From the voluntary to mandatory: A commentary of land rights CSOs on the Zero Draft of the National Action Plan for UNGPs in India

Social Development Foundation (SDF)

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Background

Context

Business and Human Rights have become increasingly important at this time when countries have been competing with each other to help big corporation grab land in the name of “development” and “investment”.

In 2011, the UN Human Rights Council unanimously endorsed the UN Guiding Principles on Business and Human Rights (UNGPs).

India immediately endorsed the principles, although acceptance by the private sector remains voluntary. The fact is that to attract investments, the government adopted soft measures and focused on charity based on Gandhian principles of “trusteeship” as mentioned in the document of the Government of India.

Prior to the UNGPs, the business sector was guided by the Corporate Social Responsibility (CSR) guidelines formulated in 2009 by the Ministry of Corporate Affairs. But these were more about philanthropy, mainly contributions to charitable causes. Most corporate entities actually found a way out by developing their own “trusts” and “foundations” to get the tax benefit.

Currently, the bulk of the CSR money goes to the Prime Minister’s relief fund, which unfortunately remains out of the purview of the Right to Information Act.
That means the people will only know about the expenditures and their rationale if the government wishes it. Otherwise, it is being treated as a secret fund.

The Ministry released a second set of guidelines in 2011 entitled, “National Voluntary Guidelines on the Social, Environmental and Economic Responsibilities of Business”. Given the goals and objectives of Sustainable Development Goals (SDGs) as well as UNGPs, the government came up with yet another set of guidelines in 2019 called the “National Guidelines on Responsible Business Conduct”.

As per the mandate of the UNGPs, the Ministry of Corporate Affairs formulated the “National Guidelines for Responsible Business Climate” under the National Action Plan for UNGPs and came out with an initial Zero Draft in 2018.

The Ministry formed a working group involving other related Ministries, National Human Rights Commission (NHRC), corporate bodies and engaged in wide-ranging consultations on the issue. It finally issued the Zero Draft in February 2019 with the aim of completing it by 2020.

The Committee headed by the Ministry of Corporate Affairs decided to do the following:

● undertake a comprehensive study to assess the implementation of UNGPs in India through a review of the country’s legal and policy framework;

● identify key priority areas for the Government for effective implementation of the principles envisaged under the UNGPs;

● prepare time-bound policy actions to achieve objectives; and,

● articulate clear responsibilities of relevant Ministries/Department of the Government of India.

India’s current National Action Plan (NAP) is laudable yet needs more teeth to protect the rights of the communities and workers, specifically their right to access and control land, water and other natural resources necessary for their survival and livelihood.
Labor issues such as wages, leaves and bonuses are indeed important but what must be addressed by the guidelines are the issues of land grabbing and dispossession of indigenous people, peasants in the name of “investment and development”.

After all, this was one of the prime reasons for the drafting of the UNGPs, thus it is essential that India’s NAP address land rights issues.

The NAP should also look at different laws and regulations that have adversely affected communities and people in the name of development or business.

To this end, a few issues needs further elaboration:

- The “consent” clauses in the Land Acquisition and Resettlement Act have been diluted. The Act in 2013 gave communities strong power to say no to any acquisition of land in the name of “development”.
- The changes in the environmental laws, particularly on Environmental Impact Assessment (EIA) procedures, need public discussion. The government, for example, declined to publish the relevant information in local languages except Hindi and English despite Delhi High Court’s order. EIA is a strong tool to protect the marginalized but it has been diluted to benefit the companies.
- Changes in labor laws have made it difficult for labor and labor unions to function.
- An analysis of three farm laws suggest that they are drafted more for the benefit of business sector rather than farmers. Even the right to access the court has been restricted while corporates are allowed to hoard products.
- During COVID-19, the UN Rapporteur on Housing Rights had asked governments to stop evictions of the people or communities under any pretext. Unfortunately, the Government of India did not share the sense of urgency.

Social Development Foundation (SDF), Ekta Parishad and Centre for Legislative Research and Advocacy (CLRA) as part of the Land Watch Asia Working Group on Mainstreaming Land Rights as Human Rights (LWA WG LRHR), facilitated by the Asian NGO Coalition for Agrarian Reform and Rural Development (ANGOC).
During the preparatory workshop of the LWA WG LRHR, the participants agreed to hold consultations on the NAP and link it with the National Human Rights Commissions and other government bodies.

To date, two consultations were organized in India to come up with a strategy related to Zero Draft.

