

FOCUS

Asia-Pacific



Newsletter of the Asia-Pacific Human Rights Information Center (HURIGHTS OSAKA)

December 2020 Vol. 102

Contents

COVID-19 and Belt and Road: Some of the Issues Impacting Business and Human Rights

This is a short review of the situation in Asia regarding business activities and government responses to such activities in the context of the COVID-19 pandemic.

- Surya Deva

Page 2

Japan's National Action Plan on Business and Human Rights: An Unfinished Project

This is an introduction to the issues and process of developing the national action plan of Japan on business and human rights.

- Hideki Matsuoka

Page 5

Analysis of India's Responsible Business Framework

This is discussion on the Indian national policies related to business and human rights and the laws that negate these policies as they adversely affect vulnerable sectors.

- Namit Agarwal

Page 8

COVID-19: Community Insights from Asia-Pacific

This is an excerpt of a summary report on a perception survey on the COVID-19 pandemic in several Asian countries, including perception on people being seen as responsible for the spread of the virus.

- Risk Communication and Community Engagement Working Group

Page 12

Editorial

Governments, Business and Human Rights

The commitment of governments in Asia-Pacific to ensure that human rights are protected in business operations is weak. One has to note the few national action plans (NAPs) on business and human rights in the region. The Office of the United Nations High Commissioner for Human Rights reports two NAPs (Thailand and Japan) having been adopted as of October 2020, and nine NAPs still being prepared (Australia, Azerbaijan, India, Indonesia, Jordan, Malaysia, Mongolia, Myanmar and Pakistan) as of early December 2020.

But more serious concern is raised on the capacity of governments to enforce existing laws that protect the human rights of people affected by business operations. There is likewise serious concern on contradictory provisions among laws that allow business enterprises to pursue operations without being held accountable for human rights abuses. Laws that provide incentives to companies on development projects and natural resource extraction may contradict those that protect the rights of people to land, water and even health.

This is where effective participation of stakeholders in the development of policies on business and human rights is needed. Workers, indigenous peoples, urban poor and members of communities affected by business operations are some of the stakeholders whose voices should be adequately heard and whose proposals should be part of government policies and programs on business and human rights.

COVID-19 and Belt and Road: Some of the Issues Impacting Business and Human Rights*

Surya Deva

The United Nations Guiding Principles on Business and Human Rights (UNGPs) provide a global framework for states and businesses to prevent, mitigate and remedy business-related human rights abuses. They came into effect in June 2011 on their endorsement by the UN Human Rights Council.

In this interview with Melbourne Asia Review's Managing Editor, Cathy Harper, Dr Deva discusses some of the main challenges in business and human rights in Asia and what is being done about them.

Do you think the situation relating to business and human rights in Asia is any better than it was prior to the UNGPs' adoption?

Some governments and companies in Asia are becoming more aware of their adverse impact on human rights and trying to manage it. The process to develop a National Action Plan on Business and Human Rights is in place in several countries. Thailand adopted a National Action Plan in December 2019, whereas South Korea has inserted a chapter on business and human rights in its National Action Plan on Human Rights. The governments of Pakistan, India, Japan, Indonesia and Malaysia are taking steps to develop a

National Action Plan, and there is some momentum in Nepal, Viet Nam, Myanmar and Sri Lanka too. The UN Global Compact's national networks and business associations across Asia are also trying to raise awareness and build capacity.

However, progress is slow and inconsistent. Good practices may exist in a particular sector or within certain companies, but there are large gaps in coherent action on the part of businesses and governments. Some governments which have made a commitment to adopt a National Action Plan are not taking any concrete steps. The Working Group has conducted country visits to several Asian countries and made specific recommendations. But these recommendations have not been implemented, which is a matter of concern. That's why the Working Group is assessing, as part of a new project, what have we achieved in the last ten years and what our ambitions should be for the next ten years regarding the UNGPs' implementation. This project will result in some recommendations as to what the Working Group should do going forward to make more impact.

What are the most concerning situations now in terms of

business and human rights in Asia?

The most immediate concern is COVID-19, which has raised several business and human rights issues. COVID-19 has been used by governments as a pretext to impose restrictions on protests: if certain projects are not done in consultation with the affected community members, and they would like to protest against such projects, governments are using their emergency powers on social-distancing to restrict those protests. COVID-19 has also provided greater opportunities for governments to intimidate civil society organisations and human rights defenders. Moreover, access to mechanisms for justice, whether these are National Human Rights Institutions or courts, has been constrained. The Working Group has issued a statement to provide some guidance to states and businesses on how to discharge their respective duties and responsibilities under the UNGPs in times of COVID-19.

Can you provide some examples and contexts that you're particularly concerned about?

There are many examples of business-related human rights concerns throughout Asia – it's not about any one country in

particular. In several countries, we have heard stories about workers who have been laid-off without any due process or consultation. If these laid-off workers or other individuals would like to protest, governments are saying that because of social-distancing linked to the COVID situation, only a very small number of people can assemble together.

We are also seeing a pattern in certain countries in Asia where companies are using COVID-19 as an opportunity to move faster in mining or other development projects. Companies think that the affected communities may not even notice adverse impacts because the people in those communities are not allowed to travel freely.

There are several other issues that the UN Working Group is quite concerned about and I would like to mention a few. Apart from a 'tick-box' approach to conducting human rights impact assessments, human rights defenders are being targeted for exercising their legitimate rights and the Working Group is developing guidance on this issue. Multiple barriers to corporate accountability for human rights abuses is an ongoing concern as well. Moreover, corruption and the weak rule of law in many Asian countries undermine the goal of promoting business respect for human rights. Another issue I would like to highlight is the adverse human rights impact of the Belt and Road Initiative (BRI). One common problem with development projects is a lack of meaningful consultation by businesses and governments

and this issue is reflected quite strongly in the BRI projects. Since many of these projects involve a very close state-business nexus (that is, the nexus between Chinese state-owned business enterprises and the host government agencies), meaningful consultations with the affected communities are very limited at best. These projects are causing a significant adverse impact on the environment, labour rights and human rights generally, so this is definitely a serious concern for us, and we organised a session during the 2019 UN Forum to discuss the way forward.

