

CHARTING GLOBAL ECONOMIC INEQUALITIES AND EMANCIPATORY HUMAN RIGHTS RESPONSES FROM THE GROUND UP: THE TEA WORKERS' MOVEMENT OF BANGLADESH

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ABSTRACT

Tea workers in Bangladesh, a workforce created by the indentured labor system under British colonialism and whose exploitation is maintained by existing laws, have been mobilizing against the threatened seizure of the land that they cultivate for sustenance in order to create a special economic zone to attract foreign investors. Because it was the government of Bangladesh, rather than a multinational corporation, that was threatening to forcibly acquire the land, the tea workers' movement did not draw popular attention as a global labor and human rights struggle,

* Associate Professor, CUNY School of Law. This Article is dedicated to my father, Farhad Mazhar. Thanks are due to my research assistant, Cristina Brito. Legal research assistance was also provided by Mahum Shabir in New York and law graduates Farhan Hoque and Zulkarnine Mim in Bangladesh. Additional sociological research assistance was provided by Monoj Kumar Yadav and Pritom Goala of the University Tea Students' Association. My field research and interviews with tea workers in Northeastern Bangladesh would not have been possible without the administrative assistance of Asha Ornal, the A/V support provided by Abul Kalam, and the transportation provided by Nur Alam. I am also thankful to professors Shirley Lung, Hasan Mahmud, Elora Chowdhury, Rana Behal, Cyra Choudhury, and Lorenzo Cotula for reading drafts of this paper and providing valuable comments. I am grateful to Lynn Lu and Rebecca Bratspies for their early comments on a presentation that ultimately led to this Article and to Ruthann Robson for her support throughout this writing process. Additional thanks are due to the library faculty and staff at CUNY Law School. In particular, I thank Kathy Williams, who managed to obtain materials that are not typically found in law libraries, and academic support staff Midiam Ramirez and Wendy Moncayo. My field research and this Article were made possible through a PSC-CUNY Research Award jointly funded by The Professional Staff Congress and The City University of New York.

revealing that marginalized communities often do not have any legal recourse to challenge their displacement where nation-states collaborate with global capital. Using the tea worker movement as a case study, this Article examines the ways in which national and international legal structures and economic policies facilitate the entry of global capital in subnational spaces, threatening the displacement of marginalized communities and creating further economic inequality. Further, this Article reveals how neither domestic law nor international human rights law is adequate to address these harmful impacts of globalization. Thus, it posits that international human rights lawyers must develop legal responses to counter the harmful impacts of globalization. Using a socio-legal research methodology, this Article explores the possibilities of legal responses from the ground up that articulate new human and labor rights for workers. Finally, this Article shows how the tea workers' movement of Bangladesh offers valuable lessons to other marginalized communities who are impacted by globalization and provides possibilities for mobilization around an alternative vision of how our laws and economies can be organized.

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INTRODUCTION

“My land. My Mother. We won’t let them take it away . . . We’ll give blood. We’ll give lives. But we won’t give our paddy land.” – Tea workers’ slogan in their struggle against the threatened seizure of agricultural land for the creation of industrial economic zones¹

Beginning in December of 2015, tea workers—mostly women—from northeastern Bangladesh directly confronted government authorities who were attempting to seize land that the workers had long been cultivating in order to supplement their wages, which were barely more than a dollar a day.² Using its legislative sovereign powers, the government of Bangladesh aimed to convert the agricultural land to Special Economic Zones (“SEZs”) as a means of attracting foreign investors and encouraging industrialization.³

Bangladeshi photographer Sanjida Jui captured the struggle as it unfolded,⁴ providing close-up profiles of women with sticks and machetes squatting on the land in order to prevent the seizure that the government had hoped would proceed quietly.⁵ Protestors crouched on the land with bows and arrows in an invocation of the culture of the indigenous communities that comprise a significant portion of tea workers.⁶ The government had justified the threatened

1. Khairun Aktar interview, *infra* note 20.

2. Moulvibazar, *Tea Workers Against Special Economic Zone in Habiganj*, DAILY STAR (Dec. 16, 2015), <https://www.thedailystar.net/country/tea-workers-against-special-economic-zone-habiganj-187993> [<https://perma.cc/6U4P-UE85>]; see also Rock Ronald Rozario, *Bangladesh Tea Workers Strike Against Land Acquisition*, UNION OF CATHOLIC ASIAN NEWS (Dec. 16, 2015), <https://www.ucanews.org/news/bangladesh-tea-workers-strike-against-land-acquisition-/74817> [<https://perma.cc/6VK9-UVLF>] (documenting tea workers’ strike against government’s land acquisition plan).

3. Moulvibazar, *Tea Workers Against Special Economic Zone in Habiganj*, *supra* note 2; see also Rozario, *supra* note 2 (documenting tea workers’ strike against government’s land acquisition plan).

4. See Sanjida Jui, *What is Development?*, FACEBOOK (Dec. 20, 2015), https://www.facebook.com/sanjida.jui/media_set?set=a.10153290438960108&type=3 (on file with the *Columbia Human Rights Law Review*) (photographs of tea worker demonstrations).

5. *Id.*; see also Mizanur Rahman, *The Fight for Land Rights*, FACEBOOK (Jan. 10, 2016), <https://www.facebook.com/media/set/?set=a.982098581827249&type=3> (on file with the *Columbia Human Rights Law Review*) (additional photographs of tea worker demonstrations).

6. See PHILIP GAIN, ON THE MARGINS: IMAGES OF TEA WORKERS AND ETHNIC COMMUNITIES 180–81 (2016).

seizure by claiming that the land had been left fallow and was legally owned by the state.⁷ Uday Modi, one of the protesters, asked Jui, “Do you see any fallow land? Is it a fallow land?”⁸ Pointing to the fields, he said, “Our grandparents cleared the jungle, made this land fertile and we have been cultivating the land here for generation after generation for the last 150 years.”⁹

In Modi’s comment about past generations of laborers and their collective connection to the land—a sentiment echoed by the tea worker leaders interviewed for this Article¹⁰—he highlights not only the naked injustice of the threatened seizure but also this workforce’s colonial past. His comment reveals how marginalized communities often do not have any legal recourse to address the economic inequality and displacement to which they may be subject. Because most tea workers hail from marginalized communities that are frequently excluded from legal protections,¹¹ and because the actor threatening the seizure was the national government,¹² the tea workers’ struggle was not viewed as part of the ongoing global movement for labor or land rights,¹³ despite involving a direct confrontation with the encroachment of global capital in the form of prospective foreign investors.¹⁴ Characterizing the tea workers’ struggle as local, rather than global or human rights-oriented, belies the global character and colonial history of the tea industry from its inception. Nor is this characterization supported by the existence of domestic laws and international economic policies that facilitated the threatened displacement.¹⁵

Yet Modi also articulates a right to land that is not rooted in domestic or international law but that nonetheless reverberates deeply with human rights principles, such as the inalienable rights to

7. Inam Ahmed, *16,000 Tea Workers Face Uncertainty*, DAILY STAR (Dec. 20, 2015), <https://www.thedailystar.net/frontpage/16000-tea-workers-face-uncertainty-189820> [<https://perma.cc/K986-U6RN>] (“[T]he government wants the land and these people stand to lose it without any compensation because the land does not really belong to them legally.”) Records obtained by the author from government sources indicate that the disputed land is owned by the state.

8. Jui, *supra* note 4.

9. *Id.*

10. *See infra* note 20.

11. *See infra* Section I.C.

12. *See supra* note 3 and accompanying text.

13. *See infra* Part III.

14. *See infra* Part II.

15. *See infra* Part III (noting the domestic laws and international policies that facilitated the displacement).

dignity, livelihood, and fair labor. The articulation of this right, though, is much broader than existing human rights principles and originates instead with collective notions of justice outside of the formal legal space. The tea workers' movement, then, articulated new rights—such as the right to the land—that can be mobilized to push both domestic and international human rights law to the creation of new legal rights. The movement should serve as a lesson to international human rights lawyers about the value of developing legal responses from the ground up, particularly when nation states collaborate with global capital in order to displace their own citizens and widen economic inequality.

This Article uses the tea workers' movement as a case study to illuminate the operation of global capital at the national level and the ways in which laws, state institutions, and domestic and international economic policy have facilitated its entry into nation-states. It also reveals how poor working conditions and socioeconomic inequality are kept intact through legacies of colonialism, and how neither domestic law nor international human rights law is adequate to address the tea workers' demands. While this Article primarily frames the tea workers' movement as a labor struggle, it also serves as a case study on the rights to land and livelihood.

So, too, does this Article highlight opportunities for legal responses, resounding in human rights and global labor rights, that are informed and led by social movements. Although the term "human rights" is contested, it nonetheless "shelters an incredibly diverse range" of politics of domination and insurrection.¹⁶ Because it registers a global importance to particular struggles, grassroots social movements can invoke the term as a rhetorical tool for organizing and an opportunity to contextualize their demands. Through a close examination of social movements, advocates can better position themselves to identify and articulate human rights responses that are informed by the demands of those who are impacted by law and globalization. These responses can chart a path toward the development of new rights and legal norms, with the ultimate aim of looking beyond formal legal and human rights institutions. In using the language of human rights, then, this Article refers to the

16. Upendra Baxi, *Voices of Suffering and the Future of Human Rights*, 8 *TRANSNAT'L L. & CONTEMP. PROBS.* 125, 128–29 (1998).

insurrectionary, aspirational, and emancipatory promise of those rights as they are expansively articulated by social movements.¹⁷

In this regard, this Article also contributes to the development of a socio-legal research methodology for what globalization scholar Boaventura de Sousa Santos terms “subaltern cosmopolitan legality,” by “empirically document[ing] experiences of resistance, assess[ing] their potential to subvert hegemonic institutions and ideologies, and learn[ing] from their capacity to offer alternative to the latter.”¹⁸ As such, this Article charts the tea workers’ movement at a granular level in order to articulate human rights responses that have the potential to counter dominant narratives.¹⁹ In doing so, this Article relies on a diversity of sources, including interviews with tea workers, organizers, and other stakeholders;²⁰ articles by Bangladeshi scholars whose work does not

17. See Lorenzo Cotula, *Between Hope and Critique: Human Rights, Social Justice and Re-Imagining International Law from the Bottom Up*, 48 GA. J. INT’L & COMP. L. 473, 476 (2020).

18. Boaventura de Sousa Santos & Cesar A. Rodriguez-Garavito, *Law, Politics, and the Subaltern*, in LAW AND GLOBALIZATION FROM BELOW 1, 14–15 (Boaventura de Sousa Santos & Cesar A. Rodriguez-Garavito eds., 2005).

19. See Cotula, *Between Hope and Critique*, *supra* note 17, at 476 (“[T]he contested nature of human rights calls for more granular analyses that consider the diverse constellations of actors, agendas, arenas, and approaches connecting human rights to social justice.”).

20. In July of 2019, with approval from the Institutional Review Board, I spent three weeks in Dhaka, Bangladesh and Sylhet, Bangladesh to meet with tea workers and other stakeholders. Recordings of these interviews will be made available via a digital archive. All interviews referenced in this Article will be cited as follows: Interview with Khairun Aktar, Member, Land Protection Committee, in Chandpur Tea Gardens (July 16, 2019) [hereinafter Khairun Aktar Interview]; Interview with Nilu Das, Member, Land Protection Committee, in Begum Khan Tea Gardens (July 16, 2019) [hereinafter Nilu Das Interview]; Interview with Shrithi Rani Das, Member, Land Protection Committee, in Begum Khan Tea Gardens (July 16, 2019) [hereinafter Shrithi Rani Das Interview]; Interview with Shukuara Karmokar, Member, Land Protection Committee, in Habiganj, Bangladesh (July 16, 2019) [hereinafter Shukuara Karmokar Interview]; Interview with Bishaka Nayek, Member, Land Protection Committee, in Begum Khan Tea Gardens (July 16, 2019) [hereinafter Bishaka Nayek Interview]; Interview with Konoklata Rajbongshi, Member, Land Protection Committee, in Begum Khan Tea Gardens (July 16, 2019) [hereinafter Konoklata Rajbongshi Interview]; Interview with Sheila Urong, Member, Land Protection Committee, in Chandpur Tea Gardens (July 16, 2019) [hereinafter Sheila Urong Interview]; Interview with Ruma Urong, Member, Land Protection Committee, in Chandpur Tea Gardens [hereinafter Ruma Urong Interview]; Interview with Obinash Ghosami, Member, Land Protection Committee (July 14, 2019) [hereinafter Obinash Ghosami Interview]; Interview with Shurjo Kumar,

often reach global academic circuits; policy reports; contemporaneous narratives of the tea workers' movement via video and photographs; journalists' accounts; and historical records.

Part I of this Article examines, with the benefit of field research and contemporaneous media accounts, the tea workers' movement against the seizure of the land that they cultivate. It also provides a history of the tea industry and delineates the continuities in socioeconomic inequality and poor working conditions from the British colonial period to the present. Part II discusses how domestic law has facilitated economic policies that favor industrialization and threaten to displace marginalized communities. It notes how nation-states and global capital deploy gender to promote industrialization and justify the social and economic costs of these policies. It draws connections between colonial histories and today's economic policies to contextualize the tea workers' struggle within the global economy. With this historical and economic context, in Part III, this Article demonstrates how the tea workers' movement reveals the limits of domestic and international human rights law. In closing, in Part IV, this Article argues for a reconceptualization of legal responses that center the demands of social movements. Such a reconceptualization is necessary for the creation of new responses and can provide lessons to other workers who are similarly impacted by globalization.

Member, Land Protection Committee (July 14, 2019) [hereinafter Shurjo Kumar Interview]; Interview with Montu Mia, Member, Land Protection Committee (July 14, 2019) [hereinafter Mintu Mia Interview]; Interview with Nripen Pal, Member, Land Protection Committee (July 14, 2019) [hereinafter Nripen Pal Interview]; Interview with Ram Bhajan Kairi, Member, Land Protection Committee (July 15, 2019) [hereinafter Ram Bhajan Kairi Interview]; Interview with Mohan Rabidas, Member, Land Protection Committee (July 15, 2019) [hereinafter Mohan Rabidas Interview]; Interview with Chunurghat Land Office Official (July 17, 2019) [hereinafter Land Office Official Interview]; Interview with Mohammed Ayub, Additional Secretary, Bangladesh Economic Zones Authority (July 19, 2020) [hereinafter Mohammed Ayub Interview]; Interview with A.K.M. Mahbubhur Rahman, Zone Development Consultant, World Bank (July 19, 2019) [hereinafter A.K.M. Mahbubhur Rahman Interview]; Interview with Md. Moniruzzaman, Joint Secretary, Bangladesh Economic Zones Authority [hereinafter Md. Moniruzzaman Interview]; Interview with Philip Gain, Researcher (July 11, 2019) [hereinafter Philip Gain Interview]. For more on these interviews, see *Chai Justice*, Facebook (Oct. 11, 2020), <https://www.facebook.com/ChaiJusticeNow/> (last visited Nov. 14, 2020).

I. TEA WORKERS AND THE GLOBAL TEA INDUSTRY

The tea workers' demands must be understood within their economic and historical context. Section I.A. recounts the threatened seizure, the tea workers' 2015 mobilization, and the government's response. Section I.B provides the history of the global tea industry and its reliance on indentured labor and support from the colonial state. Finally, Section I.C describes the labor and living conditions of tea workers today.

A. The Tea Workers' Mobilization Against Special Economic Zones

On December 14, 2015, an estimated fifteen thousand tea workers demonstrated²¹ against the threatened seizure of 511 acres of land in Chunarughat, located in northeastern Bangladesh, for the establishment of a Special Economic Zone,²² a legal creation authorized by the recent passage of the Bangladesh Economic Zones Act.²³ The disputed land is owned by the government of Bangladesh and has long been leased to Duncan Brothers Limited ("Duncan Brothers"), a subsidiary of the multinational corporation Camellia PLC, for purposes of tea production.²⁴

Duncan Brothers arose with the decline of the British East India Company in the mid-nineteenth century,²⁵ when private merchants known as managing agents ascended to manage the sale

21. Rozario, *supra* note 2; *see also* Jawad Ahmed, Tea Workers Movement: For Land and For Identity, (Dec. 2016) (B.A. thesis, BRAC University) [<https://perma.cc/NZ6Q-4PPA>] (presenting ethnographic research to conclude that while the demonstrations began as spontaneous protests, they evolved into a clearly articulated movement with specific demands).

22. AHMAD IBRAHIM, REPORT ON PROPOSED SPECIAL ECONOMIC ZONE AT CHUNARUGHAT HABIGANJ 2 (2017) [hereinafter IBRAHIM, REPORT ON PROPOSED SEZ].

23. Bangladesh Economic Zones Act (Act No. 42/2010) § 3 (Bangl.).

24. *See History of Duncan*, DUNCAN BROS. (BANGL.) LTD., <https://www.duncanbd.com/content/3.html> [<https://perma.cc/L97R-37YM>] (providing a history of the company).

25. For a corporate history of the East India Company as not only an economic entity, but also as a political formation that was later incorporated into the colonial state, see generally PHILIP J. STERN, *THE COMPANY-STATE: CORPORATE SOVEREIGNTY AND THE EARLY MODERN FOUNDATIONS OF THE BRITISH EMPIRE IN INDIA* (2011). The East India Company's governance of plantations in Asia and its performance of state functions in the second half of the seventeenth century was critical to the development of the British empire state. *Id.*

and export of goods, including tea.²⁶ Duncan Brothers was one such agency, and in 1858 and with support from the colonial state, it began the first tea plantations²⁷ in present-day Sylhet, Bangladesh.²⁸ By 1920, the agency had acquired nearly sixty plantations.²⁹ In 1948, following the partition of India and Pakistan, the formerly private Duncan Brothers was converted into a public company, and a new entity called Duncan Brothers (Pakistan) Limited was formed to assume the agency's interests in the newly-created state of Pakistan.³⁰ After Bangladesh won its independence in 1971,³¹ Duncan Brothers (Bangladesh) Limited was established.³²

Duncan Brothers, then, has maintained a steady corporate presence in Bangladesh since the era of British colonialism, and this remains the case today.³³ However, its success would not have been possible without the benefit of a legally-enforced indentured labor

26. See Rana Behal, *Coolie Drivers or Benevolent Paternalists? British Tea Planters in Assam and the Indenture Labour System*, 44 MOD. ASIAN STUD. 29, 35 (2010).

27. I intentionally use the word "plantation" over the more popularly used term "tea gardens," because it more accurately describes the tea production industry and is the term used in the Bangladesh Labor Act. Plantations are large-scale agricultural enterprises that produce crops for export using Western methods of industry. See Sharit Bhowmik, *Ethnicity and Isolation: Marginalization of Tea Plantation Workers*, 4 RACE/ETHNICITY: MULTIDISCIPLINARY GLOBAL CONT. 235, 235 (2011); see also Lloyd Best, *Outlines of a Model of Pure Plantation Economy*, 17 SOC. & ECON. STUD. 283 (1968) (characterizing plantations as settlements created for the production of export crops, where indentured laborers are procured by the state and where state regulation is less direct).

28. Philip Gain, *Introduction to SLAVES IN THESE TIMES: TEA COMMUNITIES OF BANGLADESH* 1, 1 (Philip Gain ed., 2016).

29. STEPHANIE JONES, *MERCHANTS OF THE RAJ: BRITISH MANAGING AGENCY HOUSES IN CALCUTTA YESTERDAY AND TODAY* 60 (1992).

30. *Id.* at 125.

31. The struggle for Bangladesh's independence from Pakistan during the India-Pakistan partition started soon after 1947 due to economic disparities and Pakistan's refusal to accept Bengali as a language, among other factors. Bangladesh eventually gained its independence in 1971. See Anam Zakaria, *Remembering the War of 1971 in East Pakistan*, AL JAZEERA (Dec. 16, 2019), <https://www.aljazeera.com/indepth/opinion/remembering-war-1971-east-pakistan-191216054546348.html> [https://perma.cc/55JW-B3LT] (describing how Bangladesh's independence was viewed regionally).

32. See *History of Duncan*, *supra* note 24 (providing a history of the company).

33. *Id.*

system that maintained a captive workforce on its plantations.³⁴ Part of this system, as will be explained in Section I.B, *infra*, involves subleasing plantation land that is not being used for tea production to workers as a means of keeping workers tied to the plantation. Such was the status of the disputed land that was the site of the tea workers' 2015 demonstration.³⁵ Because tea workers receive paltry wages, the food that is cultivated from the subleased land is critical in warding off malnutrition³⁶ and important for basic survival. The sublease arrangement also allows workers to pay for other necessities, such as their children's education.³⁷

Sanjida Jui watched as the demonstration unfolded: "People were passing through those golden fields with bows and arrows, koch[,] . . . cutter, sticks, and whatever they had at home. They were coming to join the procession."³⁸ This procession was the largest of a series of actions that had begun earlier that year. In January of 2015, tea workers learned about the government's intention to seize the land from an advertisement in a Bengali paper.³⁹ Because the land is owned by the government and leased to Duncan Brothers, the government did not notify the tea workers of its intent to repossess the land.⁴⁰ Public statements indicate that only "backward and underdeveloped" land will be used to create economic zones.⁴¹ Yet the

34. See Behal, *Coolie Drivers*, *supra* note 26, at 33–35 (describing the evolution of the indentured labor system and the need for "cheap and pliant" labor); Philip Gain, *The Tea and Tea Plantation Workers in Bangladesh*, in *THE STORY OF TEA WORKERS IN BANGLADESH* 1, 14 (Philip Gain ed., 2009) (noting that laborers were procured "with the assistance of the British colonial government").

