

**Minutes of the Meeting of the Core Group on Business, Environment and Human Rights held on 12 February 2020 at NHRC.**

The second meeting of the Core Group on Business, Environment and Human Rights was held on 12 February 2020 at 11 a.m. in NHRC. The meeting was chaired by Justice H.L.Dattu, Chairperson, NHRC and was attended by the Core Group members. Shri Jaideep Govind, Secretary General, NHRC gave the welcome Address. NHRC officers, namely, Shri Prabhat Singh, Director General (Investigation), Shri R.K.Khandelwal, Joint Secretary (A& R), Ms.Anita Sinha, Joint Secretary (P&T), Dr. M.D.S. Tyagi, Joint Director (Research) and Shri Surajit Dey, Registrar (Law), were present in the meeting. The list of Core Group members/participants is annexed **(Annex-I)**.

**2.** To begin with, **Shri Jaideep Govind, Secretary General, NHRC**, welcomed all the participants. He briefly touched upon the discussion that took place in the first core group meeting, which was held on 12 March 2019. He stated that the agenda of the meeting is to know the status on what has been transpired and the changes that has been envisaged after the first meeting that will help in policy formulation and taking the outcomes forward.

**3. Hon'ble Chairperson Justice Shri H.L.Dattu** in his opening remarks mentioned that every company in each of the industry sectors has Human Rights impact and responsibilities. Companies can impact entire range of Human Rights issues positively or negatively including discrimination, sexual harrassment, health and safety, freedom of association and to form unions, freedom of expression, privacy, poverty, food and water, education, housing, etc. In the current scenario of Human Rights violation in Business, Civil Society is increasingly calling for companies to be held accountable so that they maintain highest standards of Human Rights principles. He briefly touched upon the actions done so far regarding the preparation of National Action Plan on Business and Human Rights. He set forth a platform for all the participants to give the inputs and enlighten everybody with the progress made in the preparation of NAP. After this, the following agenda items were deliberated in the meeting.

**4. Agenda item I: Presentation on the Research Project titled "Assessment and Evaluation of business and Human Rights Reporting by Corporate India"**

Prof.Vasanthi Srinivasan, Organisational Behaviour and Human Resource Management, IIM Bangalore, Principal Investigator (PI) of the Research Project

Prof.Vasanthi started the presentation by explaining the Context of her Research project, which is to understand how does the corporate India report on Human Rights. She also pointed out through her presentation that there is a distinction between CSR and Human Rights.

She further explained that CSR is about stakeholder's perspective and Human Rights based approach is about rights holder perspective. Corporate Social responsibility is about Sustainable Development Goals whereas Human rights are about how companies do their business responsibly.

Objective of the study was to comprehensively assess commitment of corporates on labour/employee rights through analysis of corporate responsibility reporting of selected sectors, to understand the salient rights in the value chain of selected sectors, to evaluate NHRC's self-assessment tool with other responsibility frameworks and to provide recommendation for policy and practice with respect to business and human rights

*Key Takeaways of the presentation:-*

- 1) Business does not understand Human Rights at all. Awareness building needs to be done.
- 2) There is deeper unconsciousness in looking at Human Rights in the Corporate Sector.
- 3) Like the CSR is anchored at board level same is required for reporting Human Rights Issues.
- 4) NHRC is a key nodal player on holding accountability.

**5. Agenda item II: Presentation on the Research Project titled "Study to understand functioning of companies' response systems vis-à-vis key Human Rights violations**

Presenters- Pradeep Narayanan, Director, Partners in Change, Mr.Dheeraj, PIC and Mr.Jhumki Dutta, PIC.

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**, 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. She further stated that the above mentioned five case studies selected for the study were analysed against the indicators identified to assess the policies and mechanisms on human rights protection and the business engagement when violation of human rights were reported.