Does it make things different, in terms of response, that Belt and Road Initiatives are often Chinese state-owned enterprises?

What is unique about BRI is that it is quite difficult to engage with Chinese state-owned enterprises. If affected communities face a situation where they cannot engage with the relevant companies in the host country because of political capture or because of the state-business nexus, then one would look at pressure points in the home country of such companies. But how do you engage the Chinese government when it comes to human rights issues? It's very difficult and that makes the BRI unique. The second issue is that many states are at least willing to see the relationship between development projects and adverse human rights impacts. However, the Chinese government often tends to think of the BRI as a way to promote human rights, because the right

to development is a human right.

At the same time, there is a growing realisation within the Chinese government about the 'green' dimension of BRI. The government feels that they must take on board issues about sustainability, climate change and the environment. These concerns they acknowledge. But when it comes to human or labour rights abuses and attacks on human rights defenders, I would say these are more sensitive issues for China.

Would you mind talking a bit about the current situation with multinational companies and business and human rights in Asia? How big an issue is this still and how is the UN Working Group dealing with it?

There are two issues that we should consider here. First, a significant amount of economic activity in Asia is linked to small- and medium-sized enterprises and the informal economy. There are serious human rights abuses in these settings, and I think we should pay greater attention to that rather than focus merely on multinationals.

My second point is that historically most of the multinationals exploiting workers in Asia were from the Global North. But now we are increasingly seeing many big multinationals from the Global South, from India, China, Thailand, Malaysia and Indonesia, and of course there are many multinationals from Japan and South Korea.

Whether these multinationals are from the Global North or the Global South, many of them are definitely indulging in practices which are not consistent with international standards such as the UNGPs, the Organisation for Economic Co-operation and Development Guidelines for Multinational Enterprises, and the International Labour Organisation Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy. Evidence shows that apart from some leading multinational corporations, many companies are still operating with a legal compliance mindset, and they are not really adopting a holistic approach to respecting human rights. We still have a long way to go in bringing a shift in the corporate culture of profit maximisation.

The Working Group has been raising awareness, making recommendations and organising peer-learning events (including during our Annual UN Forum on business and human rights) to stress the importance of responsible business practices.

Which sectors are most prone to human rights abuses?

There are human rights abuses in every sector but abuses in different sectors are prominent in different countries. For example, the extractive industry raises many concerns in the Philippines, PNG, Indonesia and India. Then there are concerns in the palm oil industry in Malaysia and Indonesia, and in the apparel industry in China, Bangladesh,

Viet Nam and Cambodia. Serious labour rights abuses are also reported in the fishing industry in Asian countries, such as Thailand exporting seafood to Europe and elsewhere. In short, there is hardly any sector in which we don't have human rights abuses, but the dynamic is different from sector to sector. More recently, there are growing concerns about new technologies because they raise issues about privacy, surveillance on the part of the government, and hate speech on social media. Irrespective of sectors, the adverse impact is often faced more by vulnerable or marginalised groups such as children, women, migrant workers, indigenous peoples, LGBTI people, and persons with disability. In 2019, the UN Working Group made specific recommendations to states and companies on integrating a gender perspective in implementing the UNGPs.

What do you see as the key challenges in implementing the Guiding Principles?

One thing that we notice is that awareness of the UNGPs still remains quite low amongst government officials, companies and civil society organisations. Then there is a lack of political will on the part of the governments. Many states have made a commitment to implement the UNGPs, but in reality they are not taking adequate steps. Moreover, we continue to notice the government perception of a conflict between development and human rights. Many governments think that if they push companies hard to respect

human rights, that will slow down economic development and reduce foreign investment. They tend to focus on economic development first and believe they can take care of human rights later. This idea of sequencing is quite problematic. Challenges concerning access to justice and lack of corporate accountability are also quite severe. Last but not least, we have issues about the state-business nexus, corporate capture and corruption. These are some of the major challenges that we face in implementing the UNGPs in Asia.

The UN Working Group does not have much power to enforce its recommendations: we only have the power of persuasion. Whenever we receive reports or complaints about alleged corporate human rights abuses, we pass on these informally to the relevant government and companies and we have dialogues with them. Sometimes we send formal communications to the concerned states and companies, and in some cases we also issue a press release to highlight the serious nature of the issues at stake. Moreover, we work with civil society organisations and give them advice on how they can use several mechanisms of accountability and different pressure points. We also work with National Human Rights Institutions on how they can be proactive in dealing with particular issues. Of course, we regularly issue general

(Continued on page 15)

Japan's National Action Plan on Business and Human Rights: An Unfinished Project

Hideki Matsuoka

The Japanese government launched its *National Action Plan on Business and Human Rights (2020-2025)* (NAP) on 16 October 2020, almost four years since the government announced its intention to prepare such plan at the United Nations (UN) Forum on Business and Human Rights in November 2016. Japan is the 24th country in the world to have a standalone NAP, and the second in Asia after Thailand, which published its NAP in October 2019. It should also be noted that it is the first NAP to be completed since the start of the COVID-19 pandemic.

The formulation of NAP has been urged by the UN Working Group on Business and Human Rights to implement the UN Guiding Principles on Business and Human Rights (UNGPs). The UN Working Group, through its *Guidance on National Action Plans on Business and Human Rights*, defined the NAP as an “evolving policy strategy developed by a State to protect against adverse human rights impacts by business enterprises in conformity with the UN Guiding Principles on Business and Human Rights (UNGPs).”¹

The Formulation Process

The Japanese government undertook a baseline study in

2018 “with the aim of capturing the current landscape to what extent current legislation and policies provide for the protection of human rights in the context of business.”² After ten consultation meetings, a report on the results of the study was published by the end of the year.

