

Business,
Human Rights
and Northeast Asia
A Facilitator's Training Manual

商业与人权
기업과 인권
Бизнес ба Хүний эрх
企業と人権

Business, Human Rights and Northeast Asia

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Table of Contents

| | |
|--|-----|
| Acknowledgment..... | 6 |
| Introduction..... | 7 |
| About This Manual..... | 10 |
| Business and Human Rights: Concepts and Terms..... | 13 |
| Training Modules | |
| • Context of the Northeast Asian Subregion – Human Rights Issues and Business..... | 26 |
| • Context of the Northeast Asian Subregion – National Development Policies and Business..... | 37 |
| • Implementing the United Nations Initiatives - UN “Protect, Respect and Remedy” Framework, UN Global Compact..... | 50 |
| • Enforcing Labor Standards | 67 |
| • Using International Corporate Standards and Frameworks..... | 88 |
| • Principles of Human Rights-based Approach to Access to Justice..... | 96 |
| • Corporate Mechanisms and Access to Justice..... | 104 |
| • Administrative and Judicial Mechanisms and the UN Framework..... | 118 |
| • Resorting to Mechanisms of International Institutions..... | 129 |
| Human Rights Documents | |
| • Universal Declaration of Human Rights..... | 146 |
| • Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework..... | 151 |
| Other Suggested References..... | 157 |

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Introduction

SOMETIME IN 2010, during a meeting of the Board of Councilors of the Asia-Pacific Human Rights Information Center (HURIGHTS OSAKA), Mr. Kenzo Tomonaga (a member of the Board of Councilors) suggested the development of a training manual on business and human rights. Mr. Tomonaga, who was then the Director of the Buraku Liberation and Human Rights Research Institute (BHLRRI) proposed a training manual that could be used in the Asia-Pacific region. BHLRRI had its own project on assessing the subscription of Japanese companies to the United Nations principles on business and human rights.

That initial proposal in HURIGHTS OSAKA linked up with a similar discussion among the representatives of the Northeast Asian member-institutions of the Asian Consortium for Human Rights-based Access to Justice (HRBA2J-Asia) during its meeting in Bangkok, Thailand in December 2012. But instead of proceeding to the development of a training manual on business and human rights, they agreed on a research project on the situation in the Northeast Asian subregion that would become the basis of the training manual. The collaborative research project was completed in 2014 by the HRBA2J-Asia member-institutions in China, Japan, Korea (South) and Mongolia* with the printing of a book compiling all the research reports. In November 2014, the book entitled *Bridging Human Rights Principles and Business Realities in Northeast Asia* was launched during a workshop on business and human rights in Makati city, Philippines.**

The development of a training manual on business and human rights started just after the completion of the research project in 2014.

* HRBA2J-Asia member-institutions in Northeast Asia:

- a. Public Interest and Development Law Institute, Wuhan University (China);
- b. Korean Public Interest Lawyers Group (South Korea);
- c. MINBYUN - Lawyers for a Democratic Society (South Korea);
- d. Center for Human Rights and Development (Mongolia);
- e. Asia Pacific Human Rights Information Center (Japan);
- f. NPO Human Security Forum (Japan).

** This was the workshop entitled “Profitable Partnerships: A Workshop on Business and Human Rights in Select Countries in Asia,” organized by RAFI-SHIFT- New York and the Economic, Social and Cultural Rights-Asia (ESCR-Asia), in cooperation with the Makati Business Club (MBC), the Commission on Human Rights of the Philippines (CHRP), the Asia Pacific Pathways to Progress Foundation (APPF) and the Asian Consortium on Human Rights-based Access to Justice (HRBA2J-Asia). See HURIGHTS OSAKA, “Workshop on Business and Human Rights,” *FOCUS Asia-Pacific*, December 2014, issue 78, www.hurights.or.jp/archives/focus/section3/2014/12/workshop-on-business-and-human-rights.html.

Need for Another Training Manual

There is a view that with so many training manuals already existing adding another one may not be useful. Taking this view seriously, the existence of this training manual should be properly justified.

The justification lies in the current efforts on promoting to all stakeholders the need for human rights to become part of business. The United Nations has continuing initiatives to help guide governments, business enterprises, labor unions, non-governmental institutions and even communities take action in this field. There are similar efforts at the inter-governmental level in Asia, particularly in Southeast Asia.

There are numerous international programs for business enterprises on how to integrate human rights principles into corporate policies and systems, and how to implement such adaptation. There are indications that the Asian business communities at the national and regional levels have taken notice of the new international framework on business and human rights.

Parallel to this are the existing initiatives on monitoring business operations and on holding business enterprises accountable for the human rights abuses that have been committed. These are mainly undertaken by non-governmental organizations and labor unions. National human rights institutions in the region have also been receiving complaints related to human rights abuses by business enterprises. Some of them have instituted programs to address this issue, including taking action on the complaints.

But there remains a significant question: how many of the communities adversely affected by business operations have been informed about the new international framework on business and human rights that may provide opportunities for them to address their own problems?

Human rights abuses of business enterprises continue to occur in different parts of the Asian region. The necessity of addressing them using the new international framework on business and human rights is obvious. It is thus necessary that such actions reach the level of the workplace and the communities, in addition to initiatives directed at governments and business enterprises.

In sum, there is still room for a training manual that addresses the affected workers and communities' right to adequate remedy to human rights abuses of business enterprises.

Contextualized Training Manual

This training manual pays close attention to the Northeast Asian business enterprises and the impact of their operations within and outside Northeast Asia. Similar to the research publication, this training manual concentrates on Chinese, Japanese, Korean and Mongolian experiences relating to business and human rights.

Access to Justice

This training manual concentrates on the third pillar of the United Nations' *Guiding Principles on Business and Human Rights for implementing the UN "Protect, Respect and Remedy" Framework*. The third pillar speaks of the "need for rights and obligations to be matched to appropriate and effective remedies when breached."^{***}

^{***} *Guiding Principles on Business and Human Rights for implementing the UN "Protect, Respect and Remedy" Framework*, Full text of the document available at www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf, page 1.

This training manual devotes a number of training modules on mechanisms that facilitate access to remedy at various levels including the workplace and community, and national and international levels.

The modules discuss the mechanisms by analyzing related cases involving Chinese, Japanese, South Korean and Mongolian business enterprises.

Training Manual Users

The concept of business operations subscribing to international human rights standards is still new to many members of the civil society organizations whose work relate in one way or another to issues arising from company operations.

There is a strong need to support the work of the non-governmental organization workers in seeking adequate remedies to the problems suffered by workers and members of the community where business enterprises operate. This training manual aims to address this need.

About This Training Manual

THIS TRAINING MANUAL is a tool for understanding human rights in the context of business operations. It provides both content and process for analyzing concepts, principles, standards, mechanisms and practices relevant to the link between business and human rights. It is designed to help facilitators hold training activities on the application of human rights standards to business operations.

Manual Objectives

This training manual has the main objective of enabling trainees/participants to employ the human rights-based approach to access to justice in dealing with business and human rights issues.

The more specific objectives of this training manual are the following:

1. To discuss the United Nations framework on business and human rights in the context of Northeast Asia;
2. To analyze issues arising from business operations of Northeast Asian companies based on the international framework on business and human rights; and
3. To review existing grievance mechanisms (local, regional and international) on business-related human rights issues, and to examine strategies on resolving issues arising from business operations.

The Modules

This training manual has nine modules corresponding to the nine themes relevant to the business and human rights issue; one module takes up one theme.

Each module has the following major parts:

- a. Objectives, timeframe and materials;
- b. Initial activity to introduce the module theme;
- c. Group activity to enable discussion and analysis of situations and issues;
- d. Input on specific concepts, issues and human rights;
- e. Another group activity to further analyze situations and issues; and
- f. Summary of the major ideas and reflections on the activities held.

The themes are progressively linked – starting with a general **assessment of the situation** (local and national) concerning business and human rights, proceeding to the **standards** (domestic and international) including the principles of human rights-based approach to access to justice, and ending with the **mechanisms** that facilitate access to justice.

Depending on the needs and situation of the trainees/participants, facilitators can focus on a few modules and even use them in different sequence (e.g., corporate standards module paired with corporate mechanisms module; situation/context analysis modules paired with modules on grievance mechanism).

However, the modules are also designed to allow “stand alone” use. The facilitator can focus on a specific theme/module.

Learning Process

This training manual employs the participatory adult learning approach. The facilitators are expected to provide trainees/participants every possible opportunity to share their experiences, express opinions, raise questions and to engage in activities designed to increase skills (regarding analysis, argumentation/debate, presentation of ideas/discussions, action strategizing/planning, etc.) through individual or group/collaborative work.

Facilitators

This is a training manual for facilitators. It is designed to assist them in training people who work on problems related to business and human rights.

There is no assumption that the facilitators have substantive knowledge on the business and human rights issue. The modules provide significant amount of information (along with annexes and references) to help the facilitators gain substantial grasp of the module content.

They are expected to subscribe to participatory adult learning processes, and are assumed to have the capability to improve on the participatory processes in the modules.

Resource Persons

This training manual needs resource persons who have knowledge and experience in discussing its contents. The modules require the discussion of international human rights standards, principles related to the nexus between business and human rights, and also different forms of remedies appropriate to “human rights impacts” of business operations.

Trainees/Participants

This training manual is primarily aimed at training members of the civil society organizations whose program relates to business and human rights issues. The expected trainees/participants are those who work in labor unions, community organizations, and non-governmental organizations that provide service (directly or indirectly) to workers and/or members of communities, as well as those who work at the national human rights institutions, human rights centers, and academic institutions with social outreach orientation.

The modules ensure that the trainees/participants can share field experience and knowledge on the themes involved during the training activity.

The participatory process employed in the modules is a key measure to facilitate joint learning among facilitators and trainees/participants.

Adaptable Manual Content

This facilitator’s training manual is adaptable in at least two senses:

- a. The context of issues can be changed from that of Northeast Asia to that of another subregion in Asia. Corresponding information on experiences and practices can be changed to those of a different subregional context without affecting the contents of

the training manual on concepts, principles and standards related to business and human rights;

- b. The focus of the training manual can also be shifted from members of the civil society organizations and related institutions to officials and managers of business enterprises. In this sense, other relevant experiences and practices can be used to suit these types of trainees/participants.

Duration of Training

A training program using this training manual may last for one day or one week, depending on whether to use a few of the modules or all of them.

The program can be on staggered basis, having once-a-week sessions instead of one program over successive days in a week.

In other words, in view of the “stand-alone” nature of the modules, facilitators may choose to develop a training schedule suitable to the trainees/participants instead of a week-long training program using this training manual in full.

Business and Human Rights: Concepts and Terms

SEVERAL CONCEPTS AND TERMS being used in this training manual are briefly explained below using definitions drawn from a variety of existing materials of international institutions and organizations. The United Nations materials are preferred sources of definition, but those from other organizations are also included whenever deemed necessary.

Other concepts and terms that have not been mentioned in the modules of this training manual are also included as additional information that may be discussed in training workshops.

The sources of definition are provided at the end of each batch of concepts and terms. Facilitators (and/or their resource persons) are encouraged to review the source materials for better understanding of the definitions.

The definitions of concepts and terms are meant to guide the use of this training manual. On the whole, these definitions remain general concepts that have to defer to more specific definitions that might have been developed at the national level by local institutions and organizations. It is necessary for facilitators and/or their resource persons to search for specific and appropriate local definitions of concepts and terms that can be used alongside the definitions listed below.

The concepts and terms are grouped according to themes.

1. General concepts and terms

Access to justice

The process of ensuring that all individuals have access to the legal services and to legal processes in order to defend and enforce their rights as well as to seek or obtain a legal remedy.

Accession

The act whereby a state accepts the offer or the opportunity to become a party to a treaty already negotiated and signed by other states. It has the same legal effect as ratification. Accession usually occurs after the treaty has entered into force.

Amicus curiae

The amicus curiae is someone who, although they are not a party to the lawsuit, petitions the court or is requested by the court to file a brief due to their strong interest in the subject matter of the lawsuit (also referred to as “friend of the court” or “amicus”).

(Source: UNDP-OHCHR Toolkit for collaboration with National Human Rights Institutions, December 2010, New York-Geneva, page xi)

Business relationships

Business relationships refer to those relationships a business enterprise has with business partners, entities in its value chain and any other non-State or State entity directly linked to its business operations, products or services. They include indirect business relationships in its value chain, beyond the first tier, and minority as well as majority shareholding positions in joint ventures.

Civil society

Civil society refers to all groups outside government such as community groups, non-governmental organizations, labour unions, indigenous peoples’ organizations, charitable organizations, faith-based organizations, professional associations and foundations. Civil society expresses the interests of social groups and raises awareness of key issues in order to influence policy and decision-making. In recent decades, such organizations have been successful in shaping global policy through advocacy campaigns and mobilization of people and resources.

(Source: UNDP-OHCHR Toolkit for collaboration with National Human Rights Institutions, December 2010, New York-Geneva, pages xii-xiii)

Complicity

Complicity has both legal and non-legal meanings. As a legal matter, most national legislations prohibit complicity in the commission of a crime, and a number allow for the criminal liability of business enterprises in such cases. The weight of international criminal law jurisprudence indicates that the relevant standard for aiding and abetting is “knowingly providing practical assistance or encouragement that has a substantial effect on the commission of a crime”. Examples of non-legal “complicity” could be situations where a business enterprise is seen to benefit from abuses committed by others, such as when it reduces costs because of slave-like practices in its supply chain or fails to speak out in the face of abuse related to its own operations, products or services, despite there being principled reasons for it to do so. Even though enterprises have not yet been found complicit by a court of law for this kind of involvement in abuses, public opinion sets the bar lower and can inflict significant costs on them. The human rights due diligence process should uncover risks of non-legal (or perceived) as well as legal complicity and generate appropriate responses.

Due diligence

Due diligence has been defined as “such a measure of prudence, activity, or assiduity, as is properly to be expected from, and ordinarily exercised by, a reasonable and prudent [person] under the particular circumstances; not measured by any absolute standard, but depending on the relative facts of the special case”. In the context of the Guiding Principles, human rights due diligence comprises an ongoing management process that a reasonable and prudent enterprise needs to undertake, in the light of its circumstances (including sector, operating context, size and similar factors) to meet its responsibility to respect human rights.

Duty bearers

Duty bearers are those actors who have a particular obligation or responsibility to respect, promote and realize human rights and to abstain from human rights violations. The term is most commonly used to refer to State actors, but non-State actors can also be considered duty bearers. An obvious example is private armed forces or rebel groups, which under international law have a negative obligation to refrain from human rights violations. Depending on the context, individuals (e.g. parents), local organizations, private companies, aid donors and international institutions can also be duty-bearers.

(Source: Gender Equality, UN Coherence and You, Glossary: Definitions A-Z, page 1, www.unicef.org/gender/training/content/resources/Glossary.pdf)

Gross human rights abuses

There is no uniform definition of gross human rights violations in international law, but the following practices would generally be included: genocide, slavery and slavery-like practices, summary or arbitrary executions, torture, enforced disappearances, arbitrary and prolonged detention, and systematic discrimination. Other kinds of human rights violations, including of economic, social and cultural rights, can also count as gross violations if they are grave and systematic, for example violations taking place on a large scale or targeted at particular population groups.

Human rights

Human rights are the fundamental rights and freedoms which, it is generally agreed, everybody has from the moment of birth, simply because they are human beings. They are not privileges which need to be won and they apply equally to everybody, regardless of age, sex, race, ethnicity, wealth or social standing. Because they are rights, they cannot be taken away from anyone by the government (although they can be limited and sometimes suspended during states of emergency). These rights are based on a number of human rights principles. Human rights become enforceable as they become codified as conventions, covenants or treaties, or as they become recognized as customary international law.

Human rights-based approach (HRBA)

Access to justice is a fundamental right, and a human rights-based approach to access to justice provides a necessary framework for action on human development. The HRBA is useful in analysing immediate as well as underlying causes of justice problems by framing the issues in terms of 'rights' as guaranteed by law and international human rights standards and identifying the multiple factors impeding access to justice. The HRBA also identifies and gives due attention to the most vulnerable 'claim-holders' and the 'duty-bearers' who are accountable for preventing and stopping the rights violations, as well as for fulfilling the rights.

(Source: Access to Justice Assessments in the Asia Pacific: A review of experiences and tools from the region, Asia-Pacific Regional Centre United Nations Development Programme, February 2012, Bangkok, page 3)

Human rights and international crimes

Some of the most serious human rights violations may constitute international crimes. International crimes have been defined by States under the Rome Statute of the International Criminal Court. They are genocide ("acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group"), crimes against humanity (widespread and systematic attacks against civilians that include murder, enslavement, torture, rape,

discriminatory persecution, etc.), war crimes (as defined by international humanitarian law) and the crime of aggression.

Human rights impact

a. Actual human rights impact

An “actual human rights impact” is an adverse impact that has already occurred or is occurring.

b. Adverse human rights impact

An “adverse human rights impact” occurs when an action removes or reduces the ability of an individual to enjoy his or her human rights.

c. Potential human rights impact

A “potential human rights impact” is an adverse impact that may occur but has not yet done so.

d. Severe human rights impact

The commentary to the Guiding Principles defines severe human rights impact with reference to its scale, scope and irremediable character. This means that its gravity and the number of individuals that are or will be affected (for instance, from the delayed effects of environmental harm) will both be relevant considerations.

Human rights risks

A business enterprise’s human rights risks are any risks that its operations may lead to one or more adverse human rights impacts. They therefore relate to its potential human rights impact. In traditional risk assessment, risk factors in both the consequences of an event (its severity) and its probability. In the context of human rights risk, severity is the predominant factor. Probability may be relevant in helping prioritize the order in which potential impacts are addressed in some circumstances (see “severe human rights impact” above). Importantly, an enterprise’s human rights risks are the risks that its operations pose to human rights. This is separate from any risks that involvement in human rights impact may pose to the enterprise, although the two are increasingly related.

“Irremediability”

This refers to any limits on the ability to restore those affected to a situation at least the same as, or equivalent to, their situation before the adverse impact. For these purposes, financial compensation is relevant only to the extent that it can provide for such restoration.

Justiciability

A justiciable case is one that can be brought before the courts and in which a remedy can be sought and obtained. Justiciability is a key feature of a right. It also refers to the ability to use a human rights standard before the courts or to enforce such rights more generally. The justiciability of economic, social and cultural rights has been a contentious issue for years.

(Source: UNDP-OHCHR Toolkit for collaboration with National Human Rights Institutions, December 2010, New York-Geneva, page xvi)

Leverage

Leverage is an advantage that gives power to influence. In the context of the Guiding Principles, it refers to the ability of a business enterprise to effect change in the wrongful practices of another party that is causing or contributing to an adverse human rights impact.

Mitigation

The mitigation of adverse human rights impact refers to actions taken to reduce its extent, with any residual impact then requiring remediation. The mitigation of human rights risks refers to actions taken to reduce the likelihood of a certain adverse impact occurring.

Prevention

The prevention of adverse human rights impact refers to actions taken to ensure such impact does not occur.

Remediation/remedy

Remediation and remedy refer to both the processes of providing remedy for an adverse human rights impact and the substantive outcomes that can counteract, or make good, the adverse impact. These outcomes may take a range of forms, such as apologies, restitution, rehabilitation, financial or non-financial compensation, and punitive sanctions (whether criminal or administrative, such as fines), as well as the prevention of harm through, for example, injunctions or guarantees of non-repetition.

Rights holders

Rights-holders are individuals or social groups that have particular entitlements in relation to specific duty-bearers. In general terms, all human beings are rights-holders under the Universal Declaration of Human Rights. In particular contexts, there are often specific social groups whose human rights are not fully realized, respected or protected. More often than not, these groups tend to include women/girls, ethnic minorities, indigenous peoples, migrants and youth, for example.

(Source: Gender Equality, UN Coherence and You, Glossary: Definitions A-Z, page 5, www.unicef.org/gender/training/content/resources/Glossary.pdf)

Rule of law

One of the fundamental, overarching ideas in legal systems. The rule of law is a safeguard against arbitrary governance and requires legal decisions to be made according to known principles or laws of general and equal application. The rule of law ensures that no one is above the law and that individuals are entitled to due process of law. It is a state responsibility. It informs and structures the effectiveness and integrity of the entire justice system, including the work of NHRIs.

(Source: UNDP-OHCHR Toolkit for collaboration with National Human Rights Institutions, December 2010, New York-Geneva, page xx)

Salient human rights

The most salient human rights for a business enterprise are those that stand out as being most at risk. This will typically vary according to its sector and operating context. The Guiding Principles make clear that an enterprise should not focus exclusively on the most salient human rights issues and ignore others that might arise. But the most salient rights will logically be the ones on which it concentrates its primary efforts.

Stakeholder/affected stakeholder

A stakeholder refers to any individual who may affect or be affected by an organization's activities. An affected stakeholder refers here specifically to an individual whose human rights have been affected by an enterprise's operations, products or services.

Stakeholder engagement/consultation

Stakeholder engagement or consultation refers here to an ongoing process of interaction and dialogue between an enterprise and its potentially affected stakeholders that enables the enterprise to hear, understand and respond to their interests and concerns, including through collaborative approaches.

Value chain

A business enterprise's value chain encompasses the activities that convert input into output by adding value. It includes entities with which it has a direct or indirect business relationship and which either (a) supply products or services that contribute to the enterprise's own products or services, or (b) receive products or services from the enterprise.

(Source: The Corporate Responsibility to Respect Human Rights – an Interpretative Guide, United Nations (New York/Geneva 2012), HR/PUB/12/02, pages 5 – 8.)

2. Child/children and business

Best interests of the child

This is one of the four core principles in the Convention on the Rights of the Child, [and] applies to all actions and decisions concerning children and calls for active measures to respect their rights and promote their survival, growth and well-being as children, as well as measures to support and assist parents and others who have day-to-day responsibility for realizing children's rights.

Child labour

This refers to work that deprives children of their childhood, their potential and their dignity, and that is harmful to physical and mental development. This includes work that is mentally, physically, socially or morally dangerous and harmful to children; work that interferes with their schooling; and engaging in work children who are under the minimum working age(s) set by national legislation or international standards. No child under 18 years old should be engaged in hazardous work (i.e. work that is likely to harm their health, safety or morals) or other worst forms of child labour such as trafficking, sexual exploitation, debt bondage, forced labour and the recruitment or use of underage children for security or military purposes. This also involves focus on the gender dimensions of child labour in light of the more likely engagement of girls in activities such as domestic work and sexual exploitation. For further elaboration, see the International Labour Organization (ILO) Conventions No. 182 on the Worst Forms of Child Labour and No. 138 on the Minimum Age, in addition to the optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography and the optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict.

Child participation

This is one of the four core principles of the Convention on the Rights of the Child, [and] includes processes that encourage and enable children to articulate and convey their views on issues that affect them. It also involves information sharing and dialogue between children and adults based on mutual respect in an environment that facilitates freedom of expression. Such processes must be authentic, inclusive and meaningful and should take into account the evolving capacities of children and enable them to learn constructive ways

to influence the world around them. There should be a commitment to consider children's opinions including girls and boys, the most marginalized, the vulnerable, and those of different ages and abilities, their views should be respected, heard and taken into account in all decisions and actions affecting them. Participation should not be tokenistic and should not exploit children.

Child protection code of conduct

This is a document that sets out the business's detailed expectations of conduct for individuals within its operations who come into contact with children. The code of conduct implements the business's zero-tolerance policy on violence, exploitation and abuse. It uses the Convention on the Rights of the Child and its optional Protocols as its framework and is designed to help protect children from violence, exploitation and abuse.

Child or children

Article 1 of the Convention on the Rights of the Child defines children as every human being under 18 years old unless, under the law applicable to the child, majority is attained earlier.

Decent work

This involves opportunities for work that are productive and deliver a fair income. Decent work should provide security in the workplace and social protection for families, rights at work, social dialogue, and better prospects for personal development and social integration. People, including young people of working age, should be free to express their concerns, to organize and to participate in the decisions that affect their lives, and have the right to equality of opportunity and treatment.

Emergencies

The situations where lives, physical and mental well-being, or development opportunities for children are threatened as a result of armed conflict, widespread violence, epidemics, famine, natural disaster or the breakdown of social or legal order.

(Source: Children's Rights and Business Principles, <http://childrenandbusiness.org/>)

3. Corporate Social Responsibility (CSR)

ILO defines CSR as "a way in which enterprises give consideration to the impact of their operations on society and affirm their principles and values both in their own internal methods and processes and in their interaction with other actors. CSR is a voluntary, enterprise-driven initiative and refers to activities that are considered to exceed compliance with the law."

(Source: International Labour Office, Combating Forced Labour - A Handbook for Employers & Business, 2nd ed. (Geneva: ILO, 2015), pages 6-7. Full text available at www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_101171.pdf.)

4. Grievance Mechanisms

Grievance

An issue, concern, problem, or claim (perceived or actual) that an individual or community group wants a company or contractor to address and resolve.

Company-Community Grievance Mechanism

A locally based, formalized way to accept, assess, and resolve community complaints concerning the performance or behavior of a company, its contractors, or employees.

(Source: A Guide to Designing and Implementing Grievance Mechanisms for Development Projects, Compliance Advisor/Ombudsman (Washington, DC, 2008), page iv.)

Adjudication

The formation of a judgment on the rights and wrongs of parties in a situation of dispute and on any remedies needed, which may be binding on the parties or lead to some form of sanction. Usually, the culmination of an investigation, adjudication is distinct from arbitration in that it does not require agreement by the parties on who will adjudicate, nor does it involve a formal process of hearings.

a. **Specialised labour adjudication** is a procedure whereby ordinary courts or special labour courts settle finally any disputes over rights and obligations.

(Source: Labour dispute prevention and resolution, International Labour Organization, www.ilo.org/ifpdial/areas-of-work/labour-dispute/lang--en/index.htm.)

Arbitration

a. Arbitration

A procedure whereby a third party (whether an individual arbitrator, a board of arbitrators or an arbitration court), not acting as a court of law, is empowered to take a decision which disposes of the dispute.

(Source: Labour dispute prevention and resolution, International Labour Organization, www.ilo.org/ifpdial/areas-of-work/labour-dispute/lang--en/index.htm.)

b. Arbitration process

A process by which neutral arbitrators selected by the parties to a dispute hear the positions of the parties, conduct some form of questioning or wider investigation and arrive at a judgment on the course of action to be taken in settling the grievance of dispute, often, though not always, with binding effect on the parties.

Information Facilitation

The gathering and dissemination of information on grievances, with any further action or that information largely left to its end-users.

Investigation

A process of gathering information and views about a grievance or disputed situation in order to produce an assessment of the facts.

Negotiation

Direct dialogue between the parties to the grievance with the aim of resolving the grievance or dispute through mutual agreement.

Mediation and/or Conciliation

a. Mediation/Conciliation

Direct or indirect dialogue between the parties assisted by an external, neutral/objective facilitator with the aim of resolving the grievance through mutual agreement. The facilitator may take a more or less active and intrusive role in the dialogue process.

b. Conciliation and mediation

They are procedures whereby a third party provides assistance to the parties in the course of negotiations, or when negotiations have reached an impasse, with a view to helping them to reach an agreement. While in many countries these terms are interchangeable, in some countries a distinction is made between them according to the degree of initiative taken by the third party.

(Source: Labour dispute prevention and resolution, International Labour Organization, <http://www.ilo.org/ifpdial/areas-of-work/labour-dispute/lang--en/index.htm>.)

(Note: Unless otherwise indicated, the definitions under Grievance Mechanisms are from Caroline Rees and David Vermijs, *Mapping Grievance Mechanisms in the Business and Human Rights Arena* (Cambridge: Harvard University, January 2008), page 3.)

