

Context of the Northeast Asian Subregion – National Development Policies and Business

This module has the following objectives:

Enable the participants to

- Discuss the national and local development policies of the government and their support for corporate investments;
- Determine whether company operations subject to these national and local development policies have adverse impacts on disadvantaged groups;
- Discuss other development policies that protect and realize human rights and analyze how they relate to development policies that support company operations with adverse impacts; and
- Discuss how these business-related “human rights impacts” in the subregion/country are addressed in a general sense in Northeast Asia/country.

Time: 3 HOURS AND 15 MINUTES

Materials:

- Big size papers, colored pens, writing papers, adhesive tapes;
- Equipment - computer, projector, screen;
- Video/documents on the socio-economic situation of the different countries in Northeast Asia and also of the subregion as a whole.

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I. Procedure

a. Opener - 30 MINUTES

Show a 10-minute video on the socio-economic situation of Northeast Asia (or a country in the subregion).

Ask participants to think of the following items:

- factors that support the significant role of companies in the economy;
- areas of the economy where companies play significant role.

In case there is no appropriate video available, a reading material on the subject or a powerpoint presentation can be used instead.

Ask some participants for comments on the items listed and note them on the board.

b. Activity - 1 HOUR

In order to deepen the understanding of the socio-economic situation of Northeast Asia (or a country in the subregion), tell the participants to examine how national policies relate to business.

Ask the participants to discuss in groups a specific case or related material and determine whether or not the adverse impacts involved are related to any national and/or local development policies. Discussion on development policies in Annex A can be used in the group discussion.

Instruct the participants to identify specific issues related to the national policies-business link and organize them using a mind map.

The reports may cover the following topics:

1. Specific business fields that are affected by national economic and development policies;
2. Economic policies that promote industrialization or economic growth with little or vague reference to the protection of the workers and the community adjacent to the company premises;
3. Government programs that support private investment without social protection clauses;
4. Fiscal incentives such as tax exemption/reduction for companies as well as measures that do not protect workers' continued employment.

Write on the board the highlights of the group reports.

c. Input - 1 HOUR

Provide an input on:

- development policies and corporate investments;
- development policies and disadvantaged groups.

The input may include past and current social and economic development policies (see Annexes B and C for examples) and stress the following:

Development policies and corporate investments	Development policies and disadvantaged groups
<ul style="list-style-type: none"> • Strong role of governments in the development of countries • “Investment protectionism” • National competitiveness • Global/multilateral trade commitments • Tax benefits and other incentives to investors • Infrastructure development (roads, dams, etc.) program • Natural resources exploitation • Environmental protection 	<ul style="list-style-type: none"> • Identification of specific disadvantaged groups (such as indigenous peoples, farmers, persons with disabilities, workers) in development policies • Social safety net • Principles to protect disadvantaged groups (such as the principle of free, prior and informed consent; active participation in the development process) • Environmental and social protection measures • Inclusive development • Promotion of corporate social responsibility

Provide additional input on bilateral and multilateral trade agreements that influence national development policies and have potential impact on disadvantaged groups.

Have an open forum on development policies in relation to company operations, and the protection of the disadvantaged groups.

In plenary, brainstorm on human rights that should guide development policies. The following human rights are likely to be relevant:

- Right to work;
- Right to adequate food;
- Right to adequate housing;
- Right to health;
- Right to education;
- Right to personal security and privacy;
- Right of equal access to justice;
- Political rights and freedoms.

Introduce some of the key principles stated in the United Nations Declaration on Right to Development, such as the following:

1. Right to development as an inalienable human right;
2. Human person as the central subject of development and active participant and beneficiary of the right to development;
3. Right and duty of States to formulate appropriate national development policies that aim at the constant improvement of the well-being of the entire population and of all individuals;
4. Duty of States to co-operate with each other in ensuring development and eliminating obstacles to development;
5. Duty of states to take all necessary national measures to ensure, inter alia,
 - equality of opportunity for all in their access to basic resources,
 - education,
 - health services,
 - food,
 - housing,

- employment,
- fair distribution of income,
- active role of women in the development process, and
- eradication of all social injustices;

6. Popular participation in all spheres of development and in the full realization of all human rights;

7. Full exercise and progressive enhancement of the right to development.

See Annex D for some relevant provisions of the UN Declaration.

d. Activity

Group Work – 30 MINUTES

Using the group mindmaps, ask the participants to discuss what measures are being done on the human rights issues. Ask the participants to discuss ways by which the identified measures have included or excluded the affected people (workers, members of affected communities, etc.) in resolving issues, and explain their involvement if any.