**Objective of this report**

The concept of Business and Human Rights emerged as a response to the growing threat to rights and liberty of the indigenous communities, pastoralists, *dalits*, *adivasis* and peasants due to displacement and land acquisition in the name of development.

As the power and role of big corporations was accepted by all, it also became necessary to develop mechanisms so that these corporations will follow the right processes and protect the rights of the people.

This report seeks to spell out these guidelines and whether these can being followed by corporations as well as the government. It also aims to determine whether the draft guidelines really follow what the UNGPs actually endorsed and wanted.

It is heartening to know that the Indian government has taken the initiative and started consultations on the UNGPs on its own. However, not enough people know about these. As it is, the Zero Draft as it stands now does not cover concerns about the land, forest, water or any other natural resources issues.

The draft also does not mention the issues and problem related to *dalits*, *adivasis* as well as the environment.

So far, we do not know how these voluntary guidelines will be implemented, whether these will just remain on paper in some researcher’s manual or will actually be effectively followed.

Unless the NAP will clearly spell out the issues of *adivasis*, *dalits*, farmers and pastoralists in India who are directly affected by the current developmental model, things may not move and corporate takeover of finite resources will just continue.
How this report was prepared

SDF, Ekta Parishad and CLRA organized two online consultations. These consultations were participated in by civil society, academia, former bureaucrats, activists and members particularly from dalit and adivasi communities.

Unfortunately, most of them were not quite aware of the formulation process of the NAP for UNGPs, although they want to be involved as every one of them felt that corporates were responsible for their plight and were indeed engaged in land grabbing with the support of government.

This report is the result of consultations with civil society representatives, particularly those with dalit-adivasi-farmers background. We also looked at the Zero Draft and talked to the National Human Rights Commission (NHRC) as well as other NGOs.

We also looked at the critique provided by various experts who wrote about the Business and Human Rights process in India. Our primary concern was the issue of land rights as well as issues of dalits and adivasis. In preparing this report, we also looked at the changes in various laws during the last six years since the incumbent government took over.

This report analyzed the whole document after discussion with community activists and put forward suggestions in the greater interest of the communities as well as the environment.

Scope and limitations

Due to lockdowns brought about by the COVID-19 pandemic, face-to-face meetings became next to impossible. Even the government bodies were not functioning fully so it was decided to organize virtual civil society consultations, particularly with those most affected by the current “developmental” model.

Activists based in Chhattishgarh, Odisha, Jharkhand, Andhra Pradesh, Telangana, Uttarakhand, Uttar Pradesh participated in the online deliberations.
Of course, SDF cannot claim that it was able to consult everyone due to time constraints. Also, most of the land rights organizations as well as resource rights organizations were not aware of the UNGPs and the Zero Draft, hence further explanations on the topics and related issues need to be done.

**Status of UNGPs in India**

The Government of India’s Ministry of Corporate Affairs acts as the lead organization in formulating the national action plan of UNGPs while the National Human Rights Commission (NHRC) can be involved in monitoring and evaluating the implementation.

At the same time, the NHRC organized several workshops and consultations nation-wide and wanted government to make these guidelines mandatory to be followed by the corporate sector.

**Progress of the UNGPs and the formulation of its NAP**

To date, a Zero Draft of the NAP was prepared in February 2019 by the Ministry of Corporate Affairs. The document, however, only provided a listing of laws and provisions, highlighted the connection of States and business, some description of the situation of collective bargaining and leveraging public procurement.

Since then, there were limited attempts by the Ministry to reach out to different constituencies. In the middle of February 2020, a notification was released seeking recommendations from the public with regard to the proposed NAP for UNGPs.

Currently, nothing much is available on the website of the Government of India. At the same time, due to lockdown brought about by the pandemic, things have come to a standstill.

**Opportunities for CSO interventions on BHR and formulation of NAP for UNGPs**

Since the deadline to provide inputs has passed, there is little chance for CSO intervention. It appears that the government is reaching out more to corporate groups as well as various ministries. Unless the Ministry of
Corporate Affairs feels that it needs further consultation on the issue, it is very unlikely that the government will again initiate the process.

The NAP is a major step forward as social, economic and environmental guidelines of businesses are being formulated. However, of equal importance is to ensure proper system of checks and balances as well as the monitoring of such guidelines.

With the increasing cases of land conflicts and grabbing of lands by the business sector, a comprehensive framework for business and human rights as contained in the NAP is necessary to resolve such issues.