4. National Contact Points (NCP)

Filed

It means a case has been submitted, but the NCP has not published an initial assessment determining whether the case is admissible.

Pending

It means the NCP has issued an initial assessment and determined that the case merits further examination.

Rejected

It means an NCP has determined the issues do not merit further examination.

Blocked

It means the NCP either provides no response to the complainants at all or it allows the case to proceed endlessly without finalising it.

Concluded

It means the case was resolved with a joint agreement by the parties or the case was not resolved and the NCP issued a final statement.

Closed

It means the NCP has accepted the case, attempted to handle it, but then stops handling it (usually because the company refuses to cooperate) without issuing a final statement.

Withdrawn

It means the complainants withdrew their case, usually because the NCP has mishandled the process.

(Source: OECD Watch, Assessment of NCP Performance in the 2013-2014 Implementation Cycle, June 2014, page 9, www.oecdwatch.org.)

5. Foreign Investment/International Financing

Stabilization Clauses

For the purposes of this study, “stabilization clauses” are those clauses in private contracts between investors and host states that address changes in law in the host state during the life of the project. Use of stabilization clauses is widespread across industries and regions of the world. From an investor’s perspective, stabilization clauses constitute a risk-mitigation tool to protect foreign investments from such sovereign risks as nationalization, expropriation, or the obsolescence bargain, in which the host state can use changes in circumstances to impose new requirements on investors. These clauses also may be designed to insulate investors from environmental and social legislation, a matter of growing economic significance to investors.

Categories of stabilization clauses: Freezing clauses; Economic equilibrium clauses; and Hybrid clauses.

Freezing clauses

Freezing clauses “freeze” the law of the host state with respect to the investment project over the life of the project.

Economic equilibrium clauses

Economic equilibrium clauses require that the investor comply with new laws but also require that the investor be compensated for the cost of complying with them (compensation taking such forms as adjusted tariffs, extension of the concession, tax reductions, monetary compensation, or other), but exemptions are not specifically mentioned in the contract.

Hybrid clauses

Hybrid clauses (so named because they share some aspects of both of the other categories) require the state to restore the investor to the same position it had prior to changes in law, including, as stated in the contract, by exemptions from new laws.

(Source: Andrea Shemberg, *Stabilization Clauses and Human Rights*, March 11, 2008. Full report available at www.reports-and-materials.org/sites/default/files/reports-and-materials/Stabilization-Clauses-and-Human-Rights-11-Mar-2008.pdf.)

6. International Labour Organization (ILO)

International Labour Standards

International labour standards are legal instruments drawn up by the ILO constituents (governments, employers and, workers) and setting out basic principles and rights at work. They are either Conventions, which are legally binding international treaties that may be ratified by member States, or recommendations, which serve as non-binding guidelines.

In many cases, a Convention lays down the basic principles to be implemented by ratifying countries, while a related recommendation supplements the Convention by providing more detailed guidelines on how it can be applied.*

* Report of the Special Representative of the Secretary General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie - *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework*. A/HRC/17/31, 21 March 2011.)

There is a difference between labour “principles and rights” on the one hand, and ILO standards (Conventions and Recommendations) on the other. The existence of this difference is for instance also suggested by the ILO 1998 Declaration (although the 1998 Declaration concerns only the fundamental principles and rights at work and ILO’s fundamental Conventions):

THE INTERNATIONAL LABOUR CONFERENCE

1. Recalls: ...

(b) that these principles and rights have been expressed and developed in the form of specific rights and obligations in Conventions recognized as fundamental both inside and outside the Organization ...”

2. Declares that all Members, even if they have not ratified the Conventions in question, have an obligation arising from the very fact of membership in the Organization to respect, to promote and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights

In other words, “*principles and rights*” are universal values that should (somehow) be respected, promoted and realized everywhere. As they are necessarily imprecise, it is not possible to control their implementation.

International labour standards (e. g. Conventions), on the other hand, spell out these principles in concrete and specific rules. Countries that have ratified a Convention are under a legal obligation to implement these rules. Implementation can and is supervised.

(Source: ACT/EMP, Labour and Social Policy Components in Current Trade Agreements in Asia and the Pacific, March 2015, pages 4-5. Full text available at www.ilo.org/public/english/dialogue/actemp/downloads/publications/research_note_2015march.pdf.)

Committee of Experts on the Application of Conventions and Recommendations (CEACR)

The body established by the ILO to examine the application of international labour standards. It makes two kinds of comments: observations and direct requests. Observations contain comments on fundamental questions raised by the application of a particular convention by a state. These observations are published in the Committee’s annual report. Direct requests relate to more technical questions or requests for further information. They are not published in the report but are communicated directly to the governments concerned.

(Source: Committee of Experts on the Application of Conventions and Recommendations, www.ilo.org/global/standards/applying-and-promoting-international-labour-standards/committee-of-experts-on-the-application-of-conventions-and-recommendations/lang--en/index.htm.)

Conference Committee on the Application of Standards

A standing committee of the Conference, the Conference Committee is made up of government, employer, and worker delegates. It examines the report in a tripartite setting and selects from it a number of observations for discussion. The governments referred to in these comments are invited to respond before the Conference Committee and to provide information on the situation in question. In many cases the Conference Committee draws up conclusions recommending that governments take specific steps to remedy a problem or to invite ILO missions or technical assistance. The discussions and conclusions of the

situations examined by the Conference Committee are published in its report. Situations of special concern are highlighted in special paragraphs of its General Report.

(Source: Conference Committee on the Application of Standards, www.ilo.org/global/standards/applying-and-promoting-international-labour-standards/conference-committee-on-the-application-of-standards/lang--en/index.htm.)

Training Modules

Context of the Northeast Asian Subregion - Human Rights Issues and Business

This module has the following objectives:

Enable the participants to

- Clarify the human rights issues related to company operations or the so-called “business-related human rights impacts” in the subregion;
- Identify people affected by the human rights issues; and
- Discuss human rights in general and in relation to specific issues that arise from the participants’ presentations.

Time: 3 HOURS AND 15 MINUTES

Materials:

- Big size papers, colored pens, writing papers, adhesive tapes;
- Equipment - computer, projector, screen;
- Video, visual aid on human rights.

Context of the Northeast Asian Subregion - Human Rights Issues and Business

I. Procedure

a. Opener – 30 MINUTES

Do a brainstorming exercise by asking the participants to answer the following questions:

- What is the current situation regarding company operations?
- What are the possible reasons for this situation?
- Who are affected by this situation?

The participants are expected to provide answers based on their own experiences – as workers, members of communities near company premises, members of institutions working on issues regarding company operations, etc.

Alternatively, the participants can use the sample materials in Annex A to answer the questions.

Tell the participants to write their answers on each question on separate small pieces of paper and paste their answers on the board or wall under each of the three issues: current situation; possible reasons for the situation; and affected people.

After all the answers have been posted, ask the participants to read on their own the answers on the board or wall.

Organize the posted answers on another board by reducing duplicate answers or rearranging answer placements according to the questions:

| Current situation | Possible reasons for the situation | Affected people |
|-------------------|------------------------------------|-----------------|
| | | |

b. Presentation – 1 HOUR AND 30 MINUTES

This section has two parts: presentation on human rights in general, and discussion on specific rights affecting company operations.

i. Part 1 – General human rights discussion

Provide a 20-minute input/video presentation on human rights in general – discussing briefly the following:

- development of international human rights standards (i.e., standard-setting that started in 1948, overview of human rights instruments and the major historical contexts involved; continuing nature of United Nations human rights standard-setting process to cover more issues);
- internationally agreed human rights (and also those that are still being discussed);
- issues covered by the existing international human rights standards; and
- main documents involved (e.g., International Bill of Human Rights – see Annexes B, C and D for information on human rights treaties ratified or acceded to by Northeast

Asian states, list of treaties under the International Bill of Human Rights, and the list of specific rights).

The presentation on human rights can use the Universal Declaration of Human Rights (see text of the declaration at Human Rights Documents section) as major reference in terms of justification for recognizing human rights, the basic rights involved and their relevance to the issues regarding business operations. In case internet connection is available, the presentation can use the discussion on human rights in the website of the United Nations High Commissioner for Human Rights (OHCHR) - www.ohchr.org/EN/Issues/Pages/WhatareHumanRights.aspx.

Invite the participants to

- identify the rights they are familiar with (such as those rights found in domestic laws like the Constitution), and
- raise questions and comments on the meaning and realization of human rights.

Note on the board the rights and comments raised by participants.

ii. Part 2 – Specific rights and the company operations

Using the answers of the participants earlier posted on the board or wall during the brainstorming exercises, introduce the concept of “business-related human rights impacts” and their categories. See section on Concepts and Terms to discuss the concept of “human rights impact.”

The input may stress impact related to the following:

- Fair working conditions;
- Equality, non-discrimination and dignity;
- People’s health, life and security;
- Housing and standards of living;
- Indigenous peoples, land and culture; and
- Human rights impacts in the supply chain.

(List from the Australian Human Rights Commission, see Catherine Sutherland, “Measuring up on human rights,” WME, www.wme.com.au/categories/sustainable/aug6_2012.php)

The categories can also be the following:

- Children’s rights;
- Environment and water;
- Gender;
- High-risk and conflict-affected areas;
- Indigenous Peoples;
- Land and food;
- Supply chains;
- Migrant workers; and
- Working conditions.

(Source: Nora Götzmann and Claire Methven O’Brien, *Business and Human Rights - A Guidebook for National Human Rights Institutions* [International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC) and Danish Institute for Human Rights (DIHR), November 2013] The category of migrant workers has been added to the original list.)

Whatever categories are used, ensure that the specific rights involved are identified and explained as much as possible. Refer also to the list of human rights found to have been abused by companies in Annex E.

c. Activity

Group Work – 1 HOUR

Using the summarized list of problems posted on the board or wall, ask the participants to

- identify which would fall under the different types of “human rights impacts” of company operations; and
- 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.

Ask the participants to report the results of their group discussion.

Note 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:

- Current situation in companies and the issues that occur from company operations;
- Basic understanding of human rights;
- Human rights impacts of business operations;
- Categories of human rights impacts; and
- Concrete measures being done or can be done on issues arising from company operations.

Annex A

Case Materials

Case 1

A company has been mining gold using sodium and aluminum. It built a waste dump by paving fifteen thousand square meters of land. However, the paved dump was destroyed by harsh weather and resulted in huge financial loss for the company. An inspection of its underground mining revealed many safety breaches including insufficient bracings; violations of the General Safety Regulation for Underground Mining; irregular testing or lack of daily report of air samples; no separate registration of mineral samples in the different processing stages; establishing office and check points outside the license area; failure to build fence around canal for waste flowing from processing plant; and dumping of waste water from gold mining directly into the soil. The last violation is a very serious breach of the Law on Water as well as the Law on Environmental Influence Evaluation. A year before, the Specialized Inspection Agency, Police Department, and the Emergency Department in a province found expired blasting material in the company's warehouse and destroyed them.

(Based on Center for Human Rights and Development, *Human Rights in the Mining Industry of Mongolia*, page 114)

Case 2

In the garment industry of A country, wage competitiveness is the principal element when considering investment. Whereas the monthly wage in the country was ten US dollars fifteen years ago, it has increased to a hundred US dollars today. The frequent demonstrations in 2011 and 2012 led to a steep rise in wages in 2012. At the same time, the number of companies investing in A country sharply increased, raising the number of garment factories run by companies from thirty to nearly seventy. In order to prevent a drastic increase in wages, an association of garment companies controls the amount of wage increase.

Children in A country go to companies looking for jobs. Investigations by the ILO or the Ministry of Labour compelled the companies not to employ the children. However in many cases, the children being desperate for work lie about their age.

Workers usually work for ten to eleven hours a day, from 7 a.m. until 7 p.m. with one-hour break for lunch. They have eighty to one hundred twenty hours of overtime work a month.

(Based on Korean Transnational Corporations Watch, *Korean Companies and Human Rights: Doing Business in the Philippines, Myanmar and Uzbekistan*, page 74)

Case 3

The workers of a shipbuilding company have been trying to form a labor union since 2007. Their leaders, however, were either fired or transferred by the company as soon as they undertook the initial labor union activities. The company explained that they were fired because of involvement in robbery or theft or negligence of duty. However, the workers claimed that they were fired or transferred by the company to suppress the formation of a labor union. Under the labor law of the country where the

company operates, “probationary employment” shall not exceed six months from the date the employee started working. This means that workers who continue working in a company beyond the six-month period are qualified for permanent employment unless there are grounds for non-qualification. According to the workers, the company used tricks, such as registering the employees as workers of subcontractors, or dismissing and re-hiring them to prevent them from becoming regular employees. Such tricks upset the employees’ efforts to form a union. Some workers organized a group. However, the company claimed that it was a group of dismissed workers while in reality the group has members who are currently employed by the company.

(Based on Korean Transnational Corporations Watch, *Korean Companies and Human Rights: Doing Business in the Philippines, Myanmar and Uzbekistan*, pages 64-65)

Case 4

Petroleum companies faces the risk of causing damage to the environment and people’s health and livelihood due to oil and gas exploration, related construction processes as well as oil exploitation, transportation or warehousing. Over the past years, several industrial incidents have occurred in the country such as the pipeline spill of an oil company, a pipeline explosion and other serious oil spill accidents that have caused long-lasting damage and extremely harsh consequences to the local ecological environment, and the local residents’ living environment and health. Solid, gaseous and liquid wastes generated during the production process in the petrochemical industry also bring environmental hazards. In one case, the members of an ethical council of an organization that has investment in the company had face-to-face dialogues with the company officers regarding the “deficient safety procedures and emissions of chemicals” into a river, contrary to the Basel Convention on Hazardous Waste. The ethical council was satisfied with the action taken by the company after the dialogues. The nature of projects of the company exposes its workers to hazardous materials and equipment that can cause occupational diseases and injuries.

(Based on Huang Zhong and Cheng Qian, *Merging Business and Human Rights in China: Still A Long Way to Go*, pages 44-45)

Annex B

Table of Ratification of Human Rights Treaties

| Human Rights Treaties | China | Japan | Korea | Mongolia |
|--|--------------|--------------|--------------|-----------------|
| International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) | 1981a | 1995a | 1978 | 1969 |
| Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) | 1980 | 1985 | 1984 | 1981 |
| International Covenant on Civil and Political Rights (ICCPR) | ----- | 1979 | 1990a | 1974 |
| International Covenant on Economic, Social and Cultural Rights (ICESCR) | 2001 | 1979 | 1990a | 1974 |
| Convention on the Rights of the Child (CRC) | 1992 | 1994 | 1991 | 1990 |
| Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) | 1988 | 1999a | 1995a | 2002a |
| Convention on the Rights of Persons with Disabilities | 2008 | 2014 | 2008 | 2009a |

Note: "a" means accession by the State to the treaty

Source: Office of the United Nations High Commissioner for Human Rights, <http://indicators.ohchr.org/>

Annex C

Human Rights Treaties

| | |
|--|---|
| International Convention on the Protection of All Persons from Enforced Disappearance (ICPED) 2006 | Committee on Enforced Disappearance (CED) |
| International Convention on the Rights of the Persons with Disabilities (ICRPD) 2006 | Committee on the Rights of Persons with Disabilities (CRPD) |
| International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families 1990 | Committee on Migrant Workers (CMW) |
| Convention on the Rights of the Child (CRC) 1989 | Committee on the Rights of the Child (CRC) |
| Convention against Torture, Other Cruel, Inhuman or Degrading Treatment (CAT) 1984 | Committee against Torture (CAT) Sub-committee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT) |
| Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) 1979 | Committee on the Elimination of Discrimination against Women (CEDAW) |
| International Covenant on Civil and Political Rights (ICCPR) 1966 | Human Rights Committee (CCPR) |
| International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966 | Committee on Economic, Social and Cultural Rights (CESCR) |
| International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) 1965 | Committee on the Elimination of Racial Discrimination (CERD) |

Annex D

Examples of Human Rights

| In the area of civil and political rights | In the area of economic, social and cultural rights |
|---|--|
| <ul style="list-style-type: none"> • Right to life • Freedom from torture and cruel, inhuman or degrading treatment or punishment • Freedom from slavery, servitude and forced labour • Right to liberty and security of person • Right of detained persons to be treated with humanity • Freedom of movement • Right to a fair trial • Prohibition of retroactive criminal laws • Right to recognition as a person before the law • Right to privacy • Freedom of thought, conscience and religion • Freedom of opinion and expression • Prohibition of propaganda for war and of incitement to national, racial or religious hatred • Freedom of assembly • Freedom of association • Right to marry and found a family • Right to take part in the conduct of public affairs, vote, be elected and have access to public office • Right to equality before the law and non-discrimination | <ul style="list-style-type: none"> • Right to work • Right to just and favourable conditions of work • Right to form and join trade unions • Right to social security • Protection of the family • Right to an adequate standard of living, including adequate food, clothing and housing • Right to health • Right to education |
| In the area of collective rights | |
| <ul style="list-style-type: none"> • Right of peoples to: • Self-determination • Development • Free use of their wealth and natural resources • Peace • A healthy environment | <ul style="list-style-type: none"> • Other collective rights: • Rights of national, ethnic, religious and linguistic minorities • Rights of indigenous peoples |

(Source: Inter-Parliamentary Union and Office of the United Nations High Commissioner for Human Rights, *Human Rights: A Handbook For Parliamentarians*, page 2. Available at www.ipu.org/pdf/publications/hr_guide_en.pdf.)

Annex E

Business impact on human rights

Labour rights

| | |
|--|---|
| Freedom of association | Right to equal pay for equal work |
| Right to organize and participate in collective bargaining | Right to equality at work |
| Right to non-discrimination | Right to just and favourable remuneration |
| Abolition of slavery and forced labour | Right to a safe work environment |
| Abolition of child labour | Right to rest and leisure |
| Right to work | Right to family life |

Non-labour rights

| | | |
|---|---|---|
| Right to life, liberty and security of the person | Right of peaceful assembly | Right to an adequate standard of living (including food, clothing, and housing) |
| Freedom from torture or cruel, inhuman or degrading treatment | Right to marry and form a family | Right to physical and mental health; access to medical services |
| Equal recognition and protection under the law | Freedom of thought, conscience and religion | Right to education |
| Right to a fair trial | Right to hold opinions, freedom of information and expression | Right to participate in cultural life, the benefits of scientific progress, and protection of authorial interests |
| Right to self-determination | Right to political life | Right to social security |
| Freedom of movement | Right to privacy | |

(Source: Protect, Respect and Remedy: a Framework for Business and Human Rights Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, Advance Edited Version, A/HRC/8/5, 7 April 2008, pages 15-16.)

Materials

Short papers/media reports on the situation at the workplace and other aspects of company operations such as the following:

- Thomas Wilson, Antoni Slodkowski and Mari Saito, “Subaru’s secret: Marginalized foreign workers power a Japanese export boom,” *Reuters Investigates*, 28 July 2015, www.reuters.com/investigates/special-report/japan-subaru/
- Alexandra Chan, *Investigative Report on the Working Conditions in UNIQLO’s China Suppliers*, January 2015, http://sacom.hk/wp-content/uploads/2015/01/2014-UNIQLO-Investigative-Report_final_20150109.pdf
- Survey of Northeast Asian companies in the Mongolian mining industry, see Center for Human Rights and Development, *Human Rights in the Mining Industry of Mongolia*, pages 108-118
- Field reports on Korean company operations in other countries, see Korean Transnational Corporations Watch, *Korean Companies and Human Rights: Doing Business in the Philippines, Myanmar and Uzbekistan*, pages 64 – 87
- Huang Zhong and Cheng Qian, *Merging Business and Human Rights in China: Still A Long Way to Go*, pages 36 – 45
- “Human Rights Issues by Sector,” *2014 Stakeholder Engagement (Human Rights Due Diligence) (version 3, March 3, 2014)*, Caux Round Table, available at [http://crt-japan.jp/files2014/2-2-0-stakeholder_engagement/pdf/HR_DD_Final_Report_en\(2014\).pdf](http://crt-japan.jp/files2014/2-2-0-stakeholder_engagement/pdf/HR_DD_Final_Report_en(2014).pdf)

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.

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

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.

Implementing the United Nations Initiatives - UN “Protect, Respect and Remedy” Framework, UN Global Compact

This module has the following objectives:

Enable the participants to

- Determine the United Nations initiatives on corporate responsibility to respect human rights;
- Discuss the principles and mechanisms being promoted in the UN Global Compact, UN “Protect, Respect and Remedy” Framework, and other UN initiatives; and
- Identify possible measures that would help companies fulfill their human rights commitment under the UN initiatives.

Time: 4 HOURS AND 15 MINUTES

Materials:

- Big size papers, colored pens, writing papers, adhesive tapes;
- Equipment - computer, projector, screen;
- Video/documents on the United Nations initiatives on corporate responsibility to respect human rights.

Implementing the United Nations Initiatives – UN “Protect, Respect and Remedy” Framework, UN Global Compact

I. Procedure

a. Opener - 30 MINUTES

Show a video or powerpoint on the general introduction of the United Nations’ Global Compact and other initiatives on business and human rights. The video “Global Compact+15: Business as a Force for Good” (available on YouTube) can be used for this purpose.

Additional information can be provided regarding:

1. Women Empowerment Principles (partnership between Global Compact and UNWomen) – see Annex A;
2. Children’s Rights and Business Principles (partnership between Global Compact and UNICEF) – see Annex B;

Have an open forum and encourage the participants to raise questions. Classify and summarize questions on the board.

b. Input – 1 HOUR

Using the major questions raised in the open forum as starting point, provide a more detailed input on the UN Global Compact and the UN “Protect, Respect and Remedy” Framework.

Discuss in the input the major elements of the UN initiatives, particularly the following:*

Principles:

1. Human Rights
 - Principle 1: Businesses should support and respect the protection of internationally proclaimed human rights; and
 - Principle 2: make sure that they are not complicit in human rights abuses.
2. Labour
 - Principle 3: Businesses should uphold the freedom of association and the effective recognition of the right to collective bargaining;
 - Principle 4: the elimination of all forms of forced and compulsory labor;
 - Principle 5: the effective abolition of child labor; and
 - Principle 6: the elimination of discrimination in respect of employment and occupation.

* These are part of the “Ten Principles of the UN Global Compact.” The remaining three principles are the following:
Environment

Principle 7: Businesses should support a precautionary approach to environmental challenges;

Principle 8: undertake initiatives to promote greater environmental responsibility; and

Principle 9: encourage the development and diffusion of environmentally friendly technologies.

Anti-Corruption

Principle 10: Businesses should work against corruption in all its forms, including extortion and bribery.

Source: www.unglobalcompact.org/what-is-gc/mission/principles.

Stress specific provisions of the *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework* such as the following:**

Protect, Respect and Remedy Framework:

1. **State duty to protect human rights**
States must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises.
2. **Corporate responsibility to respect human rights**
Business enterprises should respect human rights. This means that they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.
3. **Access to remedies**
As part of their duty to protect against business-related human rights abuse, States must take appropriate steps to ensure, through judicial, administrative, legislative or other appropriate means, that when such abuses occur within their territory and/or jurisdiction those affected have access to effective remedy.

Corporate responsibility: Human rights due diligence

In order to identify, prevent, mitigate and account for how they address their adverse human rights impacts, business enterprises should carry out human rights due diligence. The process should include assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed.

Use the text of Annex C as reference material for the participants on the basic components of the UN framework on business and human rights. Alternatively, the 2011 UN report on the framework*** can also be made available to the participants.

c. Activity - 1 HOUR

As an introduction to group work, stress the UN Global Compact objective of providing “a principle-based framework to guide companies in the process of integrating human rights, labour standards, environmental stewardship, and anti-corruption in strategy and operations.” Use Annexes D to G for visual aids on UN Global Compact.

Emphasize the important obligation of UN Global Compact member-companies to submit a report stressing their

1. continued commitment to the initiative,

** *UN Framework and the Global Compact, Guiding Principles on Business and Human Rights*, www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf.

*** Annex of the Report of the Special Representative of the Secretary General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, Advance Edited Version, 21 March 2011, A/HRC/17/31/. Full text available at www.ohchr.org/Documents/Issues/Business/A-HRC-17-31_AEV.pdf.

2. a description of practical actions on each of the four issue areas (human rights, labor standards, environmental stewardship, and anti-corruption) encompassed in the Ten Principles, and
3. a measurement of outcomes using qualitative and quantitative indicators.

Ask the participants to discuss in their groups the significant human rights and labor issues that companies should focus in their report to the UN Global Compact.

Instruct the participants to prepare a report on their answers.

d. Input – 30 MINUTES

Introduce the implementation measures of the UN Global Compact, namely:

1. Integrity Measures (Annex H);
2. Communication of Progress (Annex I).

e. Activity - 1 HOUR

Ask the participants to discuss in the same small groups the following concrete examples of Communication of Progress content - human rights (Annex J), labor (Annex K), and stakeholder engagement (Annex L).

1. What significant indicators should appear in the company report to the UN Global Compact?
2. What probable problem areas may appear in company reports to the UN Global Compact?
3. How can affected people influence the preparation of company report in compliance with the UN Global Compact commitment?

Ask the participants to report to the plenary the results of group discussions in the two activities.

Organize on the board the main points that came out of the group reports.

II. Summary

Time: 15 MINUTES

Summarize the main points discussed during the session such as the following:

1. Major components of the UN Framework on Business and Human Rights;
2. Challenges in implementing the UN initiatives such as the UN Global Compact experience;
3. Compliance by companies on their commitment under the UN initiatives;
4. Participation of affected people in the UN initiatives.

Annex A

Women's Empowerment Principles

Principle 1: Establish high-level corporate leadership for gender equality

Principle 2: Treat all women and men fairly at work - respect and support human rights and nondiscrimination

Principle 3: Ensure the health, safety and well-being of all women and men workers

Principle 4: Promote education, training and professional development for women

Principle 5: Implement enterprise development, supply chain and marketing practices that empower women

Principle 6: Promote equality through community initiatives and advocacy

Principle 7: Measure and publicly report on progress to achieve gender equality.

(Source: www.weprinciples.org/)

Annex B

Children's Rights and Business Principles

1. Meet the (companies') responsibility to respect children's rights and commit to supporting the human rights of children;
2. Contribute to the elimination of child labour, including in all business activities and business relationships;
3. Provide decent work for young workers, parents and caregivers;
4. Ensure the protection and safety of children in all business activities and facilities;
5. Ensure that products and services are safe, and seek to support children's rights through them;
6. Use marketing and advertising that respect and support children's rights;
7. Respect and support children's rights in relation to the environment and to land acquisition and use;
8. Respect and support children's rights in security arrangements;
9. Help protect children affected by emergencies;
10. Reinforce community and government efforts to protect and fulfil children's rights.

(Source: Children's Rights and Business Principles, <http://childrenandbusiness.org/>)

Annex C

Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy: a Framework for Business and Human Rights” Framework* (excerpts)***

i. State duty to protect human rights*****

States must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises. This requires taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication.

In meeting their duty to protect, States should:

- (a) Enforce laws that are aimed at, or have the effect of, requiring business enterprises to respect human rights, and periodically to assess the adequacy of such laws and address any gaps;
- (b) Ensure that other laws and policies governing the creation and ongoing operation of business enterprises, such as corporate law, do not constrain but enable business respect for human rights;
- (c) Provide effective guidance to business enterprises on how to respect human rights throughout their operations;
- (d) Encourage, and where appropriate require, business enterprises to communicate how they address their human rights impacts.

ii. Corporate responsibility to respect human rights*****

Business enterprises should respect human rights. This means that they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.

