VOICES FROM THE MARGINS

Community Consultation Report on National Action Plan (NAP) on Business and Human Rights
VOICES FROM THE MARGINS

Community Consultation Report on National Action Plan (NAP) on Business and Human Rights

Report based on Consultations held with Businesses, Human Rights Defenders and Communities in

• Guwahati
• Bengaluru
• Bhubaneswar
• Jaipur
• Delhi
This work is licensed under the Creative Commons Attribution-NonCommercial-ShareAlike 3.0 Unported License.
To view a copy of this license, visit http://creativecommons.org/license/by-nc-sa/3.0/

Guidelines for citation: Voices from the Margins, 2019; Partners in Change (2019)
# TABLE OF CONTENTS

FOREWORD ................................................................................................................................. 1  
ACKNOWLEDGEMENTS ............................................................................................................. 2  
SECTION 1: INTRODUCTION ..................................................................................................... 4  
SECTION 2: SETTING THE CONTEXT ....................................................................................... 7  
SECTION 3: FINDINGS I ............................................................................................................. 10  
SECTION 4: FINDINGS II ........................................................................................................... 12  
  A. Protecting the Rights of Workers ...................................................................................... 13  
  B. Special Protection for Specific Groups ............................................................................. 16  
  C. Protection of Rights impacted by basic services like HealthCare ..................................... 18  
  D. Business Nexus ................................................................................................................. 18  
  E. Tax Avoidance and Evasion .............................................................................................. 19  
  F. Consumer Rights, Public Procurement ......................................................................... 20  
  G. Protection of Human Rights Defenders and Whistleblowers ......................................... 21  
SECTION 5: FINDINGS III .......................................................................................................... 21  
  A. Right to Information vis-à-vis Businesses: Disclosures ................................................... 22  
  B. Human Rights Due-Diligence and .................................................................................. 23  
    Social and Environment Impact Assessments ..................................................................... 23  
  C. Supply Chain Transparency and Responsibility .............................................................. 23  
  D. Inclusive and Transparent Business ................................................................................. 24  
SECTION 6: FINDINGS IV ........................................................................................................... 25  
SECTION 7: CONCLUSION ........................................................................................................ 27  
CONCLUSION .............................................................................................................................. 27
FOREWORD

Human Rights in business is a topic of immense debate and contemplation globally. While on one hand, there is a global consensus that businesses should respect human rights, which are fundamental in nature, on the other, many have gone beyond to state that businesses should proactively work towards managing, i.e. identifying, preventing and reporting, the human rights risk within its operations.

The launch of the Sustainable Development Goals in 2015, and its emphasis on responsible business and human rights, initiated parallel processes in India to better align existing guidelines with the larger international development, especially with regard to human rights. The government of India, in view of this, set to review and re-envision the National Voluntary Guidelines. Centrality of Human Rights agenda in the new National Guidelines, that is set to be launched, resonates with the thinking within the government to initiate a process to draft a dedicated plan to address Human Rights issues in business. The businesses also are steadily trying to adopt and embrace this agenda as this gives them a competitive agenda, but it is not being approached without caution and, in many cases, exception. Companies, while vigorously trying to create human rights compliance within their internal spaces, have in most cases an unchanged engagement in the external domain. The companies are yet to respond on issues relating to supply chain and communities that they impact.

As the NAP contemplation process is underway, it is important that these unheard voices find the right platform for visibilising their issues. Through the consultation, we endeavoured to create such spaces for exchange. The report, the ‘Voices At The Margins’, is an outcome of five consultations, which were organised in Bengaluru, Bhubaneswar, Guwahati, Jaipur and New Delhi with Human Rights Defenders and Communities. It was further accentuated with narratives of Civil Society, Trade Unions, Academia, Government Agencies and Businesses. The report, in a very concise manner, presents what these communities and groups want the NAP to contain.

We hope the findings of the report, together with the experiential commentaries and recommendations will make valuable contributions to the proposed NAP. The recent release of the Zero Draft of the National Action Plan on Business and Human Rights by the Ministry of Corporate Affairs, GoI, in February 2019, gives much reason for us to celebrate, as it gives a suitable opportunity to ensure these voices are heard. We would like to thank all those who made this report possible: Prof. Vasanthy Srinivasan, IIM Bangalore; Dr. Manoj Chakravarti, IIM Bangalore; V. Parvathy, IIM Bangalore; Prof. Somnath Dutta, Birla Global University Bhubaneswar; Prof. Deepsha Dhal, Birla Global University Bhubaneswar; Atul Poddar, FORHEX.

Pradeep Narayanan
Director, Partners in Change

Rana Alok Singh
Regional Director, South Asia, ETI
ACKNOWLEDGEMENTS

Lead Expert
Viraf M. Mehta, Member of Drafting Committee, National Guidelines on Responsible Business & Member, NHRC Core Committee on Business and Human Rights

Lead Facilitators:
Dheeraj, Praxis – Institute for Participatory Practices
Jhumki Dutta, Partners in Change
Pradeep Narayanan, Partners in Change and Member, Corporate Responsibility Watch

Support on Report Writing and Facilitation:
Amita Puri, Independent Consultant
Anirudhya Gupta, ETI
Rohan Preece, Partners in Change
Shireen Kurian, Praxis – Institute for Participatory Practices
Tarini Shipurkar, Praxis – Institute for Participatory Practices
Vikas Yadav, Praxis – Institute for Participatory Practices

Inputs for Reports:
Alok Singh, ETI
Dr Amita Joseph, Business & Community Foundation
International Justice Mission
Lara Jesani, Advocate Bombay High Court
Priti Darooka, Programme on Women's Economic, Social and Cultural Rights (PWESCR)
Rajavelu K., Human Rights Defenders Alert
Subhash Mittal, SRRF
Trishna Mohan Kripalani
Tom Thomas, Praxis – Institute for Participatory Practices and Convenor, Corporate Responsibility Watch

Support in Preparation of Report:
Amita Puri, Independent Consultant
Ekta Verma, Partners in Change

We would also like to thank our partners and collaborators: Atul Poddar, FORHEX; Prof. Deepsha Dhal, Birla Global University Bhubaneswar; Dr. Manoj Chakravarti, IIM Bangalore; Prof. Somnath Dutta, Birla Global University
Bhubaneswar; Stephan Ekka, Pajhra; V. Parvathy, IIM Bangalore; Prof. Vasanthisri
Srinivasan, IIM Bangalore.
SECTION 1
INTRODUCTION

