

THEME 2:

THE STATE OF THE UNITED NATIONS GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS (UNGP BHR) IN SELECTED COUNTRIES IN ASIA²

On 16 June 2011, the United Nations Human Rights Council endorsed the Guiding Principles on Business and Human Rights as part of implementing the UN “*Protect, Respect, and Remedy*” Framework. This was brought about by the realization that – at the peak of globalization – delineation of clear roles and responsibilities of business enterprises at the local, national, and international level are very important to ensuring human rights practice (UN OHCHR, 2011).

The UNGP BHR standards address the wide range of potential impacts of the business sector. These may be positive, such as increasing access to employment or improving public services; or negative, such as polluting the environment, underpaying workers, or forcibly evicting communities.

In 2008, the United Nations endorsed the ‘Protect, Respect, and Remedy Framework’ for business and human rights,³ which recognizes unequivocally that States have the *duty* under international human rights law to *protect* everyone within their territory

² This summary is based on presentations of Livio Sarandrea (Business and Human Rights Chief Adviser and Manager of UNDP’s project: Business and Human Rights in Asia), Joel Pagsanghan and discussions from the Panel on “The state of UNGP BHR in Selected Countries in Asia.” For more details, refer to the 2018 ANGOC regional publication “***Upholding Land Rights Amidst the Land Rush: A situationer on the United Nations Guiding Principles on Business and Human Rights in selected countries in Asia.***”

³ This framework was developed by then-Special Representative of the UN Secretary General, Professor John Ruggie, following three years of research and worldwide consultations with businesses, civil society, governments and victims of corporate human rights abuses.



National Human Rights Commission of Thailand Chairperson Wat Tingsamitr shares his country's initiatives to promote and implement the UNGP BHR. (Photo by NHRC of Thailand.)

and *jurisdiction* over human rights abuses committed by business enterprises. This duty means that States must have effective laws and regulations to prevent and address business-related human rights abuses and ensure access to effective remedy for those whose rights have been abused.

The UN Framework also addresses the *responsibility* of businesses to *respect* human rights wherever they operate and whatever their size or industry. Companies need to be aware of their actual or potential impacts, prevent and mitigate abuses, and address adverse impacts where they are involved. The UN Framework also makes the important clarification that the responsibility of businesses exists independently of the duty of State to protect human rights.

Finally, the UN Framework recognizes the fundamental right of individuals and communities to *access effective remedy* when their rights have been adversely impacted by business activities. States must ensure that the people affected have effective access to remedy with the court system or other legitimate non-judicial process. For their part, business companies should establish or participate in grievance mechanisms for these adversely affected individuals or communities.



In 2011, the UN Human Rights Council unanimously endorsed the UNGP BHR, a set of guidelines to operationalize the UN Framework. Following the endorsement, the UN Working Group on Business and Human Rights, consisting of five independent experts, was assigned to guide the implementation of the UNGP BHR.

The UNGP BHR set out a list of effectiveness criteria for State- or business-based non-judicial grievance mechanisms. These criteria stipulate that effective grievance mechanisms should be legitimate, accessible, predictable, equitable, transparent, and rights-compatible. Simply put, they must provide genuine remedies for the victims of human rights violations by companies and must not amount to communications or political exercises.

The Working Group on the issue of human rights and transnational corporations and other business enterprises (also referred to as the Working Group on Business and Human Rights/UNWG), mandated by the United Nations Human Rights Council (UNHRC) to promote the effective and comprehensive implementation of the UNGPs, noted in its 2016 Guidance on Business and Human Rights that National Action Plans (NAPs) can be an important means to promote the implementation of the UNGPs (DIHR, n.d.).

“We should convince companies and governments that compliance to the UNGP BHR can only improve their image, and consequently, their bottom lines.”

Livio Sarandrea, Business and Human Rights Chief Adviser, UNDP

Engagement at the country level involve CSOs, National Human Rights Institutions (NHRIs) and governments conducting dialogues for the formulation and/or monitoring of a National Action Plan (NAP) on the UNGP BHR. Six country papers were also prepared – for Cambodia, Bangladesh, Nepal, India, Indonesia, and the Philippines – in order to provide an overview and relevance of the UNGP BHR in their respective contexts.

MAINSTREAMING UNGP BHR

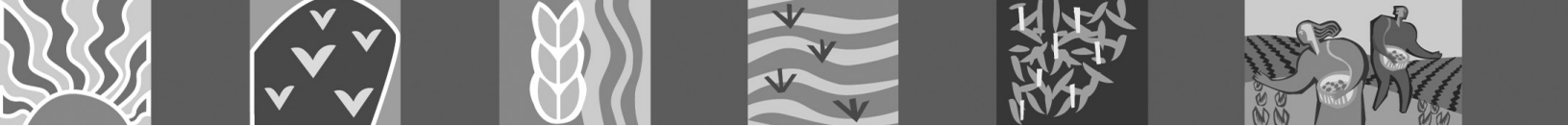
The six countries studied have all been actively engaging for recognition of the UNGP BHR through consultations with government, CSOs, and the academe; awareness-raising activities; and coordinating with the NHRIs in the formulation of the NAP.

In South Asia, engagements have been extended to the business sector via regional and national conferences and meetings with business federations.