The responsibility to respect human rights requires that business enterprises:

- (a) Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur;
- (b) Seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts.

The responsibility of business enterprises to respect human rights applies to all enterprises regardless of their size, sector, operational context, ownership and structure. Nevertheless, the scale and complexity of the means through which enterprises meet that responsibility may vary according to these factors and with the severity of the enterprise’s adverse human rights impacts.

Human rights due diligence*****

In order to identify, prevent, mitigate and account for how they address their adverse human rights impacts, business enterprises should carry out human rights due

**** Ibid.,

***** Ibid., pages 3-4.

***** Ibid., pages 13-15.

***** Ibid., page 17.

diligence. The process should include assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed. Human rights due diligence:

(a) Should cover adverse human rights impacts that the business enterprise may cause or contribute to through its own activities, or which may be directly linked to its operations, products or services by its business relationships;

(b) Will vary in complexity with the size of the business enterprise, the risk of severe human rights impacts, and the nature and context of its operations;

(c) Should be ongoing, recognizing that the human rights risks may change over time as the business enterprise's operations and operating context evolve.

iii. Access to remedies*****

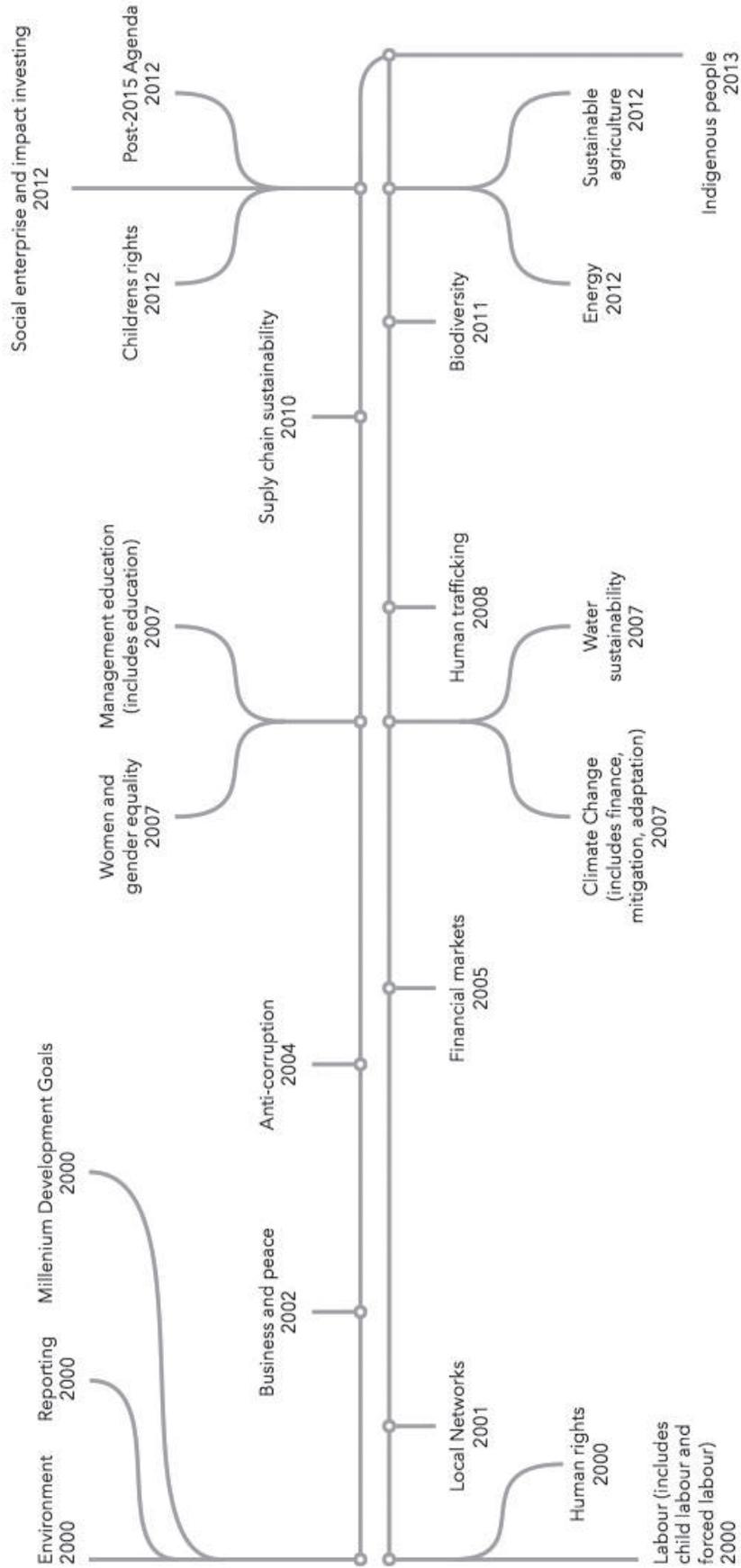
As part of their duty to protect against business-related human rights abuse, States must take appropriate steps to ensure, through judicial, administrative, legislative or other appropriate means, that when such abuses occur within their territory and/or jurisdiction those affected have access to effective remedy.

To make it possible for grievances to be addressed early and remediated directly, business enterprises should establish or participate in effective operational-level grievance mechanisms for individuals and communities who may be adversely impacted.

***** Ibid., pages 27-31.

Annex D

11 Big issues: When did the Global Compact start working on broader range of issues

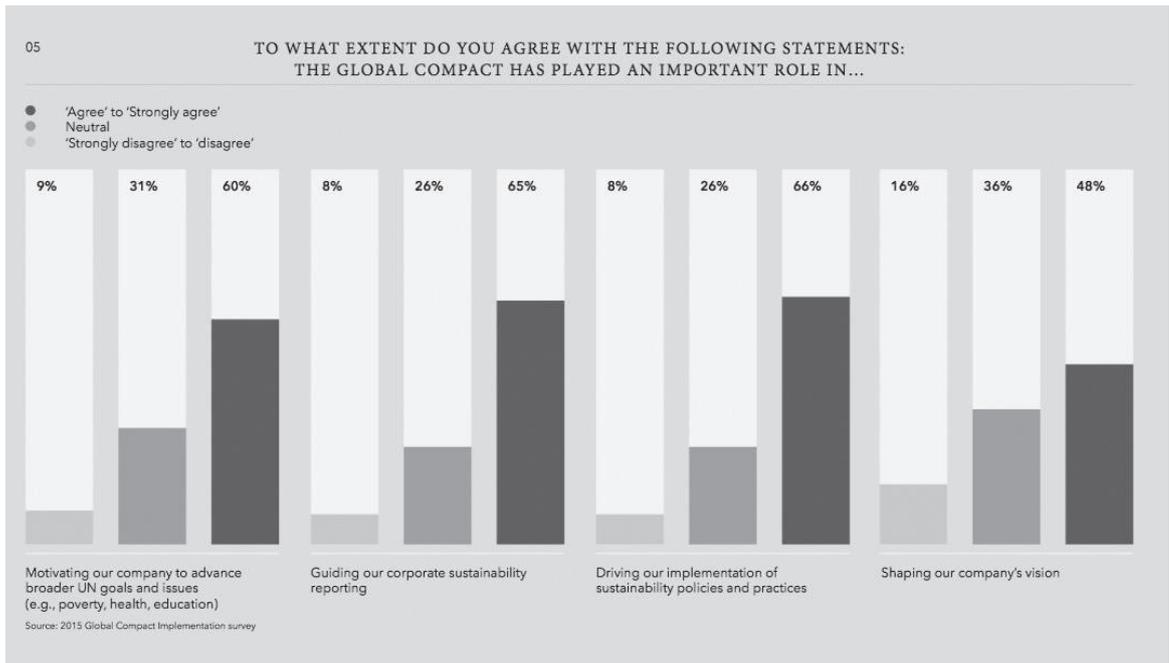


(Source: United Nations Global Compact, *Impact, Transforming Business, Changing the World*, 2015, page 77.)



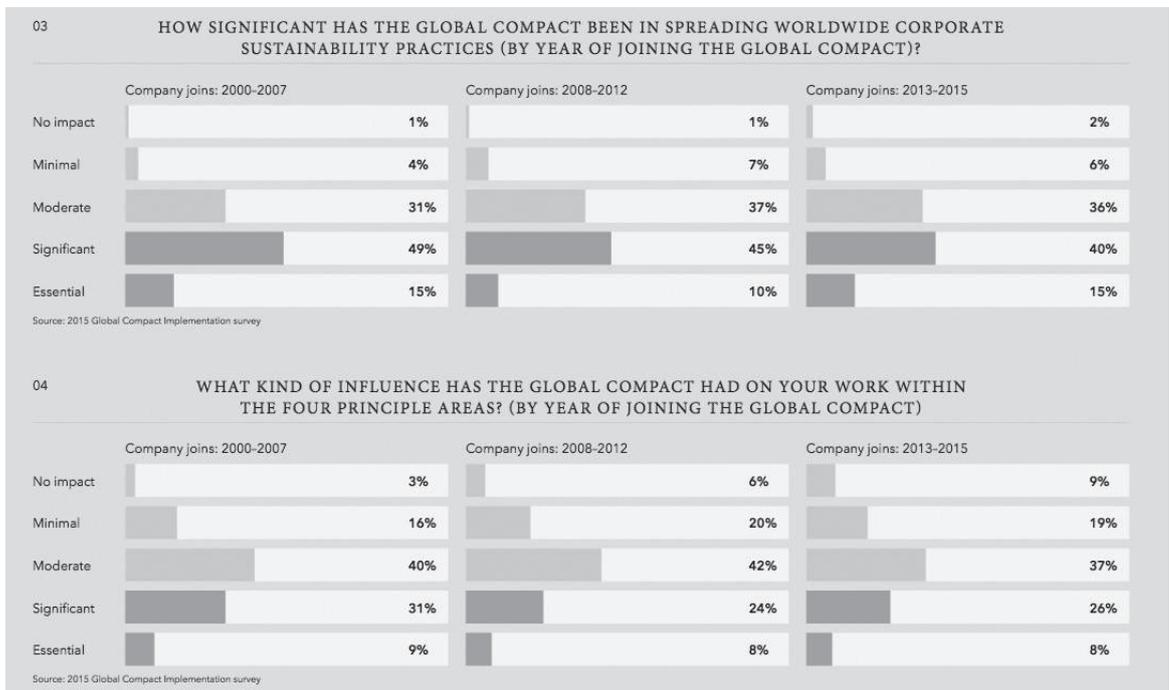
(Source: United Nations Global Compact, *Impact, Transforming Business, Changing the World*, 2015, page 14..)

Annex F



(Source: United Nations Global Compact, *Impact, Transforming Business, Changing the World*, 2015, page 15.)

Annex G



(Source: United Nations Global Compact, *Impact, Transforming Business, Changing the World*, 2015, page 15.)

Annex H

Integrity Measures

THE UNITED NATIONS GLOBAL COMPACT is a voluntary initiative that seeks to advance universal principles on human rights, labor, environment and anti-corruption through the active engagement of the corporate community, in cooperation with civil society and representatives of organized labor. The initiative is not designed, nor does it have the mandate or resources, to monitor or measure member-companies' performance. Nevertheless, with the aim of assuring that the integrity of the Global Compact is safeguarded at all times, the Secretary-General has adopted the following measures:

1. Misuse of association with the UN and/or Global Compact
2. Prohibition on the “use of the United Nations name and emblem for commercial purposes or in any other manner without the prior authorization of the Secretary-General, and recommends that Member States take the necessary measures to prevent the unauthorized use thereof;”
3. Failure to Communicate Progress
4. If a member-company fails to communicate its progress by the deadline, it will be listed as “noncommunicating” on the Global Compact website. If a further year passes without the submission of a COP, the member-company will be expelled. The Global Compact reserves the right to publish the names of companies that have been expelled for failure to communicate on their progress;
5. Allegations of systematic or egregious abuses
6. Safeguarding the “reputation, integrity and good efforts of the Global Compact and its [member-companies] requires transparent means to handle credible allegations of systematic or egregious abuse of the Global Compact’s overall aims and principles.”

(Source: Text based on *Global Compact – Integrity Measures*. Available at www.unglobalcompact.org/docs/about_the_gc/integrity_measures/Integrity_Measures_Note_EN.PDF)

Annex I

Overview of the Communication on Progress (COP)

THE COMMUNICATION ON PROGRESS (COP) is an annual disclosure through which a business informs stakeholders about its efforts to implement the principles of the United Nations (UN) Global Compact.

As the central component of the UN Global Compact's integrity measures, the COP's main objective is to serve as a public vehicle for information on sustainability performance. At the same time, the COP can be an effective tool for stakeholder dialogue and the sharing of best and emerging practices.

As a public document, the COP is an important demonstration of a company's commitment to transparency and accountability. Failure to submit a COP on the Global Compact website will result in a change of participant status and can eventually lead to the expulsion of a business from the initiative.

The submission of a COP enhances stakeholder access to information about a participant's sustainability performance.

The COP Policy applies only to business participants.

(Source: UN Global Compact Policy on Communicating Progress, Updated 1 March 2013)

Submitting an annual COP is at the heart of the company's commitment to the UN Global Compact and provides valuable information to company stakeholders. It covers the following:

- A statement by the chief executive expressing continued support for the UN Global Compact and renewing the participant's ongoing commitment to the initiative;
- A description of practical actions the company has taken or plans to take to implement the Ten Principles in each of the four areas (human rights, labour, environment, anti-corruption); and
- A measurement of outcomes.

At the advanced level, companies are required to expand upon the minimum content requirements and to disclose actions and results in the following dimensions:

- Implementing the Ten Principles into strategies and operations;
- Taking action in support of broader UN goals and issues;
- Corporate sustainability governance and leadership.

(Source: Text based on www.unglobalcompact.org/participation/report/cop)

Corporate commitments to the UN Global Compact:

- Operate responsibly, in alignment with universal sustainability principles;
- Take actions that support the society around the company;
- Commit to the effort from company's highest level, pushing sustainability deep into its DNA;
- Report annually on ongoing efforts; and
- Engage locally where the company has a presence.

(Source: Text based on www.unglobalcompact.org/participation/join/commitment)

Annex J

Indicators of Compliance – Human Rights

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|---|---|
| <p>Principle 1: Human Rights</p> <p>Businesses should support and respect the protection of internationally proclaimed human rights</p> | <p>Investment:</p> <ul style="list-style-type: none"> • Total hours of employee training on human rights policies or procedures concerning aspects of human rights that are relevant to operations, including the percentage of employees trained • Security Practices: • Percentage of security personnel trained in the organization’s human rights policies or procedures that are relevant to operations • Indigenous Rights • Total number of incidents of violations involving rights of indigenous peoples and actions taken <p>Assessment</p> <ul style="list-style-type: none"> • Total number and percentage of operations that have been subject to human rights reviews or impact assessments • Human Rights Grievance Mechanisms • Number of grievances about human rights impacts filed, addressed, and resolved through formal grievance mechanisms <p>Society:</p> <ul style="list-style-type: none"> • Local Communities • Percentage of operations with implemented local community • Engagement, impact assessments, and development programs • Operations with significant actual and potential negative impacts on local communities |
| <p>Principle 2: Human Rights</p> <p>Business should make sure they are not complicit in human rights abuses.</p> | <p>Investment:</p> <ul style="list-style-type: none"> • Total number and percentage of significant investment agreements and contracts that include human rights clauses or that underwent human rights screening <p>Supplier Human Rights Assessment</p> <ul style="list-style-type: none"> • Percentage of new suppliers that were screened using human rights criteria • Significant actual and potential negative human rights impacts in the supply chain and actions taken |

(Source: Text based on *Making the Connection - Using GRI G4 Guidelines to Communicate Progress on the UN Global Compact Principles*, Global Compact and GRI, pages 18-19.)

Annex K

Indicators of Compliance – Labor

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| <p>Principle 3: Labour</p> <p>Businesses should uphold the freedom of association and the effective recognition of the right to collective bargaining.</p> | <p>General Standard Disclosures Organizational Profile</p> <p>a. Report the percentage of total employees covered by collective bargaining agreements.</p> <p>Indicators Freedom of Association and Collective Bargaining</p> <ul style="list-style-type: none"> • Operations and suppliers identified in which the right to exercise freedom of association and collective bargaining may be violated or at significant risk, and measures taken to support these rights <p>Labor: Labor/Management Relations</p> <ul style="list-style-type: none"> • Minimum notice periods regarding operational changes, including whether these are specified in collective agreements |
| <p>Principle 4: Labour</p> <p>Businesses should uphold the elimination of all forms of forced and compulsory labour.</p> | <p>Forced or Compulsory Labor</p> <ul style="list-style-type: none"> • Operations and suppliers identified as having significant risk for incidents of forced or compulsory labor, and measures to contribute to the elimination of all forms of forced or compulsory labor |
| <p>Principle 5: Labour</p> <p>Businesses should uphold the effective abolition of child labour.</p> | <p>Child Labor</p> <p>Operations and suppliers identified as having significant risk for incidents of child labor, and measures taken to contribute to the effective abolition of child labor</p> |

| | |
|---|--|
| <p>Principle 6: Labour</p> <p>Businesses should uphold the elimination of discrimination in respect of employment and occupation.</p> | <p>General Standard Disclosures</p> <p>Organizational Profile</p> <ol style="list-style-type: none"> 1. Report the total number of employees by employment contract and gender. 2. Report the total number of permanent employees by employment type and gender. 3. Report the total workforce by employees and supervised workers and by gender. 4. Report the total workforce by region and gender. 5. Report whether a substantial portion of the organization's work is performed by workers who are legally recognized as self-employed, or by individuals other than employees or supervised workers, including employees and supervised employees of contractors. 6. Report any significant variations in employment numbers (such as seasonal variations in employment in the tourism or agricultural industries). <p>Indicators</p> <p>Economic: Aspect: Market Presence</p> <ul style="list-style-type: none"> • Ratios of standard entry level wage by gender compared to local minimum wage at significant locations of operation • Proportion of senior management hired from the local community at significant locations of operation <p>Labor Practices and Decent Work: Employment</p> <ul style="list-style-type: none"> • Total number and rates of new employee hires and employee turnover by age group, gender and region • Return to work and retention rates after parental leave, by gender <p>Training and Education</p> <ul style="list-style-type: none"> • Average hours of training per year per employee by gender, and by employee category • Percentage of employees receiving regular performance and career development reviews, by gender and by employee category <p>Diversity and Equal Opportunity</p> <ul style="list-style-type: none"> • Composition of governance bodies and breakdown of employees per employee category according to gender, age group, minority group membership, and other indicators of diversity <p>Equal Remuneration for Women and Men</p> <ul style="list-style-type: none"> • Ratio of basic salary and remuneration of women to men by employee category, by significant locations of operation <p>Human Rights: Non-discrimination</p> <ul style="list-style-type: none"> • Total number of incidents of discrimination and corrective actions taken |
|---|--|

(Source: Text based on pages 18-19, *Making the Connection - Using GRI G4 Guidelines to Communicate Progress on the UN Global Compact Principles*, Global Compact and GRI.)

Annex L

Stakeholder Engagement

STAKEHOLDER ENGAGEMENT is at the core of the commitment to the UN Global Compact. As a private-public initiative, the UN Global Compact offers companies access to key actors in the corporate sustainability landscape, including governments, civil society, labor, academia and the United Nations system. Companies in the UN Global Compact recognize the importance of stakeholder consultation in the process of integrating the UN Global Compact principles into core operations and strategy.

At the advanced level, companies must describe in their COP their engagement with all important stakeholders, including:

- Publicly recognize responsibility for the company's impacts on internal and external stakeholders;
- Define sustainability strategies, goals and policies in consultation with key stakeholders;
- Consult stakeholders in implementation dilemmas and challenges and invite them to take active part in reviewing performance;
- Establish channels to engage with employees and other stakeholders to hear their ideas and address their concerns, and protect "whistle-blowers;"
- Provide a list of stakeholder groups engaged by the organization.

Report on the following:

- Basis for identification and selection of stakeholders with whom to engage;
- Organization's approach to stakeholder engagement dealing with, including frequency of engagement by type and by stakeholder group, and an indication of whether any of the engagement was undertaken specifically as part of the report preparation process;
- Key topics and concerns that have been raised through stakeholder engagement, and how the organization has responded to those key topics and concerns, including through its reporting.

(Source: Text based on page 14, *Making the Connection - Using GRI G4 Guidelines to Communicate Progress on the UN Global Compact Principles*, Global Compact and GRI.)

Materials

- *Guiding Principles on Business and Human Rights for implementing the UN “Protect, Respect and Remedy” Framework*. Full text of the document available at www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf.
- Report of the Special Representative of the Secretary General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie - *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework*. A/HRC/17/31, 21 March 2011.
- United Nations, *The Corporate Responsibility to Respect Human Rights – an Interpretative Guide*, New York/Geneva 2012, HR/PUB/12/02. Full text available at www.ohchr.org/Documents/Publications/HR.PUB.12.2_En.pdf.

Enforcing Labor Standards

This module has the following objectives:

Enable the participants to

- Determine labor standards under the ILO Declaration on Fundamental Principles and Rights at Work;
- Analyze the labor issues faced by workers in Northeast Asia/country;
- Discuss issues that affect full implementation of the ILO Conventions.

Time: 3 HOURS AND 45 MINUTES

Materials:

- Big size papers, colored pens, writing papers, adhesive tapes;
- Equipment - computer, projector, screen;
- Video/documents on the ILO Conventions.

Enforcing Labor Standards

I. Procedure

b. Input - 1 HOUR

Provide an input on the ILO Declaration on Fundamental Principles and Rights at Work that covers the following conventions:

1. Freedom of association and the effective recognition of the right to collective bargaining
 - i. Freedom of Association and Protection of the Right to Organise Convention, 1948 (CO87);
 - ii. Right to Organise and Collective Bargaining Convention, 1949 (CO98);
2. Elimination of all forms of forced and compulsory labor
 - i. Forced Labour Convention, 1930 (CO29);
 - ii. Abolition of Forced Labour Convention, 1957 (CO105);
3. Effective abolition of child labor
 - i. Minimum Age Convention, 1973 (CO 138);
 - ii. Worst Forms of Child Labour Convention, 1999 (CO182);
4. Elimination of discrimination in respect of employment and occupation
 - i. Equal Remuneration Convention, 1951 (CO100);
 - ii. Discrimination (Employment and Occupation) Convention, 1958 (CO111).

A short presentation on the ILO Declaration on Fundamental Principles and Rights at Work can be found at www.ilo.org/declaration/lang--en/index.htm.

Below are some ILO materials that are useful in discussing different labor issues:

1. Child labor – *Eliminating Child Labour : Guide for Employers*
2. Forced labor – Forced labour, human trafficking and slavery
3. *The Labour Principles of the United Nations Global Compact: A Guide for Business* (ILO, 2008) – this can be used as guide for introducing the labor rights;
4. Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (as amended in 2006) - this provides “principles in the fields of employment, training, conditions of work and life and industrial relations which governments, employers’ and workers’ organizations and multinational enterprises are recommended to observe on a voluntary basis.”
5. IOE-ILO guidance note on the 2014 Protocol to the Forced Labour Convention, 1930 - short note jointly produced by the ILO and IOE to support the employer/business engagement to implement the Forced Labour Protocol.

Inform the participants about the status of ratification of the ILO Conventions in Northeast Asia. (Annex A).

Explain the ILO mechanisms on monitoring enforcement of its conventions, such as the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR). Emphasize the obligation of governments to submit reports to CEACR and to respond to comments on these reports from labor unions.

Mention also the Annex to the ILO Declaration on Fundamental Principles and Rights at Work on annual review of requested reports from “governments which have not ratified

one or more of the fundamental Conventions, on any changes which may have taken place in their law and practice.” The follow-up covers the “four areas of fundamental principles and rights specified in the Declaration.”*

After the presentation, hold an open forum. Summarize the discussion during the open forum by focusing on the factors that supported the enforcement of the ILO Convention.

C. Activity A – 1 HOUR

Ask the participants to form small groups to discuss the workers’ rights that are being violated using the cases taken up by the CEACR as listed below:

1. Right to Organize and Collective Bargaining – Japan;
2. Right to Equal Remuneration – Japan;
3. Private Employment Agencies – Japan;
4. Labour Inspection – Korea;
5. Discrimination (Employment and Occupation) – Korea;
6. Workers’ Representatives – Korea;
7. Discrimination (Employment and Occupation) – Mongolia;
8. Weekly Rest (Industry) – China;
9. Minimum Age – China;
10. Worst Forms of Child Labor – China.

Ask the participants to analyze in the groups some of these cases (Annexes B, C, D, E, F, G and H) by examining the responses of governments, employers, and the workers to specific issues. Tell them to determine factors that prevent the enjoyment of workers’ rights. Ask the participants to use the following group report format:

| Issues | Response | | | Comment |
|--------|------------|----------|-------|---------|
| | Government | Employer | Labor | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |

Ask the participants to present the results of the group discussion in a panel discussion format.

List on the board the major highlights of the group reports.

d. Activity B - 1 HOUR

Ask the participants to discuss in small groups specific cases of labor initiatives at the local and national levels that

* See Annex of the ILO Declaration on Fundamental Principles and Rights at Work , available at www.ilo.org/dyn/normlex/en/f?p=1000:62:0::NO:62:P62_LIST_ENTRIE_ID:2453911:NO.

1. helped address the violation of specific workers' rights;
2. helped implement the ILO Conventions and identify elements that led to the success of the initiatives.

Ask them also to focus on cases that show the capacity of the workers and/or labor unions to resolve their problems. See Annex I for an example of a local initiative that support labor rights. Use other examples available in the subregion/country.

Ask the groups to present the results of their discussion in a creative manner (drama, painting, tableau, etc.).

List on the board the major contents of the group reports.

II. Summary - 15 MINUTES

Summarize the main points discussed during the session such as the following:

- Major components of the ILO Declaration on Fundamental Principles and Rights at Work;
- Issues affecting workers in Northeast Asia/country;
- Issues regarding the implementation of ILO Conventions at the national level.

Annex A
Status of Ratification of ILO Conventions

| Convention | China | Japan | Korea | Mongolia |
|---|--------------|--------------|--------------|-----------------|
| Freedom of Association and the Effective Recognition of the Right to Collective Bargaining | | | | |
| Freedom of Association and Protection of the Right to Organise Convention, 1948 (C087) | NR | R | NR | R |
| Right to Organise and Collective Bargaining Convention, 1949 (C098) | NR | R | NR | R |
| Elimination of All Forms of Forced and Compulsory Labour | | | | |
| Forced Labour Convention, 1930 (C029) | NR | R | NR | R |
| Abolition of Forced Labour Convention, 1957 (C105) | NR | NR | NR | R |
| Effective Abolition of Child Labour | | | | |
| Minimum Age Convention, 1973 (C0138) | R | R | R | R |
| Worst Forms of Child Labour Convention, 1999 (C0182) | R | R | R | R |
| Elimination of Discrimination in Respect of Employment and Occupation | | | | |
| Equal Remuneration Convention, 1951 (C0100) | R | R | R | R |
| Discrimination (Employment and Occupation) Convention, 1958 (C0111) | R | NR | R | R |

Note: NR – Not yet ratified; R - Ratified

(Source: http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:10011:0::NO::P10011_DISPLAY_BY,P10011_CONVENTION_TYPE_CODE:1,F.)