Recent issues indicate that “there is a lack of a body which should act as an interface between State and business enterprises to ensure that best policies are formulated to promote respect of human rights” (Sharma, 2019).

Description of CSO interventions towards the popularization of BHR and the formulation of the NAP for UNGPs

Rationale/purpose of interventions

As mentioned earlier, there is not much opportunity for CSO intervention in India due to the COVID-19 breakout.

Our understanding was that most of the land rights organizations, environmental groups, indigenous people’s organizations, dalit organizations, farmers organizations and other human rights groups are not even aware of these initiatives related to the formulation of the NAP for UNGPs.

The government’s response was being defined by the Ministry of Corporate Affairs, which engaged with other related ministries, National Human Rights Commission as well as corporate bodies.

A few NGOs did get involved in the process and organized their own consultations at various levels and found that there is not much public information available about the issue.
In particular, the Praxis Institute for Participatory Practices and Partners in Change convened over two years some 21 consultations across 11 cities. While more than 600 participants from CSOs, small businesses, workers, trade unions, independent researchers, experts and lawyers were engaged, the organizers acknowledged that many constituencies and their voices remained unheard.

It was noted that an honest review of the country’s context – the human rights violations caused by a number of business investments as reported by an online web portal “Delhi Post” - is needed.

The consultations focused more around labor issues which are important but did not adequately cover land and resource issues, defeating the very purpose for which the issue of Business and Human Rights were raised at the national and international levels and UNGPs were formulated.

Meanwhile, the two consultations organized by SDF, Land Forum India and Ekta Parishad in 2021 were more about sharing information and ideas related to UNGPs.

The reality is that the corporate sector is considered a major threat to people’s rights and hence activists on the ground are more cautious about the initiative taken by the government and the corporate sector. Participants fear it is a trap but the aim of the consultations was to strengthen the initiative and push forward the agenda of land and resource rights as well as environmental protection in the National Action Plan.

It is essential to engage with civil society organizations, particularly those whose life and culture are impacted and influenced by the developmental work.

Some of the major points that emerged during the online consultations are the following:

- “Land is a composite entity which includes land, water, minerals and forest resources. We must include it in the framework. It has become a trend that once a company withdraws from its project due to public pressure, the land goes to a “land bank”. It has not returned to the people. The rights of the people are not being recognized. We must speak for them.” (Dr Goldy M George, Chhattishgarh)
“Government speaks in the interest of the corporate sector. Over 6,000 adivasis are in jails without any convictions in Jharkhand. Anyone who speaks for the people is in jail. Bhooomand land is being transferred into a land bank. I feel it is a contradiction. Business and Human Rights can not go together. They violate our human rights and now they want to ‘help’ us.” (Ramdev Vishwbandu, Jharkhand)

Article 21 says Right to Life with Dignity. Where are the dalit, adivasi, displaced people, women in the scheme of things in the interest of business? We need to discuss widely. Corporate have started their own NGOs and not keen to support others. They want to use the charitable approach and not encourage the rights-based approach.

“Those who are working for HRs are facing intimidations and threats. They are being arrested. Who will take their voice to the authorities? Authorities and administration have become like the representatives of the companies. Most of the time, officials go beyond their domain to favor the big corporations.” (Ganesh Ravi, Jharkhand)

“Land, forest and livestock are important. Land bank is basically the grazing land. All those lands are common properties and these are being shifted to the land bank. It is going to be a big issue. The administration considers those who raise these issues an obstacle. We must speak about it and protect the rights of the HR defenders.” (Activist from Jharkhand)

“Jharkhand has a history of land rights movement. It is related to human rights. We must include land rights in the human rights discourse. Guidelines are not enough. We must include them in law and at the international level. NHRC normally does not take land rights issues. NHRC needs to be sensitized. NHRC is not taking these cases such as land rights, housing etc.” (Onkar, Jharkhand)

“Right to property is no longer a fundamental right. We must support our farmers as this is the fight for our freedom. Corporates taking over our agriculture is nothing else but destroying the livelihood of lives and resources of farmers. Dalits and women never had property rights but our Constitution has guaranteed such right. Now we have regressive forces who want to deny these sections their rights. The problem is not in Constitution but those who are implementing it now. Society was always controlled by certain communities and people. We must internationalize it. We face threats and intimidation. Activists are frightened. Thus there is a need for more and more interaction and awareness, networking and sensitization, more brainstorming on the issue.” (Judge B D Naqvi, Lucknow, Uttar Pradesh)
Mainstreaming Land Rights in the UNGPs

