

REPORT

Implementation and Uptake of Business & Human Rights in India: What role can VSS organisation play?



Implementation and Uptake of Business & Human Rights in India: What role can VSS organisation play?

Introduction:

As economies world over endeavour to recover and rebuild, all hopes are pinned on businesses to lead the way out of the quagmire and towards a more resilient future. It is in this context, that Business and Human Rights (BHR) assumes a pivotal role. Ten years ago, the United Nations Human Rights Council (UNHRC) unanimously endorsed the UNGPs in 2011 as a framework for preventing, addressing, and remediating business-related human rights abuses. In June 2014, the UNHRC called upon its member States to develop a National Action Plan (NAP) to promote the effective implementation of the UNGPs. The Indian government formally announced that it would develop a NAP on BHR in November 2018 and in February 2019, a [‘Zero Draft’](#) was published. The Ministry of Corporate Affairs, the nodal ministry for NAP development, has been working on developing a final version, which is likely to be released this year.

It is important to view the development of the NAP (in particular Pillar two) in the context of several legislative and policy (mandatory and voluntary) reforms undertaken by the government over a span of ten years to mainstream business responsibility. To name a few; the New Companies Act 2013; the National Guideline on Responsible Business Conduct (NGRBC, an updated version of the NVGs released in 2011) and the Business Responsibility & Sustainability Reporting (BRSR) framework (released in 2020). Internationally too there is a heightened pivot towards and pressure on ensuring greater accountability and transparency in the value chains, particularly from a human rights lens. The EU is deliberating a mandatory human rights and environment due diligence. In March 2021, Germany mandated human rights due diligence in supply chain for German corporates and will be enforceable in 2023.

Meeting Summary:

The meeting started with an introductory note by **Rijit Sengupta, Centre for Responsible Business (CRB)** covering the following points:

- Business and human rights have assumed a pivotal role as economies world over endeavour to recover and rebuild. In this context, VSS organisations can play a key role in supporting businesses in strengthening their processes and systems to prevent and mitigate human rights related risks including in their supply/value chains, which will contribute to sustainable and inclusive recovery post COVID19.
- To mainstream the Business and Human Rights (BHR) agenda it is important that all stakeholders work together. It is believed that the adoption of a proactive strategy to address, minimize and mitigate human rights related concerns can be an important pathway for businesses to contribute to a sustainable recovery. The VSS have been and will continue to play an important role in this.
- Given the developments of the Indian government in the domain of responsible business (NGRBC and upcoming NAP), it was felt that this is the right opportunity to discuss how VSS organizations can start engaging more proactively and document and advocate on good practices related to BHR.
- The VSS Working Group for BHR recommended that opportunities for collaboration lie in 3 buckets – policy engagement at national / state level, capacity building (internal and external) and knowledge (documenting best practices on advocacy and action).

Following a brief introduction of all participants, **Nandini Sharma, CRB** gave an overview of the work and approach CRB has undertaken in forwarding the human rights agenda.

Viraf Mehta, Expert & Member of Advisory Committee, NAP India

- Focus on identifying key pathways that will continue to guide discussions on responsible business conduct in the decades ahead:
 - i. To deepen, make more accessible and increase corporate disclosures on their value chains, the following be considered:
 - a. Creation of an ombudsman that reviews, analyses and challenges these disclosures
 - b. At least 5 sector specific disclosure requirements, including manufacturing and services
 - c. Mandate non-financial disclosures based on NGRBC principles for small and medium enterprises
 - d. Aggregate Reporting: Experiment with agriculture and non-agriculture aggregates of business whose independent units are micro and small to develop a methodology to determine Environmental, Social and Governance (ESG) footprints of a cluster so as to look at cluster competitiveness and compliance
 - ii. Encourage and enhance capacity building and advocacy opportunities with National and State Human Rights Commissions with focus on role of business
- Civil society stakeholders have come together to adopt a common framework of the rights based demand in interactions with global value chains
- In respect of application of human rights beyond boundaries, corporate disclosures allow for grievance registration for overseas communities

Frank Hoffman, Regional Project Manager, FNF South Asia

- The German government has adopted a draft human rights due diligence law, the Supply Chain Act, aimed at ensuring companies' compliance with human rights with respect to their business activities throughout their global supply chains.
- The draft act is scheduled to enter into force in 2023 and will initially apply to companies with more than 3,000 employees (1,000 employees in 2024)
- Key Features:
 - German companies within the scope of the draft Act will be required to take measures to counter the risks of adverse human rights impacts in their worldwide supply chains, as set forth in the Guiding Principles.
 - Companies are required to establish a risk management system, define clear internal responsibility for the compliance with human rights, carry out regular risk analyses and employ appropriate mitigation and corrective measures to counter risks associated with their business, products or services
 - German companies are initially only responsible for their direct suppliers. For indirect suppliers, an audit and, if necessary, further measures are only required on an ad hoc basis, *i.e.*, if the German company becomes aware of potential human rights violations.
 - Additionally, the Act contains an annual reporting obligation with respect to actual and potential human rights impacts caused by the company's operations.
 - Fine for violations – 10% of annual global revenue, companies can be barred from participating in public tenders for 3 years
 - Non-governmental organizations and trade unions are to be given the opportunity to file lawsuits against human rights violations on behalf of foreign workers.
- FNF's work largely focuses on responsible business conduct in India and Sri Lanka and is based on striking a balance between the mandate to diligently assess human rights risks and still enable business between companies in South Asia and Europe
- In terms of intersections of FNF's work in India and Sri Lanka: In India focus is on NAP