International and other relevant organizations in the field of industry, labor, law, consumers and civil society took part in the drafting process of the NAP, including in the consultation meetings.

Since 2019, discussions continued in the Advisory Committee for the NAP on Business and Human Rights and the Working Group on the NAP on Business and Human Rights to formulate the structure of the NAP.

Overview of the NAP

The NAP consists of four chapters: Chapter 1 explains the situation in Japan regarding business and human rights as well as the formulation process of the NAP; Chapter 2 sets forth the contents of the NAP; Chapter 3 expresses the government's expectations for the business sector; and Chapter 4 provides the frameworks for implementation as well as for the update of the plan.



National Action Plan on Business and Human Rights (2020-2025)

In Chapter 1, it is notable that there is an emphasis on the relationship with the Sustainable Development Goals (SDGs), as seen in the phrase “the achievement of the SDGs and the protection and promotion of human rights are mutually complementary and are two sides of the same coin.” It also acknowledges the impact of COVID-19 on human rights around the world that create hardships, particularly for the most vulnerable people in society.

Five general priority areas are listed in Chapter 2, as well as Action Plans for Individual Sectors with fifty-five “specific measures to be taken” along

with the names of responsible ministries and agencies. The measures are described in relation to each of the three pillars of the UNGPs, namely “the State duty to protect human rights,” “the corporate responsibility to respect human rights,” and “access to remedy.” The section also introduces cross-sectoral issues, such as labor (including promotion of decent work), protection and promotion of child rights, human rights associated with development of new technologies, rights and roles of consumers, equality before the law (including for people with disabilities, women, and those with different types of sexual orientation and gender identity), and acceptance and coexistence of foreign nationals, with corresponding measures for each of the issues.

Inclusiveness and Transparency

In February 2020, eight months before the publication of the NAP, a draft NAP was published with request for comments from the public. Out of the seventy-eight comments received, one hundred twenty-nine issues were listed and published along with the response from the government in October 2020. In addition, the organizations participating in the formulation process discussions since 2018 also provided numerous views in their statements and documents in the meetings.

The *Guidance on National Action Plans on Business and Human Rights* includes “inclusiveness and transparency” as “essential criteria” for the formulation process and implementation of

NAP, and states that it is “central to a rights-compatible approach and the degree to which relevant stakeholders participate in the NAP process will determine, amongst other things, the legitimacy and effectiveness of a NAP.”³ In order to understand how the government considered the numerous views collected during the formulation process and how they were reflected in the NAP, the discussions during the process must be carefully followed and verified. While the record of the discussions was published to a certain degree on the Foreign Ministry’s website, there was still a need to validate whether or not the transparency of the process was sufficient to enable such verification.

Collaboration among Stakeholders

The members of the Working Group, who have been directly involved in the formulation process submitted two “Stakeholder Common Requests.” The first, submitted in November 2019, included requests on inclusion of proposals in five areas, “disclosure of non-financial reporting,” “foreign workers,” “human rights due diligence and supply chain,” “public procurement,” and “access to remedy.” The requests constituted the minimum set of proposals that the stakeholders coming from different backgrounds, such as industry, labor and civil society, could all agree on.

The second, submitted in June 2020, repeated the request to have the issues in the five areas set forth in the first submission

reflected in the NAP, and also called for formulation of specific process for implementation, monitoring and update with the participation of all stakeholders, as well as of inclusion in the NAP of the human rights impact of COVID-19 and the corresponding government response.

On 9 November 2020, after the publication of the NAP, the Advisory Committee and the Working Group issued their joint comments respectively. Such collaboration among stakeholders representing different positions is noteworthy.

Remaining Issues

On 16 October 2020, the day the NAP was published, the Civil Society Platform for Japan’s National Action Plan on Business and Human Rights (BHR-NAP Platform) in which HURIGHTS Osaka is also participating, issued a statement saying that everything depends on future efforts.

In the statement, the eight issues which the Platform has been requesting consistently throughout the formulation process were reiterated, namely:

- (1) ensure an inclusive and transparent formulation process;
- (2) ensure that the plan is based on international human rights standards and the UNGPs;
- (3) ensure policy coherence,
- (4) ensure meaningful consultation with stakeholders;

- (5) identify adverse human rights impacts and analyze the gaps;
- (6) fully consider specific measures to address the adverse impacts,
- (7) take full account of vulnerable and marginalized people, as well as of the principle of equality and non-discrimination, and
- (8) include a concrete roadmap towards establishing a national human rights institution.

The draft NAP underwent a number of revisions and additions based on some of the views of the BHR-NAP Platform on the eight issues, views expressed in the public comments, and views and requests from stakeholders and experts. BHR-NAP Platform again requested for the consideration of the eight issues even though they were partially referred to in the NAP, whose effective implementation “depends on future efforts.”

The fact that the formulation process went ahead without analyzing the gaps in order to examine whether or not the current policies were sufficient to identify adverse human rights impacts and to address them in particular, may create major problems ahead. Many of the “measures” listed in the NAP are taken from existing policies, and do not consider results of sufficient analysis of gaps. Also, the five “general priority areas” have not been determined through identification of adverse human rights impacts and gap analysis.

Unfinished Project

The NAP is an “evolving policy strategy” and is supposed to be a living document that would be continuously updated. Japan’s NAP will also be revised after five years. In that sense, the NAP remains essentially “unfinished.”

However, Japan’s NAP is an unfinished project in another sense. It is also unfinished in the sense that at the moment there is no confirmation that the fifty-five “specific measures to be taken” are based on the UNGPs and therefore are designed to address the adverse human rights impacts. That confirmation is left to the future implementation, monitoring and revision process.

Meanwhile, the NAP has been launched. Regardless of its substance, it will have certain impact in the Japanese society and will be discussed in many ways. The most important point in the UNGPs, and hence in the NAP, is to protect people from adverse human rights impacts caused by business enterprises, and to provide remedies. Would we be any closer to even a little lessening of the adverse human rights impacts exacerbated by the COVID-19 pandemic and climate change crisis within and outside of Japan, and to creating a society in which people are treated with respect? Everything depends on future efforts.