*Key Takeaways of the presentation:-*

- a) Policies are in paper, they do not provide elaborate mechanism. Even if they elaborate, there is no guarantee that they are functional. As they are not legally mandated, it is difficult for the victim to demand it.
- b) Violations often surface in public domain, not because the companies find it, but because of external stakeholders and certain whistleblowers. Once they surface, the companies become defensive; and there begins opaqueness and manipulation. However, it is possible that if companies detect themselves, they would work on them-again in a discrete way. So, not many of them are in public knowledge.
- c) All the companies are following their law of the land but not necessarily under the ungps

*Key Questions to be answered for NAP?*

- **Whether these guidelines (UNGP, NGBRC) remain voluntary or are made mandatory?**  
Even if it is voluntary, disclosures on functioning of guidelines should be made public
- **Who should monitor? State or Business Federation/Chamber**  
The question is very challenging. Giving this role to the State has its pros and cons. Various system of monitoring should be found out.
- **Can bigger brands be made responsible for the violations in supply chain?**

Yes, through effective grievance redressal system and mandating companies to make their supply chain details public.

**6. Dr. Viraf Mehta, Chief Advisor, Partners in Change** informed the participants that MCA last year constituted committee for reviewing Business Responsibility Reporting and Mr. Mehta was a member of the committee. He also laid out his expectations that the New BRR is expected to be aligned with the two referred national guidelines of responsible business conduct and not the erstwhile nvs that preceded it. He also anticipated that updated version of BRR is an improved framework. He stated that exercise of revised brr will give us enhanced content and enhanced access and through this, reporting of Human Rights Violations will be made mandatory. He stated that the challenge before us is to reach out to these small and medium enterprises to be able to do justice to these reports and from human rights perspective we should try to apportion the questionnaire into Minimum questions that are essential for all companies, listed or unlisted and to target sector specific responses and high degree of evolution.

**7. Dr. Ravi P Singh, Secretary General, Quality Council of India,** while questioning the presenters, recommended that studies based on the information available at public domain do not give us the correct idea as no company in its annual report do not mention cases of Human Rights violations. He also extended help to all the participants by informing them that QCI is an independent third party agency established by the Government and works across the sectors and if there was anything the participants would want to do as the party which could in the long run provide oversight over regulation perhaps QCI's aid can be taken this for party evaluation in any kind of product or company.

**8. Dr. Jatinder Singh, Director, PHD Chamber of Commerce and Industry,** stated that nobody is talking of MSMEs. He mentioned that MSMEs need deep diving and strategy needs to be evolved for this sector. He also 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 all the reports are supply driven and we need to focus on demand driven data. He also laid emphasis on the fact that employees need to know where to report and

what is the mechanism and no cluster approach has been taken yet as discussed in the previous meeting.

**Shri R.K.Khandelwal, Joint Secretary (A&R)** also raised a point in support of Dr.Jatinder Singh and, rightly pointed out that interview of employees is very important because it's ultimately the employees who suffer. Especially the upcoming sector, the Software sector has lot of exploitation. There are many factors such as long hours of working, odd timings, pressure of work leading to health hazards. He also stated that employees are the most important stakeholders in the entire process.

### **Agenda Item III (i): National Action Plan on Business and Human Right- National Baseline Assessment**

**9. Shri Abhijit Phukon, Director, Ministry of Corporate Affairs**, initiated the discussion on the respective agenda by mentioning that certain framework has been initiated by MCA, which is line with UNGP for eg. Section 166 of The Companies Act, 2013 that talks about Duties of the director. MCA has also released National Voluntary Guidelines on Social, Environmental and Economic Responsibilities of Business (NVGs) were released by the Ministry of Corporate Affairs (MCA) in July 2011. He further stated all these frameworks were there before the NAP. MCA also informed that the Ministry of External Affairs (MEA) has requested that MCA take lead in the matter of Business and Human Rights which is being deliberated with ever greater attention at the United Nations Offices in Geneva and carryout Inter-Ministerial Consultations with relevant stakeholders to develop India's comments/response in the matter. The role of this Ministry has been clearly explicated to include conducting inter-ministerial consultations, participate/lead deliberations in the Annual Forum on Business & Human Rights and the UN Working Group etc. and take active part in UN meetings on the issue in consultation with MEA's UN Division to ensure that India's position on this subject is adequately represented in the emerging discussions on this theme.