Objectives of the consultation

1. With the wielding of significant economic power and political influence by businesses worldwide, the need to ensure business’ respect for human rights across its sphere of influence has been a matter of concern. Internationally, the UN Guiding Principles on Business and Human Rights (UNGPs), endorsed by the UN Human Rights Council in 2011, were designed to address these issues, and have received widespread support as a framework for preventing, addressing, and remediating business-related human rights abuses. In 2016, the Working Group on Business and Human Rights launched a second version of the guidance document on the development of a National Action Plan, which was a recommendation for all States as part of the implementation of the UNGP, where a National Action Plan (NAP) is defined as an “evolving policy strategy developed by a State to protect against adverse human rights impacts by business enterprises in conformity with the UN Guiding Principles on Business and Human Rights (UNGPs).”¹ As of November 2018, 21 countries have already developed 22 NAPs (the UK has 2) while 11 more countries are in the process of developing such plans. In addition, there are 15 countries in which non-state initiatives are pushing for a NAP.²

2. Incidentally, the same year as the UNGP were endorsed, in India, the Ministry of Corporate Affairs, released the National Voluntary Guidelines on Social, Environmental and Economic Responsibilities of Business, which articulated the need for companies to “respect and promote Human Rights”, “support inclusive growth and equitable development” and be responsive to the “interests of all stakeholders”. As a corollary, the national regulatory body Securities and Exchange Board of India in 2012, mandated top 100 listed companies (later extended to top 500) to submit an annual Business Responsibility Report. Subsequently, in 2015, the 2030 Agenda for Sustainable Development reflected an underlying importance to Human Rights by explicitly stating that the aim of the SDGs is to “realise the human rights of all” and that the business sector is a key partner for the United Nations and governments in achieving the SDGs. Specifically, the SDGs directed at Businesses included - take immediate and effective measures to eradicate forced labour, end modern slavery and human trafficking, (SDG 8.7); and protect labour rights, promote safe and secure working environments for all workers, including migrant workers, in

¹ The guidance can be accessed here: https://www.ohchr.org/Documents/Issues/Business/UNWG_NAPGuidance.pdf
particular women migrants, and those in precarious employment (SDG 8.8). Simultaneously, in India, the Ministry of Corporate Affairs (MCA), recognising the underpinnings of the SDGs, also set out to revise the guidelines, which are expected to be released soon. National Human Rights Commission (NHRC) India also held a series of consultations with Industry Federations and Organizations in early 2017 to encourage voluntary compliance of human rights principles by Business, and as a culmination of these consultations developed a self-assessment tool that could be used by the Industry. In June 2018, it also set up a core group on Business, Environment and Human Rights.

3. The Indian Government, in line with its commitment to the UNGPs, has iterated its intention to draw up a National Action Plan. With the Indian government’s focus on economic growth on the one hand, and the poverty and inequality that pervades the society on the other; low wages, unsafe working conditions, gender inequality, environmental degradation, displacement of indigenous communities due to industrial projects, are all commonly experienced violations that, with other existing and potential abuses need to be prevented and addressed. A NAP in this context would enable limiting and mitigating the adverse human rights impacts of business operations in the country. Critical to an effective NAP is the process involved in developing one. In this context, the Danish Institute of Human Rights and the International Corporate Accountability Roundtable’s document that provides guidance on what governments should do to promote better corporate human rights practices and a set of ten criteria that constitute a strong National Action Plan can be referred to. The development of a NAP is also an opportunity for the State to review the implementation of business and human rights frameworks, and then to identify gaps and necessary changes needed across its business related policies and programmes. It needs to be done in an inclusive, transparent, and participatory manner to ensure broad-based support and ownership to achieve its human rights commitment, as per the UNGP.

4. Consultations: Partners in Change, for over two decades, has been engaged in prime moving processes, tools and initiatives that promote responsible business. Amongst these, the India Responsible Business Index, as well as the Status of CSR in India, report, (which provide important benchmarks on responsible business and perspectives on the contributions that businesses in India are making to social and environmental progress) can be one of the inputs

---

3 ICAR and DIHR have developed a detailed template for NBA as part of a broader NAP toolkit. It can be accessed here: https://www.humanrights.dk/sites/humanrights.dk/files/media/dokumenter/business/naps/annex-b-nba-template-november-2017.pdf
4 The set of ten criteria can be accessed here: https://www.business-humanrights.org/sites/default/files/documents/10%20Criteria%20for%20National%20Action%20Plans%20%28NAPs%29.pdf
for developing and understanding the national baseline. As a corollary to its work, Partners in Change, along with Praxis Institute for Participatory Practices and Ethical Trading Initiative, organized consultations on Human Rights and Business for NAP, across five cities between October and December 2018. About 150 participants from 200 organizations representing interests of communities, workers, and vulnerable and marginalised groups participated in the consultation. The objectives of the consultation were to:

a) Share developments both global and national on NAP;

b) Invite opinion on principles that should govern the NAP development process

c) Scope and content of India’s NAP.

5. These consultations are also seen to be instrumental in sensitizing stakeholders on the significance of the NAP development process, empowering marginalized stakeholders with knowledge about the process and influencing for the creation of space for their meaningful participation. They were held across five cities of Bengaluru, Guwahati, New Delhi, Bhubaneswar, and Jaipur and included participation of child labourers, migrant workers, women workers and workers from the unorganised sector. It also saw representation from Dalits and Adivasi communities, human rights defenders from rural areas and small towns, local vendors who form part of supply chains amongst others, NGO staff, academia, and trade union activists.

6. The Government of India has taken the first step by stating its commitment to developing a NAP to implement the UNGPs. In fact, a Zero Draft has just been released by the Ministry of Corporate Affairs. While the consultations were held immediately before the release of the draft, many of the recommendations and feedback speak directly to this. Also, the robustness of the Plan is dependent on the process deployed in developing the NAP. An important objective of the consultations held was also to understand how this process could be strengthened. The participants offered inputs on their beliefs on key Principles that should underpin the NAP development process, articulated their fears and concerns and offered recommendations on how this process could be strengthened. We hope these suggestions will be taken while designing the process and framework of the NAP.

