

**Minutes of the Meeting of the Core Group on Business, Environment and Human Rights held on 12 March 2019 at 11.00 a.m.**

The meeting of the Core Group on Business, Environment and Human Rights was held on 12 March 2019 at 11 a.m. in NHRC. The meeting was chaired by Shri Jaideep Govind, Secretary General, NHRC, and was attended by the Core Group members. NHRC officers, namely, Shri Dilip Kumar, Joint Secretary (T & R), Dr. Ranjit Singh, Joint Secretary (P&A), and Dr. M.D.S. Tyagi, Joint Director (Research) were present in the meeting. The list of participants is annexed **(Annex-I)**.

2. To begin with, Shri Jaideep Govind, Secretary General, NHRC, welcomed all the participants and requested them to introduce themselves as this was the first meeting of the newly constituted Core Group. Shri Dilip Kumar, Joint Secretary (T & R) briefly touched upon some of the recent initiatives undertaken by NHRC at regional and national level towards fulfilling its mandate on Business and Human Rights. This included development of a Self Assessment Tool by the Commission by holding series of meetings with Industry Federations/Organizations followed by organizing three Regional Conferences at Chennai, Kolkata and Mumbai and a National Conference on Business and Human Rights in Bengaluru. After this, the following agenda items were deliberated in the meeting.

**Agenda item I: Draft National Action Plan on Business and Human Rights prepared by Ministry of Corporate Affairs**

3. **Dr. Viraf M. Mehta, Adjunct Faculty, Institute of Corporate Affairs**, stated that so far twenty four countries have produced their National Action Plans (final or draft version) in conformity with the UN Guiding Principles on Business and human rights to demonstrate the strategy for providing protection against adverse human rights impacts by business enterprises. Among these twenty four countries, Indonesia is the first to launch NAP among Asian countries, while the final draft of Thailand's NAP on Business and Human Rights has been in public domain for comments. Further, the Indian Government has published its zero-draft of the National Action Plan on business & human rights which provides an overview of India's legal framework setting out the State's duty to protect human rights, the corporate responsibility to respect human rights and access to remedy against business-related human rights violations. Key policy measures adopted by the Government of India in this regard have also been discussed in the zero draft, Dr. Mehta stated. Overall, the zero draft NAP prepared by MCA reflects that India seeks to demonstrate its commitment towards the UNGP framework and preparation of the National Action Plan.

4. **Dr. Jitender Singh, Joint Director, PHD Chamber of Commerce and Industry**, raised the issue that smaller businesses have fewer resources and

abilities to adhere to the laws, regulations and guidelines and therefore, ensuring the responsibility to respect human rights by them is unfulfilling. He further stated that the start-ups have the agnostic work culture when it comes to human rights compliance. Therefore, explicitly calling for the smaller businesses and start-ups to act in accordance with the UNGPs, i.e., to ensure respecting human rights in their business operations as well as supply chains could be challenging.

**5. In response to Dr. Singh's concern, Dr. Viraf Mehta** elucidated that human rights compliance in the business operations of the small businesses, i.e. the micro, small and medium enterprises (MSMEs), could be ensured by adopting a cluster development approach as more than half of such enterprises are naturally organised in the form of clusters. Clarifying further, he stated that the National Guidelines for Responsible Business Conduct (NGRBC) by the Ministry of Corporate Affairs, which would be available in the public domain shortly, have been designed to be used by all businesses, irrespective of their ownership, size, sector, structure or location. The adoption of the said Guidelines would enable MSMEs to better prepare themselves for what they are required to do under 2030 Agenda for Sustainable Development. Further, they would be able to report their commitments and activities in an effective way of communicating their performance to their key stakeholders.