Hideki Matsuoka is a Researcher of HURIGHTS OSAKA.

For further information, please contact HURIGHTS OSAKA.

Endnotes

- 1 *Guidance on National Action Plans on Business and Human Rights*, UN Working Group on Business and Human Rights, page i, www.ohchr.org/Documents/Issues/Business/UNWG_NAPGuidance.pdf.
- 2 “Business and Human Rights,” Ministry of Foreign Affairs, www.mofa.go.jp/fp/hr_ha/page23e_000551.html.
- 3 *Guidance on National Action Plans on Business and Human Rights*, op. cit., page 4.

Analysis of India's Responsible Business Framework

Namit Agarwal

In India, the concept of responsible business conduct finds semblance with the Gandhian principle of Trusteeship.¹ During India's independence struggle, Gandhi introduced the concept of Trusteeship as an economic construct for the protection of human dignity instead of mere material prosperity. Under the Trusteeship principle, businesses are considered trustees of societal wealth. Businesses as trustees must act in the best interest of the society. Much like the concept of stakeholder capitalism, Trusteeship prioritizes business responsibility towards stakeholders over that towards the shareholders.

Commitment to Human Rights

The fundamental rights and freedoms enshrined in the Indian Constitution provide a robust constitutional framework to locate the responsibilities and obligations of business enterprises. Right to Equality prohibits discrimination on grounds of religion, race, caste, sex, or place of birth. Right against Exploitation prohibits forced and child labor. The Constitution also includes provisions for just and humane working conditions, maternity relief, living wages, participation of workers in managing industries, affirmative action, and environmental protection.

India is signatory to several international treaties and conventions with many exceptions such as the International Convention on the Protection of the Rights of All Migrant Workers and Their Families (2003), Collective Bargaining Convention (1981), Occupational Safety and Health (1981), etc.

Before the COVID-19 pandemic, India was one of fastest growing economies in the world. India's annual gross domestic product (GDP) growth rate for the last decade has been over 6 percent on an average.² India added thirty-four new billionaires³ in 2019 to attain the third spot on the global list of ultra-rich persons. However, this is in contrast with high levels of economic inequality, environmental degradation,⁴ high unemployment,⁵ and rising dissent.⁶ In 2019, the richest 1 percent in India held more than four times⁷ the wealth held by the bottom 70 percent of the country's population.

Policy Timeline

In the last decade, India has taken several policy actions to strengthen the transparency, and accountability of businesses towards societal and environmental impacts.

In 2011, the Indian government introduced National Voluntary Guidelines (NVGs) on Social,

Environmental and Economic responsibilities of business.⁸ The NVGs, for the first time, provided a government framework on business responsibility. The NVGs were updated to National Guidelines on Responsible Business Conduct (NGRBC)⁹ in 2019. Two prominent changes in the updated guidelines were – the term “voluntary” was dropped from the name and NGRBC was aligned with international frameworks such as the Social Development Goals (SDGs), United Nations Guiding Principles on Business and Human Rights (UNGPs) and OECD Guidelines for Multinational Enterprises (OECD MNE Guidelines).

In 2012, India's securities market regulator the Securities Exchange Board of India (SEBI) adopted the NVGs framework and introduced a mandatory reporting framework, Business Responsibility Report (BRR)¹⁰ for the top one hundred companies listed on Indian stock exchanges by market value. The mandatory reporting requirements were expanded from top one hundred to top one thousand listed companies between 2012 – 2019. Recently, SEBI invited public comments on an updated BRR renamed as Business Responsibility and Sustainability Reporting¹¹ in alignment with the changes from NVGs to NGRBC.

In 2013, a provision was introduced in the Companies Act for mandatory spending on corporate social responsibility and recognized the Directors' fiduciary duties towards all stakeholders. More recently, SEBI introduced a Stewardship Code¹² for all mutual funds and Alternative Investment Funds. It is expected that other categories of financial institutions will come under the ambit of the Stewardship Code soon.

In 2018, with the release of zero draft National Action Plan (NAP) on Business and Human Rights, the Indian government officially committed to developing a NAP by 2020. The NAP zero draft was merely a listing of relevant existing legislations and policies categorized under the three UNGPs pillars - protect, respect, and remedy. In early 2020, the Ministry of Corporate Affairs invited public comments and inputs to "inform the NAP development process." An extensive and participatory national baseline assessment is a crucial next step for the NAP to anticipate and address key implementation challenges. As of early December 2020, the Indian NAP has not yet been launched.

Policy actions on strengthening company disclosures on environmental, social and governance factors has led to increased awareness with large companies to a large extent. Corporate disclosures are a very significant first step towards accountability and positive impact. However, disclosures alone do not translate into impact. An assessment¹³ of the disclosures of top one hundred companies listed on Bombay

Stock Exchange between 2014 – 2016 finds shortcomings in disclosure quality and consistency. On one hand, a trend of increasing disclosures was observed on issues such as non-discrimination and corporate social responsibility. On the other hand, not much change in disclosures was observed on issues such as stakeholder engagement and transparency in supply chains.

Investing based on environmental, social, and governance (ESG) considerations has gained significant traction¹⁴ globally. The global ESG investment market is calculated to be over thirty trillion US dollars¹⁵ growing at a compound annual growth rate (CAGR) of 16 percent. In comparison, the ESG investments market in India is calculated to be around twenty-eight billion US dollars growing marginally at one-third the rate of global ESG market. Several domestic Asset Management Companies (AMCs) have introduced¹⁶ mutual funds aligned with ESG principles. Two of the major stock exchanges in India, Bombay Stock Exchange and National Stock Exchange, have both introduced ESG indices in recent years. ESG investors have a high potential leverage to influence company actions, it is perhaps too early to measure their influence on Indian companies at this point.