7. The report provides an insight into the experienced interface between business and human rights by vulnerable communities. It also reflects the various communities’ aspirations and fears about the process of developing the National Action Plan, as well as the content that they believe should be the focus of NAP. With lines demarcating State and Corporate roles increasingly getting

5Status of Corporate Responsibility in India, 2018: Do Businesses Respect Human Rights?
blurred, it is vital that the State ensures adherence to its primary responsibility of protecting public interest, and safeguarding human rights. The aim is that the NAP will be a real, enforceable mechanism that articulates a state’s priorities and actions in the case of business and human rights, and ensures protection of rights holders against business-related human rights abuse.

SECTION 2

SETTING THE CONTEXT

*Protect, respect and remedy framework, in the context of blurring of power and responsibilities of the state and business*

1. The UNGP state the duties and responsibilities of the State and businesses in addressing adverse business-related human rights impacts. It has three pillars:

   **Pillar I**  The State Duty to Protect Human Rights.
   **Pillar II**  The Corporate Responsibility to Respect Human Rights.
   **Pillar III**  Access to Remedy

2. Fundamental rights and their protection is the primary responsibility of the state. The Indian Constitution includes within this gamut, human rights as fundamental rights that affirm the constitutional relationship between the state, as the duty-bearer, provider and protector, and the citizens, as rights holders, recipients and consumers. In the recent times, however, shifts in the economy, due to the influence of international markets and other actors, has amongst many other things, downsized traditional role of state, privatised social goods and evolved new role boundaries for both the state and the business. This shift has been gradual, but definite.

3. In the period following independence, the government had exclusive control over sectors of critical importance and those, which were essential for public good, for example, water, electricity, transport. In this context, the government set up State-owned enterprises or the PSUs with the objective of furthering social outcomes, providing physical infrastructure and creating stability in times of crisis. With the entry of the private sector, riding on efficiency, the spaces started to open up for increased possibility of public private partnership. The Public Private Partnerships (PPPs) model was promoted to deliver services and infrastructure in India. While being argued as an effective way of merging the qualities of the government and the private programme, PPP norms often makes the State play a role of facilitating businesses, often even at the cost of rights of the citizens, especially over land...
and natural resources. The right to participation of citizens in decision making has also reduced as a number of these institutions, which were earlier a part of state machinery and responsible for delivery of rights, started becoming irrelevant as many decisions are now being made by businesses. Further, democratic processes involving consultation with public which form a part of policies governing the environment and land, have been slowly done away with in an attempt to ease business.

4. The shift is starkly observed in originally public sector services linked with delivery of rights, education, health, electricity, water, transport, etc, where the role of Government has either lost its relevance or has been limited. The Private sector has been forthcoming in delivery of the services in these sectors, with business associations actively involved in negotiations, profit being the driving force. While delivering the same the discourse of human rights and social protection find little or no mention.

5. These changes have led to two precarious situations. On one hand, it has created an added pressure on the state to be an effective regulator- for the market, control that the state used to have because of it being in the market as a dominant player. Regulation here is intrinsically linked with safeguard of human rights from exploitation due to changing market conditions. On the other hand, the businesses are promoting the economic growth narrative and its relationship to ‘ease of business’, thereby advancing the argument of de-regulations. The growth narrative has always been closer to the government, and now we see that the government rather than regulating the markets, is focussing on deregulation, often becoming oblivious to the rights of citizens and workers. Further, the presence of businesses in different task committees and also growing number of top businesspersons finding role in the Government itself as politicians has made the issue of conflict of interest more pronounced. In addition, in the recent years, it has also been seen that the State has not necessarily favoured human rights of citizens in scenarios where citizens have protested against companies, e.g. Sterlite case in Tuticorin.

6. Over the decades, with privatisation and disappearance of PSUs, the government has also become a significant procurer of services and goods from private players. However, the state has not yet shown any effort to use its consumer power to influence the businesses to be responsible. The two trends of de-regulation and lack of willingness to influence is in direct contradiction with the primary duty of the state to protect human rights of the citizens.

---

6 Chapter 2; Status of Corporate Responsibility in India, 2018: Do Businesses Respect Human Rights?
7. While in their external engagement, entry of private sector into spaces ‘exclusive’ to the state has not translated into embracing of the corresponding duties, especially duty to protect human rights, in their internal engagement the businesses have reduced the identity of workers to ‘inputs’. The businesses are demonstrating more enthusiasm to shirk their accountability toward workers through contractualisation. This trend is quite widespread and pertinent even in formal sector, with most companies in the top 100 indicating that contractual labour make up 26% and more of their labour force. Increasing contractualisation also means limiting the constitutional right of the workers to freely associate within workplace to discuss and further issues of concerns. Collective bargaining and freedom of association only focuses on permanent employees and given the increasing number of contractual workers, the entire notion of trade union and collective bargaining is disappearing from the business vocabulary.

8. The recent legislative changes have further promoted the role of businesses in social development through CSR. Section 135 of the Indian Companies Act prescribes a mandatory CSR spend of 2% of average net profits for all companies meeting specified financial thresholds. While on one hand it is progressive, as it makes businesses a partner in development, on the other by shifting the responsibility to the businesses the state is enabling ‘privatisation of social development’, putting human rights discourse in India at risk. Meanwhile, protective legislations are being steadily diluted to shrink corporate accountability and pave way for unregulated growth of businesses. Some of the major dilutions in the recent years are seen in environmental and social impact legislations governing natural resources and land, which took decades of struggles on the part of civil society groups and people’s movements to find place in governance. This has worsened the existing crisis on climate change and environmental pollution. Instead of strengthening the processes to assess environmental and social impact and harm, introducing sustainable measures and technology, penalising and curbing violations by businesses, consulting and empowering project affected communities and stakeholders and addressing the critical increase in pollution and accompanying health hazards in its stated goals towards sustainable development, the state has been deregulating polluting sectors and diluting safeguards, restrictions and prohibitions governing projects and activities at a domestic level, leading to uncontrolled and unsustainable development. Institutions governing environmental disputes such as the National Green Tribunal are being slowly dismantled by leaving inoperational the zonal benches and making inaccessible information, whereby the project affected communities are rendered remediless at times and further away from accessing justice and reporting violations by companies.

---

7 Status of Corporate Responsibility in India, 2018: Do Businesses Respect Human Rights?
9. In this ongoing process, while businesses are gaining resources and influence, States are said to be losing some of their power to fully control social, economic and even political processes. The power and authority shared between State and non-State actors and boundaries of the private and the public sphere is blurring, leading to a need to relook at state and businesses as responsible entities with duties. The expectation, therefore, is moving beyond the two strict compartments of respect and protect framework to a framework that allows for both businesses and state to use the range of their capabilities and influence to safeguard the rights of the vulnerable, while promoting respect among its internal and external stakeholders.