● “All three bills on agriculture are against farmers. Women do not have land, no land for agriculture. Women’s issues are important and not discussed. The entire discourse is male-dominated. Women’s issues need to be taken seriously. Labor laws are being amended. Adivasis are being displaced from their places. People have been evicted without rehabilitation and things are continuing. Activists are now afraid of speaking out. We need to make proper planning, setting aside our differences. The situation is very bad as people are being evicted and dispossessed. It is basically corporate takeover. We need to seriously think about it and join hands.” (Shobhna Smriti, Jaunpur, Uttar Pradesh)

● We need to include the issue of single women, adivasis and dalits, transgender, fisherwomen. We will have to look through Intersectionality and gender diversity in the Business and Human Rights. Access to information is also important. Access to resources is human rights. (Sunila Singh, Delhi)

Description of outputs and emerging outcomes of key activities implemented

Two online consultations were conducted on the issue and were participated in by CSOs and human rights defenders. Efforts undertaken to engage the National Human Rights Commission fell short. Questions were raised on whether the non-binding nature of the UNGPs was enough reason for non-engagement in the NAP process.

A brief outline about Business and Human Rights issues in India is already done in Hindi and now being shared with CSOs working with dalits and adivasis. As the final draft of the NAP is targeted by June 2021, it all depends on the government, on whether it will open up the consultation process to various stakeholders. However, because of severe restrictions due to the pandemic, there is still inaction, as face-to-face meetings and conferences are difficult to convene.

CSO recommendations on the NAP for UNGPs (with focus on land rights)

After two consultations (organized by SDF last 16 January 2021 and 25 February 2021) and based on further discussions with activists, academics, followed by a careful analysis of the reports of previous consultations by CSOs on the issue, we arrived at the following recommendations.
● There is not much knowledge about BHR among the stakeholders, particularly dalits, adivasis as well as civil society organizations, social movements etc. Hence, it is important to generate more awareness and engage them on the issue.

● Issues of land, water and common property resources and livelihood should be discussed and included in the NAP.

● Issues of affected communities particularly adivasis and dalits should be included in the draft guidelines on Business and Human Rights in India.

● No eviction or displacement without people’s consent and prior rehabilitation and other financial compensation should be emphasized.

● Zero Draft should be discussed further with human rights defenders and community organizations.

● Gender and intersectionality of the issues must be taken into account in the draft guidelines and issues of single women, adivasi-dalit women, sexual minorities such as transgender.

● Land Rights defenders, environmental activists particularly those working with dalits and adivasis should be protected.

● The National Human Rights Commission should be engaged and their suggestion that the UNGPs be made mandatory and not voluntary must be supported.

● Land and “access” to resources must be restored to the communities or people once a company withdraw from the area after public protests or demands.

Plan of CSOs towards the continuation of engagement related to BHR

After two consultations as well as individual interactions with various groups, it was realized that there is a lack of information in this regard and further consultations and training programs are required.

Most of the participants also felt that engagement with NHRC was important though they were not much enthused about the Ministry of Corporate Affairs. Yet it was felt that it would be good to still try to engage with the Ministry.

The following is the work plan that emerged out of these consultations and one-to-one meetings with organizations and individuals.
- More CSO consultations at different levels, particularly those engaged with community organizations, including indigenous peoples;
- Networking with organizations who have already done ground work and workshops like Praxis and VANI (Voluntary Action Network of India);
- Engage with lawmakers, Ministry of Corporate Affairs and the NHRC and explore possibilities of jointly organizing consultations;
- Conduct online training workshops for activists working on the issue; and,
- Prepare an India report on the issue once the final draft is out.

List of acronyms

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<td>ANGOC</td>
<td>Asian NGO Coalition for Agrarian Reform and Rural Development</td>
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<td>BHR</td>
<td>Business and Human Rights</td>
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<td>CLRA</td>
<td>Centre for Legislative Research and Advocacy</td>
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<td>CSOs</td>
<td>civil society organizations</td>
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<td>CSR</td>
<td>Corporate Social Responsibility</td>
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<td>EP</td>
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<td>LWA WG</td>
<td>Land Watch Asia Working Group on Mainstreaming Land Rights as Human Rights</td>
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<td>LRHR</td>
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<td>NAP</td>
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<td>SDG</td>
<td>Sustainable Development Goal</td>
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Citation


References


Notes from online consultations organized by SDF