Ground Realities

The Indian economy is predominantly informal with over 90 percent employment in the informal sector. A significantly large part of business impact on society and environment is therefore likely

to be outside the formal sector. One of the limitations of the responsible business policies in India is that these policies are designed for the formal sector leaving a significantly large part of business sector outside its direct scope.

In a stark contrast to the encouraging policy actions on responsible business front, recent changes in labor, land, environment, and agriculture laws have been criticized to be detrimental for communities and the environment. Some of these changes even contradict NGRBC principles. The Indian Parliament recently enacted four Labour Codes¹⁷ presented by the government as a historic labor reform, consolidating over twenty-nine central labor laws. Trade unions have opposed these changes in labor laws as being "anti-worker."¹⁸ A draft notification on Environment Impact Assessment (EIA) issued by the government was criticised¹⁹ for weakening environmental regulations and designed to silence affected communities. It is important to note that existing policies on responsible business rely on self-disclosures, with a provision on comply or explain. There are no provisions to ensure or to validate implementation of the principles and disclosures.

Effective implementation and monitoring of compliance relies on front-line state capacity in the hands of local labor inspectors, pollution control officers and law enforcement agencies. The paradox of India's well-designed policies is an elite well-functioning national bureaucracy coupled with a chaotic and dysfunctional²⁰

local government system. Implementation of policy is significantly impacted²¹ due to bureaucratic overload²² and inadequate resourcing at the front-line. This weak implementation capacity often means that large parts of business operations in lower tiers, supply chains, farms and communities practically remain out of policy scope. Land conflicts have impacted²³ an estimated 7.2 percent of India's GDP and over 6.5 million people in 2018-2019. Access to remedy and justice is severely constrained due to an extremely overburdened judiciary with over thirty-four million²⁴ cases pending in lower courts in 2020.

Way Forward

Policy contradictions, weak implementation mechanisms and an overburdened access to justice system can be significantly counter-productive to India's responsible business agenda. It is important to enable the large micro, small and medium enterprises (MSMEs) to adopt NGRBC. SEBI's new reporting framework includes a lighter reporting format for the MSME sector. Economic viability and capacity constraints of the MSME sector could impact greater adoption of responsible business policies. Role of lead firms in supply chains that source from MSMEs, business membership organizations and financial institutions is crucial in facilitating responsibility and transparency of MSMEs in supply chains.

Addressing policy contradictions in labor laws,

environment laws, land ownership and agriculture can provide a consistent policy framework that supports sustainable development. Strengthening community consultation processes and community-based institutions can address the power imbalance between communities, corporations, and government. Empowered community collectives can better engage in negotiation processes (e.g., land acquisition, environment, and social impact, etc.) and overcome existing challenges of information asymmetry. Considering challenges of state capacity in implementing policies and legislations it is perhaps better to rely on local, participatory, and agile governance mechanisms. Strengthening access to justice in the context of responsible business is matter of urgency. Enhancing access to non-state-based grievance mechanisms in cooperation and collaboration with necessary stakeholders could possibly overcome the situation of an overburdened local judicial system.

Namit Agarwal is Asia Policy Lead at World Benchmarking Alliance.

For further information, please contact: Namit Agarwal, World Benchmarking Alliance, Rhijnspoorplein 10-38, 1018 TX Amsterdam, The Netherlands; e-mail: n.agarwal@worldbenchmarkingalliance.org; twitter handle: <https://twitter.com/sociopreneur/>; www.worldbenchmarkingalliance.org.

Endnotes

- 1 Y. Kesavulu, 'Gandhian Trusteeship as an 'Instrument of Human Dignity'', Comprehensive Website by Gandhian Institutions-Bombay Sarvodaya Mandal & Gandhi Research Foundation, www.mkgandhi.org/articles/trusteeship.htm.
- 2 GDP growth (annual %) - India, The World Bank, <https://data.worldbank.org/indicator/NY.GDP.MKTP.KD.ZG?end=2019&locations=IN&start=2009>.
- 3 Sai Ishwarbharath, "India Mints Three Billionaires A Month: Hurun Rich List 2020," Bloomberg, 26 February 2020, www.bloombergquint.com/global-economics/india-is-now-home-to-most-billionaires-after-china-us-hurun-rich-list-2020.
- 4 "Air pollution now biggest health risk in India, says report," *The Hindu*, 22 October 2020, www.thehindu.com/news/cities/Delhi/air-pollution-now-biggest-health-risk-in-india-says-report/article32912916.ece.
- 5 Madan Sabnavis, "NSSO data confirms India's jobs crisis: Unemployment at 45-year high of 6.1%, way out is to make economy grow," Firstpost, 31 January 2019, www.firstpost.com/business/nssodata-confirms-indias-job-crisis-with-unemployment-at-45-year-high-of-6-1-solution-lies-in-economic-growth-5998071.html.
- 6 Meenakshi Ganguly, "Dissent Is 'Anti-National' in Modi's India-Government Continues to Clamp Down on Criticism," Human Rights Watch, www.hrw.org/news/2019/12/13/dissent-anti-national-modis-india.
- 7 "Wealth of India's richest 1% more than 4-times of total for 70% poorest: Oxfam," *The Economic Times*, <https://economictimes.indiatimes.com/news/economy/indicators/wealth-of-indias-richest-1-more>