Tell the participants to add to the mindmaps the results of their group discussion, and report them to the plenary. Write on the board the different measures identified by the participants.

II. Summary

Time: 15 MINUTES

Summarize the main points in the discussion particularly stressing the following:

1. Elements of the economy that support significant role of companies;
2. Development policies that support companies and adversely affect disadvantaged groups at the same time;
3. Policy measures that protect the rights of disadvantaged groups from adverse impact of development projects done by companies;
4. Human rights principles that should govern development policies;
5. Concrete forms of business-related “human rights impacts;”
6. Categories of people affected by the issues;
7. Concrete measures being done on the issues, and role of the affected people in these measures.

Annex A

Sample National Development Policies

China

In 2006 and 2008, the Bank of China and the Industrial Management Company launched their first “socially responsible investing” (SRI) Funds to international and domestic investors respectively. Since 2008, the securities information companies and the Stock Exchange have also issued several indexes concerning environmental protection and social responsibility. Moreover, the Chinese government has recently begun to use financial channels to improve corporate environmental performance. The Environmental Protection Agency of China (SEPA), the Bank of China, and the China Banking Regulatory Commission (CBRC) promulgated a joint document, “Opinion on Enforcement of Environmental Law and Prevention of Credit Risk,” encouraging Chinese banks to include corporate environmental performance into credit assessment. With the release of the Opinion, the SEPA immediately initiated the green loan program by blacklisting thirty enterprises on account of their serious environmental violations and reporting the information to the credit management system of the Bank of China. In addition to the green credit scheme, the SEPA coordinated with the China Securities and Regulatory Commission (CSRC) to issue a series of measures generally called “green securities.” Under the green securities scheme, companies in the thirteen high-pollution and high-energy-consumption industries are subject to environmental performance reviews when applying for initial public offering (IPO) or refinancing. Some large companies, including the China Coal Energy Corporation, the second-largest coal producer by output in China, failed their first IPO applications due to failure to strictly implement environmental impact evaluation and other measures relating to environmental protection required by law.

(Based on Huang Zhong and Cheng Qian, *Merging Business and Human Rights in China: Still A Long Way to Go*, page 31)

Mongolia

The revised Minerals Law of Mongolia has provisions that are relevant to human rights issues faced by communities where mining operations are held. The law prohibits mining activities in areas that have water resources (rivers, water basins, water sources for water supply and sewerage, and areas with mineral water), and also in areas designated as “city and village tenure land, and within 5 kilometers from its borders” (Article 5). The law authorizes the “Local Self-Governing Authorities and Local Governments” to prohibit mining operations in specific areas such as those necessary for maintaining historical and cultural heritage, and for ecological balance (Article 20.1.1). These local governing authorities and local governments may also propose to the national government to exclude from mining operations, areas needed for the “special use” of a local area (Article 20.1.2).

Additionally, the local governing authorities and local governments have the power to terminate the use of land by mining companies if they violate the area coverage of their mining license. They also have the authority to monitor the implementation of the mining companies’ obligations to protect and conduct the rehabilitation of the environment, and protect the public health after cessation of mining operations

(Article 20, also Article 120.3). In relation to the rehabilitation of areas used in mining operations, the mining companies have to submit a tentative environmental rehabilitation work plan. After the approval of the plan, the companies have to guarantee its completion by depositing in a special bank account established by the government an amount equal to 100 percent of the “amount of expenditure for rehabilitation activity of each year.” The deposited amount shall not be used for purposes other than for rehabilitation work (Article 119). With respect to mining license, the government shall inform the public, through its own website and the media within five days from date of decision, of tender opening, receipt of applications for mining license, grant or revocation of license, extension of license period, as well as change in the size of area granted. Article 77 obliges the extraction and processing license holder to consult local citizens, whose interests maybe affected by its activities. During such consultation, said license holder shall ensure that local citizens are able to express their views and opinions.