**6. Mr. Kevin Sergeant, Specialist-Enterprise for Decent Work Team South Asia, ILO,** stated that the 2030 Agenda for Sustainable Development (2030 SDG Agenda) put forth an opportunity to further advance the realization of human rights, wherein businesses serve as a key partner for the governments to achieve SDG. He therefore, suggested that the National Action Plan on Business and Human Rights should be linked to the Sustainable Development Goals. He further suggested that there should be a clear action oriented plan including the focused and realistic measures for operationalizing the business and human rights agenda. Responding to **Mr. Sergeant, Dr. Viraf Mehta** stated that the Niti Ayog in collaboration with the Ministry of Corporate Affairs has come out with a document wherein all the nine principles of the National Guidelines of Responsible Business Conduct have been mapped against each SDGs. He further stressed that we need to be conscious of putting burden of the responsibility to respect human rights on businesses.

**7. Ms. Sudipta Bhadra, Programme Officer, Decent Work for South Asia and Country Office, ILO,** highlighted that the businesses in the service sector may have operations very different from the other industries and may have linkages (supply chains) with the agriculture sector. In such cases, it is important to consider as to how the National Action Plan addresses the human rights compliance in the supply chains extending from the service sector to agriculture sector. She also stated that there is an intrinsic linkage between labour and environment. As such these factors must also be included in the NAP. Further, pointing out the fact that 81 per cent of people in India making a living by working in the informal sector or "non-standard forms of employment"

which includes temporary employment; part-time and on-call work; temporary agency work and other multiparty employment relationships; as well as disguised employment and dependent self-employment, and consequently the most at risk for rights abuses. She stressed that it is important that the National Action Plan take into account the protection of the rights of the workers engaged in the non-standard forms of employment.

**8. Shri Pradeep Narayanan, Director, Partners in Change,** stated that in order to fulfil the responsibility to protect human rights the state has four important roles including legislative, implementation, redressal and procurement. However, the role of the state is strong in the first part but weak in the implementation part. He stated that the zero draft of National Action Plan provides an overview of the India's legal framework in place to ensure the government's duty to protect human rights, corporate responsibility to respect human rights and access to remedy against business related human rights violations without reflecting upon the way forward. He also stated that access to remedy in case of violation of human rights by businesses should work both ways, i.e. for business and the government. He suggested that Public Sector Enterprises should also take lead in providing effective grievance redressal mechanism.

**9. Shri A.K. Khurana, Director, Department of Public Enterprises (DPE),** stated that the DPE is a nodal department for Central Public Sector Enterprises (CPSEs). It issues policy guidelines on performance improvement and evaluation, autonomy and financial delegation and personnel management in CPSEs. However, the implementation of the DPE guidelines is monitored by the concerned administrative Ministry/Department of the CPSEs.

**10. Shri Sachin Joshi, COO, CII-CESD,** stated that there is a need to take steps to convert NAP into a real action plan including proper roadmap, timelines, etc. Therefore, it is important that the government begins the processes of dialogue and engagement with key stakeholders including, the corporate sector, civil society, trade unions and workers to further develop the National Action Plan. He stressed that that NAP should go beyond the requirement under the laws. The human rights indicators and disclosures by the listed companies should be in the public domain.

**11. Shri Vikas Mohan, Senior Director, CII,** highlighted that while further developing the National Action Plan, it has to be taken into account that the companies are already subject to different code of conducts and standards which they are required to comply with. Further, it is also to be seen whether there is 'one-size-fits-all' approach to NAPs.

**12. Shri Namit Agarwal, Lead Specialist, Oxfam,** stated that the zero draft NAP is an enlisting of existing policies relevant for the National Action Plan. However, what needs to be added is the status of implementation of such laws and policies with respect of business and human rights. It is also crucial to add

a status of past and ongoing violations. One major gap in the proposed implementation of NAP is the absence of a mandatory due diligence process. Therefore, MCA must mandate due diligence in supply chains as a non-negotiable. **Shri Namit Agarwal** mentioned that the future action plan of NAP, should explicitly mention conducting a National Baseline which has 3 parts – a policy and legal assessment which could be led by a policy research or legal group, a community and ground reality of violations led by a civil society group and a company perspective led by an industry association. It is also important that the entire baselines is coordinated by a credible academic institution.