- than-4-times-of-total-for-70-poorest-oxfam/articleshow/73416122.cms?from=mdr.
- 8 *National Voluntary Guidelines on Social, Environmental and Economical Responsibilities of Business*, Ministry of Corporate Affairs, Government of India, 2011, www.mca.gov.in/Ministry/latestnews/National_Voluntary_Guidelines_2011_12jul2011.pdf.
 - 9 *National Guidelines on Responsible Business Conduct*, Ministry of Corporate Affairs, Government of India, 2019, www.mca.gov.in/Ministry/pdf/NationalGuideline_15032019.pdf.
 - 10 *Format for Business Responsibility Report (BRR)*, Securities and Exchange Board of India, www.sebi.gov.in/legal/circulars/nov-2015/format-for-business-responsibility-report-brr-30954.html.
 - 11 *Consultation Paper on the format for Business Responsibility and Sustainability Reporting*, Securities and Exchange Board of India, www.sebi.gov.in/reports-and-statistics/reports/aug-2020/consultation-paper-on-the-format-for-business-responsibility-and-sustainability-reporting_47345.html.
 - 12 *Stewardship Code for all Mutual Funds and all categories of AIFs, in relation to their investment in listed equities*, Securities and Exchange Board of India, www.sebi.gov.in/legal/circulars/dec-2019/stewardship-code-for-all-mutual-funds-and-all-categories-of-aifs-in-relation-to-their-investment-in-listed-equities_45451.html.
 - 13 Namit Agarwal, "Measuring Business Responsibility Disclosures of Indian Companies: A Data-Driven Approach to Influence Action," Cambridge University Press: 23 November 2017, www.cambridge.org/core/journals/business-and-human-rights-journal/article/measuring-business-responsibility-disclosures-of-indian-companies-a-data-driven-approach-to-influence-action/DAD9852706B2C1DF89E5688F4AAF0E7B.
 - 14 Elliot Smith, "The numbers suggest the green investing 'mega trend' is here to stay," CNBC, 14 February 2020, www.cnbc.com/2020/02/14/esg-investing-numbers-suggest-green-investing-mega-trend-is-here.html.
 - 15 *Global Sustainable Investment Review 2018*, Global Sustainable Investment Alliance, www.gsi-alliance.org/trends-report-2018/.
 - 16 "Sustainable investing: Why investing in ethically sound companies is a trend that is here to stay," 14 October 2020, *Financial Express*, www.financialexpress.com/market/cafainvest/sustainable-investing-why-investing-in-ethically-sound-companies-is-a-trend-that-is-here-to-stay/2105107/.
 - 17 See Ministry of Labour and Employment website, <https://labour.gov.in/labour-codes>.
 - 18 "Labour codes passed are anti-worker, say trade unions," *The Hindu*, www.thehindu.com/news/national/labour-codes-anti-worker-say-trade-unions/article32680053.ece.
 - 19 Satyajit Sarna, "Draft EIA Notification is an attempt to weaken regulation, silence affected communities," *Indian Express*, 27 June 2020, <https://indianexpress.com/article/opinion/columns/ease-of-harming-environment-6478163/>.
 - 20 Lant Pritchett, "Is India a Flailing State?: Detours on the Four Lane Highway to Modernization," Harvard Business School Faculty Research Working Paper Series RWP09-013, 2009, John F. Kennedy School of Government, Harvard University, <https://dash.harvard.edu/handle/1/4449106>.
 - 21 Akshay Mangla, "Bureaucratic Norms and State Capacity in India: Implementing Primary Education in the Himalayan Region," Working Paper, Harvard Business School Working Paper Series, 2015, www.hbs.edu/faculty/Pages/item.aspx?num=46981.
 - 22 Dasgupta, Aditya and Kapur, Devesh, *The Political Economy of Bureaucratic Overload: Evidence from Rural Development Officials in India* (October 23, 2017). Available at SSRN: <https://ssrn.com/abstract=3057602> or <http://dx.doi.org/10.2139/ssrn.3057602>.
 - 23 Thomas Worsdell and Kumar Sambhav, "Locating the Breach," *Land Conflict Watch*, 2020, https://global-uploads.webflow.com/5d70c9269b8d7bd25d8b1696/5ecd20dd626f166d67f67461_Locating_the_Breach_Feb_2020.pdf.
 - 24 Sasmit Patra, "Pending Cases in Courts", Unstarred question No. 1381, Rajya Sabha, Government of India, 2020, page 31, <https://doj.gov.in/sites/default/files/RS-22.9.20.pdf>.

COVID-19: Community Insights from Asia-Pacific*

Risk Communication and Community Engagement Working Group

Communities are key in stopping the spread of COVID-19. Only by understanding how people communicate, what they know, their needs and gaps in understanding about COVID-19, can humanitarian organizations achieve a community-driven response that will reduce the spread of the virus.

Perception Survey

As part of the inter-agency Risk Communication and Community Engagement (RCCE) Working Group, the International Federation of Red Cross and Red Crescent Societies (IFRC), Red Cross and Red Crescent National Societies, United Nations Office for the Coordination of Humanitarian Affairs (OCHA), UNICEF and World Health Organization (WHO) undertook a perception survey on COVID-19 in Indonesia, Malaysia, Myanmar and Pakistan from 29 May to 20 July 2020 with a two-week collection time frame in each country.

In total, 4,993 respondents (52.4 percent male, 47.28 percent female, and 0.67 percent not disclosed) participated in the four countries. Of these participants, the majority were aged 18 to 29, followed by 30 to 39 years old.

Education levels of participants differed across the four countries, with Pakistan having the greatest proportion of participants without any formal education (7.9 percent) or with primary education only (24.4 percent). In contrast, only 1.1 percent of respondents in Indonesia stated to have not attended or attended only primary school, and 82.2 percent shared that they held a secondary school degree. This strong discrepancy is likely also due to the much smaller sample size in Indonesia which was only collected online.

Question on COVID-19 Stigma

One survey question dealt with stigma (Question 11): Do you think a specific group is responsible for spreading COVID-19?

Around one in three respondents across the four countries fully believe that a specific group is responsible for spreading COVID-19 (35 percent in Indonesia, 50 percent in Malaysia, 28 percent in Myanmar, and 17 percent in Pakistan said Yes to the question whether they thought a specific group was responsible for spreading COVID-19). If we combine the groups that thought that a specific group was responsible with those who thought a specific group was “a little responsible” the number rises to one in two respondents

(55 percent in Indonesia, 69 percent in Malaysia, 32 percent in Myanmar, 30 percent in Pakistan). The belief that a specific group is responsible for spreading COVID-19 is most prevalent in Malaysia (one in two respondents), and lowest in Pakistan (one in five respondents).