In pursuance of MEA's request, MCA convened a meeting on 16.05.2018 under the Chairmanship of Secretary, MCA, of which both MEA and NHRC were a part, in which it was decided, that "MCA would be the nodal coordinating agency for the first and third pillar of UNGP and would develop roadmap for implementing the second pillar." It was also decided that MCA

would initiate all necessary action simultaneously, i.e. on updating NVGs, prepare NAP, and interface internationally through MEA.

This Ministry has since taken various steps to implement the various decisions taken at the meeting held on 16.05.2018. Multi-Stakeholder consultations have been carried out with Ministries, Business Chambers, Civil Society Organizations et al. to revise NVGs, develop NAP. He also said that MCA is in the process of finalizing India's NAP and the process has been highly consultative.

- Zero Draft of NAP released - February 2019.
- The NVGs have since been updated and released as the National Guidelines on Responsible Business Conduct (NGRBC) – March 2019.
- National Baseline Assessment on NAP had been undertaken and a elaborate Consultation document was share with all Secretaries to GoI and to all Chief Secretaries.
- The Committee on BRR is finalizing its report which shall feed into Pillar II.

### **Way Forward:**

MCA appealed to NHRC to give its comments on Pillar I & II bases on all the consultations, research activities, workshops it has carried out. It also endeavors to make a document which emanates from the Indian context, yet is global and uses the lens of NGRBCs to demonstrate the implementation of UNGPs within the larger SDG umbrella. It should also be reflective of the concerns of business while furthering the objective of securing human right in the business context.

**Dr.Viraf Mehta, Chief Advisor, Partners in Change** added to the discussion that MCA has a MOU with UNDP. This partnership is interesting because Undp at Asia level have been handholding other countries in the process of development of their NAPs. He stated that we would benefit from this process by looking at what other countries have done regarding the NAP.Knowledge that we will have from across the Asian region is going to be very useful.

He also suggested that it would be partially erroneous if everytime we talk about accountability we only talk about private sector. Government of India holds a larger part in terms of the share volume of its procurement. It would be very helpful if Government of India within its own procurement both

encourages and filters out companies that are compliant with its requirement of Human Rights versus companies that are not. With regard to pillar I, we should consider Government of India as a massive facilitator and not only as a regulator.

**Ms. Barnali Mukherjee, Chief General Manager, SEBI**, interjected and raised a question, whether any consultation process will be followed for preparing the comprehensive BRR as the final report is claimed to be tabled soon. To this, **Dr. Viraf Mehta** replied that extensive consultation was done during the formulation of National Guidelines on Responsible Business Conduct. The reporting framework that refers to the self-assessment tool that Prof. Vasanthi has referred to form the basis for the revised BRR. He also raised a point that it rests on SEBI because even if all the reports are submitted to SEBI but today it does not have an ombudsman that either reads the report or ensures whether they are materially accurate, misleading, incomplete and there is no process once its submitted to the SEBI. He in return raised the question to SEBI that what will be the procedure if through this report the company is found to be violating Human Rights, what are the avenues available to SEBI as a regulator.

In reply to Mr. Mehta's question, **Ms. Mukherjee** replied that SEBI is thinking of looking into the quality. She also pointed out that since BRR is also going to include unlisted companies, it is suggested that if there is a wide condition process as they do in SEBI, it would be useful for the MSMEs could give you the inputs that would not be taken up otherwise. In reply to this **Ms. Aparna Mudiam, Deputy Director**, MCA informed the participants that SEBI is also a part of the committee which is preparing the reports. When NGRBC was finalised SEBI was part of it.

### **Agenda Item III (ii): Framework for handling cases of Human Rights Violations in Companies**

**10. Ms. Swati Pandey, Counsellor, Confederation of Indian Industry (CII)**, stated that the industry needs more awareness and capacity building around business and human rights and why it is important for them to look at these issues, also beyond the regulation system, must be known to them.