**13. Shri Namit Agarwal** further stated that though the zero draft National Action Plan is a transforming document but the component of grievance redressal mechanism is very weak as it only provides the list of existing judicial and non-judicial mechanisms for providing access to remedy to the victims of human rights abuse. He therefore, suggested that there is a need to strengthen the grievance redressal component of the National Action Plan. On the role of CSO in NAP, he highlighted that the civil society is a significant stakeholder in the NAP and has a key role in its implementation. Therefore, Ministry of Corporate Affairs needs to engage and consult with the civil society much more. He apprised that in recent NAP processes in Germany and Thailand a very close coordination between government and civil society has worked well.

#### **Agenda item II: Developing a framework for National Baseline Study**

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#### **Agenda Item III: Ways and means to promote dissemination and implementation of the United Nations Guiding Principles on Business and Human Rights.**

**14.** Regarding the proposed framework for conducting the National Baseline Assessment- one of the prerequisite for developing the National Acton Plan, **Shri Jaideep Govind, SG, NHRC**, enquired from the Core Group Members as to how the Commission may play an effective and catalytic role in this regard.

**15. Dr. Viraf Mehta, Adjunct Faculty, Institute of Corporate Affairs**, suggested that the industry associations like CII, FICCI, ASSOCHAM, PHDCC, may conduct a survey in order to evaluate whether the companies are human rights compliant as this would help in identifying key priority area for the government's effective implementation of the principles envisaged under the UNGPs and accordingly set objectives. Adding to this, **Shri Dilip Kumar, Joint Secretary, NHRC**, stated that the Commission may invite research proposal on three pillars of the UNGPs, i.e. the protect, respect and remedy. He was also of the view that there is a need to sensitize stakeholders in the value chains as most of them are not aware what constitutes human rights. Further, he

suggested that human rights should be included in the curriculum/syllabus of the management schools.

16. Responding to **Dr. Viraf Mehta, Dr. Jitender Singh, Director, PHD Chamber of Commerce and Industry**, stated that instead of conducting a new survey, he stated that there are many studies that have been conducted on the subject of human rights, through which important parameters could be derived. **Shri Sachin Joshi, CII** stated that conducting a National Baseline Assessment is a huge task which needs to be performed at different layers for the respondents to be representative. **Ms. Sudipta Bhadra, ILO**, suggested that for conducting the NBA, a calibrated approach could be adopted initiating from few sectors or states on a pilot basis. Further, cluster level associations and workers representatives should also form part of the NBA.

17. **Shri Pradeep Narayanan, Director, Partners in Change**, stated that the information on the compliance of pillar-II of the UNGPs, i.e. corporate responsibility to respect human rights is available in the public domain in the form of sustainability report, annual reports, business responsibility reports, etc. and therefore may be assessed from the disclosures made through such reports. However, in case of Pillar-III, i.e., access to remedy, **Shri Pradeep Narayanan** suggested that the Commission may review the complaints it has received, for the number of complaints pertaining to violation of human rights by businesses.

18. On the disclosures being made by the businesses in the form of Business Responsibility Reports (BRR), **Dr. Viraf Mehta**, suggested that there is a need for screening of the BRR within SEBI in order to ensure the completeness of the information provided by the companies. In case the reports are found incomplete or giving inaccurate information, there should be a provision to send it back to the companies. He suggested that the core group on BHR should interact with other core group, on business related human rights violation under such subjects.

#### **Agenda Item IV: Presentation of the Research project sponsored by NHRC**

19. A presentation was made by **Shri Pradeep Narayanan, the Principal Investigator** of the research study titled "*Study to understand functioning of companies' response systems vis-a-vis key Human Rights violations available in Public Domain*" entrusted by NHRC to Partners in Change. The objective of the study is to create case studies with research based evidence generation, which can be used by the state, non-state actors and corporate for mobilizing efforts to institutionalize systems to address issues faced within and outside the workspace by the companies. **Ms. Jhumki Dutta, PIC** elaborated on the detailed methodology adopted for the study and apprised about the status/progress of the research project. She apprised that five case studies of business violation of human rights namely (i) Workers' Rights in Tea