10. In this scenario of extreme privatisation of social and economic development, UNGP Pillars 1, 2 and 3 cannot be compartmentalised as State, Business and Judicial or quasi-judicial institutions. Their roles need to be looked at very comprehensively; especially the need for protection of human rights has to be ‘imposed and mandated’ upon businesses through state legislations.

SECTION 3

FINDINGS I

Observations on the process of evolving national action plan

1. Most of the communities and CSOs carry the following concerns about the NAP itself and the process:

- Like many other action plans in India, “this process could also be an eyewash, with things good on paper, and nothing on the ground”.
- It may not be an inclusive process. Generally there will be a ‘club’ that writes the national action plan. Businesses are likely to dominate the NAP development process.
- The NAP gets reduced to check-list approach, with the real intent and willingness being absent.
- Given that NAP itself would be the product of State-business nexus, it might actually make things worse for human rights defenders. NAP may not actually challenge the nexus.
- NAP would finally lack an effective implementation plan as there would not be any financial allocation for the same.
- NAP would lack any independent and mandated review mechanisms.
2. They suggested the following to be the key principles to govern the NAP development process:

- The purpose of NAP development process should be to stimulate dialogue on human rights. This requires significant investment in the process itself, so that proactive efforts could be made to include voices of marginalised communities and their defenders.
- The process should respect federal structure, including Panchayati Raj systems.
- The process should assume that NAP would be influenced by the businesses. There is a need to keep in mind the existence of the State-Business nexus. The process should be transparent across levels and stages.

3. They also indicated that the following stakeholders would need to be proactively consulted, in order to ensure the SDG motto- ‘Leave No One Behind’. Other than business associations, chambers, CSOs at national level, there should be an active effort to include the following:

- Grassroots NGOs and human rights defenders.
- Informal workers and their informal associations at different levels.
- MSMEs, contractors and petty contractors, who are often delegated the responsibility to realise human rights in the supply chain.
- Representatives from women, children, LGBT community, PWD, minorities, Dalits, Adivasi and Denotified and nomadic community organisations at local levels. North Eastern states and geographically isolated regions.
- Policy researchers, environmental engineers, urban planning architects, development economists, amongst others.

4. With respect to very steps leading to the finalisation of NAP, they feared that the Government would launch the Zero Draft of NAP, and place it on their website for comments. Post a few months, all comments would be reviewed and the final plan would be launched, with the details of the organisations that commented in the process as an evidence of the civil society consultations. The CSOs recommended the following process:

Step 1: GOI launches the Zero Draft of NAP.

Step 2: GOI makes it mandatory for all Departments and the state governments to comment on the draft and send their recommendations. These recommendations need to be placed in the public domain.
Step 3: GOI should encourage as well as allocate resources for citizenship consultations in various districts, towns and villages, so that the plan is well consulted.

Step 4: Certain key Government research institutions and think tanks should be encouraged to organise dipstick studies and place the same in the public domain.

Step 5: GOI should form committees- separately of Government officials, of businesses, of MSMEs, of workers unions, of CSOs and of human rights defenders. Each of these committees should make independent recommendations on the Zero Draft. They need to be mandated to take into consideration the lens of gender, caste, children and disability.

Step 6: GOI should submit a report that considers each of these comments and presents its opinion on why certain comments have not been incorporated.

Step 7: GOI comes out with the finalised National Action Plan- which needs to have timelines; implementation mechanisms, fixing of responsibilities and financial allocations.

SECTION 4
FINDINGS II

What NAP should contain on Pillar I – state duty to protect

1. Context: According to the UNGP and other International Treaties on Human Rights, State has the primary duty to protect human rights of its people. This is, however, compromised due to lack of adequate policies, and gaps in their implementation, nexus between state and business, entry of business into spaces traditionally held by state and flawed prioritisation. The flawed prioritisation, which skews in favour of ease of doing business over human rights, can also be seen as a causal factor for the lack of willingness among government to evolve effective regulatory mechanism. State exhibits substantial legal and policy incoherence and gaps, which often entail significant consequences for victims, companies and states themselves. The most common gap is the failure to enforce existing laws. This legal and policy incoherence arises because the departments and agencies which directly shape business practices – including corporate law and securities regulation, investment, export credit and insurance, and trade – typically work in isolation from, and uninformed by, their government’s own human rights obligations and agencies. The interaction between the state and businesses, which ideally should feed into social good leads to a nexus endangering human rights. While the businesses use their resource power to leverage relations with lawmakers for stalling and impeding policy decisions
that can potentially threaten them, the state, to appease the businesses, leverages its convening power to facilitate unethical practices by the businesses.

A. Protecting the Rights of Workers

2. There are a number of legislations on labour protection. While the government has established an extensive set of legislations and regulations, the legal and policy incoherence and gaps, dilutions of existing policy and lack of framework for a comprehensive labour policy, however, render the protection mechanisms ineffective. For example, despite having over 40 central legal mechanisms segmented by Industry or type of work under labour legislation, and addressing issues such as maximum working hours, minimum wages, health and safety and working conditions, the labour market has rampant violations across all the areas. Most of these legislations are not implementable owing to the following reasons: - (a) Most workers are in the informal economy and are unorganised; (b) there has been exponential increase in sub-contracting, wherein the work itself is contracted out leading to households becoming factories; (c) in most of these sub-contracting scenarios wages are on the basis of piece-rate system, which means the minimum wage modelled on time-rate system becomes almost inapplicable; (d) even in the formal, regulated sector, the employment is now being modelled as ‘contractual’ or ‘casual’, which means a number of social security benefits are not applicable; (e) increasing feminisation of labour and child labour segmentation through dilution of child labour laws; and (f) lastly, trade unions are not promoted, in fact there is curbing of trade unionism even in formal sector, let alone providing any space for them to expand to informal sector.