Except for Indonesia, which has a NAP formulated by its NHRI (Komnas HAM), all countries have yet to initiate the NAP formulation. However, the government of Indonesia has yet to implement the NAP prepared by Komnas HAM. On the other hand, it should be noted that Cambodia has yet to establish an NHRI.

STATUS OF BHR IMPLEMENTATION IN SIX ASIAN COUNTRIES

Country	National Action Plan (NAP)	Initiatives by NHRIs/NHRCs	Initiatives by CSOs and the Private Sector
Bangladesh	Yet to be initiated	<ul style="list-style-type: none"> Conducted follow-up consultations; Established NHRC-CSO partnership 	<ul style="list-style-type: none"> CSOs partnering with NHRC on BHR activities Produced a BHR policy brief
Cambodia	Yet to be initiated	<ul style="list-style-type: none"> State HRIs and CSOs engaging on possible establishment of NHRI 	<ul style="list-style-type: none"> Awareness-raising on the UNGP BHR through meetings, workshops, factsheets, handbooks and reports Convened A Working Group to promote the establishment of an NHRI
India	Yet to be initiated	<ul style="list-style-type: none"> Held regional and national consultations on BHR, with the private sector NHRCI nominated by Commonwealth Forum to be focal point for BHR Conducted meetings with industry federations Developed a self-assessment tool for business 	<ul style="list-style-type: none"> Organized dialogues with the business sector on impact of land grabbing Dialogue for Change Conference led by Ethical Trade Initiative Awareness-raising on FPIC related to BHR among CSOs Media coverage of BHR issues
Indonesia	<ul style="list-style-type: none"> NAP formulated by NHRI but needs Executive approval Ministry of Justice (Kemenkum HAM): leading government to recognize and adopt NAP Ministry for Economic Affairs as Focal Point for UNGP BHR implementation 	<ul style="list-style-type: none"> Komnas-HAM pushing BHR not only in Indonesia but in Southeast Asia Together with some CSOs, initiated formulation of NAP on BHR 	<ul style="list-style-type: none"> CSOs supporting NHRI-initiated formulation of NAP Business Council for Sustainable Development established Conflict Resolution Unit to address land issues Indonesia Global Compact Network established BHR Working Group



Nepal	Yet to be formulated	<ul style="list-style-type: none"> Conducted a regional conference, a consultation meeting, and a multi-stakeholder dialogue, all with government participation 	<ul style="list-style-type: none"> LAHURNIP working with UN, NHRI; publications on BHR CSRC plans to assist in NAP formulation
Philippines	PHRC consultation on NAP led to declaration of intent to draft HR Action Plan 2018-2020	<ul style="list-style-type: none"> International workshop, national dialogue, and stakeholders consultation held Position paper submitted to Congress on Amendments to Corporation Code Development of BHR monitoring tool First national investigation of HR “harms caused by climate change” launched National inquiry on IPs Human Rights inventory in mining investments 	<ul style="list-style-type: none"> Multi-sectoral Forum held Development of monitoring tools on business and human rights Produced a BHR policy brief

Source: *Regional UNGP BHR Scoping Study* powerpoint presentation by Joel Pagsanghan.

RECOMMENDATIONS

Recognizing the challenges faced in mainstreaming and formulating the National Action Plans (NAPs), the following areas for action were identified at country and regional levels:

On Formulation of NAP by governments:

- NAP should be formulated and implemented at the country-level through multi-stakeholder processes;
- For governments to work with CSOs on BHR initiatives;
- Engage businesses/private sector on BHR;
- Regular review on the implementation of UNGP-BHR at national and regional levels; and,
- Implement and respect free, prior, and informed consent (FPIC).



On Code of conduct for regional/international bodies:

- ❑ Encourage governments to sign the legally-binding instrument to regulate in international human rights law transnational corporations and business enterprises; and,
- ❑ For regional bodies such as ASEAN, SAARC, SEANF, AICHR, and OHCHR to be proactive on addressing BHR issues, engaging both CSOs and Private sector in the dialogue processes.

On Joint CSO-NHRI/NHRC monitoring of BHR in land and agricultural investments:

- ❑ Development of tools (such as the scorecard for land and agricultural investments) and indicators to monitor BHR implementation;
- ❑ Look into the Convention on Biological Diversity (CBD) indicators on governments' compliance with its targets;
- ❑ Continue making case studies on business interests that affect land rights; and,
- ❑ Monitor the compliance of corporate/private sector and governments to the UNGP BHR, and other international declarations (ex. Paris accord), and international policies.

On Advocacy by CSOs:

- ❑ Produce alternative/shadow reports on the implementation of BHR and other human rights tools/declarations;
- ❑ Lobby national governments to protect CSOs and respect their freedom of expression;
- ❑ Support the establishment of an independent NHRI in Cambodia;
- ❑ Influence consumers to support and endorse businesses that abide by good business practices;
- ❑ Begin studying and documenting China's and India's investments in the land sector in Asia; and,
- ❑ Together with other land/human rights defenders and organizations, monitor and document human rights violations and abuses arising out of land conflicts, bringing these violations and abuses to the attention of international bodies, such as the United Nations through the Universal Periodic Review (UPR) Process. ■