35. Mohan Rabidas Interview, *supra* note 20 (describing land ownership system wherein the government leases land to tea plantations who in turn sublease to workers); IBRAHIM, REPORT ON PROPOSED SEZ, *supra* note 22, at 11–12.

36. Video: *Tea Workers Protest Creation of Economic Zone Over Cultivated Land*, LAW AT THE MARGINS (Nov. 5, 2016), <http://lawatthemargins.com/video-tea-workers-protest-stop-economic-zone-cultivated-land> [https://perma.cc/MY7S-8JCG]; IBRAHIM, REPORT ON PROPOSED SEZ, *supra* note 22, at 2, 11, 12, 16, 24.

37. IBRAHIM, REPORT ON PROPOSED SEZ, *supra* note 22, at 12, 13 (outlining a system of land mortgaging and community fundraising to raise money for education, cultural, and familial purposes).

38. Jui, *supra* note 4.

39. IBRAHIM, REPORT ON PROPOSED SEZ, *supra* note 22, at 17; Mohan Rabidas Interview, *supra* note 20.

40. Mohan Rabidas Interview, *supra* note 20.

41. Bangladesh Economic Zones Act (Act No. 42/2010) § 3 (Bangl.); see also Ahmad Ibrahim, *A Fight for Land and Livelihood*, DAILY STAR (Jan. 22, 2016), <https://www.thedailystar.net/star-weekend/spotlight/fight-land-and-livelihood->

disputed land is farmed by one thousand families,⁴² and estimates show that upwards of sixteen thousand workers are beneficiaries.⁴³

The government's announcement sparked a movement to stop the acquisition.⁴⁴ The mobilization began with smaller meetings among tea workers.⁴⁵ Workers from over twenty-three other plantations soon joined in support.⁴⁶ Local leaders at the plantation level drew the Tea Workers Union's central leadership into the fold in an advisory capacity;⁴⁷ both the union and the newly-formed Land Protection Committee organized rallies associated with the movement.⁴⁸ Such solidarity extended beyond other tea workers: the tea workers presented themselves not only as farmers and

205144 [https://perma.cc/MQ7M-SKLV] (reporting BEZA Executive Chairman Paban Chowdhury's claims that BEZA is only looking for "arid land").

42. Shudepto Ariquzzaman *On Human Bondage*, in SLAVES IN THESE TIMES, *supra* note 28, at 301, 312.

43. Inam Ahmed, *supra* note 7; see also Mintu Deshwara, *Special Economic Zone in Tea Estate: 6,000 to Lose Means for Survival*, DAILY STAR (Dec. 23, 2019), <https://www.thedailystar.net/backpage/tea-workers-lose-jobs-proposed-special-economic-zone-1843876> [https://perma.cc/EP9Q-REG4] (showing that 6,000 people rely on just one plantation, the Chandpur tea estate).

44. Ibrahim, *A Fight for Land and Livelihood*, *supra* note 41; see also Mohan Rabidas, *Justice for Tea Workers: My Motherland Can't Be Grabbed*, LAW AT THE MARGINS, <http://lawatthemargins.com/justice-for-teaworkers-my-motherland-cant-be-grabbed/> [https://perma.cc/3CTC-EWHK] (discussing how "tea workers have raised their voice" against the seizure).

45. Shukuara Karmokor Interview, *supra* note 20; see also Ibrahim, *A Fight for Land and Livelihood*, *supra* note 41 (describing the growth of local protests into a larger movement in Chandpur and among tea workers throughout Bangladesh).

46. Ibrahim, *A Fight for Land and Livelihood*, *supra* note 41; see also *Tea Workers Against Special Economic Zones*, DAILY STAR (Dec. 16, 2015), <https://www.thedailystar.net/country/tea-workers-against-special-economic-zone-habiganj-18799.3> [https://perma.cc/Y4EP-36KE] (reporting that tea workers from twenty-three plantations in the Habiganj district came together to strike against the creation of a Special Economic Zone).

47. Nripen Pal Interview, *supra* note 20.

48. *Id.*; see also Displacement Archive, *Nripen Pal General Secretary of Tea Workers Union*, YOUTUBE, (Nov. 16, 2017), https://www.youtube.com/watch?v=uxCFKN9y_P0 (last visited Oct. 24, 2020) [hereinafter Nripen Pal Public Interview] (describing the movement as first a more spontaneous mobilization to squat on the land that later became more formal as organizations like the Bangladesh Tea Workers Union and the Bangladesh Tea Workers Women Forum joined); Jawad Ahmed, *supra* note 21, at 29 (same).

agricultural laborers, but as part of a worldwide collective of workers.⁴⁹

Organizing activities culminated with demonstrations, including the widely-reported action of December 14, in which workers physically squatted on the land and refused to leave.⁵⁰ Though they never resorted to physical violence⁵¹—doing so would have weakened the movement’s narrative power, in addition to potentially leading to legal action⁵²—they held machetes, bows and arrows, and wooden sticks to signal confrontational opposition to the threatened seizure.⁵³ As Gita Rani Kanu, president of the Women Tea Workers Forum, put it, “Our predecessors made this land cultivable by cutting hills and forests hundreds of years ago. There is a graveyard of our forefathers. How could we give away the land? We will rather die than leave it.”⁵⁴ Echoing this sentiment, tea workers carried protest signs displaying the slogan, “I will give my blood, I will give my life, but I will not give my land.”⁵⁵

Workers also employed nationalist symbolism in their movement. Crying out “my land, my mother,” many tea workers carried or draped themselves in national flags.⁵⁶ Given the

49. *Habiganj Tea Workers Go on Strike Against SEZ*, DAILY STAR (Jan. 9, 2016), <https://www.thedailystar.net/country/habiganj-tea-workers-go-strike-against-sez-199354> [<https://perma.cc/25WJ-MM48>]; Mohan Rabidas Interview, *supra* note 20 (attributing the success of the movement to the workers’ collective action and providing the lyrics of a common protest that is translated as follows: “Workers of the world unite. Unite and fight. We are here. We will stay. We will fight through the ages. We are here. We will stay. We want to stay. We will fight. We want to fight to survive. Wherever we face obstacles, we will fight there.”).

50. Shurjo Kumar Interview, *supra* note 20.

51. Mohan Rabidas Interview, *supra* note 20. In contrast, the workers faced threats of beatings and even death. *See* Shukuara Kormokor Interview, *supra* note 20. Their farming equipment, moreover, was seized by police. *Habiganj Tea Workers Again on Strike Against SEZ*, DAILY STAR (Feb. 8, 2017), <https://www.thedailystar.net/city/habiganj-tea-workers-again-strike-against-sez-1357621> [<https://perma.cc/NHG2-87FF>].

52. Mohan Rabidas Interview, *supra* note 20.

53. Shukuara Karmokor Interview, *supra* note 20; Sheila Urong Interview, *supra* note 20; Bishaka Nayek Interview, *supra* note 20.

54. *See Protests Go on at Chandpur*, DAILY STAR (Dec. 25, 2015), <https://www.thedailystar.net/frontpage/protests-go-chandpur-tea-estate-192406> [<https://perma.cc/ST9U-VY8F>].

55. Inam Ahmed, *supra* note 7 (“[W]orkers came in their hundreds chanting slogans like ‘Amar Mati Amar Ma, Kerey Nitey Dibona (My land, my mother, we shall not let them snatch it away).’”).

56. Philip Gain, *Tea Workers’ “No” to Economic Zone on Paddy Land*, DAILY STAR, (Dec. 20, 2015), <https://www.thedailystar.net/op-ed/tea-workers-no>

government's long-running discrimination against tea workers, invoking such symbolism may initially seem counterintuitive. However, this symbolism is also reminiscent of struggles against British colonialism,⁵⁷ and there is in fact evidence that tea worker communities were active in these earlier movements.⁵⁸ The workers whom I interviewed learned firsthand of these protests, which were often violently suppressed by colonial authorities,⁵⁹ from their grandparents.⁶⁰ Such nationalist symbolism thus draws attention to the multigenerational nature of the tea workers' struggle for land rights, even as the opposing actor has shifted from the colonial-era British government to the present-day state of Bangladesh.

Notably, women were at the forefront of the 2015 mobilization.⁶¹ They were often more willing to use confrontational approaches to the threatened seizure. For example, when Shukuara Karmokar learned that government officials had come to survey the disputed land, she stood in the fields with a sickle to assert her right to the land.⁶² Karmokar stated, "Women spoke up the most during the movement. We went with farming tools, sticks, sickles, and squatted

economic-zone-paddy-land-189622 [<https://perma.cc/PT48-JBJV>] (describing tea workers carrying bows and arrows wrapping their heads and chests with the national flag).

57. For an excellent background on the role of the colonial state in aiding planters to facilitate the growth of tea plantations, see RANA P. BEHAL, *ONE HUNDRED YEARS OF SERVITUDE* 266 (2014).

58. Nitin Varma, *Chargola Exodus and Collective Action in the Colonial Tea Plantations of Assam*, SEPHIS E-MAGAZINE, Jan. 2007, at 34.

59. *Id.*; see also IBRAHIM, REPORT ON PROPOSED SEZ, *supra* note 22, at 3 (recounting reports that British soldiers fired indiscriminately on workers, forcing them to return to the plantations).

60. Konoklata Rajbongshi Interview, *supra* note 20.

61. Indeed, many of the leaders of the tea workers' mobilization interviewed for this Article were women. See, e.g., Khairun Aktar Interview, *supra* note 20; Sheila Urong Interview, *supra* note 20; Ruma Urong Interview, *supra* note 20; Shukuara Karmokar Interview, *supra* note 20; Bishaka Nayek Interview, *supra* note 20; Nilu Das Interview, *supra* note 20; Shriti Rani Das Interview, *supra* note 20; Konoklata Rajbongshi Interview, *supra* note 20.

62. Shukuara Karmokor Interview, *supra* note 20. Government accounts of the incident used such confrontational gestures as evidence that the tea workers engaged in violent tactics. See *Tea Garden Workers Chase Pro-SEZ Men*, DAILY STAR (Jan. 17, 2016), <https://www.thedailystar.net/backpage/tea-garden-workers-chase-pro-sez-men-203032> [<https://perma.cc/8AR6-JR25>]; Mohan Rabidas Interview, *supra* note 20 (recounting that it was, in fact, local police and government supporters that threatened violence on the tea workers, rather than vice versa).

on the land. The men were behind us.”⁶³ Women woke up early in order to demonstrate on land, walked the several miles to the tea plantation to perform waged labor, and then returned to the land in the evenings.⁶⁴ Ruma Urong said, “We did our movement and we continued to do the company’s work. We would meet early in the morning, protest on the land. Return to pick leaves.”⁶⁵ Nilu Das similarly shared that on most days she either did not eat at all or ate only puffed rice.⁶⁶ Because they were still responsible for childcare, women carried infants and young toddlers with them to demonstrations.⁶⁷

Despite these sacrifices, female tea workers often faced resistance to their participation from male organizers. Shrithi Rani Das told me that women who were experienced orators were permitted to speak, but that other women were discouraged from doing so.⁶⁸ Still, women participated in organizing meetings,⁶⁹ and according to Khairun Aktar, “[w]omen often were not allowed to speak but we insisted on speaking.”⁷⁰

On December 24, tea workers held a rally near the disputed land and observed a two-hour work stoppage.⁷¹ On December 29, they submitted a memorandum to the prime minister demanding cancellation of the decision to allocate the land to a proposed SEZ.⁷² Then, on January 9, 2016, the tea workers went on strike.⁷³ In collaboration with activists from the capital city of Dhaka, they held

63. Shukuara Karmokor Interview, *supra* note 20.

64. Mohan Rabidas Interview, *supra* note 20.

65. Ruma Urong Interview, *supra* note 20.

66. Nilu Das Interview, *supra* note 20.

67. *Id.*

68. Shrithi Rani Das Interview, *supra* note 20.

69. *Id.*

70. Khairun Aktar Interview, *supra* note 20; *see also* Philip Gain Interview, *supra* note 20 (explaining that while most of the participants of the movement were women, most of the speakers at public events were men).

71. *Protests Go on at Chandpur*, DAILY STAR (Dec. 25, 2015), <https://www.thedailystar.net/frontpage/protests-go-chandpur-tea-estate-192406> [<https://perma.cc/W5KQ-FGHA>].

72. Faiham Ibne Sharif, *Tea Workers Threaten With Blockade, Strike on Jan. 25 Demanding Cancellation of Economic-Zone Plan*, BDNEWS24.COM (Jan. 10, 2016), <https://bdnews24.com/bangladesh/2016/01/10/tea-workers-threaten-with-blockade-strike-on-jan-25-demanding-cancellation-of-economic-zone-plan> [<https://perma.cc/XGL5-86EW>].

73. *Habiganj Tea Workers Go on Strike Against SEZ*, *supra* note 49.

an action in front of the headquarters of the Bangladesh Economic Zones Authority ("BEZA").⁷⁴

The tea workers' movement temporarily halted the seizure.⁷⁵ Yet the legal status of the land remains in limbo.⁷⁶ Protests reignited in 2017 and 2019, when the government again attempted to take possession of the land.⁷⁷ At the time of this writing, there are no known efforts to seize the tea worker-cultivated land,⁷⁸ and BEZA officials have stated that they have no immediate plans to do so.⁷⁹ However, because the government maintains legal ownership of the land, affected tea workers are rightfully concerned for their future security.⁸⁰ In this legal impasse, there is an opportunity to explore a human rights response from the ground up. This possibility is covered in greater depth in Part IV, *infra*.

B. The Global Tea Industry: From Colonialism to Present

From its inception, the tea industry has been a global one and its workforce a part of the global colonial economy. The colonial state played a key role in procuring land and labor by creating large plantations; incentivizing individual investors, planters, and managing agencies⁸¹ to clear lands through inexpensive grants; and facilitating the import of a large labor force for tea production for the global market.⁸² This expansion would not have been possible had the planters not been legally permitted by the colonial state to coerce workers into remaining in exploitative contracts.

During the British colonial period, migrants from different parts of the then-undivided South Asian subcontinent were brought

74. Jawad Ahmed, *supra* note 21, at 31.

75. Nripen Pal Interview, *supra* note 20; IBRAHIM, REPORT ON PROPOSED SEZ, *supra* note 22, at 20.

76. Mohan Rabidas Interview, *supra* note 20.

77. *Habiganj Tea Workers Again on Strike Against SEZ*, *supra* note 49 (describing 2017 attempt); Moulvibazar, *Habiganj Tea Workers Protest Setting Up SEZ*, DAILY STAR (Mar. 11, 2017), <https://www.thedailystar.net/backpage/tea-workers-lose-jobs-proposed-special-economic-zone-1843876> [<https://perma.cc/6J5X-2BTS>] (same); Mintu Deshwara, *supra* note 43 (describing 2019 attempt).

78. Documents obtained by the author from BEZA on July 19, 2019 indicate that no action had been taken as of that date.

79. Mohammed Ayub Interview, *supra* note 20.

80. Nripen Pal Public Interview, *supra* note 48 (describing fears relating to future economic security); Mohan Rabidas Interview, *supra* note 20 (same).

81. One such agency was the Duncan Brothers, to which the government leased the disputed land that is the subject of this Article. *See supra* Section I.A.

82. Behal, *Coolie Drivers*, *supra* note 26, at 40.

to present-day Bangladesh⁸³ in order to work under the plantation economic structure as indentured laborers.⁸⁴ This labor force was deliberately recruited from indigenous communities, linguistically diverse populations, and minority religious groups on the basis of racialized stereotypes that such peoples were capable “of withstanding hard work in the jungle.”⁸⁵ Planters also hoped that by recruiting from various regions of the subcontinent, they would be less likely to encounter organized demands from workers for better pay and working conditions.⁸⁶ Finally, members of these groups were more likely to be vulnerable to coercive work arrangements because they were already marginalized under colonial land policies in their respective places of origin.⁸⁷ As a result of these recruiting practices, tea workers in Bangladesh come from nearly eighty distinct ethnic communities,⁸⁸ and over 90% are ethnic minorities or of indigenous origin.⁸⁹ A majority of tea workers are likely Dalits, and as such are also religious minorities in Bangladesh.⁹⁰ Even today, the ethnic,

83. At the time, South Asia was undivided. Tea worker leaders object to being characterized as migrants to Bangladesh because they believe it contributes to the perception that they are foreigners. See Ram Bhajan Kairi Interview, *supra* note 20.

84. See Tayyab Mahmud, *Cheaper Than a Slave: Indentured Labor, Colonialism and Capitalism*, 34 WHITTIER L. REV. 215, 217–19 (2013) (describing the legacy of indentured labor in British colonies following the abolition of slavery in the British Empire); see also RANA P. BEHAL, INDIAN MIGRANT LABOURERS IN SOUTH-EAST ASIAN AND ASSAM PLANTATIONS UNDER THE BRITISH IMPERIAL SYSTEM 2 (2017) (describing the history of the modern industrialization of India’s agrarian economies).

85. Rana Pratap Behal, *Forms of Labour Protest in Assam Valley Tea Plantations, 1900-1930*, 20 ECON. & POL. WKLY. 19, 24 (1985).

86. MAHFUZUL HAQUE, ENVIRONMENTAL GOVERNANCE: EMERGING CHALLENGES FOR BANGLADESH 393 (2013).

87. BEHAL, INDIAN MIGRANT LABOURERS IN SOUTH-EAST ASIAN AND ASSAM PLANTATIONS UNDER THE BRITISH IMPERIAL SYSTEM, *supra* note 84, at 2.

88. GAIN, ON THE MARGINS, *supra* note 6, at 5.

89. HAQUE, *supra* note 86, at 392.

90. In the literature, most tea workers are identified as Hindu. See FAISAL AHMED & MD. ISMAIL HOSSAIN, INT’L LAB. ORG., A STUDY REPORT ON WORKING CONDITIONS OF TEA PLANTATION WORKERS 16 (2016), https://www.ilo.org/wcmsp5/groups/public/---asia/--ro-bangkok/---ilo-dhaka/documents/publication/wcms_563692.pdf [<https://perma.cc/FJ8E-3LMJ>] [hereinafter ILO Report] (“Most of the respondents belong to the Hindu faith.”). But this descriptor obscures how much of the exploitation of tea workers is caused by caste discrimination. Workers who were recruited to work in the tea plantation were at the bottom of the caste hierarchy, and most likely Dalits; however, many workers do not necessarily self-identify as such. See Md. Razu Ahmad Masum, *Rights of Dalit Tea Garden Workers in Sylhet Bangladesh*, BANGL. LEGAL AID & SERVS. TR. & RSCH.

linguistic, and religious marginalization of tea workers contributes to their economic entrapment, as rampant discrimination prohibits their mobility.⁹¹

Tea workers faced atrocious conditions.⁹² An 1868 report on the status of the tea industry in Assam found frequent deception in recruitment, rampant disease and poor hygiene, and shockingly high mortality rates among workers.⁹³ The report states: “In . . . meet[ing] the terms of contract . . . or . . . satisfy[ing] the shareholders . . . , no one has suffered more than the unfortunate labourer, for the opening out of new Tea Cultivation has been too often synonymous with disease and death.”⁹⁴ After numerous complaints detailing oppressive and inhumane practices, the colonial state passed regulations concerning the recruitment of tea workers.⁹⁵ These regulations, however, utterly failed to protect migrants upon their arrival to the tea plantations.⁹⁶

How were planters able to maintain these systems of indentured servitude? Rana Pratap Behal attributes this phenomenon to the onset of early capitalism, the availability of inexpensive and uncleared land that could be sold to investors, and, most importantly for purposes of this Article, the coordination between managing agents and the colonial legal system.⁹⁷ Laborers

INITIATIVES (Jan. 19, 2016), https://www.slideshare.net/MdMasum7/rights-of-dalit-tea-garden-workers-in-sylhet-bangladesh?from_action=save [<https://perma.cc/QWK3-2TEY>] (discussing Dalit identity and its relation to the tea industry); see also Gain, *The Tea and Tea Plantation Workers in Bangladesh*, *supra* note 34, at 14 (stating that laborers came from “tribal” and Dalit communities); Philip Gain, *Mapping of the Tea Communities*, in SLAVES IN THESE TIMES, *supra* note 28, at 10, 10 (“The majority of [tea workers] belong to the fifth category in the Hindu caste system—the Dalits—who are among the . . . oppressed minorities of Bangladesh.”).

91. GAIN, ON THE MARGINS, *supra* note 6, at 32; see also Philip Gain, *Introduction* to SLAVES IN THESE TIMES, *supra* note 28, at 1, 9 (“Social and economic exclusion . . . have rendered [tea workers] . . . captive or tied laborers.”). Much of the early historical work on tea workers is focused on areas located in present-day India, but many of the issues and conditions are similar to those in Bangladesh. See Bhowmik, *supra* note 27, at 244–45 (examining the conditions of tea plantation workers in West Bengal, India).