Experiences from the Ground: Tea plantation workers in Assam

The total workforce in the tea estates of Assam exceeds two million workers and a vast majority of this largely migrant population from tribal districts in Central and Eastern India is illiterate.8

Do Companies respect Human rights of Workers? A consultation organised with workers indicated that employers do not respect human rights (reference Guwahati meeting report). Wage revision occurs after a number of years. When they occur, they also increase the task corresponding to wage increase. Their right to safe working conditions is denied. There are no toilets for women, and even men, at the work place. There is no rest time during the work. “The company often deliberately does not keep toilets, fearing that workers would take rest and waste time in toilets. Lunch timings are very short. There is no

---

space for children to be brought to workspace. Companies use loopholes to pay low wages-like those applicable to adolescent workers are paid to 20-22 years old workers. Most workers are paid wages on a daily basis and have strict working hours. They do not have the benefit of paid leaves (including on Sundays) and are not entitled to any sick leaves. Owing to daily wage system, women are left with no choice but to work until the eighth month of pregnancy. Even after childbirth, they are forced to leave their young infants at home owing to the lack of day care nurseries on the estate. The ones that are active are unhygienic, unresponsive and tend to neglect the needs of the children. Lack of toilets for women and crèches for children deny women active participation in work. There is a workers’ representative, but is often selected by the Company. Most often they become representative of the Company, rather than of workers. There is a Lane Chowkidar, who is the representative of Company, but often comes from same community as the workers. While he does become the power centre; when he is told about the issues of workers, he displays “helplessness”- with sense of belongingness with community by stating, “People like us cannot demand all these things”. The grievance redressal system is non-existent. Many of their complaints are dismissed or ignored.

Right to health of workers is also denied. Workers are also made to spray pesticides in the tea gardens. Aside from pesticides, there are liquid manures, micronutrients, growth promoters, etc., that are sprayed which have an adverse impact on human health. As the workers are often illiterate, they are unable to read the correct instruction for the proper usage of the pesticides. That coupled with improper safety equipment, hampers their health directly and they are made susceptible to diseases. Workers widely reported that the quantity of water to which workers have access is a problem, as there are not enough drinking facilities for all workers at the labour lines and that those that are available are unhygienic. The rations (wheat flour, rice, and tea leaves) provided by the company are often of very bad quality and not sufficient. Workers are highly dependent on the rations they receive for their food consumption on a monthly basis and so any change in their work status can result in severe hardship. Most of the workers do not wish for their children to work in the plantation farms. However, the circumstances force the children to work in the garden itself, despite being aware of all the wrongs they have to face.

Does the State protect the Human Rights of Workers? It is interesting that workers do not get automatically included into all government welfare schemes as they are on ‘company property’ and the company has assumed all control regarding the workers. Even if the panchayat wishes to introduce a development project for the welfare of these workers, they are first required to obtain a no objection certificate from the tea company. With the government being uninvolved and the company disregarding the necessities of the workers, they...
are left in a vulnerable position. For example, with respect to the lack of electricity, the workers do not enjoy a ‘consumer status’ and are unable to get electricity lines from the government directly. In the case of these workers, the state has taken a ‘hands off’ approach and delegated the duty of governance to the corporate tea estates. There is also a Plantation Labour Act, 1951, which was passed to promote the welfare of plantation workers. The workers are entitled to proper housing, nutrition, water, healthcare and other facilities that are essential for a quality life. The state has failed in protecting their rights and delegating their governance responsibility to the corporate houses, which have constantly neglected basic protection and facilities. However, the gravest injustice faced by the workers is the fact that despite the clear violation of the worker’s rights, they do not have any access to redressal. Their plights are not entertained by the management and more often than not, their demands and requirements are completely ignored.

3. Furthermore, due to absence of payment of minimum wages, large portions of the labour force have to resort to debt bondage in order to meet basic consumption needs, follow social rituals, or deal with medical emergencies. While owing to unbalanced growth and development, there is a continuous supply of migrant workers, it is also true that the businesses are looking for, women and children migrant workers primarily, to ensure that they do not have to pay high wages; and are able to deny a number of social security benefits. Invariably, there is increase in bondedness and trafficking of labour. ‘Goal 8.7 of the SDGs specifically calls for an end to the crime of forced labour, and given India’s commitment to the SDGs there is a need for the government to build strong infrastructure to address the issue of bonded labour, particularly holding businesses accountable for allowing exploitative labour practices, including bonding labour in their supply chains. In this regard, the MCA could appoint Multi-stakeholder groups for social audits including officials from labour department, and CSOs working on forced labour, bonded labour. These auditors should undergo mandatory training organised jointly by MCA and MOLE.

Recommendations: NAP should necessarily clearly prescribe responsibilities of state and businesses on the protection of human rights of workers in the supply chain; and create mandate for the large businesses at higher-end of value chain to take responsibility of workers living conditions across the supply chain. Merely presenting the existing laws, which are inapplicable, would not make sense.

B. Special Protection for Specific Groups

4. The National Action Plan should clearly assume that there are certain groups who are in the margins and they need special protection. Some of these groups are: women, children, elderly, LGBT, Dalit, Adivasis, Denotified, nomadic and semi-nomadic communities, OBC, minority communities, persons with disabilities.

5. The NAP needs to keep in mind the intersecting inequalities: Business displaced communities, manual scavengers, sanitation workers, female agricultural labourers, migrant workers, trafficking survivors, sex workers, landless labourers, bidi workers, etc. Further, some specific themes that would be very poorly represented in the reports would be: discrimination and harassments in workspace, environment health impacted communities, work-based accidents and occupation health; agricultural labourers; petty contractors; workers in the unorganised sectors and displaced communities.

6. Both the intersectionalities and themes can be seen in the case of the tobacco and bidi industry which employs a large number of children who are underpaid and made to work in harsh conditions in order to meet the demand of the products. At the same time, an estimated 50% of tobacco consumers are school going children, working children, slum dwellers or child labourers. The workers of tobacco factories are more susceptible to cancer than an average individual due to constant exposure to certain chemicals. However, there are no measures to protect their health or on failure of which, there is absolutely no recourse for medical ailment.

7. Displacement: While in India, there is comprehensive Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013, most human rights violation are caused due to land acquisition and displacement. The Act\(^{10}\) provides for

\[\text{“A humane, participative, informed and transparent process for land acquisition for industrialisation, development of essential infrastructural facilities and urbanisation with the least disturbance to the owners of the land and other affected families and provide just and fair compensation to the affected families whose land has been acquired or proposed to be acquired or are affected by such acquisition and make adequate provisions for such affected persons for their rehabilitation and resettlement and for ensuring that the cumulative outcome of compulsory acquisition should be that affected persons become partners in development leading to an}}\]

\(^{10}\text{http://www.legislative.gov.in/sites/default/files/A2013-30.pdf}\)
improvement in their post acquisition social and economic status and for matters connected therewith or incidental thereto.”