In Myanmar, the groups most often thought to be responsible are people from China and people coming back from a foreign country. This can likely be attributed to the facts that the virus originated in China, which has a long, porous land border with Myanmar; and that – according to OCHA at the time when this survey was conducted – there was “limited local transmission with [the] majority of cases confirmed among returning migrants.” In Myanmar, respondents who are male, over fifty years old, and without education, were more likely to believe that a specific group is responsible for spreading the virus.

In Malaysia, 69 percent of respondents believe that a specific group is responsible for spreading COVID-19, with people who are fifty years and above agreeing about 9 percent more than under fifty-year-olds. Malaysian respondents with only secondary-level education and below tend to agree more that a specific group is responsible by about 4 percent

than respondents with tertiary education. Moreover, respondents from urban areas agree slightly more (3 percent) than from rural Malaysia.

Among the Malaysian respondents who believe a specific group is responsible, foreigners are mentioned frequently with respondents specifically naming Chinese people, returning migrants, foreign tourists, “illegal foreigners,” migrant workers, and foreigners in general. This is followed closely by COVID-19 positive people and people who are not following government regulations. This is consistent with reports of moves made by Malaysia on foreign tourists and migrants during COVID-19 (particularly undocumented migrants), including tightening regulations to restrict entry¹ and increasing detention and deportation efforts,² and also supports evidence of declining positive public opinion on foreigners³ in general since the beginning of the pandemic.

In Indonesia, a large proportion (55 percent) of respondents believes COVID-19 is spread by a specific group. The majority believe the spread occurs because of some people who refuse to follow government regulations such as not wearing masks, going out unnecessarily, and travelling to and from COVID-19 high-risk areas. There is also a small but notable group that believes that COVID-19 spread because the government did not anticipate the level of spread and did not effectively implement lockdown and strict regulations. In Pakistan, most respondents think that insufficient control

measures related to travel, isolation, and quarantine facilities established by the government at the Iranian border as the cause for the spread of COVID-19. Secondly, nationals (for instance pilgrims coming back from Iran and Syria and settling in Sindh and Punjab) and foreigners returning to Pakistan, and finally, people from China are held responsible for the spread of COVID-19.

For all four countries, higher education had a small impact on whether respondents thought a specific group was responsible for COVID-19, with those having tertiary education being slightly less likely to hold a specific group responsible.

Information Needs and Community Engagement

There is a common trend of COVID-19 information needs and community engagement preferences across the four countries. Overall, the respondents suggest they primarily stay informed about COVID-19 through the Ministry of Health, Social Media, and Television (Question 14). As a young woman in Myanmar said: “In COVID times, [our TV tuned in on] MRTV [government channel] is constantly on. Our family gathers around it all day.”

“I always check – is the MOHS logo there?” reported a young man in Myanmar, “I only believe the guidance if their logo is there. Others are just advertising products.”

This suggests that in Myanmar communications about COVID-19 should be made via government agency websites and TV, radio stations, and print

media alongside popular social networking channels, such as Facebook and WhatsApp, to ensure that information is not restricted to those with internet access.

In Indonesia, the respondents explain they stay informed mostly through online channels including websites or online news pages, social media, and search engines such as Google. However, these findings are most likely a correlation with the fact that data in Indonesia was exclusively collected through online surveys. Therefore respondents were more likely to be digital natives with regular internet access.

While there is some variety in terms of most used information channels, the most trusted information source in reporting about the COVID-19 (Question 15) across all four countries is television with 61.13 percent, followed by radio stations and printed newspapers. This is followed by radio stations and printed newspapers in both Malaysia and Myanmar. Unlike those in these two countries, the respondents in Pakistan say they trust more the search engines and websites or online news pages, after TV. While respondents in Indonesia report that they mostly trust information from WHO, community health workers, UNICEF, Ministry of Health (MoH), and Red Cross volunteers over television.

Interestingly, in Indonesia and Malaysia, while online channels such as social media, websites/online news, and search engines are used frequently, they are not as well trusted as other less frequently used

channels and sources such as WHO, radio, community health workers, UNICEF and Red Cross volunteers. This suggests that to have effective communication, we need to engage people through well-trusted sources and frequently used channels; for example, MoH or WHO representatives communicating through TV or social media.

Respondents across the four countries say they received information about protection measures, symptoms, and transmission of the virus (Question 13). This information is distributed almost equally between male and female groups in the communities.

Recommendations

- Stigma is a key challenge in all four countries. Almost half of all respondents in Pakistan, Indonesia, Malaysia, and Myanmar believed that a specific group is at fault for the spread of COVID-19. Those perceived to be at fault differs by country.

Findings suggest that more work on addressing stigma is essential to foster community cohesion and address discrimination, particularly against vulnerable groups such as migrants. Continuing to listen and analyze whom individuals hold responsible for the spread of COVID-19 is key to making people feel heard, while also clarifying misconceptions about groups perceived to be responsible for spreading the virus.

- Awareness of COVID-19 is universal in Myanmar,

Indonesia and Malaysia. However, in Pakistan, nearly 10 percent of respondents were not aware of COVID-19.

Findings suggest that in Pakistan more information on COVID-19 through multiple channels needs to be provided, with a focus on reaching people relying on traditional media and face-to-face communication.

- Washing hands, wearing masks, and staying at home are the top COVID-19 prevention measures across the four countries.

Overall, participants are clear on COVID-19 preventative measures. Instead of blanket messaging that may contribute to “messaging fatigue,” communicators should find out which questions remain unanswered in local contexts and seek to answer these.

- Information most sought by surveyed communities includes treatment options and what to do if a family member is sick. Additional research and literature emphasize that individuals are more likely to follow instructions to keep others safe rather than themselves.