Annex B

1. Equal Remuneration Convention (Japan) - Excerpt

Observation (CEACR) - adopted 2014, published 104th ILC session (2015)
Equal Remuneration Convention, 1951 (No. 100) - Japan (Ratification: 1967)

The Committee notes the observations of the Zensekiyu Showa-Shell Labor Union received on 17 December 2012, to which the Government replied in its report, as well as the observations of the Japanese Trade Union Confederation (JTUC-RENGO), which were annexed to the Government's report received on 30 September 2013. It further notes the observations received on 6 August 2013 from the Aichi Solidarity Laborers' Union and the Union of Women Trading Company Workers as well as the observations of the National Confederation of Trade Unions (ZENROREN), received on 25 September 2013.

Follow-up to the recommendations of the tripartite committee (representation made under article 24 of the Constitution of the ILO)

The Committee recalls the report adopted on 11 November 2011 of the tripartite committee established by the Governing Body to examine the representation submitted by the Zensekiyu Showa-Shell Labour Union (GB.312/INS/15/3). The tripartite committee concluded that further measures were needed, in cooperation with workers' and employers' organizations, to promote and ensure equal remuneration for men and women for work of equal value in law and practice in accordance with Article 2 of the Convention, and to strengthen the implementation and monitoring of the existing legislation and measures, including measures to determine the relative value of jobs (paragraph 57).

Articles 1 and 2 of the Convention. Work of equal value. Legislation. For a number of years, the Committee has been pointing out that section 4 of the Labour Standards Law, which provides that "an employer shall not engage in discriminatory treatment of a woman as compared to a man with respect to wages by reason of the worker being a woman", does not fully reflect the principle of the Convention. The Government indicates that in order to clarify the interpretation of section 4 of the Labour Standards Law, the related Notification was revised in December 2012, and some court cases relating to section 4 of the Labour Standards Law were added as references. A brochure of relevant court cases was also prepared for employees to verify whether their payroll system had substantial gender discrimination. The Government reiterates that as long as the payroll system does not allow any discrimination in wages between men and women only by reason of the worker being a woman, it is considered to meet the requirements of the Convention. While noting the Government's views, the Committee is bound to reiterate that only prohibiting sex-based wage discrimination does not capture the concept of "work of equal value", which is fundamental to tackling occupational sex segregation in the labour market (see General Survey on the fundamental Conventions, 2012, paragraphs 673-676). The Committee also notes the views expressed by Zensekiyu Showa-Shell Labor Union, Aichi Solidarity Laborers' Union and the Union of Women Trading Company Workers that the principle

of equal remuneration for work of equal value is not considered as a principle that directly regulates employment relations, thereby creating a significant barrier to pay equity. In addition, JTUC-RENGO observes that the Government's interpretation of section 4 of the Labour Standards Law in the Notification limits the scope of the discrimination to be eliminated and does not directly deal with equal remuneration for men and women for work of equal value. The organization reiterates its request for the inclusion of a clause prohibiting wage discrimination based on sex in the Equal Employment Opportunity Law (EEO), and for "sex" to be added as a ground of discrimination in section 3 of the Labour Standards Law. The Committee once again urges the Government to take immediate and concrete measures to ensure that there is a legislative framework clearly establishing the right to equal remuneration for men and women for work of equal value and appropriate enforcement procedures and remedies. The Committee asks the Government to provide detailed information on the measures taken and the progress achieved in this regard, as well as information on any revision of the current labour legislation which could have an impact on equal remuneration for men and women, and on any judicial or administrative decisions relating to equal pay.

Practical measures to address the gender pay gap and promote gender equality. The Committee notes the detailed information provided by the Government regarding the measures taken to address the differences between men and women in employment positions and in the number of years of employment through positive action and support for the reconciliation of work and family responsibilities. Noting that the gender pay gap remains significant (27.8 per cent in 2012), the Committee asks the Government to step up its efforts to encourage enterprises to take positive measures aimed at narrowing the gender pay gap, including regarding the access of women to managerial positions and the reconciliation of work and family responsibilities for both men and women on an equal footing. The Government is requested to report on the measures taken and the results achieved.

(Source: www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3174112:NO.)

Annex C

2. *Equal Remuneration Convention (Japan) – Second excerpt*

Observation (CEACR) - adopted 2014, published 104th ILC session (2015)
Equal Remuneration Convention, 1951 (No. 100) - Japan (Ratification: 1967)

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Non-regular employment: Part-time and fixed-term employment. The Committee has previously noted that in Japan “non-regular employment” refers to part-time and fixed-term work. With respect to part-time employment, the Committee notes from the Labour Force Survey of 2012 that women workers constituted 69.2 per cent of all part-time workers. According to the JTUC-RENGO, the wages and working conditions of many part-time workers remain at low levels and their wages hardly increase with their age or length of service. The Committee recalls section 8 of the Part-Time Workers Law, which prohibits discriminatory treatment in the determination of wages only in the case of part-time workers who meet specific criteria: their job descriptions and the level of responsibilities are equal to those of regular workers; they have concluded an employment contract for an indefinite period; and, during the contract period, any change in their job description or assignment corresponds to what a regular worker could also expect. The Committee notes that, according to ZENROREN, an official survey showed that, due to these criteria, in practice only 1.3 per cent of part-time workers enjoy equal treatment with their full-time counterparts. JTUC-RENGO reiterates its calls for the revision of section 8 on equal treatment and the inclusion of a provision concerning the payment of divisible benefits with monetary value to part-time workers. In its report, the Government indicates that legislative measures will be taken to amend the provisions prohibiting discriminatory treatment. The Committee notes with interest the adoption of Law No. 27 of 2014 to amend the Part-Time Workers Law. Law No. 27 amends several provisions, including section 8(1) on the prohibition of discrimination so as to remove the requirement relating to the conclusion of a contract for an indefinite period of time, and therefore extends the prohibition of discriminatory treatment to part-time workers with a fixed-term contract who fulfil the two remaining criteria. Recalling that the Convention applies to both full-time and part-time workers, the Committee asks the Government to provide detailed information on the content and scope of the amendments to the Part-Time Workers Law and their impact on the situation of part-time workers with respect to remuneration, including the proportion of part-time men and women workers now covered by the prohibition of discrimination. The Committee also asks the Government to continue taking measures to ensure that part-time workers and full-time workers are treated equally with respect to the principle of the Convention. The Committee once again asks the Government to provide information on the results achieved in practice in promoting conversions from part-time status to regular status, and to continue providing statistical information disaggregated by sex on the number of part-time workers.

The Committee notes that, according to the Zensekiyu Showa-Shell Labor Union, the disparities in wages between men and women are connected to disparities in working conditions, including seniority, between workers in regular and non regular employment, with women being concentrated in the latter. With respect to fixed-term

employment, the Committee notes that the amendment of the Labour Contract Law adopted in August 2012 and in force since April 2013, provides for a mechanism requiring the employer to convert fixed-term employment contracts into employment contracts for an indefinite period at the employee's request when fixed-term contracts are renewed repeatedly for more than five years. It also prohibits the termination of fixed-term employment contracts under "certain circumstances", as well as the imposition on fixed-term workers of working conditions that are "unreasonably different" from those of workers under contracts for an indefinite period. In this respect, the Committee notes the Government's reply to the Zensekiyu Showa-Shell Labor Union that "unreasonably different" working conditions are determined taking into account job descriptions (duties and level of responsibilities), scope of duties, job rotation and other factors. The Committee also notes that JTUC-RENGO asserts that there are many cases in which employers set different wage standards for fixed-term workers. For its part, ZENROREN expresses concern that, since the working conditions (duties, place of work, salary, hours of work, etc.) applied to a fixed-term worker will not change after the conversion of his or her contract, unless a separate contract is signed to that effect, the existing pay gap will persist between workers with an indefinite contract and fixed-term workers whose work is identical but who are treated differently in terms of place, hours of work and employment management category. In addition, the Committee notes that, according to JTUC-RENGO and ZENROREN, concerns remain regarding compliance with the new provisions by employers who want to avoid conversion into definitive contracts. The Committee asks the Government to take the necessary measures to monitor closely the effect of the new provisions of the Labour Contract Law concerning the conversion of fixed-term contracts into contracts for an indefinite period of time so as to ensure that the mechanism put in place does not have adverse effects on the situation of fixed-term workers, including women workers, with respect to remuneration. The Committee also asks the Government to clarify the meaning, in the amendment of the Labour Contract Law, of the terms "unreasonably different working conditions" and to specify the "circumstances" under which the employer is prohibited to terminate (or not renew) a fixed-term contract, including any interpretation given by the courts.

The Committee further notes the detailed statistical information provided by the Government showing that, as of 1 April 2012, there was a total of 603,582 temporary and part-time officials in local governments, of whom 74.2 per cent were women and that job categories are highly segregated by gender. According to the Government, since 24 April 2009, local governments are regulated by a notification explaining the system related to temporary and part-time employees. The Government indicates that further information will be provided in this respect. JTUC-RENGO underlines the precarious situation of such workers, 65 per cent of whom are paid on a daily or weekly basis and 39.6 per cent continue to work for less than one year (while 31.7 per cent work for three years or longer and 17.8 per cent for five years or longer). The trade union also stresses that the absence of provisions in the Local Autonomy Law and the Local Public Service Law regarding temporary and part-time workers in the public sector makes their status unclear; they have little access to commuting allowances, regular medical examinations and bereavement leave, although they are usually engaged in jobs similar to those of regular workers. JTUC-RENGO also indicates that in May 2013 the Alliance of Public Service Workers Unions (APU) submitted to the

Diet a bill to amend partially the Local Autonomous Law with a view to ensuring the entitlement to various allowances, on the basis of municipal ordinances, of part-time employees who are equivalent in their working conditions to full-time employees or are in official posts with shorter working hours. The Committee asks the Government to indicate the manner in which the remuneration of local government non-regular employees is determined, in comparison to the remuneration of officials in regular employment, and how it ensures that officials performing work of equal value receive equal remuneration, regardless of their employment status. Please also continue to provide information disaggregated by sex on the number of temporary and part-time officials in local authorities at the prefectural and municipal levels.

(Source: www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3174112:NO.)

Annex D

3. *Discrimination in Employment (Korea) – First Excerpt*

Observation (CEACR) - adopted 2014, published 104th ILC session (2015)
Discrimination (Employment and Occupation) Convention, 1958 (No. 111) - Korea,
Republic of (Ratification: 1998)

The Committee notes the discussion that took place in the Conference Committee on the Application of Standards in May-June 2014, including the written information provided by the Government.

Articles 1 and 2 of the Convention. Migrant workers. For a number of years, the Committee has been drawing the Government's attention to the need to provide appropriate flexibility to allow migrant workers to change workplaces and to ensure the effective protection of these workers against discrimination. In this context, the Committee noted previously that migrant workers are generally covered by the labour and anti-discrimination legislation, and it welcomed the changes made to the Employment Permit System to allow foreign workers unlimited workplace changes if they are subject to "unfair treatment", defined as including unreasonable discrimination by the employer. At the same time, the Committee noted that it is not clear how job centres "objectively recognize" a victim of discrimination, which would allow the foreign worker concerned to request an immediate change of workplace. It requested the Government to keep the applicable legislation governing migrant workers and related measures under regular view. The Committee notes that foreign workers can submit a complaint to the National Human Rights Commission of the Republic of Korea (NHRCK), the outcome of which can be forwarded to job centres. The Committee also notes that, during the discussions on the application of the Convention at the Conference Committee, the Government indicated that the burden of proof does not lie solely with the worker and that, in the absence of sufficient evidence, the local job centre would try to gather the facts to deal with the case. The Government further indicates in its report that, in the event of such an investigation, the worker is placed in a new job while the case is pending. The Government also provides general information on the number of workplaces inspected in 2013 and the total violations of the labour legislation found. The Committee requests the Government to continue its efforts to ensure that migrant workers are able, in practice, to change workplaces when subject to violations of the anti-discrimination legislation, and to provide information in this respect. Please provide information on the number of migrant workers who have applied to job centres for a change of workplace on the basis of "unfair treatment by the employer", the nature and outcome of those cases and the manner in which the job centres "objectively recognize" a victim of discrimination. The Committee requests the Government to continue monitoring the situation to ensure that the legislation protecting migrant workers from discrimination is fully implemented and enforced, and to provide information on the nature and number of the violations detected, and the remedies provided, as well as the number, nature and outcome of complaints brought before labour inspectors, the courts and the NHRCK.

(Source: www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3192311:NO.)

Annex E

4. *Discrimination in Employment (Korea) – Second Excerpt*

Observation (CEACR) - adopted 2014, published 104th ILC session (2015)
Discrimination (Employment and Occupation) Convention, 1958 (No. 111) - Korea,
Republic of (Ratification: 1998)

The Committee notes the discussion that took place in the Conference Committee on the Application of Standards in May-June 2014, including the written information provided by the Government.

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Discrimination based on sex and employment status. The Committee recalls that in the Korean context, the term “non-regular workers” refers to part-time, fixed-term and dispatched workers, and that many of these workers are women. The Government indicates in its report that following the adoption in November 2011 of the Measures for Non regular Workers in the Public Sector, 30,932 non-regular workers engaged in permanent and continuous work have become workers with open-ended contracts, and that the amendment of the Act on the Protection, etc. of Dispatched Workers in 2012 resulted in 3,800 workers being hired directly by their employers in 2013 in accordance with government orders. The Government also indicates that in 2014 further revisions were made to both the Act on the Protection, etc. of Dispatched Workers and the Act on the Protection, etc. of Fixed-Term and Part-Time Employees, to introduce a punitive monetary compensation system as a measure to address repeated or willful discrimination. Starting in 2014, employers with 300 or more workers will be required to announce the status of workers’ employment. The Government also plans to introduce a guideline on employment security of non regular workers and their conversion to regular status, which will promote the voluntary conversion of non-regular workers to regular status. The Committee further notes that in 2013 the NHRCK conducted a survey on non-regular women workers (Annual Report 2013, Seoul, April 2014, page 72). While welcoming these initiatives, the Committee urges the Government to review the effectiveness of the measures taken regarding non-regular workers to ensure that they do not in practice result in discrimination on the basis of sex and employment status, contrary to the Convention. In particular, the Committee asks the Government to provide information on the practical application of the measures for non-regular workers in the public sector and on the revisions made to the Act on the Protection, etc. of Fixed-Term and Part-Time Employees and the Act on the Protection, etc. of Dispatched Workers, including any penalties imposed for violations. The Committee requests the Government to take steps to ensure that any information gathered on workers’ employment status is disaggregated by sex, and it requests the Government to provide information in this regard. Please also provide information on the results of the survey by NHRCK on non-regular women workers, including any follow-up action taken.

Enforcement. The Committee notes the general information provided by the Government on the number of workplaces inspected and the overall number of

violations detected by labour inspectors. The Committee further notes that according to the information provided by the Government to the Conference Committee, 589 violations of the Act on the Protection, etc. of Dispatched Workers and 213 violations of the Act on the Protection, etc. of Fixed-Term and Part-Time Employees were recorded in 2013. The Committee notes the Government's indication to the Conference Committee that 37 support centres and one call centre have been established to provide free services to migrant workers, such as counselling on labour laws. The Committee notes from the 2013 Annual Report of the NHRCK that it received 615 complaints concerning discrimination in employment, most of which related to recruitment, hiring and wages, although it is not clear to what extent these were filed by migrant workers. The Committee requests the Government to continue providing information on the number and nature of the violations detected by or reported to labour inspectors concerning the non-discrimination legislation, the Act on the Protection, etc. of Dispatched Workers and the Act on the Protection, etc. of Fixed-Term and Part-Time Employees, the sanctions imposed and the remedies provided. Please indicate the number, nature and outcomes of the relevant complaints handled by the NHRCK, as well as complaints brought by migrant workers to the National Labour Relations Commission and the courts, and provide copies of relevant judicial decisions.

The Committee is raising other matters in a request addressed directly to the Government.

(Source: www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3192311:NO.)

Annex F

5. *Discrimination (Employment and Occupation) (Mongolia)*

Observation (CEACR) - adopted 2014, published 104th ILC session (2015)
Discrimination (Employment and Occupation) Convention, 1958 (No. 111) - Mongolia
(Ratification: 1969)

Article 1 of the Convention. Legislative developments. The Committee notes that the new draft Labour Law is currently under elaboration and that it addresses many of the issues raised by the Committee, including the exclusion of women from certain occupations, restrictions relating to the inherent requirements of the job, the protection of workers with family responsibilities and protection against sexual harassment. The Committee hopes that the new Labour Law will soon be adopted and that it will take into account the Committee's comments and will be in conformity with the Convention.

Exclusion of women from certain occupations. The Committee recalls its previous comments concerning the exclusion of women from a wide range of occupations under section 101.1 of the Labour Law of 1999 and Order No. A/204 of 1999. In this respect, the Committee notes the Government's indication that Order No. A/204 of 1999 was annulled by Order No. 107 of 2008 and that the Ministry of Labour and Social Welfare decided, following some studies carried out in order to renew the list of prohibited jobs, that it was not necessary to proceed to such renewal or to adopt a list of prohibited jobs for women. The Government also indicates that under the new draft Labour Law women can only be excluded from certain occupations for reasons of maternity protection. The Committee requests the Government to ensure that the new Labour Law strictly limits the exclusion of women from certain occupations to measures aimed at protecting maternity.

Inherent requirements. The Committee referred in its previous comments to section 6.5.6 of the Law on Promotion of Gender Equality (LPGE) of 2011, which allows for sex-specific job recruitment "based on a specific nature of some workplaces such as in pre-school education institutions". The Committee also noted that the scope of other provisions of the LPGE may be overly broad in permitting sex-based distinctions, such as in the "provision of health, educational and other services designed to cater for the specific needs of one particular sex" (section 6.5.1) and in respect of employment in specific "workplace facilities" (section 6.5.2). The Committee notes that the definition of inherent requirements in the new Draft Labour Law no longer refers to the limitations set out in the LPGE. The Committee requests the Government to take the necessary measures to ensure that any limitations on protection against discrimination in recruitment are strictly related to the inherent requirements of the particular job, in accordance with Article 1(2) of the Convention. The Committee also asks the Government to review sections 6.5.1, 6.5.2 and 6.5.6 of the LPGE in order to ensure that they do not in practice deny men and women equality of opportunity and treatment in respect of their employment.

The Committee is raising other matters in a request addressed directly to the Government.

(Source: www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3183395:NO.)

Annex G

6. *Weekly Rest (China)*

Observation (CEACR) - adopted 2014, published 104th ILC session (2015)
Weekly Rest (Industry) Convention, 1921 (No. 14) - China (Ratification: 1934)

Article 2 of the Convention. Normal weekly rest scheme. In its previous comment, the Committee had noted that the International Trade Union Confederation (ITUC) indicated that the workers' entitlement to weekly rest was easily undermined by employers using national and local rules on flexible and consolidated working-hour schemes to exclude workers from the legal protection on rest and compensation. The ITUC also indicated that, under those schemes, which had become commonplace and even the norm in an increasing number of sectors, weekly rest could be replaced by "consolidated rest" arranged unilaterally by employers based on business considerations. The ITUC further alleged that exemptions were often granted by the Ministry of Human Resources and Social Security with the mere "paper consent" of the enterprise trade union without prior proper consultations with workers. The Committee had also noted that the ITUC referred to the Measures for the Examination and Approval of Flexible Working Hours Arrangement and Consolidated Hours Scheme, adopted in 1995, which allowed for the averaging of hours of work without, however, guaranteeing a reasonable weekly rest day arrangement. Instead of specifying the right to compensatory leave with respect to every seven-day period, the Measures referred vaguely to "consolidated work and consolidated rest" and, as a result, employees were easily misled by their employers to confuse compensatory leave with annual leave. It had further noted that according to the ITUC, employees were underpaid or not paid at all for performing work on their weekly rest day which should entitle them to 200 per cent of the normal hourly rate under the Labour Law. The Committee once again requests the Government to transmit its comments in reply to the observations of the ITUC and to provide further information on the manner in which weekly rest is ensured in law and practice.

In addition, in its previous comment, the Committee had noted that the ITUC referred to new draft national legislation on working hours which had been prepared by the Ministry of Human Resources and Social Security in May 2012, and, in particular, to draft section 10 providing for one 24-hour rest day in every period of two weeks in the case of consolidated working hours schemes. The Committee would appreciate receiving up-to-date information on the status of the above-referenced draft legislation and requests the Government to continue to provide information in this regard.

Articles 4 and 6. List of exceptions. With reference to its previous comment on the weekly rest arrangements applicable in specific industries (including railway, petroleum and chemistry, power generation, press and publishing, civil aviation, metallurgy, banks, tobacco and shipbuilding) and the conditions set out in the Convention that any exceptions to the general standard must comply with (i.e. due regard for all proper humanitarian and economic considerations and prior consultations with the employers' and workers' representative organizations concerned), the Committee notes the Government's indications that the labour administration authorities adopted strict review and examination procedures for the approval of special working hours, which

include the consultation in writing of trade unions of enterprises. It recalls, however, that the ITUC alleged that exemptions were often granted by the Ministry of Human Resources and Social Security with the mere “paper consent” of the enterprise trade union without prior proper consultations with workers. The Committee once again requests the Government to provide more information on the weekly rest arrangements applicable in these specific industries. In particular, it requests the Government to indicate how these provisions of the Convention are ensured in law and practice.

(Source: www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3183312:NO.)

Annex H

7. *Minimum Age (China)*

Observation (CEACR) - adopted 2014, published 104th ILC session (2015)
Minimum Age Convention, 1973 (No. 138) - China (Ratification: 1999)

The Committee notes that the country is participating in an ILO technical assistance programme, the Special Programme Account (SPA) project, carried out jointly between the ILO and the Ministry of Human Resources and Social Security (MoHRSS). It also notes that, in the framework of the SPA, a tripartite inter-ministerial workshop was conducted in September 2012 in Nanchang, Jiangxi Province, with the aim of drawing attention to the implementation gaps identified by the Committee with regard to the child labour Conventions, as well as two follow-up missions in Beijing in September 2013, and in Chengdu, Sichuan Province in September 2014, to assess the progress achieved; provide a forum to exchange information on the problems encountered in addressing child labour in the country; and identify priorities for future assistance.

Article 3(1) of the Convention. Hazardous work performed through work-study programmes. The Committee previously expressed its concern at the continued engagement of school children under 18 years of age in hazardous types of work within the context of work-study programmes.

The Committee notes the information provided by the Government in its report, as well as the information it supplied under the Worst Forms of Child Labour Convention, 1999 (No. 182), with respect to its work-study programmes. In this connection, the Committee notes the Government's indication that the Ministry of Education has repeatedly issued circulars and increased its inspection efforts with a view to ensuring healthy development in these programmes. The Government further indicates that the work-study programmes must be incorporated into, and must abide by, normal teaching programmes and may not, for example, modify hours of work without prior permission. In addition, it indicates that schools that organize work-study programmes must ensure the safety of students by prohibiting participation in toxic, hazardous or dangerous types of activities or labour which exceeds their physical capacity. The Government states, in this respect, that safety education must be provided to students to prevent accidents, and that the local governments are required to analyse the manner in which work-study programmes are carried out on a local basis.

The Committee takes note of the Government's efforts to ensure a healthy environment for its work-study programmes. It also recalls that the missions undertaken within the context of the SPA, discussed above, addressed ways in which the legal framework could be strengthened with respect to protecting young persons engaged in work-study programmes. The Committee notes, however, the 2014 report on the labour protection of interns in Chinese textile and apparel enterprises, carried out with ILO assistance, according to which 52.1 per cent of interns continue to work in conditions that do not meet national minimum standards for labour protection, and 14.8 per cent of interns are engaged in involuntary and coercive work (page ix). It further notes that the Committee on the Rights of the Child (CRC), in its concluding observations on the combined third and fourth reports (CRC/C/CHN/CO/3-4, paragraphs

85?86), urged the Government, as a matter of priority, to end the use of work-study schools and the use of forced and exploitative child labour under those programmes.

While noting the measures taken by the Government, the Committee notes with concern that a significant number of school children continue to engage in hazardous work within the context of work-study programmes. The Committee accordingly urges the Government to strengthen its efforts to ensure that persons under 18 years of age are not engaged in hazardous work through work-study programmes, even where safety and security measures are in place. Furthermore, noting the absence of information on this point, the Committee once again requests the Government to submit statistical information concerning the number and nature of infringements of the applicable legislation and penalties applied.

Article 9(1). Labour inspectorate and penalties. In its previous comment, the Committee noted that it was difficult to assess the extent of child labour owing to a lack of official reporting on cases and the lack of transparency in statistics. It also noted that the chances of discovering child labour were slim given the shortage of labour inspectors in the country and the extensive collusion between private businesses and local officials.

The Committee notes the Government's information concerning its labour inspection system which, by the end of 2013, consisted of 3,291 labour security inspection departments, 25,000 full-time labour security inspectors and 28,000 part-time inspectors. The Committee further notes the information provided by the Government under Convention No. 182, which indicates that it has employed labour security advisors from the All-China Federation of Trade Unions (ACFTU), trade unions and other institutions, to monitor the compliance of employers with national labour laws and regulations. The Government further reports that the departments of human resources and social security implement the provisions of national legislation prohibiting child labour and regularly monitor implementation through routine and ad hoc inspections, investigation of complaints and verification of cases reported by informants, written requests and other forms of supervision and law enforcement.

While noting this information, the Committee notes with deep concern that, to date, not a single case of child labour has been found, despite the Government's indication that its labour inspectors conduct routine visits and inspections. The Committee also notes with regret the absence of any information concerning measures taken or envisaged to address the allegations of extensive collusion between private businesses and local officials. The Committee notes, in this respect, that the CRC, in its concluding observations on the combined third and fourth reports (CRC/C/CHN/CO/3-4, paragraph 85) in 2013, noted the absence of specific data on child labour in the country, despite reports which indicate that child labour is widespread. In the absence of any indications of child labour in the country, the Committee once again urges the Government to take the necessary measures to address the issue of collusion between labour inspectors and enterprises to ensure thorough investigations into possible cases of child labour. In this regard, it requests the Government to indicate the methodology used to collect information and to provide information on the types of violations detected by the labour inspectorate, the number of persons prosecuted and the penalties imposed. The Committee also requests the Government to pursue its efforts to strengthen the capacity of the labour inspectorate. Lastly, the Committee

urges the Government to take the necessary measures to ensure that sufficient up-to-date data on the situation of working children in China is made available, including, for example, data on the number of children and young persons below the minimum age who are engaged in economic activities, and statistics relating to the nature, scope and trends of their work.

The Committee is raising other matters in a request addressed directly to the Government.

(Source: www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3187553:NO.)

Annex I

Community Unions

“Community unions” means a labor union in the local community, and any workers including part-time workers, temporary agency workers and foreign workers can join it as a single individual. The first community union was Edogawa Union, which was organized in 1984 under the slogan of “Fureai, Yuai and Tasukeai (Contact, Compassion and Cooperation).” After that, community unions were organized nationwide. Each community union is basically an independent labor union and the activities vary from one union to another. The resolution of labor disputes is listed among their commonly performed activities.

Community unions play significant role in preventing and resolving labor disputes. They listen sympathetically to the workers who have nowhere to go to resolve their problems, and provide advice. They help the workers regain their dignity and get empowered to move on their next job as in the case of temporary agency workers. During collective bargaining, community unions raise the problems of the companies regarding personnel management, labor management or communication that led to disputes. Finally, they resolve disputes that cannot be resolved with the company. They often deal with labor disputes that cannot be resolved by administrative bodies. They essentially function as administrative or judicial body in terms of dispute resolution and play a different role from company unions.

(Based on Hak-Soo Oh, *Occurrence Mechanism and Resolution Process of Labor Disputes: Cass of Community Unions (Kyushu Area)*, The Japan Institute for Labour Policy and Training, pages 84, 100-101.)