She also mentioned that in order to have a framework on grievance mechanism, it will be good to study some companies who have effective grievance

mechanisms, taking their examples a framework can be developed which Indian companies can adopt. CII will be very happy to conduct this study and come out with a suggested framework on grievance mechanism for Indian industry.

**11. Shri Digvijay Singh, UNDP, Project Design-Governance Officer,** stated that The UNDP, in official capacity, is supporting the Ministry of Corporate Affairs in developing the National Action Plan for Business and Human Rights. He also pointed out few suggestions which are as follows :-

- The Ministry of Corporate Affairs should frame suggestive guidelines for Ombudspersons and Grievance redressal in the private sector. The suggestive guidelines would help bringing in standardised systems for the remedy aspect of UNGP and NAP.
- Awareness generation will have to be a huge element where ICT efforts towards making the workers and companies aware of the NAP and its framework would be critical for the roll out of NAP.
- The MCA should include recommendations from the research studies conducted through NHRC for developing the National Action Plan.
- Linkages between NHRC and MCA need to be institutionalised by drawing the role of NHRC in the NAP.
- NHRC must create categories of grievances for violation of human rights in businesses and share reports with the MCA.
- To ensure a consultative process for developing the NAP, UNDP is holding 4 regional consultations with CSOs and trade unions and one national seminar in Delhi.

**12. Shri Namit Agarwal, Lead Specialist- Private Sector, Oxfam India** said that generally three principles of Pillar 3 in access to remedy are considered, firstly, accessibility, which is a major challenge when it comes to large no. of workers in supply chain, secondly effective remedy and thirdly timely remedy. He also stated that there is lack of awareness within many workers who are not aware of their basic rights and entitlements. There are no platforms available where these conversations can happen. Workers and farmers do not get a chance to speak with management or their representatives. He also stated that there is a need to have an operational grievance redressal mechanism where companies have a very important role to play. Local level grievance redressal mechanism is critical and it is missing right now. We need to focus on local level grievance redressal mechanism. 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.

**13. Shri D.K.Agarwal, DDG (Standardization Service Sector), Bureau of Indian Standards,** informed the participants that Bureau of Indian Standards, the National Standards Body of India has constituted a Social Responsibility Sectional Committee, MSD 10, which encompass various issues of standardization in the field of Social Responsibility, Social Accountability and other issues. In process of formulating Indian Standard, the committee has already formulated a similar standard for social accountability at work place. This standard encompasses 11 core elements which are part of Human Rights, namely, Child Labour discrimination, wages, health and safety to name a few. BIS also appealed to National Human Rights Commission, to enforce implementation of this standard in top corporate houses in India.

**14. Shri Surajit Dey, Registrar (Law), NHRC** stated that The Commission has its complaint mechanism but as per section 12 of PHR Act it cannot issue notice directly to the company. Once we receive the complaints, we issue notices to the respective public servants. We are restricted that we cannot issue notice directly to the company but we issue notices to various government agencies, which are responsible to monitor all those parameters. The Commission receives no. of complaints on CSR and Business and Human Rights and those complaints are being processed. The Commission in a way indirectly giving redressal to the victim. Silicosis is a huge area where the Commission has worked and is still working .Since 1<sup>st</sup> January 2020, the Commission has received 16 compaints related to the harm done due to Silicosis. Another area where the Commission has largely contributed is Bonded Labour. He also pointed out the case (case no.1270/25/10/2012) involving payment of minimum wages to the tea garden workers in the State of West Bengal where the Commission directed the Labour Department of the State Government that it is the duty of the department to increase the wages of the tea garden workers periodically apart from making non-cash remuneration.

**15. Shri Satoshi Sasaki, Deputy Director, International Labour Organisation** highlighted the role of ILO and stated that ILO would like to contribute to the process of developing NAP. He also said that it will try to

incorporate the views of the workers as it is working with trade unions at National and State level.