The reality is a far cry from what is given in law. There have been several attempts to dilute the protections granted under the Act, in particular to do away with the process of public consultation in cases of acquisition. Recently there has been an move by the state to increasingly go for direct purchase of land as against acquisition under the Act, in order to escape the protections offered to the people under the Act as also state accountability. A similar attack on grassroots democracy is being seen by sidelining protective legislations such as the Forest Rights Act, 2006 and the Panchayats (Extension to Scheduled Areas) Act, 1996, which protect forest dwelling, farming and Adivasi communities. The situation is particularly vulnerable for the nomadic tribes who find themselves at a loss to development activities which have involved transfer of ownership and accumulation by way of dispossession. For redressal arising as a result of displacement due to industrial activities, there is a need to include nomadic tribes in fair and just compensation due to dislocation. The panchayat and other village bodies must be involved and play the role of actors who create awareness and monitor the situation with respect to human rights violation in their territory.

**Experiences from the Ground: Communities affected by Loktak Downstream Project in Manipur**

An ongoing study to understand Human rights and Business issues in Northeast analysed NHPC, which was involved in the Loktak Downstream Project. Along with various other issues, the community was aggrieved especially because of the Company’s *lack of transparency and disclosure*. The public hearing before commencement of the project did not correspond to the norms of a public meeting and also on taking the *Free, Prior and Informed Consent* (FPIC) of affected communities on such a sensitive issue that will entail wide social, environmental and human rights impacts. Villagers complained that their village has been *deprived of electricity* from Loktak Project and contended that promises made by NHPC were never fulfilled. The study also revealed that the community around the operations were particularly aggrieved as the company concealed details of environment and social impact assessments from the general public and hence, did not disclose the larger implications on the rich flora and fauna diversity of Tamenglong Areas and the indigenous peoples.
Recommendations: NAP should ensure an action plan on how to make community consultations, claimed to be done by companies, real and meaningful. A greater systemic participation of communities in the management decisions is required.

C. Protection of Rights impacted by basic services like HealthCare

8. The healthcare industry has become a massive profit making institution. Most of the health care provided is by private players where the sole purpose is to maximize profits. There have been instances of massive profiteering by inflating the costs of healthcare and related equipment. This has led to not only overcharged medical sector but also promotion of unsafe medical practices. There is a clear denial of healthcare due to overcharging. Safety violations are breached like in the case of Johnson and Johnson hip replacement. There is also a need to address occupational health issues such as those of silicosis suffered by miners in Jodhpur.

Recommendations: The State needs to ensure mechanisms both for access and affordability of healthcare and the setting of Standards that need to be adhered to. Standard Treatment Guidelines should be prepared based on Indian condition by an autonomous body in consultation with public/private sector doctors.

D. State Business Nexus

9. The incidents related to protests by the communities against Sterlite at Thoothukudi are an example of how the state-corporate nexus manifests in a violent way. The killing of more than a dozen protestors by the police when the protestors were protesting against the company- especially when five top-level officials who could authorise firing being on leave on the day of protest is clearly presented by people’s tribunals as a case of nexus. There have been similar incidences where mining companies in Odisha, Chhattisgarh and Jharkhand have alleged to work closely with the local government against the workers and the displaced communities. Further, the concept of ‘conflict of interest’ has no meaning today, when for example, bidi barons have become members of parliaments and get into committees of subordinate legislation and influence recommendations on laws which pertain to their industry. Similarly, businessmen getting into a number of task committees that actually implement, regulate or recommend upon those aspects that influence the power relationship between business and community.

Experiences from the ground: Anti-Sterlite Protests in Thoothukudi, Tamil Nadu
Sterlite Copper, owned by Vedanta Inc. has been operational in the area since 1997. But a proposed expansion saw locals of the area march against the environmental damage caused by the company’s increase in production demanding a shutting of the plant. On the 100th day of the protest, in May 2018 the police opened fire on the protestors claiming nine lives. First tear gas shells were dropped to disperse the crowd, but people said that before they could compose themselves they heard gunshots. Usually, the norm in such situations is to use water cannon and microphones. Though the police claimed to have done so, the protestors say none of the norms were followed. The State-Corporate nexus was apparent in the protection of Company’s interests at the cost of HR violations.

10. While there are laws and guidelines for the bureaucracy, it is important that the NAP takes into consideration the principle 7 of the National Guidelines, which elucidates the core principles that govern lobbying practices of the businesses. The conflict of interest should clearly be defined and violations should be penalised. The government also needs to ensure that the ease of doing business reform action plan2019 is in alignment with NAP.

Recommendations: The NAP should ensure protection of supposed to be community-friendly institutions such as environment impact assessments and social impact assessments. These are the institutions through which the State gets to know whether its citizens are being harmed by the company’s operations or not. In that scenario, there requires a special interest shown by the government to ensure that the assessments are scientific, objective and from the lens of the interest of communities. These assessments should also be stated to make special recommendations from the lens of marginalised, especially gender.

E. Tax Avoidance and Evasion

11. The organisations working on tax justice have pointed out that there are a number of ways in which businesses are able to reduce their tax burden, some legal others not so legal. Examples of some such exemptions include accelerated depreciation charge on capital assets, Investment Allowance under S.32AD, (allowed as an incentive for undertaking the investment). Further S.80I also provides deduction from profits of certain new industrial undertakings, hotels, etc. Several special deductions are available under S.35 for certain type of Research & Development related investments. It may be noted that some of these deductions are on weighted average basis, giving more deductions than amount invested, thus, providing businesses ample opportunity to reduce their tax burden. In fact CAG report for Department of Revenue, GOI (No. 3 of 2016) states...
that for FY 2014-15, revenue forgone on various tax exemptions amounted to Rs 1.03 lakh crores (which is almost 15% of total Direct Tax Revenues that Government collected.

The above is also supported by the fact that during FY 2017-18 several of the top companies’ Tax Ratio against Profit Before Tax was much lower than the standard tax rate of around 31.5%. In case of ICICI it was only around 9%, for General Insurance Co. it was 12%, NTPC 16%, Tech Mahindra 18.5%, Infosys 19%, HDFC 20%. There are several more such examples from the top 100 corporates.

The above does not even touch the issue of corruption and Tax Evasion. It may be noted that Chapter 3, of the CAG report referred above is replete with instances of errors in assessments by Income Tax Officers, which has resulted in loss of revenue for the Govt. Dept. It is anybody’s guess how many of these errors were genuine errors and how many of them were motivated due to other considerations.