Materials

Labor Issues and Observations of the Committee of Experts on the Application of Conventions and Recommendations (CEACR)

- Reports per country in the “Supervision by country,” www.ilo.org/dyn/normlex/en/f?p=1000:11000:0::NO::

Papers on problems regarding enforcement of Conventions covered by the ILO Declaration on Fundamental Principles and Rights at Work

- Alfred Wisskirchen, *The standard-setting and monitoring activity of the ILO: Legal questions and practical experience* (2005). Available at www.ilo.org/public/english/dialogue/actemp/downloads/projects/standard_setting_2005_en.pdf
- General Survey on the fundamental Conventions concerning rights at work in light of the ILO Declaration on Social Justice for a Fair Globalization, 2008, International Labour Conference, 101st Session, 2012. Available at www.ilo.org/wcmsp5/groups/public/@ed_norm/@relconf/documents/meetingdocument/wcms_174846.pdf

Case study on initiatives of the labor sector to implement the ILO Conventions

- Hak-Soo Oh, *Occurrence Mechanism and Resolution Process of Labor Disputes: Case of Community Unions (Kyushu Area)*, The Japan Institute for Labour Policy and Training Available at www.jil.go.jp/english/reports/documents/jilpt-research/no.111.pdf.

ILO materials:

1. The Labour Principles of the United Nations Global Compact: A Guide for Business (Geneva: ILO, 2008). Available at www.ilo.org/wcmsp5/groups/public/---ed_emp/--emp_ent/---multi/documents/instructionalmaterial/wcms_101246.pdf
2. Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (as amended in 2006). Available at www.ilo.org/wcmsp5/groups/public/---ed_emp/---emp_ent/---multi/documents/publication/wcms_094386.pdf
3. An introduction to the Multinational Enterprises Declaration - a self-guided e-learning module available at <https://ecampus.itcilo.org/course/view.php?id=21>
4. Child labor – Eliminating Child Labour : Guide for Employers Available at www.ilo.org/public/english/dialogue/actemp/downloads/projects/child_guide1_en.pdf
5. Forced labor – Forced labour, human trafficking and slavery www.ilo.org/global/topics/forced-labour/lang--en/index.htm
6. IOE-ILO guidance note on the 2014 Protocol to the Forced Labour Convention, 1930. Available at www.ilo.org/global/topics/forced-labour/publications/WCMS_321410/lang--en/index.htm.

Using International Corporate Standards and Frameworks

This module has the following objectives:

Enable the participants to

- Determine the human rights coverage of international corporate standards/frameworks;
- Determine how the international corporate standards/frameworks are applied in company operations to address human rights issues;
- Analyze the international corporate standards regarding involvement of stakeholders;
- Discuss how the international corporate standards address human rights issues with the participation of the stakeholders; and
- Identify ways by which stakeholders can influence companies in preparing reports and other actions to comply with the international corporate standards or framework.

Time: 3 HOURS AND 45 MINUTES

Materials:

- Big size papers, colored pens, writing papers, adhesive tapes;
- Equipment - computer, projector, screen;
- Video/documents on the international corporate standards/frameworks.

Using International Corporate Standards and Frameworks

I. Procedure

a. Opener - 30 MINUTES

Show the video entitled “UNGP Reporting Framework: Salient Human Rights Issues” (<https://vimeo.com/154834462>) and raise the question on how companies should start their work on addressing human rights issues.

Ask the participants, in plenary, to answer the question. Stress that an important start of the work of companies to address human rights issues is in putting their commitment to do so in writing and making that document available to the public.

b. Activity – 1 HOUR

Introduce the corporate declarations, codes of conduct and reports that have been issued by different companies in Northeast Asia/country.

Ask the participants to discuss in small groups sample corporate declarations, codes of conduct and reports to determine the human rights content of the documents.*

Ask the participants to present the results of the group discussion in a panel discussion format.

Make a table of answers of the groups regarding company operations and the human rights components. The table may include the following items:

| Corporate document | Rights | Comment |
|--------------------|------------------------------------|---|
| Policy | Human rights in general | Needs more clear statement on specific human rights |
| Code of Conduct | Right to remedy | Easy procedure for lodging complaint |
| Annual report | Labor rights and some human rights | Discussion on cases of rights abuse needed |

c. Input - 1 HOUR

Provide an input on international frameworks on business and human rights (aside from the UN framework) that focus on institutionalization of company commitment to address human rights issues and report on practical steps taken. These international frameworks can include the following:**

1. International Guidance Standard on Organisational Social Responsibility (ISO 26000);
2. Guidelines for Multinational Enterprises of the Organisation of Economic Co-operation and Development (OECD);
3. Global Reporting Initiative (GRI);

* Here are some examples:

a. Human Rights Initiatives at Workplaces - Ajinomoto

www.ajinomoto.com/en/activity/csr/pdf/2015/063e.pdf

b. Respecting Human Rights and Building a Great Place to Work – Chubu Electric Power

www.chuden.co.jp/english/resource/corporate/ecsr_report_2015_26.pdf

c. Human Right and Labor Practices (Condition of work and Human development) - Taisei Corporation

www.taisei.co.jp/english/csr/hr/everyone.html

** The Introduction in *Bridging Human Rights Principles and Business Realities in Northeast Asia*, pages 8-15, provides highlights of these international frameworks.

4. Equator Principles (EPs);
5. 2012 Sustainability Framework of the International Financial Corporation (IFC); and
6. The Caux Round Table (CRT) Principles for Responsible Business.

See Annex A for brief description of these international standards and frameworks.

Emphasize to the participants that these international frameworks require the companies to state in their corporate reports actual steps taken to respect and protect human rights. This is the reporting commitment of the companies.***

Provide an input on human rights content on corporate reports and identify the areas of company operations where human rights have been applied.****

d. Activity - 1 HOUR

Tell the participants to brainstorm in small groups the practical measures that different stakeholders can employ to influence company reports on different human rights issues regarding:

- company operations (internal); and
- company relations with the community.

Remind the participants to discuss also how small and medium-size companies might be able to adopt measures to address their human rights issues.

Tell the participants to classify and justify which measures raised in the brainstorming session are feasible, hardly feasible, and not feasible.

Ask the participants to present their group reports in a TV talk show style. They will decide on who will be the TV host, and guests [“experts”] who will explain why the corporate measures are feasible, hardly feasible, and not feasible.

Ask the other participants to raise comments and questions as members of the “live audience” in the “TV show.”

II. Summary

Time: 15 MINUTES

Summarize the main points discussed during the session such as the following:

- Human rights content of the international corporate standards or frameworks;
- Practical measures under the international corporate standards or frameworks such as stakeholder mechanisms and actions by stakeholders that can influence corporate behavior.

*** A video on reporting framework can be used for this part of the input, see “UN Guiding Principles Reporting Framework Launch, February 2015,” <https://vimeo.com/124811300?from=outr-local>.

**** The report of HURIGHTS OSAKA in *Bridging Human Rights Principles and Business Realities in Northeast Asia*, pages 147-157 and its Appendix B, pages 200-202, provide examples of surveys on human rights content of corporate reports.

Annex A

International Guidance Standard on Organisational Social Responsibility (ISO 26000)

ISO 26000 provides guidance on how businesses and organizations can operate in a socially responsible way. This means acting in an ethical and transparent way that contributes to the health and welfare of society.

ISO 26000:2010 provides guidance rather than requirements, so it cannot be certified to unlike some other well-known ISO standards. Instead, it helps clarify what social responsibility is, helps businesses and organizations translate principles into effective actions and shares best practices relating to social responsibility, globally. It is aimed at all types of organizations regardless of their activity, size or location.

This International Standard is intended to assist organizations in contributing to sustainable development. It is intended to encourage them to go beyond legal compliance, recognizing that compliance with law is a fundamental duty of any organization and an essential part of their social responsibility. It is intended to promote common understanding in the field of social responsibility, and to complement other instruments and initiatives for social responsibility, not to replace them.

In applying this International Standard, it is advisable that an organization take into consideration societal, environmental, legal, cultural, political and organizational diversity, as well as differences in economic conditions, while being consistent with international norms of behaviour.

This International Standard is not a management system standard. It is not intended or appropriate for certification purposes or regulatory or contractual use. Any offer to certify, or claims to be certified, to ISO 26000 would be a misrepresentation of the intent and purpose and a misuse of this International Standard. As this International Standard does not contain requirements, any such certification would not be a demonstration of conformity with this International Standard.

The standard was launched in 2010 following five years of negotiations between many different stakeholders across the world. Representatives from government, NGOs, industry, consumer groups and labour organizations around the world were involved in its development, which means it represents an international consensus.

(Source: Text drawn from ISO 26000 – Social Responsibility, www.iso.org/iso/home/standards/iso26000.htm; and www.iso.org/obp/ui/#iso:std:iso:26000:ed-1:v1:en)

Guidelines for Multinational Enterprises of the Organisation of Economic Co-operation and Development (OECD)

The Guidelines are the first international instrument to integrate the corporate responsibility to respect human rights as set out in the UN's Guiding Principles on Business and Human Rights. The Guidelines are also the first international corporate responsibility instrument to incorporate risk-based due diligence into major areas of business ethics. The nature and extent of due diligence depend on the circumstances of a particular situation, an important point considering the complexity of international business.

The Guidelines are the only existing multilaterally agreed corporate responsibility instrument that adhering governments have committed to promoting in a global context. They express the shared views and values of countries, including major emerging economies, that are the sources and the recipients of a large majority of the world's

investment flows and are also home to a majority of MNEs. The Guidelines cover all major areas of business ethics. Their recommendations are set out in 11 chapters and cover topics such as information disclosure, human rights, employment and labour, environment, anti-corruption, and consumer interests. The Guidelines also encompass three areas - science and technology, competition, and taxation - not as fully covered by any other international corporate responsibility instrument.

Unique implementation mechanism

The active way in which the Guidelines are implemented distinguishes them from other international corporate responsibility instruments.

National Contact Points

Adhering countries are obliged to set up National Contact Points (NCPs) that are tasked with furthering the effectiveness of the Guidelines by undertaking promotional activities, handling inquiries, and providing a mediation and conciliation platform for resolving issues that arise from the alleged non-observance of the Guidelines. This makes the Guidelines the only international corporate responsibility instrument with a built-in grievance mechanism.

Proactive Agenda

The effective implementation of the Guidelines is supported by the proactive agenda. The proactive agenda aims to promote the effective observance of the Guidelines by helping enterprises identify and respond to risks of adverse impacts associated with particular products, regions, sectors, or industries. Central to its potential to effect change on a broad scale is its employment of the multi-stakeholder process which gives relevant stakeholders the opportunity to participate side-by-side with enterprises in developing strategies to avoid and address risks of adverse impacts.

(Source: OECD Guidelines for Multinational Enterprises Responsible Business Conduct Matters, pages 2-3, http://mneguidelines.oecd.org/MNEguidelines_RBCmatters.pdf)

Equator Principles (EPs)

The Equator Principles (EPs) is a risk management framework, adopted by financial institutions, for determining, assessing and managing environmental and social risk in projects and is primarily intended to provide a minimum standard for due diligence to support responsible risk decision-making.

The EPs apply globally, to all industry sectors and to four financial products 1) Project Finance Advisory Services 2) Project Finance 3) Project-Related Corporate Loans and 4) Bridge Loans. The relevant thresholds and criteria for application is described in detail in the Scope section of the EPs.

Currently 82 Equator Principles Financial Institutions (EPFIs) in 36 countries have officially adopted the EPs, covering over 70 percent of international Project Finance debt in emerging markets.

EPFIs commit to implementing the EP in their internal environmental and social policies, procedures and standards for financing projects and will not provide Project Finance or Project-Related Corporate Loans to projects where the client will not, or is unable to, comply with the EPs.

While the EPs are not intended to be applied retroactively, EPFIs apply them to the expansion or upgrade of an existing project where changes in scale or scope may create significant environmental and social risks and impacts, or significantly change the nature or degree of an existing impact.

The EPs have greatly increased the attention and focus on social/community standards and responsibility, including robust standards for indigenous peoples, labour standards, and consultation with locally affected communities within the Project Finance market. They have also promoted convergence around common environmental and social standards. Multilateral development banks, including the European Bank for Reconstruction & Development, and export credit agencies through the OECD Common Approaches are increasingly drawing on the same standards as the EPs.

(Source: Equator Principles, www.equator-principles.com/index.php/about-ep)

G4 Sustainability Reporting Guidelines

G4, the fourth generation of the Guidelines, was launched in May 2013. The launch marked the culmination of two years of extensive stakeholder consultation and dialogue with hundreds of experts from across the world from a wide variety of sectors, including companies, civil society, labor organizations, academia, and finance. The aim of G4 is simple: to help reporters prepare sustainability reports that matter and to make robust and purposeful sustainability reporting standard practice. G4 is designed to be universally applicable to all organizations of all types and sectors, large and small, across the world.

G4 includes references to other widely recognized frameworks, and is designed as a consolidated framework for reporting performance against different codes and norms for sustainability. This includes harmonization with other important global frameworks, including the OECD Guidelines for Multinational Enterprises, the UN Global Compact Principles, and the UN Guiding Principles on Business and Human Rights.

The guidance in G4 is designed to be compatible with a range of different reporting formats. In addition to enhancing the relevance and quality of standalone sustainability reports, G4 also offers a widely recognized global standard for sustainability information to be included in integrated reports.

(Source: An Introduction to G4 - The next generation of sustainability reporting, www.globalreporting.org/resource/library/GRI-An-introduction-to-G4.pdf)

2012 Sustainability Framework of the International Financial Corporation (IFC)

The Sustainability Framework articulates IFC's strategic commitment to sustainable development and is an integral part of our approach to risk management.

Our Sustainability Framework helps our clients do business in a sustainable way. It promotes sound environmental and social practices, encourages transparency and accountability, and contributes to positive development impacts. IFC's Performance Standards, which are part of the Sustainability Framework, have become globally recognized as a benchmark for environmental and social risk management in the private sector.

Originally adopted in 2006, the Sustainability Framework has recently been updated following an 18-month consultation process with stakeholders around the world.

Effective on January 1, 2012, our updates reflect the evolution in good practice for sustainability and risk mitigation over the past five years. They incorporate modifications on challenging issues that are increasingly important to sustainable businesses, including supply-chain management, resource efficiency and climate change, and business and human rights.

The Sustainability Framework Consists of

- The Policy on Environmental and Social Sustainability, which defines IFC's commitments to environmental and social sustainability.
- The Performance Standards, which define clients' responsibilities for managing their environmental and social risks.
- The Access to Information Policy, which articulates IFC's commitment to transparency.
- Environmental and Social Categorization.

(Source: International Finance Corporation, www.ifc.org/wps/wcm/connect/Topics_Ext_Content/IFC_External_Corporate_site/Sustainability+and+Disclosure/Environmental-Social-Governance/Sustainability+Framework)

The Caux Round Table (CRT)

The Caux Round Table (CRT) is an international network of business leaders working to promote a morally and sustainable way of doing business. The CRT believes that its Principles for Responsible Business provide necessary foundations for a fair, free and transparent global society.

The Caux Round Table was founded in 1986 by Frits Philips Sr, former President of Philips Electronics, and Olivier Giscard d'Estaing, former Vice-Chairman of INSEAD, as a means of reducing escalating international trade tensions between Europe, Japan and the USA.

At the urging of Ryuzaburo Kaku, then Chairman of Canon, Inc, the CRT began to focus attention on the importance of global corporate responsibility in reducing social and economic threats to world peace and stability. This led to the development of the 1994 Caux Round Table Principles for Business around three ethical foundations, namely: responsible stewardship; the Japanese concept of Kyosei - living and working for mutual advantage; and respecting and protecting human dignity.

The 2009 CRT Principles for Responsible Business comprise seven principles and more detailed Stakeholder Management Guidelines covering each of the key stakeholder dimensions of ethical business practices: customers, employees, shareholders, suppliers, competitors, and communities.

The CRT Principles have been published in twelve languages, utilized in business school curricula worldwide, and are widely recognized as the most comprehensive statement of responsible business practice formulated by business leaders for business leaders.]

(Source: Caux Round Table, www.cauxroundtable.org/index.cfm?menuid=8)

Materials

International frameworks and standards:

- International Guidance Standard on Organisational Social Responsibility (ISO 26000); ISO 26000 – Social Responsibility, www.iso.org/iso/home/standards/iso26000.htm; and www.iso.org/obp/ui/#iso:std:iso:26000:ed-1:v1:en;
- Guidelines for Multinational Enterprises of the Organisation of Economic Co-operation and Development (OECD); <http://mneguidelines.oecd.org/text/>;
- Global Reporting Initiative (GRI); <https://www.globalreporting.org/standards/g4/Pages/Introduction-to-G4-brochure.aspx>;
- Equator Principles (EPs); <http://www.equator-principles.com/index.php/about-ep>;
- 2012 Sustainability Framework of the International Financial Corporation (IFC); http://www.ifc.org/wps/wcm/connect/Topics_Ext_Content/IFC_External_Corporate_site/Sustainability+and+Disclosure/Environmental-Social-Governance/Sustainability+Framework and
- The Caux Round Table (CRT) Principles for Responsible Business - <http://www.cauxroundtable.org/index.cfm?menuid=8>.

Introduction in *Bridging Human Rights Principles and Business Realities in Northeast Asia* (Osaka/Kuala Lumpur: HURIGHTS OSAKA and SIRD, 2014)

Principles of Human Rights-based Approach to Access to Justice

This module has the following objectives:

Enable the participants to

- Discuss the principles of human rights-based approach to access to justice; and
- Apply the concept of human rights-based approach to access to justice to human rights issues related to company operations.

Time: 3 HOURS AND 45 MINUTES

Materials:

- Big size papers, colored pens, writing papers, adhesive tapes;
- Equipment - computer, projector, screen;
- Video/documents on the human rights-based approach to access to justice.

Principles of Human Rights-based Approach to Access to Justice

I. Procedure

a. Opener - 30 MINUTES

Show a video about a situation involving access to justice. Ask the participants to comment or raise questions on the video.

Inform the participants that their comments and questions will be discussed in the other activities in the module.

b. Activity – 1 HOUR*

Ask the participants to do the photograph sequencing game. Provide the participants with several photos depicting issues, actions being taken by people, and related events. The photographs should be able to portray a story of people seeking a remedy on their complaints regarding company operations.

Tell them to make a story out of the set of photographs subject to the following rules:

1. Each participant is given one photograph that she/he will not show to anyone;
2. Without seeing all the photographs, the participants discuss and agree on a story based on each one's idea on each photograph;
3. They put all the photographs face down on the floor/table in a sequence to tell the agreed story. A participant who thinks her/his photograph begins the story puts her/his photograph face down on the floor/table first, others do the same until one participant who considers her/his photograph to be ending the story puts it down as the last one in the sequence. The photographs must not be seen by the participants at this point.
4. Ask the participants to turn over all photographs and tell the story that comes out from the sequence of photographs.

There can be two groups of participants with two different sets of photographs.

Draw out from the sequence of photographs ideas or principles on how the issues are resolved or could have been resolved. These ideas or principles can include the following:

1. Participation of affected community in problem solving;
2. Empowerment of people, especially as members of groups or communities, on how to resolve their problems;
3. Fair and effective mechanism for resolving problems;
4. Accountability of the company that cause problems; and
5. Appropriate remedy for the problems.

c. Input - 1 HOUR

Provide an input on the following:

1. Bases for determining subscription of corporate grievance mechanisms to human rights-based approach:

* This activity is based on "Exercise 4 – Zoom into Human Rights Approach to Realizing EA2J" discussed on pages 40-54 of the Asian Consortium for Human Rights-based Access to Justice, *A Manual on Human Rights-Based Approach to Realizing Equal Access to Justice* (Quezon city, 2011).

- i. Use of human rights framework;
- ii. Consideration of different degrees of vulnerability with regard to a particular problem, and groups who may be more seriously impacted by the company operations;
- iii. Identification of the relevant stakeholders as either claim/rights holders and duty bearers;**
- iv. Assessment of the capacity of both the claim/rights holders and the duty bearers to address the problem and capacity development strategies for both sides;
- v. Existence of participatory processes where those who are impacted on as a result of the problem are freely and meaningfully involved.

(Note: this list is based on *Programming for Justice: Access for All – A Practitioners’ Guide to a Human Rights Based Approach to Access to Justice*, United Nations Development Programme, 2005)

2. Access to remedy with stress on, among other matters, the following:
 - i. Definition of remedy, grievance mechanism, procedures of the grievance mechanism; link to other responsibilities of the companies such as human rights due diligence;***
 - ii. Relation of corporate grievance mechanism with the larger, national justice systems (formal and non-formal, judicial and non-judicial/legislative/administrative systems); effectiveness criteria for non-judicial grievance mechanisms;
 - iii. Supporting measures for effective use of grievance mechanism or the early resolution of issues such as education programs (for workers, community members and other stakeholders), pro-active monitoring of the situation for early detection of issues (such as dialogues), multi-stakeholder initiative.

d. Activity

Group Work - 1 HOUR

Divide the participants into three groups and give each group a case to work on. The cases should not be too detailed to allow the participants to add situations and arguments/ideas to the stories. Annexes A, B and C can be used as cases for the group discussion.

Ask the participants to determine how the elements of the human rights-based approach to access to justice can be applied to the cases in terms of grievance mechanism. They have to develop a story on the development or improvement of a grievance mechanism and the application of the human rights-based approach.

Tell the groups to act out the story they developed as a play and assign participants to different roles such as the following:

1. Workers, or members of the local community where a company operates;
2. Company officials;
3. Members of the local NGO/trade union that assist the workers or the members of the local community; and
4. National or local government officials.

After the role play, ask the participants to answer the following questions:

1. What kind of grievance mechanism was developed/improved?
2. Was the issue involved resolved?

** See “Business and Human Rights: Concepts and Terms” section for definition of “rights holders” and “duty bearers.”

*** See “Business and Human Rights: Concepts and Terms” section for definition of the terms.

- i. If yes, was it resolved in accordance with human rights norms?
 - ii. If no, what was missing in the story or what went wrong in the story?
3. What aspects of the human rights-based approach to access to justice have been found to be either
 - i. Helpful in resolving business-related “human rights impacts;” or
 - ii. Problematic in applying to concrete cases?

Write on the board/big size paper the key points raised in the answers, comments and also questions of the participants.

II. Summary

Time: 15 MINUTES

Summarize the main points discussed during the session such as the following:

1. The general principles governing human rights-based approach to access to justice;
2. The key issues raised on the approach that should be considered in using it on actual cases involving companies.

Annex A

A BIG SHIPPING AND CONSTRUCTION COMPANY established business in a freeport zone in a country in Southeast Asia to build a wide variety of bulk carriers at the site. While the presence of the company in the freeport zone brought thousands of jobs to the area, occasional accidents, workplace deaths and alleged labor law violations have called into question the company's compliance with the local labor and occupational safety laws. The workers of this shipbuilding company have been trying to form a labor union for several years but have failed to have a labor union so far. Their leaders, however, were either fired or transferred by the company as soon as they undertook the initial labor union activities. The company explained that they were fired because of involvement in robbery or theft or negligence of duty. However, the workers claimed that they were fired or transferred by the company to suppress the formation of a labor union.

Under the local labor law, "probationary employment" shall not exceed six months from the date the employee started working. This means that workers who continue working in a company beyond the six-month period are qualified for permanent employment unless there are grounds for non-qualification. According to the workers, the company used tricks, such as registering the employees as workers of subcontractors, or dismissing and re-hiring them to prevent them from becoming regular employees. Such tricks upset the employees' efforts to form a labor union.

The frequency of industrial accidents forced the workers to continuously request the company to establish a hospital for them. But the company ignored the requests supposedly due to lack of personnel. The workers filed formal complaints against the company with the freeport zone management authority; while the issue got the attention of the national legislature. Both the freeport zone management authority and the national legislature investigated the complaints. Both found the company violating industrial safety and labor laws. At the conclusion of the legislative committee investigation, the legislators required the company to build a medical center and comply with industrial safety laws. Nevertheless, the company claimed that it had the capability to send injured workers immediately to a hospital using speedboats.

(This case is based on Korean Transnational Corporations Watch, "Korean Companies and Human Rights: Doing Business in the Philippines, Myanmar and Uzbekistan," in Jefferson R. Plantilla, editor, *Bridging Human Rights Principles and Business Realities in Northeast Asia* (Kuala Lumpur/Osaka: HURIGHTS OSAKA and SIRD, 2014))

Annex B

A COMPANY CONSORTIUM acquired the development rights to offshore gas fields in a country in Southeast Asia. The company consortium agreed to sell natural gas from the gas field to another company through a memorandum of understanding. Human rights issues have been raised by the residents in the affected areas and by the international community regarding the construction of the gas pipeline from the gas field to a province in the neighboring country. Non-governmental organizations have constantly demanded information on the status of the gas development as well as on the protection of human rights.

Local residents have been raising their concerns about the adverse impacts of the project from the time it started. Residents held a demonstration to express their complaint about insufficient land compensation. Ten residents who led the demonstration were arrested, charged before a court for violating the peace assembly law and sentenced to three months in prison. A human rights organization raised this issue in the UN Human Rights Council sessions and asserted that the government and the companies participating in this project should take responsibility for the imprisonment of people who were merely demanding respect for their right to live. The company consortium promised to review the issues and to prepare measures to address them.

Residents near the onshore gas terminal complain of considerable damage inflicted on them by the project. The residents have consistently insisted that the damage to their farmlands caused by the wire fences and the sewage pipeline of the onshore gas terminal has not been properly compensated. Accumulated soil and sand made it hard to farm the land and to reach it during rainy season. The residents demand that the companies involved should conduct a field investigation and then either compensate them properly for the damage caused or purchase the useless land. Due to inadequate explanation, the residents know neither the system for determining the amount of compensation nor how it would be paid. They also do not know who among the two companies is in-charge of providing the compensation.

(This case is based on Korean Transnational Corporations Watch, "Korean Companies and Human Rights: Doing Business in the Philippines, Myanmar and Uzbekistan," in Jefferson R. Plantilla, editor, *Bridging Human Rights Principles and Business Realities in Northeast Asia* (Kuala Lumpur/Osaka: HURIGHTS OSAKA and SIRI, 2014)

Annex C

ALLEGATIONS OF WORKERS in a supplier company being forced to work very long hours, living in cramped and insufficient accommodation, being forced to pay for accommodation and food, and being prevented from leaving the facility appeared in the international press. In addition, there were allegations of child labor in the manufacture of some products, and use of disciplinary actions which involved workers being made to stand still for long periods.

The main company took steps to investigate the allegations through extensive factory visits and worker interviews. It published a report on its website within six weeks of the initial media coverage. In the report, the main company stated that an audit team sent to the factory was made up of staff from its human resources, operations and legal departments, and that the evidence gathered was cross-checked against many sources of information from employees, management and staff records. It also pointed out that, in auditing for forced labor, security records were checked to look for false identification papers. The report summarized the findings related to the working and living environment, compensation, overtime, and worker treatment.

Although the main company report stated that there was no evidence of forced labor or child labor, it made public the observation that the company's own weekly limit on hours worked, as stated in the company's code of conduct, was being exceeded. The main company stated that, as a result of its findings, the supplier company was changing its policy to ensure compliance with the weekly overtime limits. In addition, the main company noted that improvements to the sleeping facilities were required but that the supplier company was in the process of acquiring more land to build further facilities. The supplier company was quoted as having opened the factory to its customer and provided access for the audits to take place. The supplier company is a significant company in the industry and has grown rapidly in recent years.

(Source: Text based on *Combating Forced Labour - A Handbook for Employers & Business, 7 Case Studies*, International Labour Organization (Geneva, 2015), pages 5-7.)