Plantations- Amalgamated Plantations Private Limited, (ii) Right to Livelihood - Resettlement and Rehabilitation in Loktak Project- National Hydroelectric Power Corporation, (iii) Workers' Rights issues in Garment Sector in Tirpur- Various Companies, (iv) Right to Health - Health Hazards Due to Asbestos Usage in Industries- National Thermal Power Corporation, (v) Consumer Rights and Food Safety issues in Maggie Case- Nestle have been identified for the purpose of analysis. Further, a list of indicators has been developed to assess the 'corporate policies and mechanisms on human rights protection' and the 'business engagement when human rights violations are reported'. She further stated that the above mentioned five case studies selected for the study would be analysed against the indicators identified to assess the policies and mechanisms on human rights protection and the business engagement when violation of human rights reported.

20. **Ms. Sudipta Bhadra** pointed out that the five case studies pertain to human rights violation in traditional industries such as, cement, garments, power etc. as case studies. However, the case studies should also include emerging industries like electronics etc. She further suggested that the indicators of supply chains including child labour, collective bargaining, minimum wages need to be added. Also there is a need to incorporate environment dimension to the draft framework meant to analyse the cases of business violation of human rights. **Shri Namit Agarwal**, suggested that while preparing a fact sheet including indicators identified for analysing the case studies, the disclosures made by the companies through Business Responsibility Reports may be looked into.

21. After the intensive discussions, the following was decided during the meeting:

- a) **NHRC to invite research proposal on UNGPs:** NHRC to invite research proposals on the three pillars of the United Nations Guiding Principles, i.e., (i) state duty to protect human rights, (ii) corporate responsibility to respect human rights and (ii) access to remedy to victims of human rights abuse.
- b) **NAP to include action plan:** There should be a clear action oriented plan in the NAP including the focused and realistic measures for operationalizing the business and human rights agenda.
- c) **Review of complaints by NHRC:** In order to identify the key priority areas for government's effective implementation of the UNGPs, the Commission may review the complaints it has received for the number of complaints pertaining to business violation of human rights.

#### **Suggestions made for the PI of the research project**

- a) It is suggested that the emerging industry such as electronics industry should be included as one of the case studies.

- b) Indicators of supply chains including child labour, collective bargaining, minimum wages need to be added.
- c) There is a need to incorporate environment dimension to the draft framework meant to analyse the cases of business violation of human rights.
- d) Information available in the public domain in the form of disclosures made by the companies through Business Responsibility Reports may be looked into while designing the framework for analysing the case studies.

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**Members of the Core Group**

- 1) Dr. Viraf M. Mehta,  
Advisor, Partners in Change
- 2) Shri Namit Agarwal,  
Lead Specialist - Private Sector Engagement, Oxfam
- 3) Shri Vikkas Mohan,  
Senior Director, Confederation of Indian Industry
- 4) Shri Puneet Nagaraj,  
Associate, L&L Partners
- 5) Dr. Jitender Singh,  
Director, PHD Chamber of Commerce and Industry
- 6) Shri Chander Shakher Taneja,  
Senior Executive, ASSOCHAM
- 7) Shri A.K. Khurana,  
Director, Department of Public Enterprises
- 8) Mr. Kevin Sergeant,  
Specialist-Enterprise for Decent Work Team South Asia , ILO
- 9) Ms. Sudipta Bhadra,  
Programme Officer, International Labour Organisation (ILO), Decent Work for  
South Asia and Country Office
- 10) Shri Pradeep Narayanan,  
Director, Partners in Change
- 11) Ms. Jhumki Dutta,  
Project Manager, Partners in Change
- 12) Shri Sachin Joshi,  
COO, CII-CESD
- 13) Ms. Swati Pandey,  
Counsellor, CII-CESD

**NHRC Officials**

1. Shri Jaideep Govind, Secretary General, NHRC
2. Shri Dilip Kumar, Joint Secretary (T & R), NHRC
3. Dr. Ranjit Singh, Joint Secretary (P&A), NHRC
4. Dr. M.D.S. Tyagi, Joint Director, NHRC
5. Shri Nishith, Assistant, NHRC
6. Dr. Priyanka Tariyal, JRC, NHRC