92. BEHAL, ONE HUNDRED YEARS OF SERVITUDE, *supra* note 57, at 87.

93. *Id.* at 66; see also JAYETA SHARMA, EMPIRE’S GARDENS: ASSAM AND THE MAKING OF INDIA 81 (2011) (noting high mortality rates of tea workers).

94. Behal, *Coolie Drivers*, *supra* note 26, at 36–37.

95. *Id.* at 57; see also SHARMA, *supra* note 93, at 81 (“These high mortality rates eventually forced the state to regulate the recruitment process.”).

96. BEHAL, ONE HUNDRED YEARS OF SERVITUDE, *supra* note 57, at 87.

97. Behal, *Coolie Drivers*, *supra* note 26, at 43–50.

were lured to plantations with idyllic promises of high wages.⁹⁸ When those promises were not kept, then, planters required the support of the colonial state to prevent desertion. As such, although indentured servitude was enforced by physical force, including floggings,⁹⁹ laborers who breached their contracts were additionally subject to criminal prosecutions and sanctions.¹⁰⁰ Colonial law was thus designed so as to meet the demands of planters who desired state support in coercing workers to remain in their contracts, but who nonetheless wanted freedom from state regulation in regard to their recruitment practices.¹⁰¹

Planters also employed more subtle legal tactics that allowed them to maintain both their labor force and uncultivated land that had been awarded to them by the colonial state.¹⁰² Workers could ostensibly leave the plantations upon the completion of their contracts.¹⁰³ However, the low wages that workers received rarely allowed them to afford passage home.¹⁰⁴ Indeed, planters often paid workers in currencies, such as tokens, that were only useful on the plantation.¹⁰⁵ Planters also encouraged entire families to migrate, facilitating the creation of a captive labor force. Frequently, married workers were provided contracts with lengths that were different from those of their spouses, so that once one partner completed their

98. See *supra* notes 92–96 and accompanying text; see *infra* note 108 and accompanying text.

99. Behal, *Coolie Drivers*, *supra* note 26, at 37–39.

100. *Id.* at 32–33 (discussing how planters had private rights to arrest and hold laborers on plantations).

101. *Id.*

102. See SHARMA, *supra* note 93, at 85 (examining how, to take advantage of surplus land from the colonial state, planters leased land to workers whose contracts had expired).

103. Philip Gain Interview, *supra* note 20; see also NITIN VARMA, *COOLIES OF CAPITALISM: ASSAM TEA AND THE MAKING OF COOLIE LABOR* 211 (2017) (finding the presence of a large body of time-expired laborers).

104. See Bhowmik, *supra* note 27, at 237 (finding that planters paid low wages); cf. ‘Coolie Woman’ Rescues Indentured Women From Anonymity, NPR (Nov. 19, 2013), <https://www.npr.org/2013/11/19/246154506/coolie-woman-rescues-indentured-women-from-anonymity> [<https://perma.cc/UGX8-XSSW>] (highlighting stories of indentured workers brought to the Caribbean from India after slavery was legally abolished in 1833, and how they followed similar patterns as workers brought to present-day Bangladesh).

105. Philip Gain Interview, *supra* note 20; see also VARMA, *supra* note 103, at 219 (finding payment through tokens common in the Sylhet plantations).

contract, they were nonetheless forced to renew because their spouse's contract remained in effect.¹⁰⁶

Planters also began subleasing cultivable land to workers to ensure that they remained on the plantations and could be reengaged in tea production.¹⁰⁷ This option was presented to workers as a means of supplementing their wages through the cultivation of arable land for their own use. In fact, this was an incentive for workers to maintain residence on plantations.¹⁰⁸ Tea workers were subjected to intensive labor schedules in order to bolster production levels,¹⁰⁹ and any income was accordingly dependent upon their residing on the plantations. The leasing system thus supported the rationale for compulsory residence. And because this land was nationalized¹¹⁰ following Bangladesh's independence, tea workers remain in an indentured, landless status to this day. The land that the government hopes to seize—and the workers' reliance on it—is therefore directly tied to the exploitative colonial labor system.

C. The Status of Tea Workers Today

Legal and social structures established during the colonial period continue to isolate tea workers from broader Bangladeshi society today, and the exploitative labor conditions to which they are

106. BEHAL, ONE HUNDRED YEARS OF SERVITUDE, *supra* note 57, at 81; *see also* Behal, *Coolie Drivers*, *supra* note 26, at 40 (finding cases where one spouse's agreement expired before the other spouse's agreement).

107. SHARMA, *supra* note 93, at 85–87 (noting that this practice also allowed colonials to settle the area with cultivating tenant-workers).

108. Shriti Rani Das Interview, *supra* note 20 (stating that her father-in-law's grandfather was told “that there was so much money to make in the tea plantation, that money falls off trees”).

109. BEHAL, ONE HUNDRED YEARS OF SERVITUDE, *supra* note 57, at 258; *see also* SHARMA, *supra* note 93, at 76 (finding that tea workers in Assam were virtually imprisoned on the plantation and subjected to flogging, beatings, and killings).

110. Gain, *The Tea and Tea Plantation Workers in Bangladesh*, *supra* note 34, at 10.

subject remain entrenched.¹¹¹ An “invisible chain” keeps workers tied to the plantations.¹¹²

An approximate four hundred thousand¹¹³ workers live and work on tea plantations in Bangladesh. They are among the most vulnerable in society, and their working conditions are characterized by long hours, low pay, inadequate housing, limited education, and poor healthcare.¹¹⁴ Tea workers have low literacy rates¹¹⁵ and earn, on average, just over one U.S. dollar per day.¹¹⁶ Their wages are lower than those of workers in other industries in Bangladesh¹¹⁷ and of tea workers in other South Asian countries.¹¹⁸ Moreover, plantation owners are authorized to deduct the costs of food rations and other “amenities” from tea workers’ already low wages.¹¹⁹ Although tea workers are entitled to a government-managed pension fund,¹²⁰

111. BEHAL, ONE HUNDRED YEARS OF SERVITUDE, *supra* note 57, at 56–100; *see also* Gain, *The Tea and Tea Plantation Workers in Bangladesh*, *supra* note 34, at 14–17, 25 (describing tea workers generally being “vulnerable to unfair dealings of the management,” and women tea workers in particular facing harassment).

112. Philip Gain, *Introduction to SLAVES IN THESE TIMES*, *supra* note 28, at 1, 9.

113. Official statistics from 2014 show a total permanent workforce of 415,622. However, this number is said to be higher—close to one million—due to the number of casual laborers on plantations who are not captured in these data sets. *See* BANGL. TEA BD., STATISTICS ON BANGLADESH TEA INDUSTRY 28 (2015).

114. *See* Gain, *The Tea and Tea Plantation Workers in Bangladesh*, *supra* note 34 (describing the working conditions of tea workers in Bangladesh); *see also* Philip Gain, *The Story of Tea Workers*, DAILY STAR (May 13, 2009), <https://www.thedailystar.net/news-detail-87912> [<https://perma.cc/7AU4-F6CK>] (reporting on the living and working conditions of tea workers in Bangladesh); I. Ahmad et al., *Study on Socio-Economic and Educational Condition of Tea Worker at Sylhet in Bangladesh*, 5 J. TEA SCI. & RES. 1, 2 (2015) (finding that tea workers live and work in abject conditions).

115. HAQUE, *supra* note 86, at 393.

116. Ram Bhajan Kairi Interview, *supra* note 20; *see also* Stephan Uttom & Rock Rozario, *All Strain and No Gain for Bangladeshi Tea Workers*, LA CROIX INT’L (Jan. 15, 2019), <https://international.la-croix.com/news/all-strain-and-no-gain-for-bangladeshi-tea-workers/9235> [<https://perma.cc/D27W-MDQW>] (finding that Bangladesh tea workers receive an average daily wage of 1.22 USD).

117. Tea workers’ wages are lower than those of even other agricultural workers. Rehana Parvin, *Health and Economic Conditions of Tea Garden Female Workers: A Study on Legal Rights*, 4 GREEN U. REV. OF SOC. SCI. 111, 127 (2018).

118. SOC’Y FOR ENV’T & HUMAN DEV., AGENDA OF THE TEA WORKERS AND LITTLE-KNOWN ETHNIC COMMUNITIES IN BANGLADESH 11 (2014), <http://sehd.org/images/euproject/PoliticalAgendaEN.pdf> [<https://perma.cc/YGV9-XUC6>].

119. Bangladesh Labour Act (Act No. 42/2006) § 125(2)(e) (Bangl.).

120. Bangladesh Labour Act (Act No. 42/2006) § 265 (Bangl.).

owners often do not contribute to these funds due to a lack of government oversight.¹²¹ Tea workers are expressly excluded from several provisions of wage and hour laws.¹²² And although there is a centralized tea worker union that offers potential advantages in negotiating with plantation owners for industry-wide benefits, it has historically been susceptible to corruption.¹²³ The union also remains isolated from unions in other sectors.¹²⁴

Nonetheless, because tea workers have no permanent addresses and the state leases the land that they live and work on to plantation owners, they are coerced into remaining under these conditions:¹²⁵ if they cease working for the plantation, they will lose their housing.¹²⁶ These relationships are further entrenched through a complex system of leasing and subleasing land from plantation owners. Under this system, workers cultivate a portion of the land not being used for tea production for subsistence agriculture. This cultivation, in addition to feeding tea workers' households, offers the opportunity to supplement income through the sale of produce in local

121. Ram Bhajan Kairi Interview, *supra* note 20; HAQUE, *supra* note 86, at 402.

122. For example, all workers except tea workers are entitled to ten days of paid casual leave. Bangladesh Labour Act (Act No. 42/2006) § 115 (Bangl.). Moreover, tea workers accumulate annual leave after eighteen days of work, as compared to fifteen days for factory and other workers. Bangladesh Labour Act (Act No. 42/2006) § 117 (Bangl.).

123. The Tea Workers Union has held only three internal elections since its formation in 1948. Philip Gain, *Elections in Tea Gardens and The Larger Issues of Tea Workers*, DAILY STAR (June 30, 2018), <https://www.thedailystar.net/opinion/human-rights/elections-tea-gardens-and-the-larger-issues-tea-workers-1597381> [<https://perma.cc/4HBV-M3PQ>]. While the recent election of new leadership is encouraging, the union is limited in its ability to improve working conditions. *Id.*

124. Ram Bhajan Kairi Interview, *supra* note 20 (acknowledging the union's dramatic reorganization since 2008, but recognizing there is much work still to be done); *see also* HAQUE, *supra* note 86, at 400 (describing the difficult social and economic situation of the tea workers).

125. Gain, *The Tea and Tea Plantation Workers in Bangladesh*, *supra* note 34, *supra* note 34, at 15 ("The tea workers are so much cornered that they depend solely on companies for food, medicine, accommodations, education, etc. They don't have choices about their life and amenities.").

126. Bangladesh Labour Act (Act No. 42/2006) § 32 (Bangl.) (describing eviction from residential accommodations); *see also* Mohan Rabidas Interview, *supra* note 20 (relating how fear of losing housing causes many family members, including children, to work as substitutes for each other: Rabidas' brother began working for the tea plantation in order to preserve his family's housing when his father was no longer able to work).

markets.¹²⁷ Some workers are also able to informally sublease or mortgage the land—a more lucrative option.¹²⁸ Tea workers who do this, however, do not receive the paltry food ration that is required by domestic labor laws.¹²⁹ As such, tea workers' ties to the land cannot be separated from the issues of housing, wages, and general working conditions.¹³⁰

The aforementioned conditions are brutal. Under the Bangladesh Labor Law Act of 2006,¹³¹ plantation owners are required to provide housing,¹³² safe water,¹³³ and sanitation,¹³⁴ medical,¹³⁵ and educational facilities.¹³⁶ However, homes on tea plantations are often in disrepair, with inadequate ventilation¹³⁷ and no toilet facilities.¹³⁸ The vast majority of households have no access to electricity.¹³⁹ Although labor laws require latrines¹⁴⁰ in every establishment, they are not available near work sites or for use by families,¹⁴¹ and many

127. IBRAHIM, REPORT ON PROPOSED SEZ, *supra* note 22, at 10–11; *see also* Shudepto Ariquzzaman & Philip Gain, *Ill Fate of the Tea Workers and a Union Election with High Promises*, 15 EARTH TOUCH 19, 20 (2014) (describing the economic opportunities available to tea workers to supplement their limited income).

128. IBRAHIM, REPORT ON PROPOSED SEZ, *supra* note 22, at 11–12 (describing a system of mortgaging land to other workers as a form of community ownership and collective fundraising to pay for education, weddings, and health services); Ariquzzaman & Gain, *supra* note 127, at 20 (describing how one family found mortgaging their subleased land to be more lucrative than using it for farming).

129. Philip Gain, *Introduction* to SLAVES IN THESE TIMES, *supra* note 28, at 1, 7.

130. Ram Bhajan Kairi Interview, *supra* note 20 (“Workers work for 102 taka a day because they know they can make additional income from land cultivation. We have become so dependent on the land. The land cannot be taken away until there is an overall improvement of working conditions.”).

131. Bangladesh Labour Act (Act No. 42/2006) (Bangl.); *see also* AKM Nasim, *Important Snapshots of Labor Law in Relations to the Tea Workers, in THE STORY OF TEA WORKERS IN BANGLADESH*, *supra* note 34, at 174–76 (describing how Bangladeshi labor law applies to tea workers).

132. Bangladesh Labour Act (Act No. 42/2016) § 96 (Bangl.).

133. *Id.* § 58.

134. *Id.* § 91.

135. *Id.* § 89.

136. *Id.* § 95; *see also* HAQUE, *supra* note 79 (describing the economic and social situation of tea workers).

137. ILO Report, *supra* note 90, at 10, 37.

138. HAQUE, *supra* note 86, at 395.

139. Ahmad et al., *supra* note 114, at 4.

140. Bangladesh Labour Act (Act No. 42/2006) § 59 (Bangl.).

141. HAQUE, *supra* note 86, at 395; Nilu Das Interview, *supra* note 20.

tea workers use open spaces for defecation.¹⁴² Labor laws require the provision of clean drinking water,¹⁴³ but here again, legal rules do not reflect the realities of plantation life.¹⁴⁴ These conditions negatively impact the health of tea workers, who commonly suffer from health problems—including endemic dysentery, diarrhea, and hookworm—that are associated with poor living and working conditions.¹⁴⁵ Nor are these illnesses likely to be adequately treated. Although plantations, depending on the number of workers in their employ, are required to have medical facilities that are staffed by a medical assistant, midwife, or doctor,¹⁴⁶ most do not meet these requirements.¹⁴⁷ In a survey of ten tea plantations, a trained doctor was present on only one.¹⁴⁸ In that same study, 68% of workers expressed their dissatisfaction with plantation healthcare.¹⁴⁹

The plantation economy also facilitates the availability of a multi-generational labor force. Tea plantations are required to provide childcare¹⁵⁰ but largely fail to do so.¹⁵¹ As a result, tea workers' younger children are often looked after in the home by their siblings.¹⁵² Likewise, plantations are required to host primary schools for tea workers' children.¹⁵³ Yet a significant majority of children

142. HAQUE, *supra* note 86, at 395.

143. Bangladesh Labour Rules (Act. No. 291/2015) Schedule 5 [Vide Rule 96] § 1 (Bangl.).

144. Parvin, *supra* note 117, at 117.

145. *Id.*

146. In gardens with less than four hundred workers, the law requires one round-the-clock medical assistant and one trained midwife to manage and maintain the medical facilities. If there are more than four hundred workers, there must be one competent medical staffer or one trained doctor. A professionally trained doctor is only required for plantations with more than 750 workers. Bangladesh Labour Rules (Act No. 291/2015) Schedule 5 [Vide Rule 96] § 6(2) (Bangl.).

147. Parvin, *supra* note 117, at 117.

148. ILO Report, *supra* note 90, at 41.

149. *Id.*

150. Bangladesh Labour Rules (Act No. 291/2015) Schedule 5 [Vide Rule 96] § 5 (Bangl.).

151. A report of the International Labour Organization (“ILO”) found that only 18.9% of survey respondents stated that their employers had arranged a childcare facility for mothers working on the plantation. ILO Report, *supra* note 90, at 10–11.

152. *Id.* at 47.

153. Bangladesh Labour Rules (Act No. 291/2015) Schedule 5 [Vide Rule 96] § 4 (Bangl.).

between the ages of six and twelve do not attend school,¹⁵⁴ as child labor is prevalent in the industry despite being prohibited by law.¹⁵⁵ A report that surveyed almost three hundred workers across ten tea estates found that only 35% of respondents were literate.¹⁵⁶ The lack of educational opportunities for the children of tea workers ensures that few employment opportunities outside of plantation labor will be available to them as adults.¹⁵⁷

The exploitation to which tea workers are subject is also gendered. Just over 50% of tea workers are women.¹⁵⁸ However, women constitute a significantly higher percentage of workers who perform the labor-intensive and low-paying work of plucking tea leaves.¹⁵⁹ Historically, patriarchy contributed to a gendered division of labor wherein women were responsible for plucking tea leaves while men were given machine-operating roles.¹⁶⁰ These divisions remain today.¹⁶¹

154. Tulshi Kumar Das & S.M. Hasan Zakirul Islam, *Human Rights of the Tea Gardeners: Case Study of Selected Gardens in Sylhet*, 28 ASIAN AFF. 25, 30 (2006); ABUL BARKAT ET AL., HUMAN DEV. RSCH. CTR., ASSESSMENT OF THE SITUATION OF CHILDREN AND WOMEN IN THE TEA GARDENS OF BANGLADESH, at ii (2010) (noting that the primary school attendance rate for tea workers' children is 62%, compared to the national average of 81%).

155. ILO Report, *supra* note 90, at 13; *see also* Ruma Urong Interview, *supra* note 20 (sharing that she began picking leaves when she was just 13 years old).

156. ILO Report, *supra* note 90, at 7.

157. Nilu Das Interview, *supra* note 20; ILO Report, *supra* note 90, at 35 (reporting that around 49% of survey respondents said that their lack of skills for the mainstream labor market forces them to accept jobs on tea plantations).

158. The percentage of female tea workers varies from 52% to 75%, and women predominate in the industry. Ram Bhajjan Kairi Interview, *supra* note 20 (citing union reports that 52% of tea workers are women); ILO Report, *supra* note 90, at 7 (reporting that 64% of tea workers are women); Md. Kamruzzaman et al., *Survival Strategies of Female Workers: A Study in a Tea Garden in Bangladesh*, 5 UNIVERSAL J. AGRIC. RES., 150, 150 (2015) (reporting that 75% of tea workers are women). Historically, a little over 50% of the labor force in Assam, once under the unified control of Bengal, was composed of women and children. *See* BEHAL, ONE HUNDRED YEARS OF SERVITUDE, *supra* note 57, at 20.

159. Researchers argue that employers prefer women workers because they can pay them less than men. *See generally* Kamruzzaman et al., *supra* note 158, at 150 (describing the disparate treatment of female compared to male tea workers).

160. Gain, *The Tea and Tea Plantation Workers in Bangladesh*, *supra* note 34, at 25.

161. *Id.*

These inequalities persist outside of waged labor, as women tea workers often have the burden of unpaid work, as the experience of Mina Tati illustrates:

Mina Tati said that she has to walk up to ten kilometers a day to reach and come back from the section where she picks tea leaf. She gets no rest when she is at home too. She does all the household chores starting from cooking, cleaning, washing clothes to smearing mud on the floor. She cooks for others but she herself cannot afford to eat the nutritious food necessary for a pregnant woman. She gets to eat fish¹⁶² twice a week and if she is lucky, she can eat meat twice a month.¹⁶³

Other women interviewed shared similar accounts.¹⁶⁴ Women bear the costs of the industry's inadequate pay, adopting survival strategies that include skipping meals and avoiding costly, protein-rich foods in order to meet their families' nutritional needs.¹⁶⁵ And they are not necessarily relieved of these burdens if they are unmarried. Khairun Aktar, for example, makes similar sacrifices to support her mother and brother after her father's death.¹⁶⁶

It is also common for tea workers to work through pregnancy.¹⁶⁷ Bangladesh labor law expressly prohibits employers from requiring women to perform work of "an arduous nature or

162. Mina Tati's fish and meat protein intake is not typical and is, in fact, on the higher end for workers. Nilu Das shares that given their low wages (a little over a dollar per day, or 102 taka) and increases in food costs, it is rare to be able to have any meat or fish proteins. Nilu Das Interview, *supra* note 20.

163. Sabrina Miti Gain, *Tea Workers: The Women's Tale*, DHAKA TRIBUNE (Nov. 22, 2018), <https://www.dhakatribune.com/magazine/weekend-tribune/2018/11/22/tea-workers-the-women-s-tale> [<https://perma.cc/8YJ4-67Y7>]; see also Gain, *The Tea and Tea Plantation Workers in Bangladesh*, *supra* note 34, at 46 (describing the story of a tea worker, Kumari Mridha, who wakes before sunrise, works all day, and does household chores after work).

164. See, e.g., Interview with Konoklata Rajbongshi, *supra* note 20 (stating that she is often without food or good clothing in order to pay for her children's education); Interview with Bishaka Nayek, *supra* note 20 (stating that her elder daughter had to discontinue her education so that the family's basic survival needs could be met).