Materials

- Photos of people and events related to human rights issues
- United Nations, *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework*. HR/PUB/11/04, 2011.
- United Nations Development Programme, *Programming for Justice: Access for All – A Practitioners’ Guide to a Human Rights Based Approach to Access to Justice*, United Nations Development Programme (Bangkok, 2005). Available at www.unrol.org/files/Justice_Guides_ProgrammingForJustice-AccessForAll.pdf.
- Asian Consortium for Human Rights-based Access to Justice, *A Manual on Human Rights-Based Approach to Realizing Equal Access to Justice* (Quezon city, 2011).

Corporate Mechanisms and Access to Justice

This module has the following objectives:

Enable the participants to

- Discuss the grievance mechanisms created by companies to address human rights issues; and
- Analyze the operations of mechanisms established by companies in cooperation with the communities to resolve business-related human rights impacts.

Time: 4 HOURS AND 45 MINUTES

Materials:

- Big size papers, colored pens, writing papers, adhesive tapes;
- Equipment - computer, projector, screen;
- Documents on examples of corporate grievance mechanisms.

Corporate Mechanisms and Access to Justice

I. Procedure

a. Opener - 45 MINUTES

Ask the participants to do the “Issues, Rights and Solutions” game. Ask them to form three lines. Give each line an assigned topic, namely,

1. First line - issues in the company,
2. Second line - human rights involved in those issues, and
3. Third line - ways to solve the issues.

The first person in the first line will say an issue, the first person in the second line will respond by saying the corresponding human rights involved in the issue raised, and the first person in the third line will respond with measure to solve the issue. This is repeated until the last persons in the lines have spoken. The answers must be short, as much as possible one-word answers.

List the answers of the three groups on the board as in the sample list below:

| Issue | Human/labor rights | Solution |
|--------------|--------------------|----------------|
| Low pay | Adequate pay | Strike |
| Harassment | Security | File complaint |
| Loss of land | Livelihood | Negotiate |

Using the answers in the game that were listed on the board, examine in the plenary if they were appropriate answers. Try to correct what can be considered inappropriate answers.

b. Activity A – Group Discussion - 1 HOUR

Display three big size papers on the wall with short description of three community-company mechanisms, such as the following:

1. Pro-active consultation/survey
C Company is a successful flat-glass company in China with six production facilities across provinces. It has a Grievance and Communications Management Process that conducts stakeholders’ satisfaction surveys on an annual basis with the goal to improve quality, environment, and occupational safety and health management systems and demonstrate to the community that it takes feedback seriously. To receive grievances, it keeps open phone, website, and e-mail channels that are publicized on a large outdoor advertisement board on the company building. It believes that a grievance mechanism helps organize environmental management more proactively and keep up as people’s general awareness on environmental issues rises. It also believes that seeking stakeholders’ input and feedback, as opposed to fixing issues under pressure, ensures smooth operations and helps build a good public image.
2. Third party/Mediator
Third parties such as non-governmental organizations, community-based organizations, local governments, local community and religious organizations and councils – can sometimes be involved in companies’ grievance mechanisms. They can serve

as process organizers, places to bring a complaint to be passed on to the company, or as facilitators, witnesses, advisors, or mediators. In some cases, it may be beneficial to place part of the responsibility for the process on external entities - formed within the communities themselves or acceptable to them – while the company maintains ultimate responsibility and accountability for the process. Third parties can help increase the level of trust from communities as well as overcome certain limitations of project level mechanisms, such as lack of transparency, insufficient company resources, possible conflict of interest, and biases, provided that they themselves are perceived to be not biased and impartial to both the company and the communities.

3. Multistakeholder Advisory Group

The Multistakeholder Advisory Group (MSAG) is a multi-stakeholder body that monitors the effectiveness of the resettlement and income restoration program activities for the people and communities affected by the resettlement program of a special economic zone (SEZ) project. In addition, MSAG discusses countermeasures for issues identified in the process of the resettlement and income restoration program activities, and advises to Income Restoration Program Implementation Subcommittee (IRPISC). Some of the MSAG's objectives are:

- To identify and assess potential issues, concerns and complaints from Project Affected Persons (PAPs) with the implementation of the resettlement program and recommend corrective measures or other actions required to resolve such issues, concerns or complaints;
- To bring to the attention of the relevant implementing agencies and authorities any issues, concerns and complaints that PAPs and other stakeholders have regarding the SEZ Phase 1 project.

Ask the participants to read the description of the three mechanisms and stay in front of the mechanism they like the most. Randomly ask the participants on the reason for choosing a particular mechanism. Note which mechanism is most popular, and which reasons are most impressive.

Ask the participants to discuss in small groups the grievance mechanisms displayed on the wall and determine their advantages and disadvantages in terms of community participation and the mechanism's capacity to resolve issues. One group discusses one mechanism.

Provide the participants with additional information on the grievance mechanisms using Annex A.

Instruct them to cite in their group discussion specific cases/examples of similar grievance mechanisms that exist in Northeast Asia/country.

c. Activity B – Role Play - 1 HOUR

Tell the participants to role play the results of the group discussion. Give a guide on how to do the role play particularly on the following:

1. Assignment of group members to act out different roles (workers or members of the affected community, company officials, NGO workers, local government officials, etc.);
2. Creation of a story that would present
 - i. human rights impacts;

- ii. use of grievance mechanism to resolve the human rights impacts;
- iii. role of the workers or members of the affected community in the grievance mechanism; and
- iv. outcome of the action(s) taken.

Ask the groups to do the role play in plenary, and seek questions or comments from participants on the content of the role play.

Organize on the board the key points raised in the role play and in the comments and questions of the participants, particularly regarding the following:

1. Features of the mechanisms that address the grievances of the affected people (workers or members of community);
2. Role of the affected people in the operation of the mechanisms;
3. Advantages and disadvantages of the mechanisms portrayed in the role play.

d. Input - 1 HOUR

Provide an input on characteristics, principles, and experiences in using grievance mechanisms that are relevant to companies, their workers and the people affected by their operations. Stress the relevance of human rights principles in these grievance mechanisms in line with the human rights-based approach to access to justice perspective.

Before presenting the principles of grievance mechanisms, show a video on an experience on grievance mechanism.

Possible videos to show:

1. *“Making Monkey Business:” Building Company/Community Dialogue in the Philippines* (Corporate Social Responsibility Initiative at Harvard Kennedy School, available at <https://vimeo.com/25199195>)
2. *Corporate-Community Dialogue: An Introduction* (Corporate Social Responsibility Initiative at Harvard Kennedy School, available at <https://vimeo.com/43661831>)

The principles of grievance mechanism may cover the following elements:

Principle 1: Proportionality: A mechanism scaled to risk and adverse impact on affected communities;

Principle 2: Cultural Appropriateness: Designed to take into account culturally appropriate ways of handling community concerns;

Principle 3: Accessibility: A clear and understandable mechanism that is accessible to all segments of the affected communities at no cost;

Principle 4: Transparency and Accountability to All Stakeholders;

Principle 5: Appropriate Protection: A mechanism that prevents retribution and does not impede access to other remedies.

(Source: *Addressing Grievances from Project-Affected Communities - Guidance for Projects and Companies on Designing Grievance Mechanisms* [Washington: International Finance Corporation, September 2009], pages 7-15.)

From the UN Guiding Principles, the following can also be discussed:

In order to ensure their effectiveness, non-judicial grievance mechanisms, both State-based and non-State-based, should be:

- (a) Legitimate: enabling trust from the stakeholder groups for whose use they are intended, and being accountable for the fair conduct of grievance processes;
- (b) Accessible: being known to all stakeholder groups for whose use they are intended, and providing adequate assistance for those who may face particular barriers to access;
- (c) Predictable: providing a clear and known procedure with an indicative time frame for each stage, and clarity on the types of process and outcome available and means of monitoring implementation;
- (d) Equitable: seeking to ensure that aggrieved parties have reasonable access to sources of information, advice and expertise necessary to engage in a grievance process on fair, informed and respectful terms;
- (e) Transparent: keeping parties to a grievance informed about its progress, and providing sufficient information about the mechanism's performance to build confidence in its effectiveness and meet any public interest at stake;
- (f) Rights-compatible: ensuring that outcomes and remedies accord with internationally recognized human rights;
- (g) A source of continuous learning: drawing on relevant measures to identify lessons for improving the mechanism and preventing future grievances and harms.

Operational-level mechanisms should also be: (h) Based on engagement and dialogue: consulting the stakeholder groups for whose use they are intended on their design and performance, and focusing on dialogue as the means to address and resolve grievances.

(Source: *The Corporate Responsibility to Respect Human Rights – An Interpretative Guide*, United Nations, 2012, pages 73- 74)

For a brief explanation of operational- or project-level grievance mechanism see Annexes B and C.

Question and Answer session follows. The resource person may answer questions and/or add explanation on the mechanisms.

e. Activity C – 45 MINUTES

Ask the participants to discuss in the same groups the following question: How can the principles of grievance mechanisms presented in the input be applied to the sample grievance mechanisms earlier discussed in the groups? Determine which of the principles are likely incorporated in the mechanism and which principles can be still be incorporated; and give reasons for the answers.

Instruct the participants to put their answers in the following report format:

Name of grievance mechanism: _____

| Incorporated principles | Principles that can be incorporated |
|-------------------------|-------------------------------------|
| | |
| | |
| | |

Ask them to present their group reports in plenary and explain the reasons for their answers.

II. Summary

Time: 15 MINUTES

Summarize the main points discussed during the session such as the following:

1. The general characteristics of the grievance mechanisms that companies should establish;
2. The key issues on grievance mechanisms that arise in Northeast Asia in addressing human rights impacts, especially those related to affected communities;
3. The role of the affected communities in the operation of the grievance mechanisms.

Annex A

Examples of community-company mechanisms

1. Stakeholder Satisfaction Surveys

China Glass Holdings (CGH) is a successful flat-glass company in China with six production facilities across provinces. During its rapid growth, the company is striving to attain international standards and practices in the areas of energy efficiency and environmental management. An Environmental and Social Management system is part of CGH official policies and includes a Grievance and Communications Management Process. As part of this process, CGH conducts stakeholders' satisfaction surveys on an annual basis with the goal to improve quality, environment, and occupational safety and health management systems and demonstrate to the community that CGH takes feedback seriously. In addition to the affected communities, the Survey seeks feedback from government institutions, suppliers, and staff on the same issues. To receive grievances, CGH keeps open phone, Web site, and email channels that are publicized on a large outdoor advertisement board on the company building. CGH staff also visits communities to inform them about the company's procedures and policies as well as to disseminate "stakeholders' satisfaction questionnaire" forms. Through the survey, the company seeks feedback from communities on how effectively their issues are being resolved. Investigation and analysis of survey results are conducted by the planning department, and reported in the management review meetings. The surveys also help ensure internal accountability of the units involved in handling grievances and taking corrective actions. For example, CGH's Production Department has an Accident Unit that is held responsible for acting on environmental impact complaints in conformance with the company's Accident Investigation and Handling Process as well as Correction & Prevention Measures and Control Process. CGH believes that a grievance mechanism helps organize environmental management more proactively and keep up as people's general awareness on environmental issues rises. Seeking stakeholders' input and feedback, as opposed to fixing issues under pressure, ensures smooth operations and helps build a good public image. For example, when a complaint was received regarding dust fallout from the raw materials plant resulting in lower harvest in a nearby orchard, the grievance-handling and corrective action procedures facilitated immediate action on dust-collector maintenance and enclosure of plant windows and doors. The complainant was satisfied with the outcome.

(Source: Addressing Grievances from Project-Affected Communities - Guidance for Projects and Companies on Designing Grievance Mechanisms [Washington: International Finance Corporation, September 2009, page 26.]

2. Third party/Mediator

The Baku-Tblisi-Ceyhan (BTC) pipeline project in Azerbaijan is operated by the British Petroleum (BP). In its construction phase, BTC created a complaint mechanism with the help of local non-governmental organizations (NGOs) and experts. The mechanism provided for community members to raise grievances, including human rights-based grievances. Any communities or community members along the pipeline who claimed to have been impacted by the pipeline construction could register a complaint. Complaints could be brought regarding the activities of the BTC consortium or a contractor engaged by them on work related to the construction of the pipeline. No complaints were excluded and the BTC did not make any prima facie judgments

on their legitimacy. The only requirement was to have a name and a contact point for the complainant so that a response could be provided.

The complaints are resolved through a dialogue process – concerned parties meet to seek a common settlement. In case the dialogue does lead to an agreed settlement,

BOX 3.1: OVERVIEW OF THE AZERBAIJAN PIPELINES COMPLAINTS MANAGEMENT PROCEDURE

Structure:

- Network of six community liaison officers (CLOs) located in pipeline-affected communities, stakeholder relations lead representative at Sangachal Terminal.
- Network of three public information centres with public drop boxes in Ganja, Yevlakh and Kurdamir.
- Telephone hotline.
- Internal company complaints log and database for managing and tracking complaints and their resolution.

Procedure:

- Submission of grievance via drop boxes; information centres, CLOs, the pipeline right-of-way team, post or telephone; grievance form is filled out or a letter is sent.
- Grievance is logged and a staff member is nominated to address it.
- Grievance acknowledged within 10 working days; if grievance is not relevant to the project and/or cannot be resolved by the operating company, a letter explaining the reasons is addressed to the complainant.
- Aim is to address grievances within 30 days following submission.
- If grievance is not resolved within 30 days, it is reassessed and next steps are discussed with the complainant.
- If grievance remains unresolved, independent third-party mediation can be brought in. BP in Azerbaijan has used a third-party mediator, the local NGO Centre for Legal and Economic Education (CLEE).

Dissemination:

- Information posters and brochures distributed widely in communities (e.g. information centres, local libraries, community bulletin boards).
- Advertising in local media.
- Telephone numbers and grievance forms published online and in brochures; telephone numbers published in the sustainability report;
- Information on website in the public consultation and disclosure plan, including location of bulletin boards and information centres.
- Annual public consultation and public awareness meeting covering all pipeline communities.

Responsibility:

- Azerbaijan export pipelines social team is managing the resolution of complaints received from communities and third parties, involving other teams when relevant and necessary.
- The social team leader coordinates community grievances resolution process and has the authority to assign responsibility to address a grievance to appropriate levels of management or relevant contractors.

Accountability:

- BP in Azerbaijan reports to the project lenders on number of grievances, complaint categories and other relevant information regarding their resolution.
- External review by the Azerbaijan Social Review Commission.
- Numbers and types of grievances resolved are published in the sustainability report.

Source: Emma Wilson and Emma Blackmore, editors, *Dispute or dialogue?* (London: International Institute for Environment and Development, 2013), page 53.

and where the issue in dispute relates to land, compensation or other primarily non-technical issues, the complainant(s) can take the matter to the Center for Legal and Economic Education (CLEE), a local NGO engaged by BP to provide the function of an arbiter in such situations. CLEE would review all documents related to the complaint and produce a finding or opinion on the appropriate outcome. Neither side would be bound a priori to accept that finding, but PB/PTC did so in practice in every case.

(Source: Caroline Rees and David Vermijs, *Mapping Grievance Mechanisms in the Business and Human Rights Arena* (Cambridge: Harvard University, January 2008), pages 8-9.)

3. Community-driven Grievance Mechanism and Multistakeholder Advisory Group

To address the impacts of the first phase of the Thilawa Special Economic Zone (SEZ) Project on the affected community, a proposal has been made to develop a model for operational-level grievance mechanisms (OGMs) that are designed primarily by the affected populations themselves to meet their needs and expectations as rights-holders seeking an adequate remedy. This approach will ensure that OGMs provide adequate, appropriate remedies for human rights abuses, through a process that is considered legitimate by the affected communities and complies with international human rights law. The scope of the OGM, the processes by which it functions, the people who staff it, and the outcomes of individual grievance complaints will all be dictated by the communities themselves, based on international human rights principles and their own traditional conceptions of fair process and just outcomes.

(Source: Earth Rights International and SOMO, Community-Driven Operational Grievance Mechanisms discussion paper for a new model, page 4)

This model reinforces the position that remedy is not a gift bestowed on a community from a charitable company, but rather the most basic right of affected stakeholders because it secures and ensures the realization of all other substantive human rights. (Jonathan Kaufman and Katherine McDonnell, Community-Driven Operational Grievance Mechanisms, 2015, page 131)

To address the impacts of the first phase of the Thilawa Special Economic Zone (SEZ) Project in Myanmar, a community-driven operational grievance mechanism (CD-OGM) is being established by which the local community can play a leading role in the design and implementation of the mechanism. Where grievances fall outside of the scope of the CD-OGM or cannot be resolved through it, the Multistakeholder Advisory Group (MSAG) may have a role to play in elevating the issues or finding solutions. The Multistakeholder Advisory Group (MSAG) aims to strengthen stakeholder coordination and advise on the resettlement aspects of implementation of the Thilawa Special Economic Zone (SEZ) Project. It responds to continued civil society interest and concerns about the resettlement program and the recognition of the governments of Myanmar and Japan that broader stakeholder engagement will assist in making progress of Income Restoration Program (IRP) and resolving some of the ongoing challenges that have arisen, as well as providing lessons learned for the next phase of the SEZ.

MSAG has the following objectives:

- To create a broad dialogue between relevant key stakeholders of the Thilawa SEZ Phase 1 project with the intention to improve policies, priorities and processes that govern the project and ensure the success of the SEZ and benefits to affected communities;
- To identify and assess potential issues, concerns and complaints from Project Affected Persons (PAPs) with the implementation of the resettlement program and recommend corrective measures or other actions required to resolve such issues, concerns or complaints;
- To bring to the attention of the relevant implementing agencies and authorities any issues, concerns and complaints that PAPs and other stakeholders have regarding the Thilawa Phase 1 project;

- To monitor implementation of resettlement and income restoration activities to ensure they fulfil the obligations set out by relevant Myanmar and international commitments;
- To help promote and facilitate improved outcomes for PAPs of Thilawa Phase 1 resettlement program including by encouraging good international practice in resettlement and income restoration activities;
- To promote good international practice in stakeholder engagement including disseminating information to generate a better understanding of Thilawa SEZ Phase 1 project and reduce the risk of conflict and misunderstandings;
- To identify lessons learned from Thilawa Phase 1 project to inform planning and implementation of the Phase 2 project.

The MSAG structure and its relations to the stakeholders in the SEZ Phase 1 are still evolving. The envisioned operations of MSAG are shown in the illustration below.

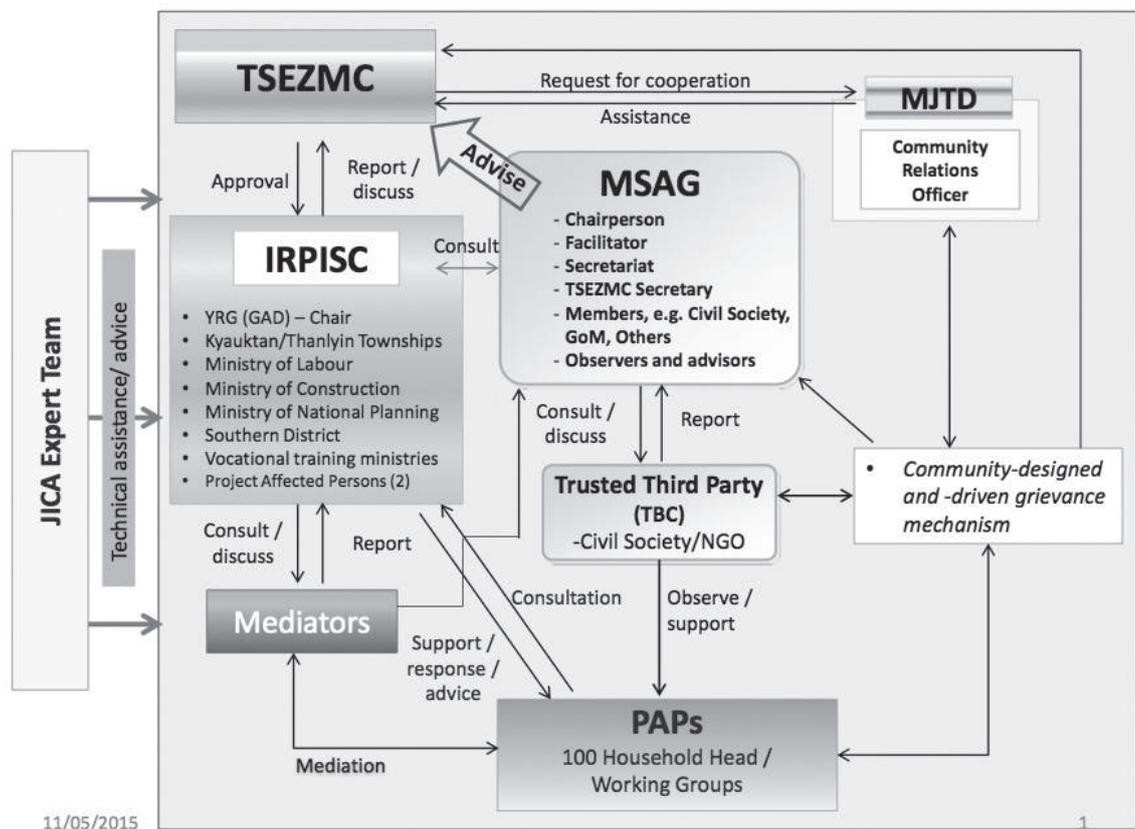


Illustration on the operation of the MSAG

Key Questions/Guiding Principles for the Multistakeholder Advisory Group (MSAG):

1. Will the action/advice benefit PAPs or other target communities?
2. Is the action/advice informed by relevant international standards (e.g. World Bank Group social safeguard policies on community engagement and land acquisition and involuntary resettlement)?
3. Will the action/advice support the achievement of good international practice in resettlement, livelihood restoration and community engagement?
4. Does the action/advice contribute to livelihood restoration of PAPs?
5. Does the action/advice contribute to improving the standard of living of PAPs?

6. Have PAPs and other relevant stakeholders been consulted to develop the action?

7. Does the action consider and recognise the differential benefits and impacts on women and other potentially vulnerable groups? Have special provisions been made to support vulnerable people?

8. Will the action/advice address or contribute to meeting other needs of the community (e.g. Host Community or others)?

9. Is the action/advice locally appropriate to the target communities and does it respect the local culture and traditions?

10. Is the action/advice based on or supported by an objective and professional, third party study, assessment or opinion of the benefits of the action?

11. Is the action/advice consistent with Myanmar laws and regulations?

12. Will the action/advice avoid or reduce conflict and disagreement with the GOM, and promote achievable win-win solutions?

(Sources: Proposed terms of reference of the Thilawa SEZ Multistakeholder Advisory Group, www.myanmar-responsiblebusiness.org/pdf/MSAG/TOR.pdf and Thilawa Special Economic Zone (Sez), Myanmar, submission on the session on “Stakeholder Engagement Across All Three Pillars (Case Studies),” UN Forum On Business & Human Rights, 16 November 2015, www.ohchr.org/Documents/Issues/Business/ForumSession4/ThilawaSpecialEconomicZoneMyanmar.pdf)

Annex B

Commentary

OPERATIONAL-LEVEL grievance mechanisms are accessible directly to individuals and communities who may be adversely impacted by a business enterprise. They are typically administered by enterprises, alone or in collaboration with others, including relevant stakeholders. They may also be provided through recourse to a mutually acceptable external expert or body. They do not require that those bringing a complaint first access other means of recourse. They can engage the business enterprise directly in assessing the issues and seeking remediation of any harm.

Operational-level grievance mechanisms perform two key functions regarding the responsibility of business enterprises to respect human rights.

First, they support the identification of adverse human rights impacts as a part of an enterprise's ongoing human rights due diligence. They do so by providing a channel for those directly impacted by the enterprise's operations to raise concerns when they believe they are being or will be adversely impacted. By analysing trends and patterns in complaints, business enterprises can also identify systemic problems and adapt their practices accordingly;

Second, these mechanisms make it possible for grievances, once identified, to be addressed and for adverse impacts to be remediated early and directly by the business enterprise, thereby preventing harms from compounding and grievances from escalating. Such mechanisms need not require that a complaint or grievance amount to an alleged human rights abuse before it can be raised, but specifically aim to identify any legitimate concerns of those who may be adversely impacted. If those concerns are not identified and addressed, they may over time escalate into more major disputes and human rights abuses. Operational-level grievance mechanisms should reflect certain criteria to ensure their effectiveness in practice (Principle 31).

These criteria can be met through many different forms of grievance mechanism according to the demands of scale, resource, sector, culture and other parameters. Operational-level grievance mechanisms can be important complements to wider stakeholder engagement and collective bargaining processes, but cannot substitute for either. They should not be used to undermine the role of legitimate trade unions in addressing labour-related disputes, nor to preclude access to judicial or other non-judicial grievance mechanisms.

(Source: Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework. United Nations, HR/PUB/11/04, 2011, pages 32-34)

Annex C

What Is a Project-Level Grievance Mechanism?

A PROJECT-LEVEL grievance mechanism for affected communities is a process for receiving, evaluating, and addressing project related grievances from affected communities at the level of the company, or project. In the context of relatively large projects, this mechanism may also address grievances against contractors and subcontractors.

Project-level grievance mechanisms offer companies and affected communities an alternative to external dispute resolution processes (legal or administrative systems or other public or civic mechanisms). These grievance mechanisms differ from other forms of dispute resolution in that they offer the advantage of a locally based, simplified, and mutually beneficial way to settle issues within the framework of the company-community relationship, while recognizing the right of complainants to take their grievances to a formal dispute body or other external dispute-resolution mechanisms. It should be noted, however, that complex issues that arise from high environmental and social impacts are seldom resolved in a relatively simple way. In such cases, projects should anticipate involvement of various third parties in the resolution process to achieve solutions with affected communities. These include, but are not limited to, various national and international mediation bodies, independent mediators and facilitators with sector- and country-specific expertise, and independent accountability mechanisms of public sector financiers.

A project's grievance mechanism should be specifically designed with a focus on local communities affected by the project. The task of understanding who will be potentially affected by project operations, and who will therefore use the company grievance mechanism to raise complaints, is not always straightforward and depends on the project's particular circumstances. Thus, it is beneficial to review who may be affected by the project, and the nature of the potential impact, during the broader stakeholder analysis phase of the Social and Environmental Assessment. Early and strategic interaction with communities will help ensure that the grievance mechanism is culturally acceptable to all affected groups within communities, integrates traditional mechanisms for raising and resolving issues, and reasonably addresses accessibility and other barriers that may prevent communities from raising their concerns.

(Source: Addressing Grievances from Project-Affected Communities - Guidance for Projects and Companies on Designing Grievance Mechanisms [Washington: International Finance Corporation, September 2009, pages 4-5. Footnotes deleted.]

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Administrative and Judicial Mechanisms and the UN Framework

This module has the following objectives:

Enable the participants to

- Discuss the experiences of using the existing labor grievance mechanisms;
- Discuss the administrative oversight on corporation-related issues (e.g., compliance with domestic standards on use of natural resources that impact on livelihood security, health, land use, cultural protection, environmental protection);
- Analyze the experience of using the courts in addressing business-related human rights issues;
- Determine what measures should be done by affected people when using the administrative and judicial mechanisms to resolve business-related human rights issues.

Time: 7 HOURS AND 20 MINUTES

Materials:

- Big size papers, colored pens, writing papers, adhesive tapes;
- Equipment - computer, projector, screen;
- Video or a on labor mechanisms.

Administrative and Judicial Mechanisms and the UN Framework

I. Procedure

a. Opener – 5 MINUTES

Explain that there are two sections in this module. One section covers labor dispute resolution mechanisms and administrative oversight mechanisms. The second section dwells on judicial mechanism.