(Based on Center for Human Rights and Development, *Human Rights in the Mining Industry of Mongolia*, pages 98-99)

Annex B
***Statement Regarding Cabinet Approval
of the Proposed Amendments to the Worker Dispatch Law***

Rikio Kozu, General Secretary
Japanese Trade Union Confederation (JTUC-RENGO)
13 March 2015

1. On March 13, 2015, the Cabinet approved proposed amendments to the Worker Dispatch Law and submitted them to the National Diet. The proposal in effect removes the upper limit on the duration of temporary staffing. The proposal will increase the ranks of long-term dispatched workers who receive low wages throughout their working lives, and will also substantially curtail workers' protection. It is deplorable that the government has submitted this new legislation, which is almost the same in content as last ones scrapped twice last year.
2. The new government proposal is not in accordance with global norms that stipulate that dispatched workers are to be hired for a limited period of time and that they should enjoy the same treatment as regular workers. The proposal seeks to introduce permanent indirect-employment practices while not addressing the inappropriate treatment of dispatched workers. It does not offer any fundamental solutions to the problems facing dispatched workers, whose wages do not rise, who get no semi-annual bonuses, and who feel that they are unable to marry and start a family due to a lack of job security.
3. The latest proposal, which is based on an agreement between the policy research chiefs of the two ruling political parties, now takes into consideration that the employment of dispatched workers should be temporary, and it clearly stipulates measures to stabilize the employment of dispatched workers. It also now includes a clause to ensure that research is conducted on the equal treatment of dispatched and regular workers. However, this latest proposal will still not be effective in protecting dispatched workers.
4. The way the proposal was submitted to the Diet is also problematic. The proposal was created based on an agreement between the two ruling political parties, which was then approved by the Cabinet and submitted to the Diet. However, in accordance with the tripartism of the International Labor Organization, labor-related legislation proposed by the government should be debated by the Labor Policy Council of the Ministry of Health, Labour and Welfare. Therefore, it is extremely problematic that the legislation was approved by the Cabinet without being debated by the council.
5. RENGO will mobilize all of its resources and lobby inside and outside of the Diet to thwart the enactment of this government proposal that would curtail workers' protection on the grounds that the numbers of low-income workers and workers without job security should not be increased.

(Source: Japan Trade Union Confederation, www.jtuc-rengo.org/updates/index.cgi?mode=view&no=360&dir=2015/03.)

Annex C

Private Employment Agencies Convention, 1997 (No. 181) (ratification: 1999) Follow-up to the recommendations of the tripartite committee (representation made under article 24 of the ILO Constitution)

THE COMMITTEE recalls that, at its 313th Session (March 2012), the Governing Body adopted the report of the tripartite committee established to examine a representation alleging non-observance by Japan of the Convention (document GB.313/INS/12/3). In paragraph 43 of the report, the tripartite committee expressed its firm hope that the new bill to revise the Worker Dispatch Law would soon be enacted into law in order to ensure “adequate protection” for all workers employed by private employment agencies in accordance with Articles 1, 5 and 11 of the Convention. The Committee notes the Government’s report which includes information in reply to its previous comments and observations made by the Japan Business Federation (NIPPON KEIDANREN) and the Japanese Trade Union Confederation (JTUC–RENGO). It also notes the observations made by the National Confederation of Trade Unions (ZENROREN), received in September 2014. The Committee recalls that the Worker Dispatch Law was revised in 2012. The Government indicates in its report that the need to review the Worker Dispatch Law approximately one year after it is enforced that is, in October 2013, was pointed out during the deliberations in the Diet. In this regard, discussions were held at the Labour Policy Council between the Government and the social partners. A report was produced in January 2014 concluding that the employment instability issue of “registration-type dispatch” (workers are only “registered” with, but not employed by, the agency prior to their work assignment) and worker dispatching to manufacturing businesses should be responded to not by the means of prohibition, but by ensuring that dispatch business operators take measures for securing employment stability of fixed-term contract dispatched workers. Based on that report of the Labour Policy Council, a bill to amend the Worker Dispatch Law was submitted to the Diet. In its observations, the NIPPON KEIDANREN indicates that it is in favour of the bill, adding that its provisions will institute a permit system for all staffing agencies, create a good business environment for staffing agencies, and ensure equality of treatment and promote career development for dispatched workers. The NIPPON KEIDANREN is of the view that these measures are expected to solve the issues relating to “registration-type dispatch” and worker dispatching to manufacturing businesses. The JTUC–RENGO indicates that it has been making strong demands to adhere to the principle that forms of dispatch working are only temporary and to strengthen adequate protection for the employees of temporary work agencies by applying the principle of equal treatment. It adds that their views were not reflected in the bill. The JTUC–RENGO is of the view that there is a danger that a legal system normalizing indirect employment would be put in place in Japan. Moreover, there is a growing concern that forms of low-pay dispatch work will be further expanded. It adds that the term limit for dispatching workers and the equal treatment principle are two global standards that are clearly recognized in the Directive on Temporary Agency Work of the European Parliament and of the Council, as well as within the legal frameworks in China and in the Republic of Korea. The Government submitted the bill to the Diet in March 2014 but it was eventually withdrawn due to lack of time for deliberation when the session ended in June 2014. The JTUC–RENGO indicates