165. Md. Musharraf Hossain et al., *Socio-Economic Status, Dietary Pattern and Nutritional Status of the Female Workers of Fulchara Tea Garden in Moulvibazar District in Bangladesh*, J. NUTRITION & FOOD SCI., Nov. 23, 2017, at 1, 3 (finding that over 64% of women are underweight due to poor nutrition); Kamruzzaman et al., *supra* note 158, at 152.

166. Khairun Aktar Interview, *supra* note 20.

167. Sabrina Miti Gain, *supra* note 163.

which involves long hours of standing or which is likely to adversely affect her health” if the employer knows that she will give birth within ten weeks.¹⁶⁸ However, upon certification by the tea plantation’s medical practitioner, an exception is made for tea workers.¹⁶⁹ Indeed, one study found that 77% of women surveyed were made to perform arduous labor while pregnant.¹⁷⁰ Moreover, although they are entitled to eight weeks of maternity leave,¹⁷¹ tea workers often forego prenatal care and instead take leave after childbirth for fear of reduced wages or unemployment.¹⁷² Sadly but perhaps unsurprisingly given these realities, maternal and child mortality rates are higher on tea plantations than elsewhere in the country, where those rates have significantly declined in recent years.¹⁷³

Finally, historical accounts and interviews reveal that female tea workers were sexually exploited by white planters during the colonial period.¹⁷⁴ Such abuses continue to occur today.¹⁷⁵

168. Bangladesh Labour Act (Act No. 42/2006) § 45 (Bangl.).

169. *Id.*

170. Hossain et al., *supra* note 165, at 3.

171. Bangladesh Labour Act (Act No. 42/2006) § 46 (Bangl.).

172. Sabrina Miti Gain, *supra* note 163 (noting that tea workers working while pregnant is common on tea plantations across South Asia); see also Swati Gupta, *Pregnant Women Are Risking Their Lives to Bring People Tea*, CNN (Feb. 6, 2019), <https://www.cnn.com/2019/02/06/health/india-assam-tea-asequals-intl/index.html> [<https://perma.cc/33ME-M349>] (describing the health risks and economic pressures that pregnant tea workers have to navigate); ILO Report, *supra* note 90, at 39 (stating that despite experiencing health complications, pregnant tea workers often do not take maternity leave for fear of loss of income).

173. BARKAT ET AL., *supra* note 154 (finding that infant mortality rates on tea plantations are twice as high as the national average); see also *Bangladesh’s Tea Gardens, Saving Mothers and Newborns*, U.N. POPULATION FUND (July 11, 2017), <https://www.unfpa.org/news/bangladeshs-tea-gardens-saving-mothers-and-newborns> [<https://perma.cc/33ME-M349>] (“According to national findings from 2014, tea gardens and surrounding areas accounted for nearly 40 percent of the district’s maternal deaths.”).

174. See SHARMA, *supra* note 93, at 76 (“Fragmentary anecdotal accounts testify to the many ways female coolies were sexually exploited by Assam’s white masters, and of the mixed-race, illegitimate children who often resulted.”); Konoklata Rajbongshi Interview, *supra* note 20 (sharing family history wherein failed flight from plantation resulted in the British “oppressing the women” as a consequence).

175. Md. Ziaur Rahman, *Assessment of Socio-Economic and Sexual Vulnerability of Tea Workers in Bangladesh*, 4 J SOC. SCI. RES. 229, 238 (2018) (reporting that more than 52% of tea workers reported sexual harassment, sexual assault, and rape).

II. ECONOMIC ZONES: ASSEMBLAGES¹⁷⁶ OF GLOBALIZATION

The threatened seizure of land that has long been cultivated by tea workers—a workforce created by colonialism and that is still subject to exploitative conditions—to create SEZs underscores the global character of both this workforce and its movement. As Section II.A demonstrates, both domestic and global economic policies promote economic zones through laws such as the Bangladesh Economic Zones Act, which proactively facilitate the flow of global capital through the domestic economy and in which the operation of labor law is often suspended.¹⁷⁷ Section II.B shows that the laws and policies that promote such zones embody an industrialization bias rooted in development theory¹⁷⁸ that views agrarian societies as underdeveloped. This dominant industrialization bias justifies the seizure of agricultural land¹⁷⁹ notwithstanding evidence indicating that domestic tea production has the potential to be quite profitable.¹⁸⁰

In carefully examining these laws and policies, Section II.C illuminates the interplay between tea workers, the nation-state, and the global economy. Aihwa Ong describes the phenomenon at issue here as a “graduated sovereignty,” wherein the state cedes territory to global capital but nonetheless remains central in restructuring social and political relations.¹⁸¹ Ong’s work, along with Saskia

176. This Article refers to “assemblages” as a dynamic systems theory and framework for analyzing social complexity between entities. See GILLES DELEUZE & FELIX GUATTARI, *A THOUSAND PLATEAUS: CAPITALISM AND SCHIZOPHRENIA* 23 (1987).

177. Amita Punj, *Special Economic Zone: Operational Adjustment of Labour Law*, 5 *J. NAT’L L. U. DELHI* 78, 79 (2018) (identifying three types of economic zones: *inclusionary zones* allow for the operation of national labor laws; *exclusionary zones* the opposite; and *special/altered zones* offer a selective and discretionary enforcement of labor laws).

178. For a good discussion on development theory and globalization, see PHILIP MCMICHAEL, *DEVELOPMENT AND SOCIAL CHANGE: A GLOBAL PERSPECTIVE* 2 (6th ed. 2017).

179. Documents obtained from the Habiganj Land Office and BEZA show that Duncan Brothers’ lease on the disputed land was canceled on the ground that the land was not being used for tea. The land was transferred to BEZA in order to create an economic zone.

180. See Kazi Muzafar Ahammed, *Investment for Sustainable Development of Bangladesh Tea Industry – An Empirical Study*, BANGL. TEA BD. (June 2012), <https://bea-bd.org/site/images/pdf/9.pdf> [<https://perma.cc/W4US-Z5E4>].

181. AIHWA ONG, *FLEXIBLE CITIZENSHIP: THE CULTURAL LOGIC OF TRANSNATIONALITY* 217 (1999).

Sassen's scholarship on historicizing globalization,¹⁸² makes all the more evident the necessity of developing human rights responses from the ground up to counter these processes and to create possibilities for the articulation of new rights.

A. The History of Economic Zones in Bangladesh

An economic zone is generally defined as a territorial enclave within a country's national borders where the rules of business are different from those that prevail elsewhere in the state.¹⁸³ These differential rules principally deal with investment conditions, international trade and customs, taxation, and the regulatory environment.¹⁸⁴ The goal of these zones is to integrate domestic economies into the global market through export-led growth.¹⁸⁵ The first modern zone was established in Ireland in 1959.¹⁸⁶ By 1986, there were 176 zones in 47 countries,¹⁸⁷ and 3,500 zones in 130 countries by 2006.¹⁸⁸ As of 2008, SEZs accounted for an estimated two hundred billion dollars in global exports and directly employed at least forty million workers.¹⁸⁹

In 1980, while economic zones were being established at tremendous rates across the globe, the government of Bangladesh established the Bangladesh Export Processing Zones Authority ("BEPZA").¹⁹⁰ BEPZA managed the creation of Export Processing

182. Saskia Sassen, *Locating Cities on Global Circuits*, 14 ENV'T & URBANIZATION 13, 14 (2002).

183. For an overview of issues concerning SEZs, see SPECIAL ECONOMIC ZONES: PROGRESS, EMERGING CHALLENGES, AND FUTURE DIRECTIONS (Thomas Farole & Gokhan Akinci eds., 2011) [hereinafter SPECIAL ECONOMIC ZONES] and Hooshang Amirahmadi & Weiping Wu, *Export Processing Zones in Asia*, 35 ASIAN SURV. 828 (1995).

184. Thomas Farole & Gokhan Akinci, *Introduction to SPECIAL ECONOMIC ZONES*, *supra* note 183, at 3; *see also* Amirahmadi & Wu, *supra* note 183, at 829 (identifying primary characteristics of economic zones).

185. Amirahmadi & Wu, *supra* note 183, at 828.

186. Farole & Akinci, *supra* note 183, at 3.

187. Jean-Pierre Singa Boyenge, *ILO Database on Export Processing Zones (Revised)* (INT'L LAB. ORG., Working Paper No. 251, 2007), <https://pdfs.semanticscholar.org/f73e/d4417616e513d00bdd66af40539693558155.pdf> [<https://perma.cc/TJ8N-LTFT>].

188. *Id.*

189. FIAS WORLD BANK GRP., SPECIAL ECONOMIC ZONES PERFORMANCE, LESSONS LEARNED AND IMPLICATIONS FOR ZONE DEVELOPMENT 23 (2008), <http://documents.worldbank.org/curated/en/343901468330977533/pdf/458690WPOBox331s0April200801PUBLIC1.pdf> [<https://perma.cc/9NNF-7FPU>].

190. Bangladesh Export Processing Zones Act (Act No. 36/1980) (Bangl.).

Zones (“EPZs”).¹⁹¹ An EPZ is “a territorial or economic enclave in which goods may be imported, stored, repacked, manufactured, and reshipped with a reduction in duties and/or minimal intervention by customs officials.”¹⁹² They differ from SEZs in that while EPZs are limited to exports, SEZs allow for a greater range of economic activities.¹⁹³ Both, however, are clear outgrowths of economic policy that favors industrial development and the promotion of export-oriented strategies.¹⁹⁴ Indeed, BEPZA is transparent in its goal to “stimulate rapid economic growth . . . , particularly through industrialization . . . to attract foreign investment in Bangladesh.”¹⁹⁵

Even after the establishment of BEZPA, proponents of economic zones argued that land scarcity was an impediment to the expansion of large industrial spaces as a development strategy.¹⁹⁶ In 2010, the government established BEZA, providing a legal mechanism for the state to acquire land for the promotion of its economic policies.¹⁹⁷ BEZA’s mission is to create SEZs in “backward and underdeveloped” regions of the country.¹⁹⁸

The Bangladesh Economic Zones Act (“the Act”), BEZA’s enabling statute, gives the government wide latitude in the selective suspension and extension of other national laws. It allows the government to exclude or modify the application of “any other Act”

191. See Asif Dowla, *Export Processing Zones in Bangladesh: The Economic Impact*, 37 ASIAN SURV. 561, 562 (1997) (discussing how the notion of EPZs was introduced to Bangladesh by the World Bank).

192. John R. McIntyre et al., *The Role of Export Processing Zones for Host Countries and Multinationals: A Mutually Beneficial Relationship?*, 10 INT’L TRADE J. 435, 437 (1996).

193. Lorenzo Cotula, *The State of Exception and Law of the Global Economy: A Conceptual and Empirico-Legal Inquiry*, 8 TRANSNAT’L LEGAL THEORY 424, 434 (2018).

194. For further context, see *supra* note 183 and accompanying text.

195. *About BEPZA*, BANGL. EXPORT PROCESSING ZONES AUTH., <http://bepza.gov.bd/pages/details/about> [https://perma.cc/69F8-VKBG].

196. See ZAARA ZAIN HUSSAIN, INST. S. ASIAN STUD., *ECONOMIC ZONES IN BANGLADESH: UNBOUND OPPORTUNITIES FOR FOREIGN INVESTMENT 15–18* (2013), https://www.files.ethz.ch/isn/174249/ISAS_Special_Report_17_-_Economic_Zones_28112013121935.pdf [https://perma.cc/WR6Q-BHJP] (reflecting government policy via a highly favorable article on economic zones).

197. *Cf.* MICHAEL LEVIEN, *DISPOSSESSION WITHOUT DEVELOPMENT: LAND GRABS IN NEOLIBERAL INDIA* 86 (2018) (discussing how India’s SEZ Act provided the legal justification for the state to capture large chunks of land for real estate developers).

198. See Bangladesh Economic Zones Act (Act No. 42/2010) pmb. (Bangl.).

and purports to prevail over “any other law” in the case of conflict,¹⁹⁹ including the Bangladesh Labor Act of 2006.²⁰⁰ The Act also reserves to BEZA the right to order, without compensation, the dismissal of any worker who is “involved in or instigates any action that leads to labour unrest, strikes, or lockout.”²⁰¹ It establishes special courts to adjudicate disputes that arise under the Act.²⁰² And, ominously, a provision entitled “Removal of Difficulties” authorizes the government to “take necessary measure[s]” in order to remove “any difficulty [that] arises in giving effect to the provisions of this Act.”²⁰³

The Act’s establishment of a regime where ordinary legislation does not apply and where ordinary courts have no jurisdiction, has led some critics to describe SEZs as “a country within a country.”²⁰⁴ Yet this characterization is misleading. SEZs do not represent a concession of Bangladesh’s sovereignty, but are instead *evidence* of its sovereignty. They are examples of how states may differentially deploy their power.²⁰⁵ Economic zones are not static territories in which laws simply do not exist and states are passive conduits for the entry of global capital. Rather, “SEZ regimes can entail substantial normative activity to exclude, qualify or modify the application of ordinary norms” and “create highly regulated spaces, even though the contours of that regulation may depart from the generally applicable law.”²⁰⁶ SEZs thus expose states as both framers and enablers of the entry of global capital. They are neither passive actors nor victims of globalization.²⁰⁷

Aihwa Ong has noted that Asian states have responded positively to the global market, adjusting their relationship to it and, in certain instances, ceding some measure of regulatory control to corporate entities within its territory.²⁰⁸ Here, the state’s role under

199. *Id.* § 3; *id.* § 13(p).

200. *Id.* § 3.

201. *Id.* § 37.

202. *Id.* § 36.

203. *Id.* § 40.

204. Jim Yardley, *Export Powerhouse Feels Pangs of Labor Strife*, N.Y. TIMES (Aug. 23, 2012), <https://www.nytimes.com/2012/08/24/world/asia/as-bangladesh-becomes-export-powerhouse-labor-strife-erupts.html> (on file with the *Columbia Human Rights Law Review*).

205. ONG, *supra* note 181, at 217.

206. Cotula, *supra* note 193, at 451.

207. Global economic processes create “institutional and legal environments” that facilitate the flow of capital through nation states. Sassen, *Locating Cities on Global Circuits*, *supra* note 182, at 14.

208. ONG, *supra* note 181, at 239.

globalization is not diminished, but firmly remains—and is arguably enlarged—because it is the state that authorizes the entry of global capital and which outsource its regulatory functions.²⁰⁹ Likewise, Bangladesh is collaborating with, rather than falling victim to, global capital. Specifically, Bangladesh employs its sovereign lawmaking authority to facilitate the entry of global capital by creating economic zones. Its use of its lawmaking powers is not subordinated to the interests of global capital, but rather is essential to attract global capital and to facilitate its entry. In the context of the threatened seizure of land, lawmaking and the political process are means by which the state can and does collaborate with global capital, in particular by creating EPZs and SEZs.²¹⁰ This insight reveals that the state and its laws remain sites where tea workers can advocate for land rights and improved working conditions.

B. Legislative Expressions of the Industrialization Bias

SEZs and EPZs are clear legislative expressions of domestic economic policy that favors industrialization and courts global capital, and their establishment has been essential in facilitating land acquisition in order to increase foreign investment. Law and policies favoring industrialization are connected to the modernization theory of economic development,²¹¹ which suggests that formerly colonized countries follow a course similar to 'European countries'.²¹² They are based on a developmentalism that places capitalist economic development as central to political governance for newly independent nations.²¹³

Bangladesh, for its part, adhered to a short-lived “socialist” economic vision for a number of years after its establishment in which industry was nationalized and managed by the state.²¹⁴ It was

209. *Id.*

210. See Michael Levien, *Special Economic Zones and Accumulation by Dispossession in India*, 11 J. AGRARIAN CHANGE 454, 457 (2011); see also Marcos A. Pedlowski, *When the State Becomes the Land Grabber: Violence and Dispossession in the Name of Development*, 12 J. LAT. AM. GEOGRAPHY 91, 106 (2013) (describing the state's role in land displacement as a “legal land grab”).

211. See MCMICHAEL, *supra* note 178, at 2.

212. *Id.*

213. *Id.*

214. MIRZA HASSAN & SELIM RAIHAN, *Navigating the Deals World: The Politics of Economic Growth in Bangladesh*, in DEALS AND DEVELOPMENT: THE POLITICAL DYNAMICS OF GROWTH EPISODES 100, 103 (Lant Pritchett et al., eds. 2018).

during this time that much of the land used for tea plantations reverted back to the government.²¹⁵ This nationalization, however, allowed a politically connected class to gain access to wealth through a patronage system.²¹⁶ The wealth acquired through nationalization was thus not redistributed to the general public. This state-dominated economic policy quickly gave way to a stronger private sector one, beginning with the Industrial Investment Policy of 1975, which withdrew restrictions on private sector participation in manufacturing and allowed for direct foreign investment.²¹⁷ This shift in domestic economic policy was the result of structural adjustment policies of the World Bank and the International Monetary Fund that directed newly-independent countries toward private market approaches to development and away from nationalization efforts.²¹⁸ By 1979, many formerly nationalized industries had been handed back to private entrepreneurs.²¹⁹ Since then, domestic economic policy has continued in a decidedly pro-business direction.²²⁰

These shifts in Bangladesh's economic policy have been characterized as neoliberal²²¹ because they favor free trade, and because they frame a connection with the global economy as essential for the country's political survival.²²² They have also been described as neocolonial, in that they have permitted countries in the global

215. Gain, *The Tea and Tea Plantation Workers in Bangladesh*, *supra* note 34, at 2; *see also* Tasnuba Nasir & Mohammad Shamsuddoha, *Tea Productions, Consumptions and Exports: Bangladesh Perspective*, 2 INT'L J. EDUC. RES. & TECH. 68, 68 (2011) (describing historical efforts to privatize the tea industry).

216. HASSAN & RAIHAN, *supra* note 214, at 102.

217. *Id.* at 103; *see also* Emajuddin Ahmed, *Development Strategy in Bangladesh: Probable Political Consequences*, 18 ASIAN SURV. 1168, 1170–71 (1978) (finding that the Bangladesh government encouraged foreign investment).

218. HASSAN & RAIHAN, *supra* note 214, at 103.

219. *Id.* at 104–05.

220. *Id.* at 105.

221. This Article uses “neoliberalism” broadly to describe a set of political, cultural, and economic policies that, among other features, favors free markets and minimal regulation by state and civil society actors or necessitates private-public ventures, prioritizes corporate interests over the promotion of social goods and benefits, grants corporate actors personhood while denying that personhood to marginalized actors in the global economy, and promotes an individual rather than collective vision of rights. *See generally* DAVID HARVEY, A BRIEF HISTORY OF NEOLIBERALISM (2007) (theorizing neoliberalism).

222. *See* HASSAN & RAIHAN, *supra* note 214, at 124 (positing that a reason for this policy is that there is a “strong ideological preference for market-led growth among political elites” whereby they prioritize the private sector given their fragile democratic legitimacy).

North to retain economic control over their former colonies.²²³ Ironically, the present government's claim to the tea worker-cultivated land is rooted in its legal ownership of the land, which was made possible due to nationalization under the "socialist" vision of the early 1970s. It is not the characterization of the economy—socialist or private—that is central, then, but rather that under either model, the state has pursued an economic development policy mirroring global economic policies and global capitalism. Whether state-managed or deregulated to favor the private sector, under modernization and developmentalism, industrialization is still seen as central to Bangladesh's economic development.²²⁴

Following this model, subsistence agriculture is "backward"²²⁵ and an underutilization²²⁶ of land.²²⁷ Industrialization has thus been a powerful driver of land acquisition²²⁸ in the name of economic development.²²⁹ These policies are having a profound impact on agriculture²³⁰ and agricultural land.²³¹ Such dispossession facilitates the capture of former agricultural workers in low-wage industry jobs

223 . KWAME NKRUMAH, *NEO-COLONIALISM, THE LAST STAGE OF IMPERIALISM*, at ix (1965) ("The essence of neo-colonialism is that the State which is subject to it is, in theory, independent and has all the outward trappings of international sovereignty. In reality its economic system and thus its political policy is directed from outside.")

224 . For further context, see generally A.M.A. Rahim, *A Review of Industrial Policy in Bangladesh*, 18 *ASIAN SURV.* 1181 (1978).

225 . Bangladesh Economic Zones Act (Act No. 42/2010) pmbl. (Bangl.).

226 . In the case of the dispute that is the subject of this Article, government officials referred to the land as fallow notwithstanding its active cultivation by tea workers.

227 . The direct link between domestic law and global economic policy, as it relates to the tea workers, is affirmed by the fact that a World Bank development consultant sat in the same offices as did BEZA officials. A.K.M. Mahbubhur Rahman Interview, *supra* note 20.

228 . See Katy Gardner & Eva Gerharz, *Introduction. Land, Development and Security in Bangladesh and India*, 13 *S. ASIA MULTIDISCIPLINARY ACAD. J.* 1, 5 (2016) (conceptually distinguishing land grabs, enclosures, dispossession, and displacement in South Asia).

229 . Harvey called this phenomenon "accumulation by dispossession." See HARVEY, *supra* note 221, at 159. In contrast, Abu Ahasan and Katy Gardner refer to it as "dispossession by development." Abu Ahasan & Katy Gardner, *Dispossession by 'Development': Corporations, Elites and NGOs in Bangladesh*, 13 *S. ASIA MULTIDISCIPLINARY ACAD. J.* 1, 2 (2016).