Inform the participants that the discussions/activities will use their own experiences and/or their own knowledge about specific cases related to the mechanisms.

SECTION ONE

Labor grievance mechanisms

a. Activity 1 – 1 HOUR

Ask the participants to recall their experience in using labor mechanisms and answer the following questions:

- i. What advantages or disadvantages are provided by these labor grievance mechanisms in addressing labor issues?
- ii. What procedural aspects of the mechanisms should change or be retained to ensure that they subscribe to human rights-based approach to access to justice?
- iii. What lessons can be learned from the experiences of using these mechanisms?

Ask the participants to discuss the answers to the question in groups. Instruct them to write their answers on big size papers; and post the papers on the wall afterward.

Administrative oversight mechanisms

b. Activity 2 – 1 HOUR AND 30 MINUTES

Provide examples of existing administrative oversight mechanisms that cover human rights issues. These mechanisms can be the following:

National government corporate oversight

- i. Government agencies that monitor compliance with laws on agricultural (including aquatic) production, forestry preservation, environmental/natural resources protection, mineral exploitation, foreign investment, special economic zones, cultural assets protection, and other related issues;
- ii. Administrative procedures in resolving complaints about non-compliance by companies;

Local government corporate oversight

- i. Local government offices that monitor the corporate compliance with laws and ordinances on agricultural (including aquatic) production, forestry preservation, environmental/natural resources protection, mineral exploitation, foreign investment, cultural assets protection, and other concerns;
- ii. Remedies available in local governments (provincial, city and town governments) regarding complaints of adverse human rights impact of company operations;

National human rights institutions

- i. Role of national human rights institutions in resolving business-related human rights issues;
- ii. Procedures for resolving business-related human rights issues.

Ask the participants to discuss in small groups lessons that can be learned from the experiences of using the existing mechanisms and determine their advantages and disadvantages in resolving business-related human rights issues. Assign each group of participants to one type of administrative mechanism.

Tell the participants to present their group reports in plenary.

Ask the participants to raise questions or comments on the group reports.

Organize on the board/big size paper the key points raised in the group reports and in the comments and questions of the participants. Use the table below in summarizing the key points:

| Administrative mechanism | Procedures | Advantages | Disadvantages |
|-----------------------------------|-------------------|-------------------|----------------------|
| National government | | | |
| Local government | | | |
| National human rights institution | | | |

Ask the groups to present their reports in plenary.

Tell the participants to raise questions or comments on the group reports.

Organize on the board/big size paper the key points raised in the group reports and in the comments and questions of the participants.

Alternative Activities

Alternatively, the activities in this Section can start with a visit to nearby offices of the administrative mechanisms to interview officials involved in resolving cases related to companies. The interview on specific cases should include the procedures of the grievance mechanisms.

The participants can be divided into as many groups as there are offices that can be visited.

In this case, the participants will use the information gathered from the interview to discuss the questions in the two activities above.

c. Input – 1 HOUR

Provide an input on how existing administrative grievance mechanisms can be improved to be able to subscribe to human rights-based approach to access to justice.

The presentation can discuss the characteristics of effective non-judicial grievance mechanisms, both State-based and non-State-based, such as the following:

- a. Legitimate: enabling trust from the stakeholder groups for whose use they are intended, and being accountable for the fair conduct of grievance processes;

- b. Accessible: being known to all stakeholder groups for whose use they are intended, and providing adequate assistance for those who may face particular barriers to access;
 - c. Predictable: providing a clear and known procedure with an indicative time frame for each stage, and clarity on the types of process and outcome available and means of monitoring implementation;
 - d. Equitable: seeking to ensure that aggrieved parties have reasonable access to sources of information, advice and expertise necessary to engage in a grievance process on fair, informed and respectful terms;
 - e. Transparent: keeping parties to a grievance informed about its progress, and providing sufficient information about the mechanism's performance to build confidence in its effectiveness and meet any public interest at stake;
 - f. Rights-compatible: ensuring that outcomes and remedies accord with internationally recognized human rights;
 - g. A source of continuous learning: drawing on relevant measures to identify lessons for improving the mechanism and preventing future grievances and harms;
- Operational-level mechanisms should also be:
- h. Based on engagement and dialogue: consulting the stakeholder groups for whose use they are intended on their design and performance, and focusing on dialogue as the means to address and resolve grievances.

(Source: *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*. United Nations, HR/PUB/11/04, 2011, page 33)

Tell the participants to refer to Annex A for an explanation of these principles. Ask the participants to go back to their discussions on labor and administrative oversight mechanisms and determine whether these characteristics apply to these mechanisms' mandate, powers and procedures.

Provide another input on the national human rights institutions (NHRIs) and their role in resolving grievances arising from business operations. The following characteristics of effective investigation and complaints handling system can be stressed:

Complaints are handled promptly and effectively by:

1. Identifying out-of-jurisdiction complaints and potential referrals out to other organisations at the intake stage;
2. Using information and tips from NGOs [non-governmental organizations], advocates, and other organisations in the field to pursue investigations;
3. Using alternative dispute resolution (ADR) in the early stages of the complaint process (statistics show that voluntary mediation can resolve 30% - 50% of complaints submitted, if properly structured);
4. Tracks the performance of investigators in terms of the numbers of complaints they handle and close per year, depending on whether cases are systemic or complex in nature. This information feeds into both individual performance measures and institutional targets. (The target may be higher in Ombuds-style NHRIs that rely on quick, early resolution processes to resolve cases without many legal formalities);
5. Communicates regularly with parties about the status of the complaint and recording this activity;

6. Demonstrates that the NHRI has made recommendations following investigations on important human rights issues (as set out in the strategic plan) and has made efforts to ensure that these recommendations were adopted;
7. Uses case management committees, or an equivalent structure, that meets regularly and provides timely process decisions;
8. Has decision-making structures, whereby senior office-holders meet regularly to review and decide on investigation reports, and document those decisions;
9. Sets service standards for timelines for each part of the investigation process and communicating these to the public;
10. Is used to inform and improve programming and performance in investigation and in other programme areas.

(Source: Text based on *UNDP-OHCHR Toolkit for collaboration with National Human Rights Institutions* [New York/Geneva, December 2010], page 221)

Ask the participants to review their discussions on NHRIs and determine whether or not these characteristics apply to their complaints handling system.

SECTION TWO

Judicial mechanism

a. Activity 3 – 1 HOUR AND 30 MINUTES

Ask the participants to discuss in small groups court cases they are familiar with and answer the following questions:

- i. How do courts address the business and human rights issues?
- ii. What are the challenges being faced in using the courts to uphold corporate accountability and on employing the human rights-based approach to access to justice?
- iii. What lessons can be learned from these experiences?

Tell the participants to discuss in groups the questions and write on big size paper their responses. Ask them to give a report in plenary.

b. Input – 1 HOUR

Provide an input on judicial mechanism and the practical measures necessary to maximize the use of the courts to address business-related human rights issues. Use a case study on how resorting to court action has helped the community affected by company operations recover from the effects of pollution. See Annex B for a case study.

Discuss in the input the following issues, among other concerns, regarding judicial mechanism:

- Consideration of adverse human rights impacts of business operations as subject to domestic laws and therefore bases for court action;
- Requirements in initiating judicial recourse on adverse human rights impacts of business operations, including the costs of litigation;
- Role of supporters (particularly of volunteer lawyers,* legal assistance groups and other civil society organizations) to pursue court claims on behalf of the affected

* See for example Takeji Fujiwara, *The Involvement of Japan's Lawyers in Environmental Issues*.

people against companies - this includes the issue of the supporters' *locus standi*** in representing them in court;***

- Evidence necessary to prove claims against companies - this includes evidence of technical/medical/scientific nature that is difficult and expensive to obtain;
- Time needed to complete judicial proceedings; and
- Judicial remedies and their enforcement – the remedies include compensation for the damage caused (including compensation for lost income, or lost capacity to earn a living), restoration of property that have been taken, rehabilitation of area that has been damaged, support for the medical needs of affected people, and stoppage of operations of erring companies. Such remedies may also be in the form of settlement agreement, which require appropriate negotiation capacity on the part of the affected people to be able to obtain their demands from the companies. The extent of enforcement of the remedies obtained has to be explained too.

c. Activity – 1 HOUR

In plenary, brainstorm on practical measures needed in seeking the courts' intervention on business-related human rights issues.

List on the board the suggested practical measures.

Report to the plenary the results of the group discussion using a panel discussion format.

II. Summary

Time: 15 MINUTES

Summarize the main points discussed during the session such as the following:

1. General characteristics of administrative and judicial mechanisms to resolve business-related human rights issues;
2. The key issues and lessons on the resolution of specific cases using the mechanisms existing in Northeast Asia/country that affect business and human rights.

** In law, *locus standi* means the right to bring an action, to be heard in court, or to address the Court on a matter before it. *Locus standi* is the ability of a party to demonstrate to the court sufficient connection to and harm from the law or action challenged to support that party's participation in the case (USLegal.com, <http://definitions.uslegal.com/l/locus-standi/>).

*** See discussion of this issue in the Mongolian context in Center for Human Rights and Development, *Human Rights in the Mining Industry of Mongolia*, pages 106-108.

Annex A

Commentary

A GRIEVANCE MECHANISM can only serve its purpose if the people it is intended to serve know about it, trust it and are able to use it. These criteria provide a benchmark for designing, revising or assessing a non-judicial grievance mechanism to help ensure that it is effective in practice. Poorly designed or implemented grievance mechanisms can risk compounding a sense of grievance amongst affected stakeholders by heightening their sense of disempowerment and disrespect by the process. The first seven criteria apply to any State-based or non-State-based, adjudicative or dialogue-based mechanism. The eighth criterion is specific to operational-level mechanisms that business enterprises help administer. The term “grievance mechanism” is used here as a term of art. The term itself may not always be appropriate or helpful when applied to a specific mechanism, but the criteria for effectiveness remain the same. Commentary on the specific criteria follows:

a. Stakeholders for whose use a mechanism is intended must trust it if they are to choose to use it. Accountability for ensuring that the parties to a grievance process cannot interfere with its fair conduct is typically one important factor in building stakeholder trust;

b. Barriers to access may include a lack of awareness of the mechanism, language, literacy, costs, physical location and fears of reprisal;

c. In order for a mechanism to be trusted and used, it should provide public information about the procedure it offers. Time frames for each stage should be respected wherever possible, while allowing that flexibility may sometimes be needed;

d. In grievances or disputes between business enterprises and affected stakeholders, the latter frequently have much less access to information and expert resources, and often lack the financial resources to pay for them. Where this imbalance is not redressed, it can reduce both the achievement and perception of a fair process and make it harder to arrive at durable solutions;

e. Communicating regularly with parties about the progress of individual grievances can be essential to retaining confidence in the process. Providing transparency about the mechanism’s performance to wider stakeholders, through statistics, case studies or more detailed information about the handling of certain cases, can be important to demonstrate its legitimacy and retain broad trust. At the same time, confidentiality of the dialogue between parties and of individuals’ identities should be provided where necessary;

f. Grievances are frequently not framed in terms of human rights and many do not initially raise human rights concerns. Regardless, where outcomes have implications for human rights, care should be taken to ensure that they are in line with internationally recognized human rights;

g. Regular analysis of the frequency, patterns and causes of grievances can enable the institution administering the mechanism to identify and influence policies, procedures or practices that should be altered to prevent future harm;

h. For an operational-level grievance mechanism, engaging with affected stakeholder groups about its design and performance can help to ensure that it meets their needs, that they will use it in practice, and that there is a shared interest in ensuring its success. Since a business enterprise cannot, with legitimacy, both be the subject

of complaints and unilaterally determine their outcome, these mechanisms should focus on reaching agreed solutions through dialogue. Where adjudication is needed, this should be provided by a legitimate, independent third-party mechanism.

(Source: Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework. United Nations, HR/PUB/11/04, 2011, pages 32-34)

Annex B

Case Study: Nishiyodogawa: Community Struggle on Right to Health and Environment*

Aozora Foundation

By mid-1930s, Nishiyodogawa ward had seven hundred factories, sixty thousand employees, and four hundred sixty of these factories had ten or more employees. This made Nishiyodogawa ward the heart of Osaka's industrial area.**

In the 1930s, Osaka city was named the "City of Factories"*** but also as "Smoke Capital" of Japan due to its industrialization history dating back to the 1870s. In a school textbook, Osaka city's industrial development was symbolized by smokes coming from numerous factory smokestacks.

The strong demand of foreign trade as well as the military industry in the 1930s caused the fast industrial development of Nishiyodogawa ward; it resumed after World War II. In the 1960s, residents experienced brown-colored haze that enveloped the area all day. Residents believed that all types of chemical pollution existed in Nishiyodogawa ward, particularly sulfur oxides. Cars and trains had their lights turned on during the day due to poor visibility.

Protests (including law suits) against widespread pollution in the country led to the enactment of the Basic Law for Environmental Pollution Control in 1967, the Law on Special Measures Concerning Redress for Pollution-related Health Damage in 1969, and the Absolute Liability Law in 1972 and the Pollution-related Health Damage Compensation Law in 1973. The 1969 law designated parts of several cities including Yokkaichi, Osaka (including Nishiyodogawa ward) and Kawasaki cities as polluted areas. Under this law, people who were certified as suffering from pollution-induced health problems were qualified to receive medical care benefits. Under the 1972 Absolute Liability Law, lack of intent to pollute does not exempt companies from escaping their responsibility for the pollution caused.

Nishiyodogawa Residents' Protest

In mid-1970s, the Nishiyodogawa Association for Pollution Patients and Their Families contacted lawyer-members of the Osaka Bar Association to study the Nishiyodogawa problem. The difficulty of finding the sources of air pollution led the lawyers to do a three-year study on what legal action to take. In April 1978, the patients filed a case before the District Court in Osaka against ten companies believed to be sources of air pollution.**** More than twenty lawyers were involved in the filing of the complaint in court, but lawyers from different parts of Japan later joined the legal team that increased the number of lawyers to one hundred and fifty.

The tort liability complaint asked the court, among several demands, to stop the operations of the companies and to order the companies to pay compensation to

* This is a short version of the article entitled "Nishiyodogawa: Community Struggle on Right to Health" published in *FOCUS Asia-Pacific*, December 2015, volume 82, and available at www.hurights.or.jp/archives/focus/section3/2015/12/nishiyodogawa-community-struggle-on-right-to-health.html.

** "A City of Factories Appears," *Osaka Asahi Shimbun*, 16 November 1936, an English version of the article is found in <http://aozora.or.jp/lang/english/nishiyodogawa-field-museum/citizens-struggle>.

*** Japan's Air Pollution from the Perspective of Pollution Victims, Center for the Redevelopment of Pollution-damaged Areas in Japan (The Aozora Foundation), page 9.

**** Three more complaints were subsequently filed by the patients in court including those filed against the government about the air pollution (nitrogen oxides) from vehicle exhaust from public roads.

the pollution victims. The Nishiyodogawa residents received a lot of support from the general public in pursuing the complaint.

While proving which companies were the sources of specific types and amounts of pollutants was technically difficult, proving the unusually high rate of health problems (compared to the national average) among the Nishiyodogawa residents, especially the young and old, was not. And the court considered the health issue data in favor of the complainants.

After seventeen years of litigation, the companies sought to settle the complaint. Both sides subsequently agreed on a four billion Yen compensation package. The District Court accepted the settlement agreement in a decision issued in March 1995. The Nishiyodogawa residents filed several other cases in court. These cases ended after twenty years lapsed from 1978.

Aozora Foundation

Years before the District Court decision came out, the Nishiyodogawa Association for Pollution Patients and Their Families had released in March 1991 the “Nishiyodogawa Redevelopment Plan” aimed at having a pollution-free community development in Nishiyodogawa ward. The Association brought forth a series of proposals, including one directed at defendant companies and on reconstruction after earthquakes.****

Using part of the settlement package given by the companies under the 1995 court settlement agreement, the Nishiyodogawa pollution victims established in 1996 the Center for the Redevelopment of Pollution-damaged Areas in Japan (Aozora Foundation).

Aozora Foundation organizes studies and practical activities that are creatively carried out from the standpoint of pollution victims and community members, and aimed at rejuvenating local areas and environments.

It also holds public lectures, symposiums and other events with the participation of the residents, gathers documents and source materials, provides information, hosts observation tours and trainees, lends support for school classes, conducts international exchanges, and more.

Redeveloping polluted areas does not merely involve rejuvenating, recreating, and preserving the natural environment. In the Aozora Foundation way of thinking such redevelopment depends on recovering and improving the health of local citizens; recovering and fostering community functions lost on account of economics-first development; rebuilding relationships of trust and cooperation among government, business, and citizens; and other such efforts. This necessitates basing initiatives on the idea of “participation” as proposed in the Basic Environment Plan***** and, from a citizens’ standpoint, obtaining the cooperation of local authorities, businesses, and all other social entities.*****

**** See website of Aozora Foundation, <http://aozora.or.jp/lang/english/nishiyodogawa-field-museum/regeneration-begins>.

***** See Basic Environment Law and Basic Environment Plan, www.env.go.jp/en/aboutus/pamph/html/00pan250.html for basic information on the Plan.

***** “Our mission,” The Aozora Foundation, <http://aozora.or.jp/lang/english/our-mission>.

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Nora Götzmann and Claire Methven O'Brien, *Business and Human Rights - A Guidebook for National Human Rights Institutions*, (International Coordinating Committee of National Human Rights Institutions [ICC] and Danish Institute for Human Rights [DIH], November 2013). Full text available at www.humanrights.dk/files/media/dokumenter/udgivelser/bhr_guidebook_for_nhris_2013_eng.pdf.

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Strategic Plan of NHRIs, for Mongolia see the 5th *Strategic Plan of NHRCM – 2012-2014*, in Center for Human Rights and Development, *Human Rights in the Mining Industry of Mongolia*, pages 100-102.

Resorting to Mechanisms of International Institutions

This module has the following objectives:

- Enable the participants to discuss the advantages and disadvantages of using the mechanisms that have been established by international institutions (such as the Integrity Measures of the UN Global Compact and the National Contact Point [NCP] system of OECD) to address human rights and labor issues.

Time: 4 HOURS AND 15 MINUTES

Materials:

- Big size papers, colored pens, writing papers, adhesive tapes;
- Equipment - computer, projector, screen;
- Video/documents on the international mechanisms such as the National Contact Point of the OECD and the UN mechanisms.

Resorting to Mechanisms of International Institutions

I. Procedure

a. Opener - 30 MINUTES

Show a video on the National Contact Point (NCP) of the OECD. Ask the participants for comments.

b. Input

Provide an input on international mechanisms to resolve cases of adverse human rights impact:

1. Integrity Measures of the UN Global Compact (Annex A)
2. National Contact Point of the OECD (Annex B).

Activity – 1 HOUR

In small groups, ask the participants to review in small groups the cases decided by the NCPs and the Office of the UN Global Compact relating to Northeast Asian companies such as the following:

1. Korean Trans National Corporations Watch, et al., v Daewoo International, POSCO, et al., ruling of the Korean National Contact Point, 3 December 2014 (Annex C);
2. Canada Tibet Committee vs. China Gold Int. Resources, Canada National Contact Point, 29 January 2014 (Annex D); and
3. Complaint against Petro-China filed in the Office of the UN Global Compact (Annex E)

One group discusses one case. Use the text of the cases in the annexes.

Instruct them to take note of the process involved from the filing of complaint to the resolution of the case by the NCP or whatever stage the case has reached; who filed the complaint; reasons/explanations given the NCP, UN Global Compact on the cases.

Ask them to present the results of their discussion in the plenary.

List on the board the ideas/suggestions provided by the participants.

c. Input - 1 HOUR

Provide an input that answers the following questions:

- How have the National Contact Points (NCPs) and the Integrity Measures addressed the complaints brought before them?
 - What are the limitations of the NCPs and Integrity Measures?
 - What can be done to further improve the work of the NCPs and Global Compact Office (regarding Integrity Measures)?
 - What lessons can be learned from the use of the NCPs and Integrity Measures?
- (See F Annex E for an assessment of a NCP)

d. Activity - 1 HOUR AND 30 MINUTES

In small groups, ask the participants to

- discuss the feasibility of using the NCPs by local stakeholders (workers, members of the local community, etc.);

- cite practical ideas/suggestions on the use of these mechanisms to resolve disputes involving companies.

Instruct them to present the results of their discussion in the plenary.

II. Summary

Time: 15 MINUTES

Summarize the main points discussed during the session such as the following:

1. The existing international mechanisms to address “business-related human rights impacts” of company operations especially the NCPs and the Integrity Measures;
2. The advantages and disadvantages of using these international mechanisms especially for local stakeholders.

Annex A

Integrity Measures

Allegations of Systematic or Egregious Abuses

The Global Compact welcomes any participant that pledges to work towards implementation of the Global Compact principles through learning, dialogue, projects, process improvements or other such measures. Moreover, it is not now and does not aspire to become a compliance based initiative. Nevertheless, safeguarding the reputation, integrity and good efforts of the Global Compact and its participants requires transparent means to handle credible allegations of systematic or egregious abuse of the Global Compact's overall aims and principles. The Global Compact Office can assist or provide guidance in this regard, by means of the measures described below. The purpose of these measures in the first instance always will be to promote continuous quality improvement and assist participants in aligning their actions with the commitments they have undertaken with regard to the Global Compact principles. It should be noted that the Global Compact Office will not involve itself in any way in any claims of a legal nature that a party may have against a participating company or vice versa. Similarly, the measures set out below are not intended to affect, pre-empt or substitute for other regulatory or legal procedures or proceedings in any jurisdiction.

Thus, when a matter is presented in writing to the Global Compact Office, the Office will:

1. use its judgement to filter out prima facie frivolous allegations. If a matter is found to be prima facie frivolous, the party raising the matter will be so informed and no further action will be taken on the matter by the Global Compact Office.
2. If an allegation of systematic or egregious abuse is found not to be prima facie frivolous, the Global Compact Office will forward the matter to the participating company concerned, requesting
 - written comments, which should be submitted directly to the party raising the matter, with a copy to the Global Compact Office, and
 - that the Global Compact Office be kept informed of any actions taken by the participating company to address the situation which is the subject matter of the allegation. The Global Compact Office will inform the party raising the matter of the above-described actions taken by the Global Compact Office.
3. The Global Compact Office would be available to provide guidance and assistance, as necessary and appropriate, to the participating company concerned, in taking actions to remedy the situation that is the subject matter of the allegation in order to align the actions of the company with its commitments to the Global Compact principles.

The Global Compact Office may, in its sole discretion, take one or more of the following steps, as appropriate:

1. Use its own good offices to encourage resolution of the matter;
2. Ask the relevant country/regional Global Compact network, or other Global Compact participant organization, to assist with the resolution of the matter;
3. Refer the matter to one or more of the UN entities that are the guardians of the Global Compact principles for advice, assistance or action;

4. Share with the parties information about the specific instance procedures of the OECD Guidelines for Multinational Enterprises and, in the case of matters relating to the labour principles, the interpretation procedure under the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy.
5. Refer the matter to the Global Compact Board, drawing in particular on the expertise and recommendations of its business members.

If the participating company concerned refuses to engage in dialogue on the matter within two months of first being contacted by the Global Compact Office under subparagraph (b) above, it may be regarded as “non-communicating”, and would be identified as such on the Global Compact website until such time as a dialogue commences. If, as a result of the process outlined above and based on the review of the nature of the matter submitted and the responses by the participating company, the continued listing of the participating company on the Global Compact website is considered to be detrimental to the reputation and integrity of the Global Compact, the Global Compact Office reserves the right to remove that company from the list of participants and to so indicate on the Global Compact website.

A participating company that is designated “non-communicating” or is removed from the list of participants will not be allowed to use the Global Compact name or logo if such permission had been granted.

If the participating company concerned has subsequently taken appropriate actions to remedy the situation that is the subject matter of the allegation, and has aligned its actions with the commitments it has undertaken with regard to the Global Compact principles, the company may seek reinstatement as an “active” participant to the Global Compact and to the list of participants on the Global Compact website. If there is a local network in the country where the company is based, the company should first approach the local network; in all other cases the Global Compact Office should be contacted directly. Only the Global Compact Office can make a final determination of reinstatement.

The Global Compact Office is committed to ensuring a fair process for the parties involved. In order to promote the productive resolution of matters raised, no entity involved in the process should make any public statements regarding the matter until it is resolved.

(Source: Text based on *Global Compact – Integrity Measures*. Available at www.unglobalcompact.org/docs/about_the_gc/integrity_measures/Integrity_Measures_Note_EN.PDF)

Annex B

National Contact Point

THE NATIONAL CONTACT POINT [NCP] will contribute to the resolution of issues that arise relating to implementation of the Guidelines [OECD Guidelines for Multinational Enterprises] in specific instances in a manner that is impartial, predictable, equitable and compatible with the principles and standards of the Guidelines. The NCP will offer a forum for discussion and assist the business community, worker organisations, other non-governmental organisations, and other interested parties concerned to deal with the issues raised in an efficient and timely manner and in accordance with applicable law. In providing this assistance, the NCP will:

1. Make an initial assessment of whether the issues raised merit further examination and respond to the parties involved.
2. Where the issues raised merit further examination, offer good offices to help the parties involved to resolve the issues. For this purpose, the NCP will consult with these parties and where relevant:
 - a. seek advice from relevant authorities, and/or representatives of the business community, worker organisations, other nongovernmental organisations, and relevant experts;
 - b. consult the NCP in the other country or countries concerned;
 - c. seek the guidance of the Committee if it has doubt about the interpretation of the Guidelines in particular circumstances;
 - d. offer, and with the agreement of the parties involved, facilitate access to consensual and non-adversarial means, such as conciliation or mediation, to assist the parties in dealing with the issues.
3. At the conclusion of the procedures and after consultation with the parties involved, make the results of the procedures publicly available, taking into account the need to protect sensitive business and other stakeholder information, by issuing:
 - a. a statement when the NCP decides that the issues raised do not merit further consideration. The statement should at a minimum describe the issues raised and the reasons for the NCP's decision;
 - b. a report when the parties have reached agreement on the issues raised. The report should at a minimum describe the issues raised, the procedures the NCP initiated in assisting the parties and when agreement was reached. Information on the content of the agreement will only be included insofar as the parties involved agree thereto;
 - c. a statement when no agreement is reached or when a party is unwilling to participate in the procedures. This statement should at a minimum describe the issues raised, the reasons why the NCP decided that the issues raised merit further examination and the procedures the NCP initiated in assisting the parties. The NCP will make recommendations on the implementation of the Guidelines as appropriate, which should be included in the statement. Where appropriate, the statement could also include the reasons that agreement could not be reached.

The NCP will notify the results of its specific instance procedures to the Committee in a timely manner.

4. In order to facilitate resolution of the issues raised, take appropriate steps to protect sensitive business and other information and the interests of other stakeholders involved in the specific instance. While the procedures under paragraph 2 are underway, confidentiality of the proceedings will be maintained. At the conclusion of the procedures, if the parties involved have not agreed on a resolution of the issues raised, they are free to communicate about and discuss these issues. However, information and views provided during the proceedings by another party involved will remain confidential, unless that other party agrees to their disclosure or this would be contrary to the provisions of national law.
5. If issues arise in non-adhering countries, take steps to develop an understanding of the issues involved, and follow these procedures where relevant and practicable.

(Source: *OECD Guidelines for Multinational Enterprises*, 2011 edition, OECD Publishing, pages 72-74. Available at <http://dx.doi.org/10.1787/9789264115415-en>)

Annex C

National Contact Point - Cases

KTNCW et al. vs. Daewoo, et al.