It is a fact that businesses avoid paying taxes. The CAG Report states that only around 61% of the companies registered with RoC as at 2014-15 were filing Tax Returns. It also states that of Rs 7 lakh crores of uncollected demands as at 31-3-2015, 96% is not likely to be collected.

F. Consumer Rights, Public Procurement

12. The CSOs have clearly made a point that there is an utmost need to build consumer rights movement in India, with an agenda that the consumers become conscious of their power and their responsibility to build human rights agenda in the market processes. The governments have been repeating their achievements by merely listing the law and certain institutions created. However, largely the movement has never been promoted by the Government.

13. Community-as-consumers: There has been little debate on recognising the rights of marginalised communities as consumers. They have been largely seen as ‘producers’ or ‘workers’ only. Certain sections like children as consumer is an important dimension to leverage. The intersection of child rights and consumer rights, especially in the domains of advertisements, labelling and procurement is something that NAP should talk about.

14. Public Procurement: The organisations have pointed out that the government has not yet recognised its power as ‘bulk consumer’ to ensure the businesses (vendors) respect and promote human rights. While there have been

13 Source: https://www.moneycontrol.com/stocks/marketinfo/tax/bse/index.html
steps to increase efficiency in public procurement, the ability of the state to instrumentalise public procurement to clean the supply chain is still not recognised.

G. Protection of Human Rights Defenders and Whistleblowers

15. This is an area that NAP should clearly work on in a more detailed way. There is no doubt that human rights defenders across the country are facing violence as well as the Strategic Lawsuit Against Public Participation (SLAPP) suits by the companies. Their voices are being curbed. Number of killings of RTI activists, rampant increase in fabricated cases against defenders, increased killings especially of defenders working on land and natural resources and a surge in attacks on journalists reporting these instances, portray a worrying picture on the violence that is perpetrated against defenders. A number of human rights NGOs are also being targeted through surveillance and misuse of law, especially when they speak against corporate power. Despite the existence of the Whistleblower Protection Act, 2014, there is yet no facilitating environment for persons to stand for the rights of poor and transparency. Protection legislation for human rights defenders and NAP on human rights should be prerequisite to NAP on Business and Human Rights.

Recommendation: NAP should provide a clear action plan on facilitating a human rights respected culture wherein citizens are standing up for their own rights as well as others. They should propose steps to support human rights defenders and whistle-blowers from the onslaught of the state as well as companies.

SECTION 5
FINDINGS III

What NAP should contain on Pillar II – business responsibility to respect human rights

1. Context: According to UNGP, given that Business and operations have impact on the entire spectrum of human rights, it is expected that they respect human rights. This obligation exists independently of the presence of national laws and regulations protecting human rights and in doing so the businesses are expected to take adequate measures for prevention, mitigation and, where appropriate, remediation. The above statement reiterates the primary spirit of Pillar II, which stresses absence of law and regulation should not be taken as an excuse to violate human rights. While this is the globally recognised standard, numerous cases of human rights violations exist in India.
A. Right to Information vis-à-vis Businesses: Disclosures

2. The human rights defenders and civil society groups demanded that the citizens should have the right to information from companies in all matters that has interface with human rights. It is necessary so that any harm by corporates could be engaged with. As of now, the Right to Information Act is applicable only with respect to the government companies. There has also been a decisive structural weakening of the RTI mechanisms by the government and the increase in attacks on RTI activists and journalists using these mechanisms further leads to deterring its use. The private companies do not disclose a lot of information- owing to which the justice gets denied for human right victims. The civil society groups stressed upon the need for increasing transparency in business led processes and activities through effective disclosure practices, which is an important way of embedding and realising Human Rights in business operations. While SEBI’s move of non-financial reporting for top 500 companies is welcome, it should be extended to all companies including SMEs’. In addition, businesses should proactively put in public domain all policies and programmes that affect public interest and have an impact on people’s rights. They should also share how they identify and respond to human rights issues and risks in their operations and supply chains. Policies covering human rights across supply chains including suppliers and sub-contractors should contain human rights standards to be followed and the companies should share how these are being audited/enforced. This transparency will become a necessary precondition for specific standards of accountability that the NAP should include. While there should be a push for a code of ethics that corporates should hold themselves accountable to, the measures of accountability need to go beyond self-certification. The role of certification agencies needs to be looked at in this regard. They need to be independent from corporate influence. There should be no dilution of standards. State Institutions engaged in the process (SEBI, Ministry of Corporate Affairs, ROC) need to strengthen accountability standards and approaches demanded from businesses.

3. As of now, the companies have started reporting on a Business Responsibility Reporting template, as prescribed by SEBI based on the National Voluntary Guidelines. These are being reported by top 500 companies listed in the BSE and NSE. The reporting is mandatory while the guidelines are voluntary. Incidentally, the updated guidelines are called National Guidelines, although by nature these guidelines are going to be voluntary. The groups have stated that the NAP should actually list out actions and timelines for making informed legislation or executive orders to make some of these voluntary guidelines mandatory. The government needs to make the reporting compulsory for all companies.
B. Human Rights Due-Diligence and Social and Environment Impact Assessments

4. The crisis of environment is rapidly worsening in the country. In 2018, India has made a stark drop to the bottom of the Global Environment Performance Index in two years. The issues of poor air quality, destruction of biodiversity, rampant forest diversion, contamination of water and lack of access to water, poor sanitation and waste management, reluctant transition to renewable energy sources and ineffective and slow prosecution of environmental crimes, are all responsible for the state of environment today. Even as the situation continues to deteriorate, corporate accountability for environmental rights violations is at a low and largely missing from the discourse. Only 6 out of top 100 companies organise human rights due diligence in their operations. While the requirement and criteria for SIA and EIA are itself being diluted for certain projects and activities, even when done, the SIA and EIA are done without much of the rigour of ensuring mainstreaming of voices of people at margins. There is actually now ‘assessment industry’ which rather than being objective is often lured by future assignments. NAP should clearly specify guidelines for Human Rights due diligence and community consultations.

C. Supply Chain Transparency and Responsibility

5. No instrument would be meaningful if it restricts itself to only the ‘legal-workplace’ of the companies. As of now, owing to sub-contracting and the practice of hiring contractual workers, the companies have freed themselves from any legal responsibility vis-à-vis most of the workers. A number of companies claim ‘excuse’ that they have kept their workspace ‘clean’, but do not necessarily know about what is happening in the rest of the supply chain.