230 . Since Bangladesh became independent, the share of agriculture in GDP has declined from 46.5% to 23.23%, while the shares of the industrial and services sectors have risen. See HASSAN & RAIHAN, *supra* note 214, at 127.

231 . World Bank figures show a drop in agricultural land from 77% in 1990 to 70% in 2011. Ahasan & Gardner, *supra* note 229, at 1.

where they are vulnerable to exploitation by the global economy. This is reflected in high rates of urbanization: from 1974 to 2001, the population in urban areas increased from 8% to 23% percent, and it had risen to 33% by 2015.²³² Unemployment in rural areas, inadequate access to land, and lack of safety nets are among the main causes of migration to urban areas.²³³

The government's bias against agriculture notwithstanding, Bangladeshi tea production has surged in recent years due to low interest rates.²³⁴ In 2006, Bangladesh ranked tenth in the world in tea production and thirteenth in tea exports,²³⁵ and demands for domestic tea production have only increased with population growth and urbanization.²³⁶ In 2017, Bangladesh began importing tea in order to meet this demand,²³⁷ and in 2019, Bangladesh produced 96,069,000 kilograms of tea.²³⁸

Professionals in the industry have recommended that the government make a substantial investment in the tea sector in order to satisfy domestic consumption and create an export surplus.²³⁹ While it is no longer possible to recreate the large tea estates formed under British colonialism, as unused land parcels of that size are rare

232. Mohammed Mamum Rashid, *Rural-Urban Female Migration in Bangladesh: Need for Information Support and Institutional Responses*, 13 GLOB. J. HUM. SOC. SCI. SOC. & CULTURE 1, 5 (2013).

233. *Id.* at 4.

234. Dwaipayan Barua, *Tea Production Hits Two-Year High*, DAILY STAR (Jan. 23, 2019), <https://www.thedailystar.net/business/news/tea-production-hits-two-year-high-1691356> [<https://perma.cc/P6CP-HKRY>]. Tea production involves both agricultural and industrial production. Thus, the promotion of the tea industry could also serve the industrialization policy objective of the government. See Philip Gain, *Introduction to SLAVES IN THESE TIMES*, *supra* note 28, at 1, 5.

235. Nasir & Shamsuddoha, *supra* note 215, at 69–70.

236. Ahammed, *supra* note 180.

237. See Ibrahim Hossain Ovi, *Value Addition: Bright Future for the Tea Industry*, DHAKA TRIB. (Feb. 20, 2018), <https://www.dhakatribune.com/business/2018/02/20/value-addition-bright-future-tea-industry> [<https://perma.cc/T5VG-RBRN>].

238. BANGL. TEA BD., STATISTICAL BULL. (2019), http://teaboard.portal.gov.bd/sites/default/files/files/teaboard.portal.gov.bd/monthly_report/a4c58f8a_d66d_4abd_8962_b149b04efdc4/2020-01-20-16-47-734c236282611821e881e6028dbdb7a7.pdf [<https://perma.cc/FC9H-EQY8>]. *But see* Dwaipayan Barua, *Record Tea Production Last Year*, DAILY STAR (Jan. 21, 2020), <https://www.thedailystar.net/business/news/record-tea-production-last-year-1856851> [<https://perma.cc/6RDF-96YK>] (reporting production of 82,130,000 kilograms).

239. Ovi, *supra* note 237 (highlighting export opportunities created by the production of organic tea).

today,²⁴⁰ industry experts have determined that small tea plantations are feasible.²⁴¹ With better management, they estimate that production in small tea plantations can increase to one hundred million kilograms annually by the year 2025.²⁴² Furthermore, the creation of small tea holdings also has the potential to increase employment in rural areas.²⁴³ Given this high demand for tea and the accompanying prospects for rural employment, the threatened seizure of tea worker-cultivated land for the creation of SEZs is not supported by economic indicators.

The limitations of the industrialization bias are also reflected in the admissions of BEZA's proponents that economic zones have produced mixed results in terms of economic growth.²⁴⁴ A 2019 United Nations report found that "the performance of many zones remains below expectations" and that "SEZs are not a guarantee for higher FDI [foreign direct investment]."²⁴⁵ It also reported that "most zones grow at the same rate as the national economy."²⁴⁶ The World Bank has also acknowledged "despite large development success fueled by Ready Made Garment (RMG), microfinance, and remittances, three out of five Bangladeshi workers still find themselves in vulnerable employment."²⁴⁷

With these flaws becoming more apparent, gender has become key to continued support for economic zones.²⁴⁸ Industrialization is praised by development professionals as a prudent course for

240. Indeed, the lack of large, unused land parcels is one reason for forced dispossessions such as the one in this case study. *See supra* notes 196–98 and accompanying text.

241. Ahammed, *supra* note 180, at 8.

242. *Id.* at 9.

243. *Id.*

244. Amirahmadi & Wu, *supra* note 183, at 831.

245. U.N. CONFERENCE ON TRADE AND DEVELOPMENT, WORLD INVESTMENT REPORT: SPECIAL ECONOMIC ZONES, at xiv (2019), https://unctad.org/en/PublicationsLibrary/wir2019_overview_en.pdf [<https://perma.cc/ZRV6-LHGH>].

246. *Id.*

247. WORLD BANK GRP., THE RISE OF SPECIAL ECONOMIC ZONES IN BANGLADESH (2018), <https://openknowledge.worldbank.org/handle/10986/30555> [<https://perma.cc/6YT9-MP5F>].

248. *See* Chandra Talpade Mohanty, "Under Western Eyes" Revisited: Feminist Solidarity Through Anti-Capitalist Struggles, 28 SIGNS 499, 510 (2003) ("[C]apitalism and its various relations of rule can be analyzed through a transnational, anticapitalist feminist critique, one that draws on historical materialism and centralizes racialized gender.").

Bangladesh because it is expected to provide jobs for rural women.²⁴⁹ The articulation of women's rights through this development lens aligns with "worldwide changes in economic restructuring and the opening of markets in many countries."²⁵⁰ Economic development discourses²⁵¹ typically see waged work as tied to women's ability to free themselves from patriarchal relations in agrarian economies.²⁵² And it is true that a majority of jobs created under this model are held by women.²⁵³ Those jobs, however, are low-paying and labor-intensive.²⁵⁴ In 2011, for example, wages in SEZs in Bangladesh were 2.5 times lower than those in Vietnam, and more than three times lower than in most African SEZs.²⁵⁵ Moreover, as we see in the garment industry,²⁵⁶ these policies have placed women into

249. *In Bangladesh, Empowering and Employing Women in the Garments Sector*, WORLD BANK GRP., (Feb. 7, 2017), <https://www.worldbank.org/en/news/feature/2017/02/07/in-bangladesh-empowering-and-employing-women-in-the-garments-sector> [<https://perma.cc/85PF-W62E>]; see also Syed Zain Al-Mahmood, *Bangladesh's Garment Industry Still Offers Women Best Work Opportunity*, THE GUARDIAN (May 23, 2013), <https://www.theguardian.com/global-development/2013/may/23/bangladesh-garment-industry-women-opportunity> [<https://perma.cc/7MZR-4DB6>] (describing the opportunities the Bangladeshi garment industry provides to women).

250. Lamia Karim, *Analyzing Women's Empowerment: Microfinance and Garment Labor in Bangladesh*, 38 FLETCHER F. WORLD AFF. 153, 155 (2014).

251. Here, this Article uses "development discourse" critically as a series of ideas that promotes: 1) market approaches and capitalism as the path to advancement for countries in the global south; and 2) the systemic arrangement of socio-cultural relationships within society to promote those ideas. See generally Farzana Naz, *Arturo Escobar and the Development Discourse: An Overview*, 28 ASIAN AFF. 64 (2006) (summarizing development as a colonialist concept rooted in the Cold War by drawing on Foucault, Said, and Escobar).

252. In 1998, the ILO's International Labour Office estimated that of the 27 million workers working in export-oriented industries, 90% were women. INT'L LAB. ORG., WORLD EMP. REP., 1998-99 (1998), https://www.ilo.org/wcmsp5/groups/public/--dgreports/--dcomm/documents/publication/dwcms_080628.pdf [<https://perma.cc/HKM9-A7HE>]. In 2016, the proportion remained as high as seventy percent. MCMICHAEL, *supra* note 178, at 91.

253. Mustafizul Hye Shakir & Thomas Farole, *The Thin End of the Wedge: Unlocking Comparative Advantage through EPZs in Bangladesh*, in SPECIAL ECONOMIC ZONES, *supra* note 183, at 31.

254. Amirahmadi & Wu, *supra* note 183, at 836-37.

255. Shakir & Farole, *supra* note 253, at 34.

256. Naila Kabeer notes that the push of poverty in rural areas and the pull of the emerging garment industry in Bangladesh, along with the industry's preference for female laborers, increased women's labor in the urban industrial sector. The overwhelming majority of women in the garment industry come from rural backgrounds. In 1951, 90% of both men and women worked in agriculture, but by 1986 only 11% of women remained. NAILA KABEER & SIMEEN MAHMUD,

exploitative factory settings.²⁵⁷ They have also ruptured familial and social relationships²⁵⁸ by pushing rural women to seek work in urban areas.²⁵⁹ Cheap labor and a feminized workforce may have made the establishment of economic zones in Bangladesh compelling to investors, but they did not lead to either the promised gains for women or broad economic growth.²⁶⁰

Although experience teaches that such policies widen economic inequality²⁶¹ and make rural workers even more

RAGS, RICHES AND WOMEN WORKERS: EXPORT ORIENTED GARMENT MANUFACTURING IN BANGLADESH, in CHAINS OF FORTUNE: LINKING WOMEN PRODUCERS AND WORKERS WITH GLOBAL MARKETS 133, 147 (Marilyn Carr ed., 2004).

257. In a survey of garment workers, one respondent commented:
 We were jobless in village. We were not able to eat regularly. But now we have a job. Working in garments factory protect us from hunger but kills our freedom. We start work at early morning but do not know the end time. It depends on decision of supervisor. Sometimes we work whole night without rest. Supervisors misbehave with us. Sexual harassment and violence, in some extent, exist in workplace.

Mohammed Mamum Rashid, *Rural-Urban Female Migration in Bangladesh: Need for Information Support and Institutional Responses*, 13 GLOBAL J. HUM. SOC. SCI. SOC. & CULTURE 1, 5 (2013).

258. The push towards export-oriented industries as a path to development for the newly-independent Bangladesh meant that rural women were displaced from their primary roles in agricultural work. MCMICHAEL, *supra* note 178, at 99 (discussing how the commercialization of agriculture erodes women's role in and control of food production); *see also* U.N. FOOD & AGRIC. ORG., THE STATE OF FOOD AND AGRICULTURE WOMEN IN AGRICULTURE: CLOSING THE GENDER GAP FOR DEVELOPMENT 7 (2011), <http://www.fao.org/3/a-i2050e.pdf> [<https://perma.cc/VTF4-HKQZ>] (summarizing the global state of women in the agricultural sector).

259. *See generally* Mead Cain et al., *Class, Patriarchy and Women's Work in Bangladesh*, 5 POPULATION & DEV. REV. 405 (1979) (providing a quantitative analysis of women's participation in the rural Bangladeshi labor force and of the patriarchy's economic and social effects).

260. Shakir & Farole, *supra* note 253, at 25, 31, 34 (stating that Bangladesh gained entry into the international market by promoting its low labor costs in the garment sector in order to attract investors, and that most of the employment created in that sector was for women).

261. *See* Tayyab Mahmud, *Precarious Existence and Capitalism: A Permanent State of Exception*, 44 SW. L. REV. 699, 701 (2015) <https://digitalcommons.law.seattleu.edu/faculty/731> [<https://perma.cc/GF3T-KACF>] (discussing that under capitalism, precarious existence is the norm for the working classes); *see also* PK. MD. MOTIUR RAHMAN ET AL., DYNAMICS OF RURAL POVERTY IN BANGLADESH 208 (2013) (presenting a complex quantitative analysis of rural households in Bangladesh through which the authors recommend various policy solutions).

vulnerable²⁶² to exploitation, the government nevertheless continues to push for the creation of economic zones to further draw private investors to rural areas and attract global capital under the banner of economic development. If the seizure of tea worker-cultivated land for the creation of SEZs is successful, then tea workers will be displaced from the land that they rely on for subsistence.²⁶³ Without the sustenance and supplemental income that the land provides, laborers will be forced to either increasingly depend on plantations as their sole source of income, or to find work in equally exploitative industries.²⁶⁴

C. Globalizing Localities and Localizing Globalization

Globalization²⁶⁵ is a complex historical process that (re)establishes itself at the local and national level.²⁶⁶ Saskia Sassen's scholarship is instructive in bridging colonial histories to the present economic policies discussed above. First, she shows how global capital moves through local, national, and subnational circuits that are often considered to be local rather than global, and that law facilitates its entry.²⁶⁷ Second, she shows how global economic processes create the capacity to enable global capital expansion into perpetuity.²⁶⁸ This framework allows us to see continuities from the colonial-era exploitation of tea workers to their current working conditions and threatened displacement.

262. The ILO notes that trade-related challenges are a root cause of rural poverty. See ALFREDO LAZARTE HOYLE, INT'L LAB. ORG., UNDERSTANDING THE DRIVERS OF RURAL VULNERABILITY 7 (2017), https://www.ilo.org/wcmsp5/groups/public/---ed_emp/documents/publication/wcms_568736.pdf [https://perma.cc/DSN3-A2R8].

263. Roslyn Schoen, *Women and Rural Industrialization: Garment Production Reaches Old Land and New Labor in Bangladesh*, 75 WOMEN'S STUD. INT'L F. 102248, at 3 (2019) (examining the siting of a garment factory in an abandoned rural estate and cautioning that rural women can be exploited by global supply chains, specifically citing economic zones as an example of a renewed focus on rural industrialization in this economic niche).

264. Bishaka Nayek Interview, *supra* note 20 (discussing the importance of land for survival).

265. It is also important that we understand the nuances of globalization as a part of feminist and anti-racist methodologies, because it is in these explorations that we see how social identities such as gender, race, and indigeneity are constructed.

266. Sassen, *Locating Cities on Global Circuits*, *supra* note 182, at 17–18.

267. See *generally id.* (discussing the role of cities in modern globalization).

268. See SASKIA SASSEN, TERRITORY, AUTHORITY, RIGHTS: FROM MEDIEVAL TO GLOBAL ASSEMBLAGES 145 (Princeton Univ. Press ed. 2006) (2008).

As demonstrated in Section I.B, *supra*, the tea industry has been part of the global economy from its inception and therefore contributes to what I refer to as “globalized localities.”²⁶⁹ In other words, the tea industry, even though it operates under the auspices of the state, is a global one, and the tea workers’ movement to protect the land that they cultivate has a global character despite its location within the nation-state. Similarly, the state is a local site of globalization in the implementation of global economic policies, as embodied in the creation of economic zones. I call this process “localizing globalization.” The government’s intention to establish these particular structures on tea-worker-cultivated lands indicates that the tea workers’ struggle is not solely a national one. Further, the tea workers’ demand for the declaration of a right to the land for improved working conditions are responses to globalization—they are articulations of human rights and a demand for generations of justice denied.

That the government seeks to disrupt a space that is itself a creation of global economic processes under colonization reflects the changing nature of globalization, and the accompanying need to historicize it.²⁷⁰ Agriculture has never been backward—free trade itself created a tea worker class. Rather, because the government hopes to repurpose the land for *different* aims of global capital, free trade and economic development are now being used to justify the establishment of SEZs that will necessarily displace tea workers.²⁷¹ Sassen’s description of land acquisition for purposes of industrialization as a new phase of globalization is instructive here.²⁷² Land dispossession creates what Tayaab Mahmud terms a “reserve army of labor”²⁷³ for these new industries, facilitating this new form of capital expansion. The capture of the rural population for work in the garment industry reflects this phenomenon. It remains to be seen which industries the tea workers will be displaced to.

269. Rana Behal describes plantations as “agro-industrial enterprises set by European capitalists to produce for the global market and to make profits.” BEHAL, ONE HUNDRED YEARS OF SERVITUDE, *supra* note 57, at 5.

270. See Sassen, *Locating Cities on Global Circuits*, *supra* note 182, at 19 (discussing the role of cities in modern globalization).

271. See generally Bangladesh Economic Zones Act (Act No. 42/2010) (demonstrating the government’s intent to establish economic zones).

272. See generally Saskia Sassen, *Land Grabs Today: Feeding the Disassembling of National Territory*, 10 GLOBALIZATIONS 25 (2013) (positing that the trend, beginning in 2006, of foreign land acquisitions embodies a structural transformation in modes and purposes of such acquisitions).

273. Mahmud, *supra* note 84, at 219.

The tea industry has always, both under British colonialism and in the twenty-first century, been characterized by the presence of multinational companies. The British colonial state's facilitation of the tea industry's expansion through low-cost land grants²⁷⁴ is akin to today's efforts to seize and repurpose tea worker-cultivated land to attract foreign investors.²⁷⁵ Colonial-era land grabs were made possible through the use of overt force, but the continued theft of land by nation-states to serve global capital reveals the neocolonial continuities that have kept intact the global North's economic influence over formerly colonized countries.

This historicization of global economic processes, illuminated by the tea workers' movement, is critical to understanding the tea workers' demands for justice in the form of land rights. An adequate human rights response to the emancipatory aspirations of social movements must go beyond drawing similarities between the state, the law, and the economy, as I have tried to do here. It must also commit to understanding each movement's particularities and phases. By studying the tea workers' movement in this fashion, this Article will reveal the inadequacy of current domestic and international law and the need for a human rights approach from the ground up.

III. THE LIMITS OF DOMESTIC AND INTERNATIONAL LAW IN THE PROTECTION OF TEA WORKERS

The domestic economy is intimately intertwined with the global one, and Bangladesh has used its law to threaten the displacement of tea workers. Accordingly, tea workers will find little recourse under Bangladeshi law. International human rights law, which relies on the state to protect human rights, is also incapable of protecting tea workers where, as here, the state is the actor that is threatening their displacement. This Part will examine these inadequacies in more detail.

A. Domestic Law

The threatened seizure of tea worker-cultivated land implicates a number of interlinked rights,²⁷⁶ including the tea

274. See *supra* Section I.B.

275. See *supra* Section II.B.

276. The highest court in Bangladesh has stated: "If there is an obligation upon the State to secure to the citizens an adequate means of livelihood and the

workers' right to cultivate food to supplement their income, their interest in the land as workers who have been permitted to cultivate the land, and their right to due process of law should the government take any action with respect to their land and livelihood.

Under Article 15 of the Bangladesh Constitution, the government is responsible for providing the basic necessities of life—including food, clothing, shelter, and employment at a reasonable wage—to its citizens.²⁷⁷ In a similar vein, Articles 31 and 32, which protect the right to life,²⁷⁸ have been interpreted by Bangladesh's highest court to encompass the right to livelihood.²⁷⁹ In particular, Article 31 guarantees that “no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law.”²⁸⁰ Finally, Article 42 provides a fundamental right to property, stating that “every citizen shall have the right to acquire, hold, transfer or otherwise dispose of property, and no property shall be compulsorily acquired, nationalized or requisitioned save by authority of law.”²⁸¹

These rights, however, are constrained by the government's authority to acquire land for the public interest.²⁸² Under the Acquisition and Requisition of Immovable Property Act (“Acquisition Act”), the government can seize “any property in any locality is

right to work, it would be sheer pedantry to exclude the right to livelihood from the content of the right to life.” In the same opinion, though, the Court states that the government is not under any affirmative obligation to provide adequate means of livelihood. The court acknowledges that slum dwellers contribute to the national economy as low-waged workers, but it also claims that slums need to be taken down for “peaceful growth of City life.” Ultimately, then, economic development favors the development of cities over rural economies, thus overriding any material potential for a right to livelihood. While the court's pronouncements for socio-economic equality are commendable and perhaps useful rhetoric for the mobilization of workers, they do not guarantee those rights to the poor, including tea workers. See *Bangl. Legal Aid and Servs. Trust, v. Gov't of Bangl.*, 13 BLC (HCD) 384 (2008).

277. BANGL. CONST., pt. II, art. 15.

278. *Id.* pt. III, arts. 31–32.

279. For a summary of public interest litigation related to shelter and livelihood, see *Right to Shelter*, BLAST, <https://www.blast.org.bd/issues/shelter> [<https://perma.cc/62N7-J7VL>].

280. BANGL. CONST., pt. III, art. 31.

281. *Id.* pt. III, art. 42.

282. See MOHAMMAD TOWHIDUL ISLAM, *LAND LAW: TEXT, CASES AND MATERIALS* 286 (2d ed. 2018); see generally Md. Ariful Islam, *Law and Practice for Land Acquisition in Bangladesh*, BANGL. J. LEGAL STUD. (2019) (describing the history and procedure created by the Acquisition Act).

needed or is likely to be needed for any public purpose or in the public interest.”²⁸³ The statute does not define what constitutes a “public purpose” or serves in the “public interest.”²⁸⁴ Accordingly, government officials have nearly unbridled discretion in land acquisition decisions. And although interested persons may file objections to a proposed acquisition, the matter remains firmly within the discretion of the government, and there is no appeals process before an external neutral arbiter.²⁸⁵ Land seizures are thus subject to woefully few procedural safeguards. These due process concerns are compounded by the Bangladesh Economic Zones Act, which, as noted in Section II.A, *supra*, gives the government wide latitude to promote economic zones in the “public interest.” Indeed, the establishment of new industries has already been determined to constitute a public purpose.²⁸⁶ Constitutional provisions thus provide little protection to tea workers, constrained as they are by other legislation. Furthermore, these provisions do not provide clear legal support for the tea workers’ demand that they be declared the rightful owners of the disputed land.