**16.** After the intensive discussions, the following was concurred during the meeting:

- i. The governance structure should create awareness in the corporate sector, as business does not understand Human Rights at all and there is a deeper unconsciousness within the workers and companies of different sectors. The industry needs more awareness and capacity building around business and human rights
- ii. The governance structure should ensure operational grievance redressal mechanism at local level, where companies have a very important role to play.
- iii. The governance structure should ensure that all individuals and groups, whose human rights are impacted, have access to effective grievance redressal mechanisms. There is also a need to make reporting of human rights violations mandatory.
- iv. There is a need to analyse the role of NHRIs in the development process of NAP.
- v. There is a distinction between CSR based approach and Human Rights based approach. CSR is about sustainable development goals whereas Human Rights in business are about how companies do their business responsibly.
- vi. With regard to Pillar I, Government of India should act as a massive facilitator and not only as a regulator.
- vii. The governance structure should have suggestive guidelines for Ombudspersons and Grievance redressal in the private sector. The suggestive guidelines would help bringing in standardized systems for the remedy aspect of UNGP and NAP.

\*\*\*\*\*

## **Annex-I**

### **Members of the Core Group**

#### Government Representatives

- 1) Shri Abhijit Phukon, Director, Ministry of Corporate Affairs.
- 2) Ms.Aparna Mudiam, Deputy Director, Ministry of Corporate Affairs.
- 3) Shri Pramod Kumar Saha, Director, (Dept. of Public Enterprise) Ministry of Heavy Industries & Public Enterprises.

#### Other Core Group Members

- 4) Dr. Viraf M. Mehta, Chief Advisor, Partner in Charge.
- 5) Dr. Jatinder Singh, Director, PHD Chamber of Commerce and Industry.
- 6) Shri Khozem Mirza, President of Corporate Legal Cell, Aditya Birla Corporation (P) Ltd.
- 7) Shri Namit Agrawal, Lead Specialist-Private Sector Engagement, Oxfam India.
- 8) Shri Satoshi Sasaki, Deputy Director, International Labour Organisation.
- 9) Ms.Shreya Kaushik, Oxfam India.
- 10) Ms.Swati Pandey, Counsellor, Confederation of Indian Industry.
- 11) Prof. Vasanthi Srinivasan, Organisational Behaviour and Human Resource Management, IIM-Bangalore.

### **Special Invitees**

- 12) Ms. Barnali Muherjee, CJM, SEBI
- 13) Shri D.K.Agrawal, Standardization Services Sector, Bureau of Indian Stds.
- 14) Shri Digvijay Singh, Project Design Officer, United Nations Development program
- 15) Dr. Garima Dadhich, Head, Centre for BHR, IICA
- 16) Rajesh Maheshwari, CEO, National Accreditation Board for Certification Bodies
- 17) Dr. Ravi P. Singh, Secretary General, Quality Council of India
- 18) Dr. Rineeta Naik, Social Inclusion Specialist, United Nations Resident Coordinator's Office

**Research Project Presenters**

- 19) Shri Pradeep Narayanan, Director, Partners in Change
- 20) Mr. Dheeraj, Partners in Change
- 21) Ms. Jhumki Dutta, Partners in Change

**NHRC Officials**

- 1) Justice Shri H.L.Dattu, Hon'ble Chairperson
- 2) Shri Jaideep Govind, Secretary General
- 3) Shri Prabhat Singh, Director General (Investigation)
- 4) Shri Surajit Dey, Registrar (Law)
- 5) Shri R.K.Khandelwal, Joint Secretary (A&R)
- 6) Ms. Anita Sinha, Joint Secretary (P&T)
- 7) Dr. M.D.S. Tyagi, Joint Director (Research)
- 8) Mr. Arun Kumar Tewari, Section Officer (Research)
- 9) Ms. Devosmita Bhattacharya, Junior Research Consultant
- 10) Ms. Khyati Panjwani, Junior Research Consultant