that the bill will be resubmitted at the next session of the Diet in 2014. ZENROREN is of the view that the current state of the bill, if adopted, would likely increase the use of dispatched labour and seriously threaten the principle of direct employment. The Committee expresses its firm hope, in the same way as the tripartite committee, that the revised legislation will ensure “adequate protection” for all workers employed by private employment agencies in accordance with the Convention. The Committee invites the Government to provide a copy of the revised Worker Dispatch Law to the ILO once it has been adopted.

Article 5(1). Equality of opportunity and treatment. In paragraph 38 of the tripartite committee’s report, the Government was requested to clarify whether the provisions of Article 5(1) of the Convention apply to both the dispatch business operators and the dispatch receiving companies. The Government indicates that section 44 of the Workers Dispatch Law provides that dispatch business operators and clients are subject to the guidance and inspection of the Labour Standards Inspection Offices with respect to section 3 of the Labour Standards Law, which prohibits different forms of discrimination. Moreover, the Government adds that the dispatching business operators are subject to the guidance and supervision of Prefectural Labour Bureaus with respect to the Employment Security Law. The Committee invites the Government to continue to provide information on the application of Article 5(1) of the Convention in practice. For example, please indicate whether the authorities responsible for the application of the abovementioned legislation or tribunals have rendered decisions involving this matter which relates to the application of the Convention.

Article 11. Measures to ensure adequate protection for workers employed by private employment agencies. The Government indicates that the revised Labour Contract Act, in force since April 2013, introduced provisions to convert fixed-term labour contract into open-ended contracts, to prohibit the termination of the labour contract by the employer in certain circumstances, to prohibit the imposition of working conditions on fixed-term contract workers that are unreasonably different from those of open-ended contract workers. Furthermore, the revised Worker Dispatch Law includes measures to promote the conversion of certain fixed-term contracts into contracts of an indefinite duration and to promote education and training of dispatched workers. The Committee notes that some provisions of the revised Worker Dispatch Law will be effective as of October 2015. In its observations, ZENROREN indicates that, while in recent years the number of work-related accidents causing four or more days of absence is on the decrease for the overall workforce, the number of occupational accidents is increasing in the case of temporary workers. It adds that many user enterprises neglect health and safety considerations for dispatched workers for whom they are not directly responsible. Moreover, ZENROREN indicates that Japanese legislation does not stipulate the obligation of a user enterprise to accept collective bargaining by temporary workers. The Committee invites the Government to provide its comments in this respect. It also invites the Government to specify the manner in which the provisions guaranteeing adequate protection for the workers employed by a private employment agency in the fields of collective bargaining (Article 11(b)) and occupational safety and health (Article 11(g)) are supervised by the competent national authorities in order to ensure their effective implementation (Article 14(2)).