Alternatively, the doctrine of adverse possession, which grants persons legal rights to land on the basis of continuous and hostile occupation,²⁸⁷ may support the affected tea workers’ claims.²⁸⁸ Adverse possessors acquire title if the owner does not bring eviction proceedings within twenty years of the date on which their occupation began,²⁸⁹ and tea workers have been cultivating the disputed land for generations. However, because the tea workers have been subleasing the land through informal arrangements with Duncan Brothers, it is difficult to establish that their possession is hostile.²⁹⁰

283. Acquisition and Requisition of Immovable Property Act (Act No. 21/2017) (Bangl.). The Act provides a circular definition of a “nationally important project,” stating, “Nationally Important Project’ means any project declared by the Government as [a] Nationally Important Project.” *Id.* at ch.1, § 2(4). A close reading of the statute reveals that designating a project as nationally important, rather than merely for a public purpose or in the public interest, fast-tracks the seizure process.

284. *Id.*

285. *Id.*

286. ISLAM, *supra* note 282 at 290.

287. *Id.* at 272–73.

288. For a good summary of complex land policies in Bangladesh, see *Food Security and Land Governance Fact Sheet Bangladesh*, LANDAC, <https://www.landgovernance.org/wp-content/uploads/2019/09/20160608-Factsheet-Bangladesh.pdf> [<https://perma.cc/68PZ-476K>].

289. Limitation Act (Act No. 19/1908) pt. IV § 26 (Bangl.).

290. ISLAM, *supra* note 282, at 273.

Even if the tea workers could show a cognizable interest in the land, under either the Constitution or the adverse possession doctrine, the available remedy would be limited to resettlement or compensation under the Acquisition Act.²⁹¹ Resettlement is of little value here, as most tea workers live on plantations. Nor is direct monetary compensation or the promise of future employment in the SEZ an adequate remedy. As an initial matter, many benefits of cultivation are not related to the market and thus harder to quantify.²⁹² Cultivating the land provides tea workers with not only a means of supplementing their wages, but in doing so also offers a level of independence from the plantation economy. The seizure of the land that they cultivate would increase their reliance on plantation employment and simultaneously diminish their prospects for economic and social mobility.

Moreover, tea workers are justifiably suspicious of promises of future employment.²⁹³ Community organizer Mohan Rabidas notes that similar promises of employment have not been upheld in other economic zones.²⁹⁴ In particular, he remembers an instance when tea workers were promised jobs to build a nearby cricket stadium, only to be told after the fact that they did not have the required skillset for

291. See Acquisition and Requisition of Immovable Property Act (Act No. 21/2017) (Bangl.). The High Court has found that the requirement for the government to provide compensation or rehabilitation in the event of an eviction from state land also applies to slum dwellers—i.e., not just those with legal title. *Bangl. Legal Aid and Servs. Trust, v. Gov't of Bangl.*, 13 BLC (HCD) 384 (2008). This case has implications for the lack of notice given to tea workers, as local officials only notified the plantation leaseholders—not the workers—about the cancelation of the lease. See *supra* Section III.A. Government officials claimed they were not obligated to notify the workers because they had no fixed address. See *id.* Still, while this decision supports the tea workers' entitlement to notice, it would not support the tea workers' main demand for a legal right to the land because the remedy here was limited to rehabilitation. *Bangl. Legal Aid and Servs. Trust, v. Gov't of Bangl.*, 13 BLC (HCD) 384 (2008).

292. See Levien, *supra* note 197, at 91 (discussing how SEZs have destroyed agrarian economies by depriving people of access to grains, lentils, and other means of subsistence during a time of increasing food prices, causing hunger and malnutrition); see also Ahasan & Gardner, *supra* note 229, at 1e (examining the role of multinational organizations in displacing agricultural land).

293. IBRAHIM, REPORT ON PROPOSED SEZ, *supra* note 22, at 13–14. In India, an SEZ project meant to attract the IT sector did not employ any of the local residents because they lacked the education and credentials required for those jobs. See Levien, *supra* note 197, at 133.

294. See Mohan Rabidas Interview, *supra* note 20 (“Stadiums at Laccatura have been built on the land of the tea workers. It was promised that workers will get jobs at those newly established infrastructures. No workers got any job.”).

the available work.²⁹⁵ A decade earlier, when land was seized for the development of gas fields, workers were given only short-term jobs that did not outweigh the long-term negative effects on farming and agricultural jobs.²⁹⁶ Union leader Ram Bhajan Kairi also recounted tea workers' land being seized in order to build a high school with unkept promises that their children would be able to attend.²⁹⁷ The exploitative labor system of which tea workers are a part has intentionally kept them isolated and undereducated in order to maintain a multigenerational workforce. Many of the industries likely to be established in SEZs are technology-related,²⁹⁸ and consequently unlikely to provide employment to agricultural workers.²⁹⁹ It is therefore hardly surprising that the tea workers refused the government's offers for compensation and future employment in exchange for the land.³⁰⁰

Finally, domestic land policy offers limited potential for legal recourse for tea workers, as it stands in stark contrast to the state's industry-oriented economic development policies.³⁰¹ *Khas* land, or

295. See *id.*; see also Montu Mia Interview, *supra* note 20 (describing how his limited education and tea plantation-tailored skillset could not transfer to industrial work).

296. Ram Bhajan Kairi, *supra* note 20; see also Katy Gardner, et al., *Field of Dreams: Imagining Development and Un-Development at a Gas Field in Sylhet*, 9 SOUTH ASIA MULTIDISCIPLINARY ACAD. J. 1, 3 (2014) (describing local resistance to a gas project in Sylhet).

297. Ram Bhajan Kairi Interview, *supra* note 20.

298. Shakir & Farole, *supra* note 253, at 41 (noting that Bangladesh's EPZ program initially focused on high-technology investment but later found greater success attracting the garment industry); see also *Attracting Private Investments and Generating Jobs Through Economic Zones and Hi-Tech Parks in Bangladesh*, WORLD BANK GRP. (May 23, 2019), <https://www.worldbank.org/en/results/2019/05/23/attracting-private-investments-and-generating-jobs-through-economic-zones-and-hi-tech-parks-in-bangladesh> [<https://perma.cc/HM2S-AUYP>] (noting that BEZA was established concurrent to and in coordination with the Bangladesh Hi-Tech Park Authority for the promotion of "economic zones and hi-tech parks"); A.Z.M Azizur Rahman, *Encouraging Investment thru Economic Zones for Rapid Economic Growth*, FINANCIAL EXPRESS (Sept. 28, 2017), <https://thefinancialexpress.com.bd/special-issues/rmg-textile/encouraging-investment-thru-economic-zones-for-rapid-economic-growth-1506539959> [<https://perma.cc/D7AW-XMAU>] (reporting former BEZA member's sentiment that technological advancement is a primary goal of economic zones).

299. Montu Mia Interview, *supra* note 20 (describing how his agricultural skillset will not transfer to the economic zones).

300. Nripen Pal Interview, *supra* note 20.

301. IBRAHIM, REPORT ON PROPOSED SEZ, *supra* note 22, at 21–22 (showcasing the disparities between the government's public claims about BEZA and the reality experienced by tea workers).

state-owned fallow land with no individual owner,³⁰² may be allocated according to government priorities.³⁰³ The government may therefore grant or lease *khas* land to landless populations.³⁰⁴ The land in dispute here has been classified as *khas* land since the government, on the ground that it was not being used as a tea plantation, reclaimed it from Duncan Brothers.³⁰⁵ Although the tea workers have disputed the characterization of the land they cultivate as “fallow,”³⁰⁶ its classification as *khas* land provides a potential pathway to legal ownership. Indeed, affected tea workers are precisely the population that the *khas* land policy is intended to protect.

Yet the government, in accordance with its economic development priorities, has allocated the land to BEZA.³⁰⁷ When asked whether the disputed land might be granted or leased to the tea workers, officials rejected such an idea outright as inconsistent with economic development.³⁰⁸ These responses reveal how the industrialization bias is embedded not just in the law, but also in its implementation. Opportunities for negotiation are quickly foreclosed.

302. ISLAM, *supra* note 282, at 363.

303. Bappy Rahman, *Access of the Landless to Khas Land in Eradicating Poverty*, DAILY SUN (Oct. 10, 2017), <https://www.daily-sun.com/arcprint/details/260407/Access-of-the-Landless-to-Khas-Land-in-Eradicating-Poverty-/2017-10-10> [https://perma.cc/LS8H-G2B7].

304. See ISLAM, *supra* note 282, at 373 (describing the purpose of Khas Land and Management and Settlement Policy as alleviating poverty and rectifying past land policy issues that created a class of landless poor).

305. Papers obtained by the author from the local land office show the government reclaimed land that was not used for tea cultivation.

306. See Jui, *supra* note 4.

307. See Bangladesh Economic Zones Act (Act No. 42/2010) § 5 (Bangl). Similarly, Bangladesh's 2001 National Land Policy also seeks to stop the conversion of agricultural land to non-agricultural land to increase the food demand of the population. See MONZUR HUSSAIN, IMPROVING LAND ADMINISTRATION AND MANAGEMENT IN BANGLADESH 15 (2015) (describing the purpose of Khas Land and Management and Settlement Policy as alleviating poverty and rectifying past land policy issues that created a class of landless poor); see also Rahman, *supra* note 303 (noting that the policy gives the government the right to allocate land based on its stated priorities); ISLAM, *supra* note 282, at 362 (stating that Bangladesh maintained the British system of centrally controlled land management to secure a steady source of state funding).

308. Md. Moniruzzaman Interview, *supra* note 20. The Bangladeshi diaspora in the United Kingdom applied pressure for the creation of economic zones. Transnational communities of this elite diaspora have also contributed to these ideas of industrialization. See Ahasan & Gardner, *supra* note 229, at 1.

Tea workers, then, fall within the gaps of domestic legal protections.³⁰⁹ Their rallying cry, that they would rather shed their blood and give up their lives than lose their land, is not hyperbole. It reflects an accurate assessment of their plight should their land be taken from them. It is little wonder, then, that they opted for a confrontational, extralegal approach to demanding the rights to their land.

B. International Human Rights Law

International human rights law is similarly ill-equipped to address the negative impacts of global capitalism on marginalized communities.³¹⁰ Although some international human rights instruments, explored below, may be applicable to the tea workers' struggle, they do not provide affected tea workers with enforceable rights to the land nor pathways to securing those rights. Indeed, Upendra Baxi cautions that the "overproduction of human rights" that are not enforceable often render international human rights law "both suboptimal . . . and inadequate."³¹¹ Further, the human rights paradigm faces a formidable challenge in the form of investors, multinational corporations, and international financial institutions that collectively represent global capitalism, as demonstrated by the tea workers' movement.³¹²

The post-World War II human rights system, though recognizing the "inherent dignity and . . . the equal and inalienable rights of all members of the human family,"³¹³ imposed the obligation to protect the human rights of individuals within a sovereign's national borders upon the nation-states themselves.³¹⁴ International law is based on the sovereignty, defined as the state's independence and exclusive authority over its territories and those within it, of all

309. See Nripen Pal Interview, *supra* note 20; Nripen Pal Public Interview, *supra* note 48 (noting that one of the main weaknesses of the movement is that tea workers do not have formal legal rights to the land).

310. See generally KOEN DE FEYTER, HUMAN RIGHTS: SOCIAL JUSTICE IN THE AGE OF THE MARKET (2005) (describing obstacles to the ability of international human rights law to protect marginalized groups).

311. Upendra Baxi, *Voices of Suffering and the Future of Human Rights*, 8 TRANSNAT'L L. & CONTEMP. PROBS. 125, at 141, 163 (1998).

312. *Id.* at 163.

313. G.A. Res. 217 (III) A, Universal Declaration on Human Rights, at pmb. (Dec. 10, 1948).

314. *Id.*

nation-states.³¹⁵ As such, the U.N. charter prevents it from intervening in matters that are considered domestic.³¹⁶ Where, as here, it is the state that seeks to deprive persons of rights—influenced though it may be by a desire to participate in the global market—it acts within its sovereign authority.³¹⁷ The case of the tea workers lays bare this gap in international human rights law.

1. The International Labour Organization and Human Rights Related to Work

International Labour Organization (“ILO”) conventions and other international labor rights-related law and norms, such as the International Covenant on Economic, Social and Cultural Rights (“ICESCR”), can be construed as applicable to tea workers.³¹⁸ They cannot, however, be relied upon to establish the tea workers’ legal rights to the land or prevent the state from seizing it.

The ILO concerns itself with human rights related to work, including the right to form trade unions, to be free from forced labor and slavery, and to safe and healthful working conditions.³¹⁹ It pays particular attention to the rights of rural workers, and has gone so far as to issue a report on the working conditions of tea plantation laborers in Bangladesh.³²⁰ The ILO has also held workshops to facilitate tripartite communication between the Bangladesh Tea Workers Union, the Bangladesh Tea Association, and the Ministry of Labour and Employment.³²¹ Tea workers can employ these workshops

315. Rogier Bartels, *The Relationship Between International Humanitarian Law and the Notion of State Sovereignty*, 26 J. CONFLICT & SEC. L. 461, 464 (2018).

316. See U.N. Charter art. 2, ¶ 7 (“Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state . . .”). The humanitarian exceptions relating to armed conflicts or situations of imminent harm to civilians do not apply here. See Daryl Mundis, *International Humanitarian Law, in 1 ATROCITIES, MASSACRES, AND WAR CRIMES: AN ENCYCLOPEDIA* 309, 309–13 (Alexander Mikaberidze ed., 2013).

317. U.N. Charter art. 2, ¶7.

318. It is beyond the scope of this Article to detail the ways in which tea workers might mobilize around these norms in the hypothetical.

319. *About the ILO*, INT’L LAB. ORG., <https://www.ilo.org/global/about-the-ilo/lang-en/index.htm> [<https://perma.cc/3BPC-R7KD>].

320. ILO report, *supra* note 90.

321. *Tripartite Cooperation and Commitment Can Promote Decent Work in the Tea Plantation Sector in Bangladesh*, INT’L LAB. ORG. (Nov. 4, 2018),

to raise awareness of their plight and to collectively pressure the government to address land rights and working conditions.³²² However, the ILO is unable to mandate the government to capitulate to the tea workers' demands.³²³

Another potential mechanism within this category is the ICESCR, which sets out to protect economic, social, and cultural human rights.³²⁴ These rights include the rights to housing,³²⁵ to work³²⁶ and to just conditions of work,³²⁷ to food,³²⁸ to the highest attainable standard of health,³²⁹ to social security,³³⁰ and to education.³³¹ States are obligated to realize these rights by adopting appropriate legislation.³³²

Several provisions of the ICESCR are relevant to the tea workers' struggle. Article 1, for example, prohibits a state's denial of "means of subsistence."³³³ The right to work is addressed in Article 6, which recognizes the right of each person to "the opportunity to gain his living by work which he freely chooses or accepts."³³⁴ Article 7 recognizes the right to "the enjoyment of just and favorable conditions of work," including fair wages and safe working conditions.³³⁵ Article 10 requires that mothers be provided paid leave for a reasonable period both before and after childbirth.³³⁶ Finally, Article 11

https://www.ilo.org/dhaka/Informationresources/Publicinformation/Pressreleases/WCMS_649089/lang-en/index.htm [<https://perma.cc/AX2E-2QFA>].

322. Nripen Pal Interview, *supra* note 48 (discussing how the international community can be appealed to pressure the government of Bangladesh, but ultimately to secure tea workers' land and other rights a Bangladesh law is needed).

323. See *How ILO Works*, INT'L LAB. ORG., <https://www.ilo.org/global/about-the-ilo/how-the-ilo-works/lang-en/index.htm> [<https://perma.cc/PPT9-BNW3>] (describing how the ILO works through tripartism, social dialogue, and standard setting).

324. International Covenant on Economic, Social and Cultural Rights, Oct. 5, 1977, 993 U.N.T.S. 3. [hereinafter ICESCR].

325. *Id.* art. 11.

326. *Id.* art. 6.

327. *Id.* art. 7.

328. *Id.* art. 11.

329. *Id.* art. 12.

330. *Id.* art. 9.

331. *Id.* art. 13.

332. *Id.* art. 2.

333. *Id.* art. 1.

334. *Id.* art. 6.

335. *Id.* art. 7.

336. *Id.* art. 10.

recognizes the right of all persons to adequate food, clothing, and housing, and to the continuous improvement of living conditions.³³⁷

Although the ICESCR provides a mechanism for workers to report violations,³³⁸ the committee charged with reviewing these communications can act only if domestic remedies have been exhausted.³³⁹ Furthermore, while the ICESCR is enforceable upon states, like Bangladesh,³⁴⁰ that have ratified it, states' precise obligations are left to their discretion.³⁴¹ Lastly, even to the extent that ICESCR can be a mechanism for improving tea workers' overall working conditions, it does not provide them with a legal basis to claim a right to the land that they have long cultivated.

2. The United Nations Guiding Principles on Business and Human Rights

The United Nations Guiding Principles on Business and Human Rights, endorsed by the United Nations Human Rights Council in 2011,³⁴² also purports to address the harmful impacts of global capital.³⁴³ The Guiding Principles set forth a framework for preventing and remedying human rights abuses in business operations.³⁴⁴ But like other international human rights instruments, the Guiding Principles reinforce the state's role in protecting human

337. *Id.* art. 11.

338. See Optional Protocol to the ICESCR, *opened for signature* Sept. 24, 2009, art. 2, 2922 U.N.T.S. 29, at 59.

339. *Id.* art. 3.

340. *Ratification of 18 International Human Rights Treaties*, U.N. HUMAN RIGHTS OFF. OF HIGH COMM'R, <https://indicators.ohchr.org> [<https://perma.cc/993E-C5HG>].

341. See generally Philip Alston & Gerard Quinn, *The Nature and Scope of States Parties' Obligations Under the International Covenant on Economic, Social and Cultural Rights*, 9 HUMAN RIGHTS Q. 156 (1987) (outlining how states' obligations under the ICESCR are largely left to their discretion).

342. U.N. Secretary-General, *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*, HUMAN RIGHTS COUNCIL, U.N. DOC. A/HRC/17/31 (Mar. 21, 2011) [hereinafter *Guiding Principles*].

343. For an overview of other approaches to making corporations accountable for human rights violations and their limitations, see Jean-Marie Kamatali, *The New Guiding Principles on Business and Human Rights' Contribution in Ending the Divisive Debate Over Human Rights Responsibilities of Companies: Is it Time for an ICJ Advisory Opinion?*, 20 CARDOZO J. INT'L & COMP. L. 437, 463 (2012).

344. *Guiding Principles*, *supra* note 342.

rights³⁴⁵ and do not impose binding legal obligations on corporations.³⁴⁶ Where, as here, the state acts in the interest of global capital to deprive persons of their rights, the Guiding Principles have little effect.³⁴⁷

In addition, countries in the Global South continue to advocate for a binding mechanism to hold businesses accountable for transnational human rights abuses.³⁴⁸ However, progress has been slow,³⁴⁹ and perhaps even stalled, as the European Union has withdrawn from negotiations.³⁵⁰ Moreover, as it stands, the voluntary guidance does not address instances where state action violates human rights, regardless of whether those actions are intended to facilitate the entry of global capital.³⁵¹ It is thus subject to the by now familiar limitation of being unable to challenge state sovereignty.

345. *Id.* at 1–4 (demonstrating that the framework rests on three pillars, one of which is the state’s responsibility to protect against human rights abuses by third parties, including businesses).

346. *Id.* at 5 (demonstrating that the Guiding Principles do not create new international legal obligations but rather provide a set of coherent and comprehensive standards). In relation to land grabbing, see Emily Polack et al., *Accountability in Africa’s Land Rush: What Role for Legal Empowerment?*, INT’L INST. FOR ENV’T & INT’L DEV. RES. CTR. (2013), <http://pubs.iied.org/pdfs/12572IIED.pdf> [<https://perma.cc/84NM-N6PD>].

347. See generally Rashmi Venkatesan, *The UN Framework on Business and Human Rights: A Workers’ Rights Critique*, 157 J. BUS. ETHICS 635 (2017) (commenting that the Guiding Principles, while bringing clarity and uniformity to business human rights standards, are limited in their ability to bring about substantive change for workers because of their voluntary nature).

348. *Working Group on The Issue of Human Rights and Transnational Corporations and Other Business Enterprises*, U.N. HUMAN RIGHTS OFF. OF HIGH COMM’R, <https://www.ohchr.org/en/issues/business/pages/wghrandtransnationalcorporationsandotherbusiness.aspx> [<https://perma.cc/3JRR-MF32>]; see also Jens Martens & Karolin Seitz, *The Struggle for a UN Treaty: Towards Global Regulation on Human Rights and Business*, GLOB. POL’Y F. & ROSA LUXEMBURG STIFTUNG, http://www.rosalux-nyc.org/wp-content/files_mf/un_treaty_online18.pdf [<https://perma.cc/S798-A6JM>] (providing an overview of the debates around a binding treaty).