Case overview

Date filed: 3 December 2014

Current status: Rejected (7 July 2015)

Issue: Daewoo's use of cotton harvested with forced & child labour

Summary of the case

Uzbekistan is one of the few countries around the world that through the implementation of state policy subjects its citizens to forced labour. The government forcibly mobilises farmers to grow cotton and forces more than a million men, women and children to harvest it. Since its first investment in Uzbekistan in the 1990s, Daewoo has expanded to three factories and is currently the country's largest cotton processor, buying 5% of all Uzbekistan's cotton. In return, the Uzbek government provides Daewoo with discounted cotton prices, tax incentives and preferential loans.

The complainants have been in direct contact with Daewoo since 2012. The company repeatedly admitted to having purchased cotton produced with forced and child labour. Nevertheless, the complaint alleges that Daewoo refuses to cease purchasing forced-labour cotton or to conduct independent human rights monitoring of its supply chain in Uzbekistan. It also alleges that Daewoo failed to conduct comprehensive human rights due diligence in its supply chain and contributes to the ongoing human rights violations associated with the cotton harvest in Uzbekistan.

The complainants also ask Daewoo's parent company POSCO to take its responsibility to avoid contributing to human rights violations in its subsidiary's operations and supply chains. Complaints have also been filed against Norwegian pension funds NPS and NBIM, requesting that as institutional investors of Daewoo International, they use their leverage to ensure that they mitigate the adverse human rights impacts to which they are directly linked to through their financial relationship with Daewoo.

Developments/Outcome

After an extension to carry out its initial assessment, the Korean NCP rejected the complaints against Daewoo, POSCO and NPS in July 2015. The NCP recognised the internal guidelines for ethical business conduct that the companies have in place and could not establish that they have breached the due diligence provisions of the OECD Guidelines or contributed to child labour and forced labour. The NCP further takes into consideration that the companies are not in a position to have leverage over the Uzbek government.

Given its relatively recent conclusion of a complaint against NBIM on the same issues and the ongoing clarification process at OECD level on the application of the OECD Guidelines to the financial sector, the Norwegian NCP decided to close the case without further consideration in July 2015. The NCP did not reject the complaint, but concluded that a new examination of same questions of principles concerning the financial sector's compliance with the Guidelines will not contribute to the purpose of the OECD Guidelines. In its statement the NCP did make reference to its previous

decision and recommendations to NBIM formulated at the conclusion of a complaint filed by ForUM and concluded by the NCP in May 2013.

(note: list of relevant OECD Guidelines not included in this Annex)

Case keywords

Child labour, Forced labour

NCP Information

NCP name: National Contact Point Korea

NCP address: 1 Chungang-dong Gwacheon-si, Kyonggi-do, Korea, Republic of

NCP website: www.mocie.go.kr/

Other NCPs involved: National Contact Point Norway

Complainants

NGO

Anti-slavery International

Cotton Campaign

Korean Trans National Corporations Watch

Source: www.oecdwatch.org/cases/Case_354

Annex D

National Contact Point - Cases

Canada Tibet Committee vs. China Gold Int. Resources

Case overview

Date filed: 29 January 2014

Current status: Concluded (1 April 2015)

Issue: Environmental, HR & disclosure issues China Gold Int.

Summary of the case

On 29 March 2013, Chinese state media reported that 83 miners were buried after a major landslide hit part of the Gyama Copper Polymetallic Mine located in the Pulang Valley in Siphug Village of Tashi Gang Town in Central Tibet (Tibet Autonomous Region). There were no survivors. The workers were reportedly asleep in their tents when they were buried by a mass of mud, rocks, and debris that was three kilometres wide and thirty metres deep. The camp where the workers were buried belongs to Tibet Huatailong Mining Development Ltd., a wholly-owned subsidiary of China Gold International Resources.

Although the Chinese government has stated that the landslide was a natural disaster, CTC alleges that there is documented evidence that it was in fact a manmade disaster and that the company had ignored previous warnings and local protests.

In addition, the complaint describes numerous other disputes with local stakeholders that remain unresolved and are indicative of a range of continuing violations of the Guidelines.

The complaint was filed by CTC because members of affected communities are unable to bring forward public complaints for reasons of personal security.

Developments/Outcome

After confirming receipt on 28 January, CTC did not hear from the NCP until 17 April, when the NCP informed CTC that China Gold was unwilling to engage in the process despite multiple requests from the NCP.

Though it never formally issued an initial assessment, in April 2015 the Canadian NCP released a final statement “accepting” the case and concluding that China Gold had not demonstrated that it is operating in a manner that can be considered to be consistent with the OECD Guidelines.

Interestingly, in its final statement, the NCP took the unprecedented step of imposing sanctions on the company for failing to engage in the complaint process, including withdrawing Trade Commissioner Services and other Canadian advocacy support abroad. This is a first in the NCP system. The sanctions can be repealed if the company eventually does engage with the NCP or somehow shows that it has engaged in good-faith dialogue with CTC.

The final statement also made recommendations to China Gold with respect to human rights due diligence including the importance of undertaking human rights impact assessments of the potential impacts of anticipated activities, and of disclosing any past or future reports.

(note: list of relevant OECD Guidelines not included in this Annex)

Case keywords

Health and safety, Extractives / mining sector, Forced evictions and resettlement, Labour rights, Human rights, Environment, Disclosure of information

NCP Information

NCP name: National Contact Point Canada

NCP website: www.ncp-pcn.gc.ca/

Complainant

NGO

Canada Tibet Committee

Source: www.oecdwatch.org/cases/Case_324

Annex E

Complaint Against Petro-China

IN A 12 MAY 2008 LETTER, an international group of NGOs requested the UN Global Compact Board to exercise its authority under the so-called “Integrity Measures” to hold PetroChina accountable for the Darfur crisis. The group asked the Board to request PetroChina to 1) engage the Sudanese government, either independently or collectively with other foreign oil companies operating in Sudan, to implement the UN Security Council resolution on ending the conflict in Darfur; 2) make all possible efforts to contribute to the success of Sudan’s Comprehensive Peace Agreement (CPA), including utilizing leverage on its business affiliates on the [government of Sudan] and on the government of South Sudan, to ensure that the CPA is implemented without further delay. This group of NGOs subsequently filed a formal complaint on the issue with the UN Global Compact Board on 15 December 2008. The formal complaint has two major issues: a. Are signatory-companies accountable under the UN Global Compact for the actions of their shareholders? And if the shareholders were companies, can UN Global Compact hold them accountable regardless of their non-signatory status? b. Are signatory-companies accountable under the UN Global Compact for any link to activities of other companies that allegedly support the human rights violations of host government?

The response of the UN Global Compact Office (through the letter of the Vice-Chair of the Global Compact Board on 9 February 2009) addresses the two issues. On the first issue, the letter explains that PetroChina (a signatory to the Global Compact) is not operating in Sudan and thus cannot be held responsible for the crisis there. And while the China National Petroleum Company (CNPC), the “dominant majority shareholder” of PetroChina, operates in Sudan it is not a signatory to the Global Compact and thus it is not covered by the integrity measures. The letter cites the difficulty of holding a subsidiary “responsible for the activities of a non-signatory shareholder, even if that shareholder holds a significant majority of the shares.” A prior response by the Executive Director of the UN Global Compact Office to the NGO request to delist PetroChina says that the Global Compact Board decided “not to handle this matter as an integrity issue of an individual company, PetroChina” and that the UN “Global Compact’s approach to business and peace emphasizes engagement rather than divestment and the power of collective action rather than focusing on any one individual company.” On the second issue, the complaint argues that any company that takes “part in any activity which is a source of major government revenue is by definition complicit with any human rights [violations] of the host government whether or not there is direct connection with the company’s activities.” In this case, the “company should then either engage with the government in order to persuade it to desist [from committing human rights violations], or presumably withdraw from the country.” The letter of the Vice-Chair of the UN Global Compact, however, states that “companies have to make their own decisions based on whether they feel able to operate in line with the principle they subscribe to as well as any advice or sanction from their home government and of course whether there are United Nations sanctions involved.”

(Source: Huang Zhong and Chen Qian, “Merging Business and Human Rights in China: Still a Long To Go,” in *Bridging Human Rights Principles and Business Realities in Northeast Asia*, pages 40-42. Endnotes have been omitted.)

Annex F

Assessment of the Australian NCP by Monash University, the University of Melbourne and Deakin University's Non-Judicial Human Rights Mechanisms Research Project, April 21st, 2014

Has the NCP changed its structure or procedures in the present implementation cycle?

Although the Australian National Contact Point (ANCP) has not changed its structure or procedures in the past period, the establishment of the oversight committee in 2012 as a direct response to the 2011 review of the Guidelines is important to note. The prime duty of the committee is to assist the ANCP when complaints are made and there are contentious issues to be considered. Although it was introduced as part of the structure of the ANCP and members are expected to meet biannually, the ANCP website only has records of the minutes from its First Meeting in November 2012 suggesting that it has not been active. We encourage the ANCP to ensure an active role for the oversight committee.

How do you assess the general functioning and structure of the NCP in your country you have been in contact with?

The ANCP is considered to be relatively weak, even after the oversight body was established. The ANCP is under-resourced and its determination processes are less rigorous than 'best practice' NCPs. The ANCP receives significantly less funding than the model NCPs (UK, Dutch, Norway). It does not have a dedicated budget or any designated staff, and instead is supported by staff of the Foreign Investment and Trade Policy Division of the Commonwealth Treasury.* As a result of its lack of funding, its ability to investigate specific instance complaints, conduct consultations within Australia, participate at OECD meetings, and promote the OECD Guidelines is detrimentally affected. Whilst the ANCP is one of the 15 (33%) NCPs that have created a multi-stakeholder board** the continuing functionality of this board is in question (as discussed above). The ANCP is not very active when compared with other NCPs, and there is no reason to believe that Australian companies have better human rights records than companies based elsewhere in the OECD. It has only received 12 cases, of which 5 have been concluded, 5 rejected, 1 withdrawn and 1 still pending.*** If the ANCP chooses to refuse mediation or mediation fails, it does not continue to investigate the complaint and it does not make an assessment of whether a company has breached the Guidelines. This is an area where Australia is failing to uphold the Guidelines. Furthermore, where mediation is successful and the NCP releases a final statement, it does not have a follow up process to monitor a company's compliance with its recommendations.**** This allows multinational enterprises that are in violation of the Guidelines to avoid implementing the recommendations of the NCP to bring themselves in line with the Guidelines. The ANCP performs well by having a dedicated website with adequate web pages explaining its function and role. Key OECD materials on the Guidelines are accessible on the website in English. Far more can be done to improve accessibility, however, such as more thorough outreach activities

* Trade Union Cases, National Contact Point Comparison.

** Trade Union Cases, National Contact Point Comparison.

*** OECD Watch, NCP: National Contact Point Australia.

**** Trade Union Cases, Australia NCP.

and the publication of materials in different languages. The ANCP offers reasonable levels of transparency by publishing its initial statement in the complaint process and provides mediation to parties for the purpose of resolving disputes. The NCP uses independent mediators in this process, and upon the conclusion of the mediation process it publishes a final statement to the public which includes recommendations to the company on future implementation of the Guidelines. Despite this, there is much room for improvement within the ANCP.****

How do you assess the performance of information and promotion function of the NCP in your country?

The ANCP complaint process is well publicised on their website. The website details information on the stages involved in handling complaints, the review procedure for complaints, and provides time limits for each stage. However, in Australia, the NCP is not a widely known mechanism and the NCP itself does little promotional work. The ANCP website states that their role includes the promotion of the Guidelines and that they do this by undertaking activities such as conducting seminars and consultation session on the Guidelines with businesses, NGOs, government departments and agencies, and the interested public; and publicising a Service Charter on the role of the ANCP to multinational enterprises and more broadly.***** However, in practice, there is no evidence of these outreach activities being conducted in any substantive form. As a result, concerns have been raised about the lack of accessibility to the ANCP due to the lack of promotional activities undertaken. Furthermore, the NCP website states “Consultations are held at least once a year to complement the schedule of meetings of the OECD Committee on Investment. These sessions aim to provide a forum for stakeholders to address issues under the Guidelines with the ANCP and to promote the Guidelines as a useful framework for business.”***** However, members of OECD Watch complain that although there used to be 3 meetings a year in Sydney, Melbourne and Canberra, which operate as multi- stakeholder consultations, these no longer occur. According to the Trade Union Cases (TUAC), the ANCP does not hold regular consultations in cooperation with external stakeholders, including trade unions, and it does not organise events to promote the Guidelines either in Australia or abroad.*****

Whilst the ANCP does have publications and key materials on the OECD Guidelines and reports from the Annual Meeting of NCPs, it has not been updated since 2012, which further limits its information and promotion function.

Other comments

With respect to the structure of the ANCP, it is housed in a single government department, the Foreign Investment and Trade Policy Division at the Commonwealth Treasury. In general, scepticism has been expressed regarding the independence of the ANCP (from ACTU and Oxfam Australia) and its ability to operate impartially throughout the complaints process as the structure can influence how the NCP handles complaints. For example, decision-making by the ANCP ultimately sits within this government department which can result in conflicts of interest. Thus, the ANCP

**** Trade Union Cases, Australia NCP.

***** Australian Government, Implementation and Promotion.

***** Australian Government, The Australian National Contact Point.

***** Trade Union Cases, Australia NCP.

should consider having an independent location to avoid conflicts of interest with the goals of the Guidelines. In short, the Australian NCP is falling short of achieving the four core criteria of functional equivalence of NCPs recommended in the 2011 Guidelines. Though it is formally visible, accessible, transparent and accountable, in practice it takes a very minimalist approach to meeting these criteria and that has impacted adversely on its usefulness as a grievance mechanism and promoter of human rights in the Australian business community.

(Source: OECD Watch, *Assessment of NCP Performance in the 2013-2014 Implementation Cycle*, June 2014, pages 36-38. Available at www.oecdwatch.org.)

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Caitlin Daniel, Joseph Wilde-Ramsing, Kris Genovese, Virginia Sandjojo, *Remedy Remains Rare (Amsterdam: OECD Watch, 2015)*

National Contact Point, HURIGHTS OSAKA, "Human Rights and Japanese Companies," pages 165 - 172; and Appendix C, pages 203-204, in Jefferson R. Plantilla, editor, *Bridging Human Rights Principles and Business Realities in Northeast Asia* (Osaka/Kuala Lumpur: HURIGHTS OSAKA and SIRD, 2014)

Human Rights Documents

Universal Declaration of Human Rights

Adopted and proclaimed by General Assembly resolution 217 A (III) of December 1948

PREAMBLE

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,

Whereas it is essential to promote the development of friendly relations between nations,

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,

Whereas Member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge,

Now, therefore,

The General Assembly,

Proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

Article I

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Article 3

Everyone has the right to life, liberty and security of person.

Article 4

No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

Article 5

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 6

Everyone has the right to recognition everywhere as a person before the law.

Article 7

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 8

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

Article 9

No one shall be subjected to arbitrary arrest, detention or exile.

Article 10

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 11

1. Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

2. No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

Article 12

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Article 13

1. Everyone has the right to freedom of movement and residence within the borders of each State.
2. Everyone has the right to leave any country, including his own, and to return to his country.

Article 14

1. Everyone has the right to seek and to enjoy in other countries asylum from persecution.
2. This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

Article 15

1. Everyone has the right to a nationality.
2. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

Article 16

1. Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.
2. Marriage shall be entered into only with the free and full consent of the intending spouses.
3. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Article 17

1. Everyone has the right to own property alone as well as in association with others.
2. No one shall be arbitrarily deprived of his property.

Article 18

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

Article 19

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 20

1. Everyone has the right to freedom of peaceful assembly and association.
2. No one may be compelled to belong to an association.

Article 21

1. Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.
2. Everyone has the right to equal access to public service in his country.
3. The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

Article 22

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

Article 23

1. Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.
2. Everyone, without any discrimination, has the right to equal pay for equal work.
3. Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.
4. Everyone has the right to form and to join trade unions for the protection of his interests.

Article 24

Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

Article 25

1. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.
2. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

Article 26

1. Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.
2. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.
3. Parents have a prior right to choose the kind of education that shall be given to their children.

Article 27

1. Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.
2. Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

Article 28

Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

Article 29

1. Everyone has duties to the community in which alone the free and full development of his personality is possible.
2. In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.
3. These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

Article 30

Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework*

General principles

I. The State duty to protect human rights

A. Foundational principles

1. States must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises. This requires taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication.
2. States should set out clearly the expectation that all business enterprises domiciled in their territory and/or jurisdiction respect human rights throughout their operations.

B. Operational principles

General State regulatory and policy functions

3. In meeting their duty to protect, States should:
 - (a) Enforce laws that are aimed at, or have the effect of, requiring business enterprises to respect human rights, and periodically to assess the adequacy of such laws and address any gaps;
 - (b) Ensure that other laws and policies governing the creation and ongoing operation of business enterprises, such as corporate law, do not constrain but enable business respect for human rights;
 - (c) Provide effective guidance to business enterprises on how to respect human rights throughout their operations;
 - (d) Encourage, and where appropriate require, business enterprises to communicate how they address their human rights impacts.

The State-business nexus

4. States should take additional steps to protect against human rights abuses by business enterprises that are owned or controlled by the State, or that receive substantial support and services from State agencies such as export credit agencies and official investment insurance or guarantee agencies, including, where appropriate, by requiring human rights due diligence.

* Text taken from the Annex of the Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, Advance Edited Version, 21 March 2011, A/HRC/17/31/. Full text available at www.ohchr.org/Documents/Issues/Business/A-HRC-17-31_AEV.pdf.

5. States should exercise adequate oversight in order to meet their international human rights obligations when they contract with, or legislate for, business enterprises to provide services that may impact upon the enjoyment of human rights.

6. States should promote respect for human rights by business enterprises with which they conduct commercial transactions.

Supporting business respect for human rights in conflict-affected areas

7. Because the risk of gross human rights abuses is heightened in conflict-affected areas, States should help ensure that business enterprises operating in those contexts are not involved with such abuses, including by:

(a) Engaging at the earliest stage possible with business enterprises to help them identify, prevent and mitigate the human rights-related risks of their activities and business relationships;

(b) Providing adequate assistance to business enterprises to assess and address the heightened risks of abuses, paying special attention to both gender-based and sexual violence;

(c) Denying access to public support and services for a business enterprise that is involved with gross human rights abuses and refuses to cooperate in addressing the situation;

(d) Ensuring that their current policies, legislation, regulations and enforcement measures are effective in addressing the risk of business involvement in gross human rights abuses.

Ensuring policy coherence

8. States should ensure that governmental departments, agencies and other State-based institutions that shape business practices are aware of and observe the State's human rights obligations when fulfilling their respective mandates, including by providing them with relevant information, training and support.

9. States should maintain adequate domestic policy space to meet their human rights obligations when pursuing business-related policy objectives with other States or business enterprises, for instance through investment treaties or contracts.

10. States, when acting as members of multilateral institutions that deal with business related issues, should:

(a) Seek to ensure that those institutions neither restrain the ability of their member States to meet their duty to protect nor hinder business enterprises from respecting human rights;

(b) Encourage those institutions, within their respective mandates and capacities, to promote business respect for human rights and, where requested, to help States meet their duty to protect against human rights abuse by business enterprises, including through technical assistance, capacity-building and awareness-raising;

(c) Draw on these Guiding Principles to promote shared understanding and advance international cooperation in the management of business and human rights challenges.

II. The corporate responsibility to respect human rights

A. Foundational principles

11. Business enterprises should respect human rights. This means that they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.

12. The responsibility of business enterprises to respect human rights refers to internationally recognized human rights understood, at a minimum, as those expressed in the International Bill of Human Rights and the principles concerning fundamental rights set out in the International Labour Organization's Declaration on Fundamental Principles and Rights at Work.

13. The responsibility to respect human rights requires that business enterprises:

- (a) Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur;
- (b) Seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts

14. The responsibility of business enterprises to respect human rights applies to all enterprises regardless of their size, sector, operational context, ownership and structure. Nevertheless, the scale and complexity of the means through which enterprises meet that responsibility may vary according to these factors and with the severity of the enterprise's adverse human rights impacts.

15. In order to meet their responsibility to respect human rights, business enterprises should have in place policies and processes appropriate to their size and circumstances, including:

- (a) A policy commitment to meet their responsibility to respect human rights;
- (b) A human rights due-diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights;
- (c) Processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute.

B. Operational principles

Policy commitment

16. As the basis for embedding their responsibility to respect human rights, business enterprises should express their commitment to meet this responsibility through a statement of policy that:

- (a) Is approved at the most senior level of the business enterprise;
- (b) Is informed by relevant internal and/or external expertise;
- (c) Stipulates the enterprise's human rights expectations of personnel, business partners and other parties directly linked to its operations, products or services;
- (d) Is publicly available and communicated internally and externally to all personnel, business partners and other relevant parties;

(e) Is reflected in operational policies and procedures necessary to embed it throughout the business enterprise.

Human rights due diligence

17. In order to identify, prevent, mitigate and account for how they address their adverse human rights impacts, business enterprises should carry out human rights due diligence. The process should include assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed. Human rights due diligence:

- (a) Should cover adverse human rights impacts that the business enterprise may cause or contribute to through its own activities, or which may be directly linked to its operations, products or services by its business relationships;
- (b) Will vary in complexity with the size of the business enterprise, the risk of severe human rights impacts, and the nature and context of its operations;
- (c) Should be ongoing, recognizing that the human rights risks may change over time as the business enterprise's operations and operating context evolve.

18. In order to gauge human rights risks, business enterprises should identify and assess any actual or potential adverse human rights impacts with which they may be involved either through their own activities or as a result of their business relationships. This process should:

- (a) Draw on internal and/or independent external human rights expertise;
- (b) Involve meaningful consultation with potentially affected groups and other relevant stakeholders, as appropriate to the size of the business enterprise and the nature and context of the operation.

19. In order to prevent and mitigate adverse human rights impacts, business enterprises should integrate the findings from their impact assessments across relevant internal functions and processes, and take appropriate action.

- (a) Effective integration requires that:
 - (i) Responsibility for addressing such impacts is assigned to the appropriate level and function within the business enterprise;
 - (ii) Internal decision-making, budget allocations and oversight processes enable effective responses to such impacts.
- (b) Appropriate action will vary according to:
 - (i) Whether the business enterprise causes or contributes to an adverse impact, or whether it is involved solely because the impact is directly linked to its operations, products or services by a business relationship;
 - (ii) The extent of its leverage in addressing the adverse impact.

20. In order to verify whether adverse human rights impacts are being addressed, business enterprises should track the effectiveness of their response. Tracking should:

- (a) Be based on appropriate qualitative and quantitative indicators;
- (b) Draw on feedback from both internal and external sources, including affected stakeholders.

21. In order to account for how they address their human rights impacts, business enterprises should be prepared to communicate this externally, particularly when concerns are raised

by or on behalf of affected stakeholders. Business enterprises whose operations or operating contexts pose risks of severe human rights impacts should report formally on how they address them. In all instances, communications should:

- (a) Be of a form and frequency that reflect an enterprise's human rights impacts and that are accessible to its intended audiences;
- (b) Provide information that is sufficient to evaluate the adequacy of an enterprise's response to the particular human rights impact involved;
- (c) In turn not pose risks to affected stakeholders, personnel or to legitimate requirements of commercial confidentiality.

Remediation

22. Where business enterprises identify that they have caused or contributed to adverse impacts, they should provide for or cooperate in their remediation through legitimate processes.

Issues of context

23. In all contexts, business enterprises should:

- (a) Comply with all applicable laws and respect internationally recognized human rights, wherever they operate;
- (b) Seek ways to honour the principles of internationally recognized human rights when faced with conflicting requirements;
- (c) Treat the risk of causing or contributing to gross human rights abuses as a legal compliance issue wherever they operate.

24. Where it is necessary to prioritize actions to address actual and potential adverse human rights impacts, business enterprises should first seek to prevent and mitigate those that are most severe or where delayed response would make them irremediable.

III. Access to remedy

A. Foundational principle

25. As part of their duty to protect against business-related human rights abuse, States must take appropriate steps to ensure, through judicial, administrative, legislative or other appropriate means, that when such abuses occur within their territory and/or jurisdiction those affected have access to effective remedy.

B. Operational principles

State-based judicial mechanisms

26. States should take appropriate steps to ensure the effectiveness of domestic judicial mechanisms when addressing business-related human rights abuses, including considering ways to reduce legal, practical and other relevant barriers that could lead to a denial of access to remedy.

State-based non-judicial grievance mechanisms

27. States should provide effective and appropriate non-judicial grievance mechanisms, alongside judicial mechanisms, as part of a comprehensive State-based system for the remedy of business-related human rights abuse.

Non-State-based grievance mechanisms

28. States should consider ways to facilitate access to effective non-State-based grievance mechanisms dealing with business-related human rights harms.

29. To make it possible for grievances to be addressed early and remediated directly, business enterprises should establish or participate in effective operational-level grievance mechanisms for individuals and communities who may be adversely impacted.

30. Industry, multi-stakeholder and other collaborative initiatives that are based on respect for human rights-related standards should ensure that effective grievance mechanisms are available.

Effectiveness criteria for non-judicial grievance mechanisms

31. In order to ensure their effectiveness, non-judicial grievance mechanisms, both State based and non-State-based, should be:

- (a) Legitimate: enabling trust from the stakeholder groups for whose use they are intended, and being accountable for the fair conduct of grievance processes;
- (b) Accessible: being known to all stakeholder groups for whose use they are intended, and providing adequate assistance for those who may face particular barriers to access;
- (c) Predictable: providing a clear and known procedure with an indicative timeframe for each stage, and clarity on the types of process and outcome available and means of monitoring implementation;
- (d) Equitable: seeking to ensure that aggrieved parties have reasonable access to sources of information, advice and expertise necessary to engage in a grievance process on fair, informed and respectful terms;
- (e) Transparent: keeping parties to a grievance informed about its progress, and providing sufficient information about the mechanism's performance to build confidence in its effectiveness and meet any public interest at stake;
- (f) Rights-compatible: ensuring that outcomes and remedies accord with internationally recognized human rights;
- (g) A source of continuous learning: drawing on relevant measures to identify lessons for improving the mechanism and preventing future grievances and harms;

Operational-level mechanisms should also be:

(h) Based on engagement and dialogue: consulting the stakeholder groups for whose use they are intended on their design and performance, and focusing on dialogue as the means to address and resolve grievances.

Other Suggested References

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Business, Human Rights and Northeast Asia

A Facilitator's Training Manual

THIS TRAINING MANUAL is a tool for understanding human rights in the context of business operations. It provides both content and process for analyzing concepts, principles, standards, mechanisms and practices relevant to the link between business and human rights. It is designed to help facilitators hold training activities on the application of human rights standards to business operations.

It has the main objective of enabling trainees/participants to employ the human rights-based approach to access to justice in dealing with business and human rights issues.

Nine training modules corresponding to nine themes relevant to the business and human rights issue comprise the main content of this training manual.

This training manual employs the participatory adult learning approach. The training facilitators are expected to provide trainees/participants every possible opportunity to share their experiences, express opinions, raise questions and to engage in activities designed to increase skills (regarding analysis, argumentation/debate, presentation of ideas/discussions, action strategizing/planning, etc.) through individual or group/collaborative work.

This training manual is also adaptable in at least two senses:

- a. The context of issues can be changed from that of Northeast Asia (or Northeast Asian country) to that of another subregion in Asia. Corresponding information on experiences and practices can be changed to those of a different subregional context without affecting the contents of the training manual on concepts, principles and standards related to business and human rights; and
- b. The focus of the training manual can also be shifted from members of civil society organizations and related institutions to officials and managers of business enterprises. In this sense, other relevant experiences and practices can be used to suit these types of trainees/participants.

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