Findings suggest that people are interested to hear about what is being done to find treatments and vaccines against COVID-19. Moreover, the findings suggest that content should give practical tips on how to keep family members and others vulnerable to the disease safe.

- More than half of all participants shared that they have worries and fears related to COVID-19. The main worries for respondents were around losing a loved one and getting sick (73 percent of respondents frequently worry about). Respondents also reported that they are frequently worried about the health system being overloaded (72 percent). This shows a significant emotional and mental stress that individuals are facing in addition to other challenges (e.g., economic) and highlights the importance of a response that acknowledges and addresses psycho-social needs.

Accessible and localized mental health and psycho-social support are key. Engagement should focus on actionable advice on how to keep family members safe and care for them.

*This is an edited excerpt of the report released by the inter-agency RCCE working group on 17 September 2020, and is available at Reliefweb, COVID-19: Community Insights from the Asia Pacific Region - Indonesia, Malaysia, Myanmar, and Pakistan (September 2020), <https://reliefweb.int/report/indonesia/covid-19-community-insights-asia-pacific-region-indonesia-malaysia-myanmar-and>.

For further information, please contact: RCCE working group Co-Chairs:

- *Ljubica Latinovic, Risk Communication Advisor,*

World Health Organization (WHO) – e-mail: latinovicl@who.int;

- Viviane Fluck, Regional Community Engagement and Accountability Coordinator, International Federation of Red Cross and Red Crescent Societies (IFRC) – e-mail: viviane.fluck@ifrc.org;
- Husni Husni, Humanitarian Affairs Officer, (Community Engagement / Accountability to Affected Populations), Office for the Coordination of Humanitarian Affairs (OCHA) – e-mail: husni.husni@un.org.

Endnotes

- 1 “Covid-19: Immigration releases list of countries whose citizens are barred from entering M’sia,” *The Star*, www.thestar.com.my/news/nation/2020/09/07/covid-19-immigration-releases-list-of-countries-whose-citizens-are-barrd-from-entering-m039sia.
- 2 Emily Ding, “Malaysia’s Coronavirus Scapegoats,” *Foreign Policy*, 19 June 2020, <https://foreignpolicy.com/2020/06/19/malaysias-coronavirus-scapegoats/>.
- 3 Charles Hector and Adrian Pereira, “End discrimination against foreigners and migrants in COVID-19 responses,”

Malaysiakini, 30 Jun 2020. www.malaysiakini.com/announcement/532379; A. Ananthalakshmi, Rozanna Latiff, “Rohingya targeted in Malaysia as coronavirus stokes xenophobia,” Reuters, www.reuters.com/article/us-health-coronavirus-malaysia-rohingya/rohingya-targeted-in-malaysia-as-coronavirus-stokes-xenophobia-idUSKBN22Z00K.

COVID-19 and Belt and Road

(Continued from page 4)

recommendations in our thematic reports to all states and all companies on how they should respond to business-related human rights abuses.

In terms of the implementation of the UN Guiding Principles, what do you see as the role of politics and society?

A lack of political will is one of the major issues. The political will to promote business respect for human rights could be built through political processes. I would say that the business and human rights agenda should be on the political manifestos of different political parties. When elections are taking place, at the national level or at the provincial or local level, business and human rights issues should be at the centre of the political discourse. Let’s say

if I’m a candidate, I should be saying that if I win this election, I will do “a, b, c” to address labour rights issues, climate change and environmental pollution. Business and human rights is something which impacts everyone, and that’s why current political culture could be changed if all of us more proactively engage in these election processes.

Moreover, I think we also need to involve other institutions such as universities, schools, religious institutions, investors, consumer councils and trade unions in the business and human rights agenda—everyone has a role to play in their own settings. The UN Working Group very much hopes that in coming years all societal institutions begin recognising these connections and start playing a more proactive role in the future in promoting business respect for human rights.

*This article was originally published in the *Melbourne Asia Review*, Asia Institute. It is available at: <https://melbourneasiareview.edu.au/interview-covid-19-and-belt-and-road-some-of-the-issues-impacting-business-and-human-rights/>

Dr Surya Deva is a Member of the United Nations Working Group on Business and Human Rights, a five-member group which promotes the implementation of the UN Guiding Principles on Business and Human Rights (UNGPs). He is also an Associate Professor at the School of Law of City University Hong Kong.

For further information please contact: Surya Deva, School of Law, City University Hong Kong; e-mail: suryad@cityu.edu.hk.

HURIGHTS OSAKA Calendar

The 10th volume of *Human Rights Education in Asia-Pacific* is planned to be printed in December 2020.



PRINTED MATTER

AIR MAIL

May be opened for inspection by the postal service.

HURIGHTS OSAKA, inspired by the Charter of the United Nations and the Universal Declaration of Human Rights, formally opened in December 1994. It has the following aims: 1) to engender popular understanding in Osaka of the international human rights standards; 2) to support international exchange between Osaka and countries in Asia-Pacific through collection and dissemination of information and materials on human rights; and 3) to promote human rights in Asia-Pacific in cooperation with national and regional institutions and civil society organizations as well as the United Nations. In order to achieve these goals, HURIGHTS OSAKA has activities such as Information Handling, Research and Study, Education and Training, Publications, and Consultancy Services.

FOCUS Asia-Pacific is designed to highlight significant issues and activities relating to human rights in the Asia-Pacific. Relevant information and articles can be sent to HURIGHTS OSAKA for inclusion in the next editions of the newsletter.

Sender: HURIGHTS OSAKA

(Asia-Pacific Human Rights Information Center)

8F, CE Nishihonmachi Bldg., 1-7-7 Nishihonmachi, Nishi-ku, Osaka 550-0005
Japan

Phone: (816) 6543-7002

Fax: (816) 6543-7004

E-mail: webmail@hurights.or.jp

Website: www.hurights.or.jp



HURIGHTS OSAKA