349. See generally *Binding Treaty*, BUS. & HUM. RTS. RES. CTR., <https://www.business-humanrights.org/en/big-issues/binding-treaty/> [<https://perma.cc/F5LT-AA57>] (showing the slow progress of the proposed legally binding instrument).

350. *EU to Back out of the U.N. Treaty on Business and Human Rights*, FRIENDS OF THE EARTH HOPE EUR. (Mar. 13, 2019), <http://www.foeeurope.org/leak-eu-un-treaty-human-rights-130319> [<https://perma.cc/BQP7-UUYD>].

351. The present draft of the treaty defines one of its purposes as “strengthen[ing] the respect, promotion, protection and fulfilment of human rights in the context of business activities of transnational character.” Business

3. The Indigenous and Tribal Peoples Convention and the United Nations Declaration on the Rights of Indigenous Peoples

Because the tea worker population consists of persons from indigenous communities,³⁵² the Indigenous and Tribal Peoples Convention (“ILO C-169”) and the United Nations Declaration on the Rights of Indigenous Peoples (“UNDRIP”) could serve as bases for advocacy. ILO C-169 directly addresses the socioeconomic rights of indigenous peoples.³⁵³ Similarly, UNDRIP establishes the rights of

activities are “any for-profit economic activities . . . undertaken by a natural or legal person, including activities undertaken by electronic means, . . . that involve actions, persons or impact in two or more national jurisdictions.” *Zero Draft - Legally Binding Instrument to Regulate, in International Human Rights Law, the Activities of Transnational Corporations and Other Business Enterprises*, U.N. HUM. RTS. COUNCIL, <https://www.business-humanrights.org/sites/default/files/documents/DraftLBI.pdf> [<https://perma.cc/XR6P-FFHJ>]. In contrast to the unavailability of binding human rights protections to persons from corporate human rights harms or displacement by foreign investment, the interests of global finance are protected through the Investor-State Dispute Settlement, which allows an investor of a state party to bring a claim against another state party that is hosting the investor. *Statement by Alfred-Maurice de Zayas*, U.N. OFF. OF HIGH COMM’R FOR HUM. RTS. (Oct. 26, 2015), <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=16745&LangID=E> [<https://perma.cc/X4DN-A4UW>]; see also Alfred-Maurice de Zayas, *How Can Philip Morris Sue Uruguay Over Its Tobacco Laws?*, THE GUARDIAN (Nov. 16, 2015), <https://www.theguardian.com/commentisfree/2015/nov/16/philip-morris-uruguay-tobacco-isds-human-rights> [<https://perma.cc/42WU-7WWW>] (contending that the Investor-State Dispute Settlement “undermines fundamental principles of the UN, state sovereignty, democracy and the rule of law”).

352. Bangladesh is home to more than 54 indigenous populations who collectively speak at least 35 languages. *Indigenous People in Bangladesh*, INT’L WORK GRP. FOR INDIGENOUS AFFS., <https://www.iwgia.org/en/bangladesh> [<https://perma.cc/FU72-9V22>]. But see Kawser Ahmed, *Defining Indigenous in Bangladesh: International Law in Domestic Context*, 17 INT’L J. ON MINORITY & GRP. RTS. 47, 49 n.13 (2010) (identifying only 29 communities). There is no precise figure of indigenous communities among the tea worker population, but the overall indigenous population in Bangladesh is estimated at 1.8% of the total, or 1.6 million people. See Minority Rights Group International, *World Directory of Minorities and Indigenous Peoples—Bangladesh: Adivasis*, <https://www.refworld.org/docid/49749d5841.html> [<https://perma.cc/X4DN-A4UW>].

353. Indigenous and Tribal Peoples Convention, No. 169, ILO (1989), https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312314:NO [<https://perma.cc/5U9G-5ZQK>]. Given the diverse ethnicities among tea workers and the racialization of this workforce during British colonialism, the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), which prohibits racial discrimination based on race, color, descent, ethnic origin for the enjoyment of human rights and

indigenous peoples to the equal enjoyment of education, health, and employment.³⁵⁴ It also sets out their right to pursue their own visions of economic, social, and cultural development.³⁵⁵ These mechanisms may provide support for the tea workers' claim that their preferred model of economic development, which requires the preservation of agricultural land for subsistence farming, deserves protection.³⁵⁶

Bangladesh has not ratified these instruments, despite the government's statements that it intends to work with indigenous communities.³⁵⁷ Moreover, the rhetorical weight of these resolutions is diminished by the significant presence of non-indigenous peoples in the tea worker community. As noted in Section I.B, *supra*, the majority of tea workers today are the descendants of laborers who came to present-day Bangladesh from other regions of the then-undivided South Asian subcontinent during the British colonial era.³⁵⁸ Further, the disputed land is not claimed by any indigenous

fundamental freedoms, may also be relevant but does not apply here where the specific movement regarding land grabs is not explicitly about racial discrimination. G.A. Res. 2106 (Dec. 21, 1965), <https://www.ohchr.org/en/professionalinterest/pages/cerd.aspx> [<https://perma.cc/U8WJ-363F>]. However, CERD's inapplicability does not suggest that racialization of this workforce is not a contributor to this land grab.

354. For background on the rights of indigenous peoples, see G.A. Res. 11/295 (Sept. 13, 2007), <https://www.ohchr.org/EN/Issues/IPeoples/Pages/Declaration.aspx> [<https://perma.cc/A5EV-JXME>].

355. *Id.*

356. See Arook Toppo et al., *Socio-Economic Condition of Plain Land Tribal People in Bangladesh*, 5 SOC. SCI. 58, 60 (2016) (finding that 60.94% of tribal households are involved in day-labor agricultural activities and another 22.14% cultivate own land); see also FOOD AND AGRIC. ORG. OF THE U.N., SAVING LIVELIHOODS SAVES LIVES 39 (2018), <http://www.fao.org/3/i8463en/I8463EN.pdf> [<https://perma.cc/5BDW-9U9U>] (commenting that indigenous farmers rely on subsistence farming).

357. Ratifications of C-169 Indigenous and Tribal People's Conventions, https://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:312314 [<https://perma.cc/5Y8S-B8BK>]; see also Pallab Chakma, *Fight for Indigenous Rights Continue*, DAILY STAR (Aug. 9, 2017), <https://www.thedailystar.net/opinion/human-rights/fight-indigenous-rights-bangladesh-continues-1445536> [<https://perma.cc/6V3S-27EC>] (“[A]t the domestic level, its top political leadership has promised several times to work together with the indigenous communities for the implementation of the UNDRIP.”).

358. The United Nations has not adopted an official definition of “indigenous.” See U.N. Office of the High Comm’r for Hum. Rts. & Asia Pacific F., *The United Nations Declaration for Indigenous Peoples: A Manual for Human Rights*, 6, <https://www.ohchr.org/Documents/Issues/IPeoples/UNDRIPManualForNHRIs.pdf> (stating that international law has not adopted a formal definition of “indigenous peoples” as doing so was seen as “unnecessary and undesirable”).

community.³⁵⁹ The non-binding status of ILO C-169 and UNDRIP, in addition to the open question of whether tea worker communities fall under their protections, makes them a less than viable pathway to meeting the tea workers' demands.

4. The United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas

The United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas ("UNDROP"), adopted in 2018, is an encouraging development that acknowledges the particular challenges faced by agricultural workers.³⁶⁰ It aims to better protect the rights of all rural populations, including peasants, fisher folks, nomads, agricultural workers, and indigenous peoples, as well as to strengthen food sovereignty, fight climate change, and conserve biodiversity.³⁶¹ While UNDROP is potentially useful to the tea workers' movement, it has only been recently adopted by the government of Bangladesh.³⁶² How it will be implemented, then,

However, a criterion developed by José Martínez Cobo is the most widely-cited working definition. See José R. Martínez Cobo, *Study of the Problem of Discrimination Against Indigenous Populations*, U.N. Doc. E/CN.4/Sub.2/1986/7/Add.4, U.N. Sales No. E.86.XIV.3 (1986) ¶¶ 379, 381–82, <https://www.un.org/development/desa/indigenouspeoples/publications/2014/09/martinez-cobo-study/#more-7242> [<https://perma.cc/DNH4-2MLJ>].

359. See Sushmita Preetha, *Human Rights Violations Against Adivasis Are Increasing at an Alarming Rate*, DAILY STAR (Oct. 9, 2016), <https://www.thedailystar.net/op-ed/human-rights-violations-against-adivasis-are-increasing-alarming-rate-123718> [<https://perma.cc/B76K-WH4P>]. Journalist Sushmita Preetha describes how land grabs of indigenous communities in Bangladesh is a serious issue. In Bangladesh, indigenous peoples are referred to as Adivasi. Preetha interviews Jyotirindra Bodhipriya Larma, president of Bangladesh Adivasi Forum on the challenges of Adivasi movement particularly in their ability to self-identify and right to their land. Adivasis are not only losing land to influential Bengalis who are forcefully taking their lands from them with impunity, but the government is also grabbing their land for economic development projects. *Id.*

360. United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas, G.A. Res. 73/165, U.N. Doc. A/RES/73/165 (Jan. 21, 2019); see also Cotula, *Between Hope and Critique*, *supra* note 17, at 504–15 (discussing the Declaration's enactment and appraising its strengths and potential challenges).

361. United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas, G.A. Res. 73/165, U.N. Doc. A/RES/73/165 (Jan. 21, 2019), arts. 15, 18, 20, 25.

362. Priscilla Claeys, *From Food Sovereignty to Peasants' Rights: An Overview of Via Campesina's Struggle for New Human Rights*, in LA VIA

remains to be seen.³⁶³ Nonetheless, of all the international human rights mechanisms discussed in this Article, UNDROP is the most promising for the tea workers' movement.

First, UNDROP articulates a broad vision of the community falling under its protections, defining "peasant" as:

any person who engages or who seeks to engage alone, or in association with others or as a community, in *small-scale agricultural production for subsistence and/or for the market*, and who relies significantly, though not necessarily exclusively, on family or household labor and other non-monetized ways of organizing labor, and *who has a special dependency on and attachment to the land*.³⁶⁴

As persons who engage in subsistence farming and who are connected to the land through generations of indentured servitude, affected tea workers meet this definition. UNDROP also specifically encompasses indigenous communities, to which many tea workers belong.³⁶⁵

UNDROP has been praised for increasing the visibility of rural communities, establishing new legal entitlements to land, and introducing concepts, such as food sovereignty, that create possibilities for agrarian communities to retain control over means of production, consumption, and distribution.³⁶⁶ UNDROP thus provides

CAMPESINA'S OPEN BOOK: CELEBRATING 20 YEARS OF STRUGGLE AND HOPE 1, 5 (2013); *see also* United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas, G.A. Res. 73/165, U.N. Doc. A/RES/73/165 (Jan. 21, 2019), <https://digitallibrary.un.org/record/1656160?ln=es> [<https://perma.cc/JS6F-92F7>] (noting that Bangladesh voted in favor of this Declaration).

363. Bangladesh Agricultural Farm Labour Federation (BAFLF) and National Women Farmers and Workers Association (NWFA) organized an action to demand agrarian reformation on April 17, International Day of Peasant's Struggles, in Gazipur, Bangladesh. *See* Bangladesh Agricultural Farm Labour Federation & National Women Farmers and Workers Association, *17 April, International Day of Peasant's Struggle: Farm Workers in Gazipur, Bangladesh Mobilise to Demand Agrarian Reform*, EUROPE SOLIDAIRE SANS FRONTIÈRES (Apr. 17, 2019), <http://www.europe-solidaire.org/spip.php?article48496> [<https://perma.cc/A4UB-C237>].

364. Declaration on the Rights of Peasants and People and Other People Working in Rural Areas, *supra* note 360, art. 5.

365. *Id.*

366. Priscilla Claeys & Marc Edelman, *The United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas*, 47 J. PEASANT STUD. 1, 62–63 (2020) ("The Declaration promotes a new approach to production, consumption and distribution . . . and changing the public policies that have made

an expansive framework for peasants and other rural workers to conduct advocacy,³⁶⁷ and departs significantly from traditional international human rights instruments in its conception of rights as both individual and collective.³⁶⁸ It will, though, “undoubtedly require continued public advocacy if its provisions are to have any follow-through.”³⁶⁹

It is important to note that UNDROP emerged as a result of long-term pressure from transnational grassroots movements, and peasant leaders and their allies were directly involved in its development.³⁷⁰ UNDROP is therefore a powerful testament to the emancipatory potential of incorporating the demands of social movements into legal frameworks, discussed in greater detail in Part IV, *infra*.

IV. EMANCIPATORY HUMAN RIGHTS RESPONSES FROM THE GROUND UP

By charting the ways in which global capital impacts tea workers, revealing colonial histories that are replicated in the present day, and identifying gaps in legal protections, this Article has identified the need for creative, emancipatory, human rights-oriented legal responses that do not reinforce these patterns, but that instead challenge and disrupt the impact of global capital.³⁷¹ Here, the law was inadequate to protect the tea workers, but by physically asserting their right to the land because they had cultivated it for generations, the tea workers were able to temporarily stave off government action.³⁷² Legal responses formulated in response to the

precarious the lives of millions of people, especially peasant women indigenous peoples, racialized minorities, migrants and seasonal and agricultural workers.”) (quoting Sandra Moreno Cadenal an organic oil producer, scholar and activist).

367. *Id.* (providing an excellent compilation of articles from those who were involved in the movement to pass UNDROP on their motivations, experiences and reflections for the future).

368. Cotula, *Between Hope and Critique*, *supra* note 17, at 511.

369. *Id.* at 514.

370. See Claeys, *supra* note 362; see also Heri Puwanto, *Local to Global: How Serikat Petani Indonesia Has Accelerated The Movement for Agrarian Reform*, in LA VIA CAMPESINA'S OPEN BOOK: CELEBRATING 20 YEARS OF STRUGGLE AND HOPE 1, 1 (2013) (documenting Serikat Petani Indonesia's emergence as a peasant movement organization).

371. Jackie Smith, *Human Rights from the Ground Up*, GREAT TRANSITION INITIATIVE (Aug. 2019), <https://greattransition.org/gti-forum/global-local-smith> [<https://perma.cc/AB3F-5VW4>].

372. See *supra* Section I.A.

tea workers' grassroots movement should support their demands against displacement and for a legal right to the land that they have long cultivated.³⁷³ Such responses must also support calls for improved working conditions for tea workers. They should be commensurate with the urgency reflected in the workers' mobilization.³⁷⁴ Finally, they must challenge the economic policies justifying the attempted seizure and work to provide greater legal protections to similarly situated workers who are impacted by globalization.

The approach advocated for in this Article makes social movements "primary authors of human rights."³⁷⁵ Scholarly work on subaltern cosmopolitan legality is instructive here.³⁷⁶ Boaventura de Sousa Santos describes subaltern cosmopolitan legality as an approach, rather than a centralizing theory, that "aims to empirically document experiences of resistance, assess their potential to subvert hegemonic institutions and ideologies, and learn from their capacity to offer alternative[s] to the latter."³⁷⁷ Similarly, Balakrishnan Rajagopal describes the need for a counter-hegemonic international law, or international law from below, wherein the challenges faced by Third World resistance movements are centered in the creation of an alternative human rights discourse that moves beyond more formalist

373. For a general theory on legal mobilization for social movements, see MICHAEL MCCANN, RIGHTS AT WORK: PAY EQUITY AND THE POLITICS OF LEGAL MOBILIZATION 9 (1994) ("the pluralistic character of law provides reform activists with some measure of choice regarding both the general institutional sites and the particular substantive legal resources that might be mobilized to fight policy battles and advance movement goals").

374. *Id.* at 11. McCann writes that for law to be useful as a mobilization tool, it must account for the interaction and interdependence of movement tactics, and be cognizant of social context "that may support or undercut efforts to resist and transform dominant social relations." *Id.*

375. Baxi, *supra* note 16, at 148; see also Cotula, *Between Hope and Critique*, *supra* note 17, at 521 (urging human rights scholars to recognize "diversity of human rights actors" to understand how they reimagined human rights from the bottom up for broader emancipatory goals beyond formal human rights).

376. BALAKRISHNAN RAJAGOPAL, INTERNATIONAL LAW FROM BELOW: DEVELOPMENT, SOCIAL MOVEMENTS AND THIRD WORLD RESISTANCE 271 (2003); see generally Balakrishnan Rajagopal, *Counter-Hegemonic International Law: Rethinking Human Rights and Development as a Third World Strategy*, 27 THIRD WORLD Q. 767 (2006) (stating that challenging existing human rights discourses is necessary in order to achieve a counter-hegemonic international legal framework).

377. Santos & Rodriguez-Garavito, *supra* note 18, at 15.

rights discourses.³⁷⁸ Indeed, as Upendra Baxi notes, the “global institutionalization of human rights has been preceded by grassroots activism.” The local, then, remains the “crucial locus of struggle for the enunciation, implementation, and enjoyment of human rights.”³⁷⁹ In the context of labor rights specifically, Adelle Blackett similarly calls on us to rethink law’s foundational narratives and to “decolonize labor.”³⁸⁰ She advances the need to “cultivate transnational futures of labor law that are emancipatory.”³⁸¹

This “subaltern” approach resists a centralizing theory in order to ensure that even those who are well-intentioned do not lapse into what Dianne Otto describes as the “imperialist urge to *improve* the world by standardization” and to “represent the subaltern.”³⁸² It does so in three primary ways. First, it involves both legal and extralegal strategies employed by social movements, such as strikes, direct actions, and consumer boycotts.³⁸³ Second, it moves beyond individual conceptions of rights to “solidaristic” understandings of rights.³⁸⁴ It recognizes the centrality of collective action to any grassroots legal strategy. Third, this approach “pragmatically resort[s] to political and legal tools at every scale,” whether they are local, national, regional, transnational, or international.³⁸⁵

Here, tea workers have engaged in direct action and mobilized collectively beyond the particular tea workers who are directly affected by the land grab, including tea workers from the Tea Workers Union and other plantations. For months, they occupied the disputed land, engaged in political education to bring together tea workers from area tea plantations who did not have a direct stake in the land dispute, engaged union leaders for support, and raised awareness among other civil society organizations. They organized walk-outs, protests, and events with supporters. Organizer Mohan Rabidas commented that the movement developed a “collective

378. RAJAGOPAL, *supra* note 376, at 2.

379. Baxi, *supra* note 16, at 148.

380. Adelle Blackett, *Introduction: Decolonizing Labour Law—Contributions to an Emergent Transnational Labour Law*, 33 CAN. J. L. & SOC’Y 111, 111–14 (2018).

381. Adelle Blackett, *Theorizing Emancipatory Transnational Futures of International Labor Law*, 113 AJIL UNBOUND 390, 391 (2019).

382. Dianne Otto, *Subalternity and International Law: The Problems of Global Community and the Incommensurability of Difference*, 5 SOC. & LEGAL STUD. 337, 359 (1996) (italics in original).

383. Santos & Rodriguez-Garavito, *supra* note 18, at 16.

384. *Id.*

385. *Id.*

interest among workers, women, and youth.”³⁸⁶ The Land Protection Committee, then, built a broad, solidarity-based approach to opposing the attempted seizure. Its demand for a right to land was not limited to the families who cultivated the disputed land, but rather articulated a collective right to land for all tea workers. And it was successful: Nripen Pal, union organizer and leader of the Land Protection Committee, remarked, “We have only been able to keep this land through our movement.”³⁸⁷

It is not the task of this Article to develop a detailed strategy to which affected tea workers, the Land Protection Committee, the Tea Workers Union, and other allied organizations must adhere. Rather, in identifying possible responses as part of a subaltern approach, this Part relies on interviews with workers who have been actively involved in the movement in order to illuminate legal and political tools that might ensure workers’ right to land. It also directly confronts the industrialization and development biases which have fueled the attempted land seizure. Finally, this approach reveals possible lessons for other similarly situated social movements.

A. Challenging Development Discourse and the Industrialization Bias

It is essential to contest development discourse that promotes industrialization and globalization as the sole modes of economic progress. It is this discourse and the policies that it enables that trigger displacement and maintain neocolonial relationships between states. Legal responses must challenge these assumptions or risk perpetuating the logics that have produced the very inequalities that they seek to remedy.

Challenging development discourse is not a purely theoretical economic exercise. Instead, doing so illuminates the ways in which the industrialization bias is aligned with the interests of global capital, and how this bias leads to policy decisions that enable displacement. This is the case despite evidence that supporting rural economies can produce economic growth. Challenging this discourse also upends the notion that industrialization is necessarily liberating for women. It does not in any way romanticize agricultural economies or erase the gendered labor inequalities that exist in agricultural

386. Mohan Rabidas Interview, *supra* note 20.

387. Nripen Pal Interview, *supra* note 20; Nripen Pal Public Interview, *supra* note 48.

settings, but rather exposes how the industrialization bias has justified the continued exploitation of women in low-paying, labor-intensive jobs, as can be seen in the garment industry.