and upcoming regulations; In Sri Lanka, focus is on regulations in Europe and trainings for companies to carry out Human Rights Due Diligence

Basis the work that VSS organizations are undertaking, the following points were tabled for further discussion:

- Areas on policy engagement that could be explored in order to strengthen the elements of BHR
- Opportunities to build capacities of stakeholders on BHR
- Knowledge: what has worked, examples of good practices and communications done with businesses and stakeholders

Ritu Baruah, Bonsucro

- Capacity building done at a general level for all that the standard requires people to address, however, the gap between policy and implementation remains to be bridged
- Bonsucro has developed own training material for communication with partners. Going forward, focus on digitization of content and inclusion of human rights risks is key focus area

Archana Panda, Social Accountability International

- 'Due diligence' as a component already factored in the standards with focus on supply chain
- Supplier Capacity Initiatives for apparel and textile sector – creation of a digital platform wherein buyers and suppliers come together; suppliers also disclose sub-contracting details so as to bring in the informal sector
- Trainings on human rights conducted globally

Mausumi Sarangi, Fairwear Foundation

Work done at three levels:

- i. Brand Performance Check: Work with brands, across geographies, in looking at how they can improve their purchasing practices as these have a direct impact on the working conditions at the supplier level
 - ii. Brand Guidance Material: Tools for risk assessments, how suppliers can address gender based violence, calculate living wages and engage in social dialogue in their supply chains.
 - iii. Trainings: On-boarding new brands on concept, training existing brands on these issues and how they can improve. In India, trainings conducted for management and workers on gender based violence (how can policies be developed) and handholding of suppliers who are moving from minimum to higher wages (how to calculate).
- Operationalizing human rights due diligence – what does it mean for small and medium enterprises, how does it impact them, whether it is doable in their set up etc.

Kinjal Shah, RJC

- Due diligence is reflected in standards, incorporated OECD due diligence aligned approach in 2019

Summary:

- Working with different stakeholders particularly businesses (including SMEs and smallholders) VSS offer frameworks/standards to address human rights challenges and facilitate positive impacts. VSS organisations therefore can play a critical role in the uptake, effective rollout and robust monitoring of BHR related interventions.

- Mechanisms of due diligence, transparency, accountability etc. are already being followed by each VSS organisation to understand improvements and impacts within their sectors. This collective experience and knowledge can be used to raised awareness and engage with policy makers and practitioners to create a compendium of good practices / policy research paper
- Quality of reporting for financial and non-financial disclosures should be treated with equal seriousness
- Reinforcing transparency / accountability in supply chains
- Sector specific supplements and challenges may be explored towards synthesizing existing knowledge
- Remediation has potential for collaboration. VSS networks can be leveraged to create frameworks and methodologies or short research assessments that can inform policy and advisories
- Regional collaborations / linkages: creation of multi-stakeholder platforms to deliberate on the BHR agenda

Way Forward:

Based on the discussion, the next step in taking this agenda forward is to explore how members of the VSS Collaboration India could work together (in sectors, on specific thematic areas) to advance the practice of business and human rights in India. This is also timely, given the Ministry of Corporate Affairs is in the process of developing the National Action Plan on Business & Human Rights (NAP).

CRB would also like to use this opportunity to highlight some of the good practices/case examples of how VSS are already pursuing business and human rights related issues in India in collaboration with India Inc. For the purpose, CRB will compile the inputs received about specific areas of work/interest of VSS Organisations on BHR issues highlighting elements of policy, knowledge and capacity building.

Annex I: List of Participants

| S.No. | Participant | Organisation |
|--------------|--------------------|-------------------------------------------|
| 1 | Archana Panda | Social Accountability International (SAI) |
| 2 | Ashish Bhardwaj | Alliance for Water Stewardship (AWS) |
| 3 | Ganesh Kasekar | GOTS |
| 4 | Kamal Prakash Seth | Roundtable on Sustainable Palm Oil (RSPO) |
| 5 | Kinjal Shah | Responsible Jewellery Council (RJC) |
| 6 | Mausumi Sarangi | Fairwear Foundation |
| 7 | Nandini Sharma | CRB |
| 8 | Rijit Sengupta | CRB |
| 9 | Ritu Baruah | Bonsucro |
| 10 | Shreya Majumdar | CRB |
| 11 | Siya Batra | CRB |