to ensure that the information provided by the government of India may be verified for its accuracy and impartiality.
- d. On the basis of the information received, adopt a decision including the expression of specific concerns, along with recommendations for action, addressed to the government of India:
- e. Recommend that other relevant actors including:
  - i. The Special Rapporteur on contemporary forms of racism, racial discrimination and xenophobia and related intolerance, the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, or the independent expert on minority issues;
  - ii. Other relevant human rights bodies or special procedures of the Human Rights Council
  - iii. Regional intergovernmental organizations and human rights mechanisms;
  - iv. The Human Rights Council;
  - v. The Special Adviser of the Secretary-General on the prevention of genocide;
  - vi. The Secretary-General through the High Commissioner for Human Rights (together with a recommendation that the matter be brought to the attention of the Security Council)

take note of the unfolding situation regarding the treatment of Bengali-speaking Muslims in Assam and observe developments closely, whilst reiterating to the government of India its obligations to protect minorities from discrimination and ensure their rights including right to a nationality for all and the related obligation to not make anyone stateless, right to housing, right to security of person, right to education, right to freedom of thought, opinion and religion and the obligation to act against racist hate speech. The Government of India should be urged to respond constructively to the CERD EWUA. Further, in the event any serious engagement appears unlikely or absent, these actors should be urged to escalate matters per established procedure.

- f. Recommend that the government of India urgently makes the declaration under article 14 ICERD, allowing individuals and groups to petition the CERD.
- g. Recommend that the government of India avail itself of the advisory services and technical assistance of the Office of the High Commissioner for Human Rights to resolve this situation

in a satisfactory manner. In particular, to offer to work with relevant implementing agencies, to help them:

- develop and institutionalise human rights compliant systems and procedures;
- train and capacity build personnel, to sensitise them to human rights and non-discriminatory practices.

The submitting organisations remain at the disposal of the CERD to provide additional information, and to support the OHCHR in providing technical assistance to the State, as may be appropriate.



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