The industrialization bias also limits the success of traditional legal responses. My interviews with local land officials and BEZA members made clear that they saw industrialization, participation in global markets, and foreign investment as the path to economic progress for Bangladesh.³⁸⁸ These views were so entrenched that they were reluctant to entertain other possibilities, such as leasing the disputed land for workers to cooperatively cultivate.³⁸⁹ Instead, officials regarded globalization as a boon to tea workers who could be absorbed into new industries. Even those who were most sympathetic believed that tea workers would fare better in factories, and thus proposed conciliatory solutions such as promises to provide employment training.³⁹⁰

The tea workers rejected these proposals, understanding that giving up their land would worsen their economic position.³⁹¹ Transforming fertile agricultural land—land that the affected workers have cultivated for generations—into industrial plots threatens their livelihood and has the potential to create food insecurity. The workers also feared that the establishment of an SEZ in the region would have a devastating impact on the environment and risks their water supply.³⁹² It is important to recognize, though, that tea workers do not oppose economic development generally.³⁹³ Indeed, the affected tea workers have suggested alternative placements for the proposed SEZ.³⁹⁴ Even more critically, however, they see the continued cultivation of the land for agricultural use as the preferred course of development.³⁹⁵ They offer a different model of economic development that runs counter to industrialization, one that both supports their livelihood and protects the environment.

By identifying the industrialization bias at play in this dispute and understanding the affected tea workers' nuanced views of economic development, it becomes clear why rehabilitation,

388. A.K.M. Mahbubhur Rahman Interview, *supra* note 20.

389. Md. Moniruzzaman Interview, *supra* note 20.

390. Mohammed Ayub Interview, *supra* note 20.

391. Nripen Pal Public Interview, *supra* note 48.

392. Mohan Rabidas Interview, *supra* note 20.

393. *Id.*

394. *Id.*

395. Nripen Pal Interview, *supra* note 20; Nripen Pal Public Interview, *supra* note 48.

compensation, and the promise of employment in the proposed SEZ are not satisfactory solutions. From the tea workers' perspective, industrialization simply shifts the site of the inequality that they experience from plantations to factories. The solutions also fail to address their central demand: the right to the land that they have cultivated for generations. The emancipatory possibilities for legal responses that might support that demand are lost without a critique of development discourse and the industrialization bias.

B. Rearticulating Human Rights from the Ground Up

Human rights must be rearticulated in a manner that responds to the demands of social movements. These articulations offer the potential of moving beyond formal legal systems and proposing counter-hegemonic visions of economic development. The methods incorporated into such a "ground up" approach to human rights are multi-varied, prioritizing collective action and the establishment of new rights.³⁹⁶ Tea worker organizer Nripen Pal states: "I have to go where my demands can be met. Our demands can only be raised through a democratic movement. If . . . you write about our movement, our struggles, and it reaches the glob[e], and they hear our plight, then that is fine."³⁹⁷ His comment is significant in that it reveals that the forum for legal advocacy need not be precisely defined. Wherever demands are raised, however, they must be voiced collectively.

The tea workers' primary demand is for an unambiguous and direct legal right to the disputed land.³⁹⁸ They are also advocating for improved working conditions, and in doing so are striving to create deeper connections with the broader global labor movement.³⁹⁹ The tea workers' movement has been successful in creating an impasse wherein the government, though it has canceled its lease with the plantations and transferred ownership to BEZA, has not physically seized the land.⁴⁰⁰ The Land Protection Committee remains ready to

396. See generally RAJAGOPAL, *supra* note 376 (chronicling the complex relationship between international law and the Global South during the twentieth century).

397. Nripen Pal Interview, *supra* note 20.

398. *Id.*; Shurjo Kumar Interview, *supra* note 20.

399. Nripen Pal Public Interview, *supra* note 48.

400. Mohammed Ayub Interview, *supra* note 20. Communications with BEZA officials during the author's visit to its office on July 19, 2019 indicated that it is unlikely that the government will take any action to convert the land into an economic zone in the near future, keeping the land in legal limbo.

act should the government threaten to take further steps toward converting the land for industrial use.⁴⁰¹ Had the tea workers resorted to traditional legal approaches, the government's legal title all but guarantees that they would have been deprived of the land, as discussed in Part III, *supra*. Nonetheless, it is critical to make legally cognizable the tea workers' demands for land rights. As Pal puts it, "We remain vulnerable because we do not have legal title to the land. We want to bring our land claims within Bangladeshi law."⁴⁰² Bearing in mind the tea workers' prioritization of collective action, this Article will now discuss some possible strategies that emerge from a close examination of their grassroots movement and demands.

At the domestic level, affected tea workers might use the existing *khas* land policy, originally designed to address landlessness and poverty,⁴⁰³ to demand that the SEZ designation be removed from disputed land so that the land may be allocated, or, at minimum, directly leased by the government to tea workers.⁴⁰⁴ Under this option, should the government attempt to seize the land, affected workers—now lessees—will be able to directly challenge the acquisition under Articles 31 and 32 of the Bangladesh Constitution, protecting the right to livelihood. Additionally, affected workers can challenge the attempted seizure on the grounds that the government's discretion to act in the "public interest" is not legally defined, and that it therefore does not have the authority to make such a decision.⁴⁰⁵ The vagueness of the "public interest" authorization may well violate the due process provisions of Bangladesh's Constitution.⁴⁰⁶

Whether or not these challenges are successful in the courts, they can bring into the national consciousness an examination of Bangladesh's economic development policies. Moreover, they offer the possibility of creating processes by which the appropriation of land for the creation of economic zones can be challenged. Currently, there is no mechanism for members of the public to lodge their opposition to

401. Ruma Urong Interview, *supra* note 20.

402. Nripen Pal Interview, *supra* note 20.

403. *Id.*

404. See ILO Report, *supra* note 90, at 19 (recommending that the government lease land to tea workers).

405. See *supra* Section III.A.

406. BANGL. CONST. art. 36 ("Subject to any reasonable restrictions imposed by law in the public interest, every citizen shall have the right to move freely throughout Bangladesh, to reside and settle in any place therein and to leave and re-enter Bangladesh.").

such designations.⁴⁰⁷ Although there appears to be an administrative process under the Acquisition Act by which interested parties can challenge land seizures generally,⁴⁰⁸ it is not clear whether that process remains available after land has been allocated to BEZA, as is the case here. For stakeholders who do not receive notice of land acquisitions because they are neither owners nor lessees of the land, such as the affected tea workers, a transparent process must be made available by which they can articulate why such seizures are not, in fact, in the public interest.

Outside of the domestic legal space, affected tea workers can collaborate internationally with other movements that are similarly opposing the direct and indirect impacts of global capital. Some of the challenges faced by tea workers in Bangladesh, for example, are similar to those faced by tea workers in India and Sri Lanka.⁴⁰⁹ Regional cooperation allows movements to share strategies and create bases of solidarity. In particular, Bangladeshi tea workers can look to India's passage of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act.⁴¹⁰ Under the Act, persons affected by land seizures for public

407. See generally Bangladesh Economic Zones Act (Act No. 42/2010) (Bangl.) (outlining procedures for the creation of special economic zones in underdeveloped regions).

408. Acquisition and Requisition of Immovable Property Act § 5 (Act No. 21/2017) (Bangl.); see also ISLAM, *supra* note 282 (describing the various land acquisition mechanisms available to the state).

409. For more information on the challenges faced by tea workers in India and Sri Lanka, see Meera Srinivasan, *A Bitter Brew: For Sri Lanka's Tea Estate Workers, Fair Wage Is Still Elusive*, THE HINDU (Oct. 5, 2019), <https://www.thehindu.com/news/international/in-sri-lanka-a-bitter-brew/article29598287.ece> [<https://perma.cc/LMW7-PY8N>]; Philip Yiannopoulos, *Sipping the Tea In Sri Lanka*, FOREIGN POL'Y (July 8, 2019), <https://foreignpolicy.com/2019/07/08/spilling-the-tea-in-sri-lanka/> [<https://perma.cc/A4N2-YFWW>]; GLOBAL NETWORK FOR THE RIGHT TO FOOD AND NUTRITION, *A LIFE WITHOUT DIGNITY—THE PRICE OF YOUR CUP OF TEA* (2016), https://www.fian.org/fileadmin/media/publications_2016/Reports_and_guidelines/FFMReport_June_2016.pdf [<https://perma.cc/5WSJ-8X3Q>]. For articles on the tea sector generally, see BUS. & HUMAN RIGHTS RES. CTR., <https://www.business-humanrights.org/sectors/agriculturefoodbeveragetobaccofishing/tea> [<https://perma.cc/C3U2-WNUH>] (presenting the latest news on human rights in the agricultural and food sectors).

410. See Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, No. 30 of 2013, INDIA CODE (2013), <http://legislative.gov.in/sites/default/files/A2013-30.pdf> [<https://perma.cc/ZL86-T6T4>]. Some academics caution the Act has significant drawbacks. See Michael Levien, *Rationalising Dispossessions: The Land Acquisition and*

use—including not just landowners but also laborers, tenants, and those who stand to lose their primary livelihood—are awarded monetary compensation and a series of entitlements.⁴¹¹ Although the language would need to be adapted to the Bangladeshi context, as tea workers' "primary" livelihood is not subsistence agriculture, India's law nonetheless serves as a useful model. The Act also requires social impact assessments and public hearings for proposed takings, thereby requiring the government to articulate how land seizures will affect its citizens and to listen to the public's concerns.⁴¹² These requirements do not exist under either the Bangladesh Economic Zones Act or the Acquisition Act.

Tea workers can also engage with international human rights declarations and norms in order to appeal to the broader international community as a point of pressure for the government of Bangladesh. In particular, they can employ the recently adopted United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas to draw attention to the plight of rural workers in Bangladesh and to build solidarity with other rural workers.⁴¹³ The Tea Workers Union can also continue to play a role in supporting the movement by engaging with global labor rights, as represented by the ILO or the ICESCR, and the labor rights movement more broadly.⁴¹⁴ Such mobilizations will facilitate narratives that benefit tea workers and other similarly-situated groups whose identities straddle the line between workers and farmers. The Land Protection Committee already exists as a grassroots formation that can engage in such mobilizations.⁴¹⁵

Finally, tea workers can engage Duncan Brothers in their movement. As an initial matter, Duncan Brothers and the affected tea workers have a common interest in maintaining the land for agricultural use, as the government of Bangladesh ended its lease with Duncan Brothers in order to establish an SEZ on the disputed

Resettlement Bills, 46 ECON. & POL. WKLY. 66, 70 (2011) (writing that the Act may provide a legal rationalization for land seizures and make facilitate displacements in furtherance of corporate interests); *see also* Namita Wahi, *Land Acquisition, Development and the Constitution*, SEMINAR MAG., Feb. 2013, at 49 (assessing the history of land acquisition laws in India).

411. *See* Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, §§ 31–42.

412. Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, No. 30 of 2013, INDIA CODE (2013).

413. *See supra* Section III.B.4.

414. *See supra* Section III.B.1.

415. *See supra* Section I.A.

land.⁴¹⁶ Indeed, Duncan Brothers expressed concerns to officials that the state might take further efforts to cancel additional lease agreements.⁴¹⁷ The company was also disturbed by the prospect that affect tea workers might organize to raise wages should they lose the ability to supplement their wages through subsistence agriculture.⁴¹⁸

Duncan Brothers' Corporate and Social Responsibility Policy, moreover, states that the "[w]elfare of our own employees is very important to the Group as is the welfare of the society in general, the local communities where we do business and the environment in which the Group operates"⁴¹⁹ Its United Kingdom-based parent company, Camellia PLC, has its own corporate social responsibility commitment.⁴²⁰ Tea workers and their allies can capitalize on these rhetorical commitments to demand improved living and working conditions. Labor groups have long engaged in campaigns that engage consumers to raise awareness of workers' rights.⁴²¹ Through Duncan Brothers' connection to its parent company, moreover, such a campaign has the potential to appeal both to middle class tea consumers in Bangladesh and to consumers of Camellia products around the globe. As the United Kingdom has a large Bangladeshi community, such a transnational advocacy campaign also has the benefit of engaging the diaspora in ways that protect the rights of tea workers⁴²²—an important counterweight to the role that wealthy

416. Nripen Pal Public Interview, *supra* note 48; Nripan Pal Interview, *supra* note 20.

417. Obinash Ghosami Interview, *supra* note 20 ("The company doesn't want to clash with the government. On one hand they are telling the government here you can reclaim this land but with us they are quiet.").

418. Rozario, *supra* note 2 (quoting a plantation manager who shares that he supports neither the government plan nor the protests).

419. *Corporate and Social Responsibility*, DUNCAN BROS. (BANGL.) LTD., <https://www.duncanbd.com/content/14.html> [<https://perma.cc/G886-WDMU>].

420. *Corporate Social Responsibility Policy*, CAMELLIA PLC, <https://www.camellia.plc.uk/community> [<https://perma.cc/NQP4-RJ6R>].

421. Labor groups such as United Students Against Sweatshops have used students' and universities' role as consumers to improve sweatshop conditions. See SHAE GARWOOD, *ADVOCACY ACROSS BORDERS: NGOS, ANTI-SWEATSHOP ACTIVISM AND THE GLOBAL GARMENT INDUSTRY* 111–36 (2011) (discussing the potential and the limitations of civic politics through anti-sweatshop campaigns).

422. After two sugar companies, which had contracted to sell to a United Kingdom company, displaced Cambodian villagers from their land, the villagers brought suit in England. See, e.g., *Koh Kong Sugar Plantation Lawsuits (re Cambodia)*, BUS. & HUMAN RIGHTS RES. CTR., <https://www.business-humanrights.org/en/koh-kong-sugar-plantation-lawsuits-re-cambodia/?page=1#c86294> [<https://perma.cc/S6ES-QEAY>] (providing an example of what such an advocacy campaign could look like).

Bangladeshis in the United Kingdom play in the promotion of economic development.⁴²³

The approaches outlined in this Article need not—and indeed, cannot—be relied on exclusively because, as discussed in Part III, *supra*, the affected tea workers find themselves within the gaps of existing legal protections. Rather, the purpose of identifying these legal responses is to illustrate the ways in which the tea workers' demands can be incorporated into legal strategies that push for new rights and norms, both under domestic law and in the international arena. These strategies, because they are derived from the demands of grassroots social movements and reflect an understanding of the complex interplay of the state, economic policies, and workers' rights, more effectively respond to the government actions at issue in this case study.

C. Lessons for Other Social Movements

The tea workers' struggle offers lessons for other workers who are impacted by globalization. It is particularly instructive in contexts where global capital, rather than a specific actor, threatens displacement or the denial of rights, or where the state actively collaborates with global capital to do the same. It also provides guidance for legal activists supporting grassroots social movements.

First, the tea workers' movement evidences the utility of demanding rights that are not presently articulated by the law. By insisting on their inalienable right to dignity and to livelihood, the tea workers created conditions for those rights to become reality. As organizer Mohan Rabidas puts it, "We tried to send a world-wide message that if any land is grabbed, or human rights are violated, and if [we] all remain unified and organized for collective rights then we will be successful."⁴²⁴ He attributes the movement's success in halting the conversion of tea-worker cultivated land to an SEZ⁴²⁵ to this approach. Although some tea workers do not see their movement as victorious because they have not yet obtained a formal legal right to their land, forestalling the zone's establishment is nonetheless a

423. KATY GARDNER, DISCORDANT DEVELOPMENT: GLOBAL CAPITALISM AND THE STRUGGLE FOR CONNECTION IN BANGLADESH 3, 102–03, 184–86 (2012) (stating that partnerships with transnational communities were essential for the promotion of corporate development projects).

424. Mohan Rabidas Interview, *supra* note 20.

425. *Id.*; see also Nripen Pal Interview, *supra* note 20.

critical defensive step in the broader movement for land rights.⁴²⁶ Had the land been seized, the possibility of continuing to demand legally cognizable land rights would have been entirely foreclosed. My interviews with movement leaders indicate that they remain committed to demanding legal ownership of the land, or at the very least, the possibility of directly leasing it from the state.⁴²⁷

Second, the mobilization led to a broad base of solidarity among members of the Tea Workers Union and workers in surrounding tea plantations. The movement was intentional in creating a committee comprised of workers from nearby plantations, local political leaders, and union leaders.⁴²⁸ They broadened the movement beyond those tea workers who were directly affected by the threatened seizure, and many workers who were heavily involved in the movement, like Bishaka Nayek and Khairun Aktar, had not cultivated the disputed land.⁴²⁹ Rather, they participated because they knew that the movement was part of a larger battle to improve the working and living conditions of tea plantation laborers.⁴³⁰ Tea workers also engaged with activists in the capital city of Dhaka,⁴³¹ providing a basis for solidarity with groups dedicated to women's rights, environment justice, and labor rights. The movement also demonstrated the importance of not only building coalitions, but also of maintaining them. Doing so allowed the tea workers to respond effectively to renewed threats of seizure in 2017⁴³² and 2019.⁴³³ The importance of continuing to organize is perhaps most clearly articulated in the statement of a BEZA official indicating that the government hopes to capitalize on future disunity within the movement.⁴³⁴

426. Konoklata Rajbongshi Interview, *supra* note 20 (relaying that the interviewee does not find that the movement is successful, but pledges to continue fighting until they are).

427. Nripen Pal Interview, *supra* note 20; Mohan Rabidas Interview, *supra* note 20.

428. Nripen Pal Public Interview, *supra* note 48; Mohan Rabidas Interview, *supra* note 20.

429. Bishaka Nayek Interview, *supra* note 20; Khairun Aktar Interview, *supra* note 20.

430. Bishaka Nayek Interview, *supra* note 20 (discussing the need to increase wages for workers).

431. Mohan Rabidas Interview, *supra* note 20.

432. See Moulvibazar, *Habiganj Tea Workers Protest Setting Up SEZ*, *supra* note 77 (describing a day-long event and two-hour work stoppage in March of 2017 to protest the economic zone).

433. Deshwara, *supra* note 43.

434. Md. Moniruzzaman Interview, *supra* note 20.

Third, the active participation of women and youth should be instructive to other movements. As Nilu Das puts it, "Other women can get strength and courage from our movement. Those who are outside of the country are women just like us. We can struggle as women because we are human."⁴³⁵ Mobilization builds critical leadership skills among workers. Women leaders with whom I spoke consistently told me that they had learned important organizing skills. Bishaka Nayek said, "I have never learned to fight injustice. I was so unaware. Now, I am more educated and conscious."⁴³⁶ Likewise, Srithi Rani Das commented that she had "gained the courage to speak."⁴³⁷ And Konoklata Rajbongshi declared, "We didn't know how to build a movement. Our courage increased. We know how to fight. Most importantly, our children know what a movement is. They will understand why we fought."⁴³⁸ The impact on future generations and the collective memory of tea workers is critical here. It is this same collective memory, this time of the protests led by their great-grandfathers, that the tea workers deployed in their own movement.

Fourth, women's participation in the movement articulates a collective and collaborative form of leadership that challenges the typical hierarchal organizing model of male leaders. When asked if she identified as a leader, Srithi Rani Das responded, "To be a leader means to serve the people during the trouble, to stand beside them."⁴³⁹ Similarly, Bishaka Nayek said, "I can't go around and say I am a leader; how could that be? The people must acknowledge me."⁴⁴⁰ And when asked whether she would accept compensation for the disputed land, Nilu Das remarked: "How can I alone agree to compensation? We would decide by committee."⁴⁴¹ Because collective organizing was instrumental to the movement's success, the emergence of this leadership model will be crucial to the movement's continued success.

Fifth, social movements that are similarly impacted by globalization can implement multifaceted strategies that engage the local, national, and transnational, as described in Section IV.B,

435. Nilu Das Interview, *supra* note 20.

436. Bishaka Nayek Interview, *supra* note 20.

437. Srithi Das Rani Interview, *supra* note 20.

438. Konoklata Rajbongshi Interview, *supra* note 20.

439. Srithi Das Rani Interview, *supra* note 20.

440. Bishaka Nayek Interview, *supra* note 20.

441. Nilu Das Interview, *supra* note 20; Bishaka Nayek Interview, *supra* note 20.

supra. As Boaventura de Sousa Santos suggests, by empirically documenting the experiences of grassroots movements, others can learn about their capacity to do the same.⁴⁴² Lawyers who wish to support social movements should study those movements and explore creative legal strategies that respond to movement demands. They can use their specialized knowledge to identify gaps in legal protections, such that the demands of social movements can be articulated to advocate for new rights. Lawyers should, however, resist the impetus to suggest solutions, such as compensation or rehabilitation, when such conciliatory approaches would simply reify inadequate legal rights as they are presently interpreted.⁴⁴³

CONCLUSION

By closely examining the Bangladeshi tea workers' movement, this Article reveals how global capital works through nation-states to impact the lives and labor of workers. In detailing how global capital, from British colonialism to the present, has used law to facilitate its entry into localized territories, it exposes the inadequacy of domestic and international law in protecting workers. Where, as here, the collaboration of nation-states with global capital disenfranchises workers, emancipatory human rights strategies from the ground up are necessary for the articulation of new rights and normative structures.

442. Santos & Rodriguez-Garavito, *supra* note 18, at 15.

443. In social justice movements, recourse to solely legal strategies should be limited, as they center legal professionals rather than directly impacted communities. For more on this topic, see generally Sheela Patel & Diana Mitlin, *Reinterpreting the Rights Based Approach: A Grassroots Perspective on Rights and Development* (2005), reprinted in RIGHTS-BASED APPROACHES TO DEVELOPMENT: EXPLORING THE POTENTIAL AND PITFALLS 107–25 (2009).