Articles 10 and 14. Investigation of complaints and adequate remedies. The Committee notes that 13 complaints were filed with the Ministry of Health, Labour

and Welfare in 2012 in respect of job placement services on matters including the clear indication of working conditions. In that same year, 87 complaints were filed regarding dispatch businesses for matters which included disguised employment contracts. The Committee further notes that 8,764 instances of written guidance were made in 2012. Also, the number of persons received by public prosecutors offices for Worker Dispatch Law violations amounted to 74 in 2012. The Committee invites the Government to continue to provide information on the number and nature of the complaints received in respect of the activities of private employment agencies. Please also continue to provide information on the remedies available in the event of violations of provisions of the Convention, an evaluation of the adequacy of such remedies, and statistics, disaggregated by sex and sector of the economy, with respect to the source of complaints.

(Source: Application of International Labour Standards 2015 (I) , Report of the Committee of Experts on the Application of Conventions and Recommendations, International Labour Office (Geneva, 2015), pages 381-382.)

Annex D

United Nations Declaration on the Right to Development (Few selected articles)

Article 1

1. The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized.

2. The human right to development also implies the full realization of the right of peoples to self-determination, which includes, subject to the relevant provisions of both International Covenants on Human Rights, the exercise of their inalienable right to full sovereignty over all their natural wealth and resources.

Article 2

1. The human person is the central subject of development and should be the active participant and beneficiary of the right to development.

2. All human beings have a responsibility for development, individually and collectively, taking into account the need for full respect for their human rights and fundamental freedoms as well as their duties to the community, which alone can ensure the free and complete fulfilment of the human being, and they should therefore promote and protect an appropriate political, social and economic order for development.

3. States have the right and the duty to formulate appropriate national development policies that aim at the constant improvement of the well-being of the entire population and of all individuals, on the basis of their active, free and meaningful participation in development and in the fair distribution of the benefits resulting therefrom.

Article 3

3. States have the duty to co-operate with each other in ensuring development and eliminating obstacles to development. States should realize their rights and fulfil their duties in such a manner as to promote a new international economic order based on sovereign equality, interdependence, mutual interest and co-operation among all States, as well as to encourage the observance and realization of human rights.

Article 8

1. States should undertake, at the national level, all necessary measures for the realization of the right to development and shall ensure, inter alia, equality of opportunity for all in their access to basic resources, education, health services, food, housing, employment and the fair distribution of income. Effective measures should be undertaken to ensure that women have an active role in the development process. Appropriate economic and social reforms should be carried out with a view to eradicating all social injustices.

2. States should encourage popular participation in all spheres as an important factor in development and in the full realization of all human rights.

Article 10

Steps should be taken to ensure the full exercise and progressive enhancement of the right to development, including the formulation, adoption and implementation of policy, legislative and other measures at the national and international levels.

Materials

Info sheets or video on:

- Economic profile of Northeast Asia/country
- Role of companies in the economy of the subregion/country.

International Labour Organization, *Labour and Social Policy Components in Current Trade Agreements in Asia-Pacific*, ACT/EMP Research Note, , March 2015. Available at www.ilo.org/public/english/dialogue/actemp/downloads/publications/research_note_2015march.pdf.

Reports on government policies regarding company investments in local areas. Alternatively, case studies can be in video or other audio-visual material formats.

- *A RENGO Perspective on the Japan Revitalization Strategy: For Whose Sake Is “Japan’s Revitalization”?*, JTUC-RENGO, 17 July 2014, www.jtuc-rengo.org/updates/pdf/20140717kenkai_en.pdf.

Short papers or media reports on development policies in general and for specific sector or group (such as workers, indigenous peoples, subsistence farmers, subsistence fisherfolk, local communities, etc.) such as the following:

- Mioko Bo and Katsuro Oda, “Japan plans measures against death from overwork,” 27 July 2015, <http://business.asiaone.com/news/japan-plans-measures-against-death-overwork>;
- “Cabinet OK’s outline of steps against death from overwork,” *The Japan News*, 24 July 2015;
- Center for Human Rights and Development, “Human Rights in the Mining Industry of Mongolia,” in Jefferson R. Plantilla, editor, *Bridging Human Rights Principles and Business Realities in Northeast Asia* (Kuala Lumpur/Osaka: HURIGHTS OSAKA and SIRD, 2014), pages 100-118;
- *Application of International Labour Standards 2015 (I), Report of the Committee of Experts on the Application of Conventions and Recommendations*, International Labour Office (Geneva, 2015), pages 381-382.

What is a mind map? See www.mindmapping.com/mind-map.php.