6. A company’s responsibility to respect human rights applies across its business activities and through its relationships with third parties connected with those activities—such as business partners, entities in its value chain, and other non-State actors and State agents. Respect for Human Rights requires the businesses to embed the responsibility to respect human rights into its culture, knowledge and practices. In this regard, a transparent and detailed mapping of the supply chain, full-chain traceability, identifying highest risk areas, prioritising where to focus on is needed to develop a policy/code of conduct for suppliers endorsed by top management, should be made mandatory. This should be supplemented by trainings of auditors and senior management in labour laws such as inter-state migrant workers act, minimum wages act, payment of wages act etc to ensure proper regulation and reduce risk to businesses.
D. Inclusive and Transparent Business

7. While being transparent, the businesses should also ensure decision making processes as well as actual implementation of the decision should be done in an inclusive manner. Inclusion should ensure participation and communication with relevant stakeholders, both internal and external, and especially with those whose rights may be affected/belonging to vulnerable groups. The engagement process should be inclusive, participatory, and transparent, in order to provide meaningful opportunities for their views to be taken into account in relation to planning and decision making for projects or other activities that may significantly impact local communities.

8. Companies should address issues of people affected by their operations and should be held responsible for human rights abuses that arise in their global operations. And in this scenario regulation and transparency of the lobbying process would also be crucial for ensuring protection of Human Rights. While, lobbying in India is unregulated, it is not illegal. Many interest groups actively lobby with the government for change in laws and policy decisions. In the past the cases like the 2G scam and Walmart’s disclosure of its lobbying expenses in India, have raised concerns about the unethical manner in which corporate are engaging with the government for influence policy decisions. Therefore, in order to reduce influence of business over States and agencies through unethical engagement practices, legislations would be needed for requiring politicians and civil servants to disclose all meetings with corporate actors, including informal meetings, and the issues discussed. Companies on their part should be required to adopt a code of conduct, which to act as a whistle blower for any unethical practices being adopted to again political favours. Transparency in the process would guard against creating barriers to access for ordinary citizens wanting to engage with their political representatives.

9. In conclusion, there is a need to look at Pillar 2, in a comprehensive way. ‘Respect’ of human rights means an uptake of responsibility by the businesses as a promoter and protector of human rights. This means creating centres of excellence and promoting them, going beyond their own area of operation and championing them in areas beyond ‘home’ e.g. there should be zero tolerance of sexual harassment by businesses, which will include areas beyond just the workplace. Businesses could also create standards relating to human rights and conform by these which go beyond those required through compliance measures.
SECTION 6:
FINDINGS IV

*What NAP should contain on Pillar III – access to remedy*

1. **Context:** The UNGPs require States to take appropriate steps to ensure access to effective remedy for those affected by business-related human rights abuse. This applies to both judicial and non-judicial grievance mechanisms. The mandate of Pillar 3 is supposed to be fulfilled by Courts, labour courts, NGT, NHRC and other National Commissions for SCs, for STs, for Children, for women; and the commissions at the state levels. In India, while we have an extensive judicial set up with judicial bodies at both local and central level, non-judicial mechanisms like the NHRC also co-exist to look into Human Rights Violations. Instances, however, of lack of redressal are many, often provoking concerns about Human Rights and its safeguard in India.

2. **During the Consultation in Bhubaneswar, participants pointed out at the ineffectiveness of non-judicial mechanism particularly NHRC and Odisha Human rights commission and NGT. In the 2013 POSCO case where forced land acquisition happened, people who were protesting against the same were lathi-charged and arrested. In NHRC hearing when the issue was raised, no action was taken against the violence. “Institutions meant for safeguarding community interest in light of Human Rights violations are for namesake and take on an average 3 to 5 months to just register the case formally”. NHRC rapporteurs in many instances never communicate with complainant and close the cases. NHRC and other safeguarding institutions are recommendatory bodies and therefore while prevention of violation is important, they can act only after the violation has happened. In case of Tata Mines, communities are asking for relocating the mining operations but the NGT, according to protestors, ‘is practically defunct’. NHRC also closes complaints where the perpetrators are non-state actors and also in corporate related human rights violations stating that it does not involve any ‘public servant’. Though the Edinburgh Declaration\(^{12}\) on the role national human rights institutions in addressing Business and Human Rights adoted that NHRIs with complaint handling mechanism could consider “*Handling complaints related to corporate human right abuse using their quasi-judicial powers*”

3. **There are several barriers to accessing justice that prevent victims of business–related human rights abuse from accessing justice and getting redressal. The NAP should recommend the State to start taking steps to remove legal, practical or other barriers such as administrative fees or language barriers that may prevent victims from presenting their cases.**

4. The barriers include the lack of knowledge and awareness about the existing remedial mechanisms as well as the procedure involved. The government needs to invest in raising awareness amongst the various stakeholders like workers about the availability of business-related complaints mechanisms (for example the Internal Complaints Committee) as well as the processes involved for recourse against violation. NALSA could play a role in raising awareness and building capacity more effectively. In addition creation of simple tools such as ready reckoners, infographics, audio visual resources, etc could be considered for this purpose. It should also include the interests of workers from the informal economy under its ambit.

5. While on one hand lack of awareness leads to obstruction in accessing remedy, on the other ineffectiveness of the existing mechanism makes the realization of remedy a distant reality. With the zonal benches of the NGT being rendered inoperational due to changes in policy governing appointment and failure on the part of the state to fill vacancies, the effective resolution of environmental disputes in the regions is gravely affected. Judicial mechanism in India have been a cause of frustration and disillusionment among the people, non-judicial bodies like the NHRIs, which are incharge of overseeing the active conformation to businesses and human rights in India, have been found to be lacking in discharge of their duty. The NHRCI has regularly come under criticisms for the political interference in its constitution and functioning.

6. In a large number of cases, the Government’s failure to effectively address adverse human rights impacts is due to faulty enforcement of existing laws. The government needs to evolve ways to work on strengthening existing State-based judicial and non-judicial remedy mechanisms. There should be a particular focus on non-judicial remedy mechanisms since they are faster and cheaper than legal processes. In addition, an effective, appropriate redressal forum could be put in place with collaboration between the Ministry of Corporate Affairs (MCA), Ministry of Labour (MOL), and Ministry of Home Affairs (MHA) and other relevant stakeholders. There should be room for convergence between the Ministry of Labour and Employment and the Ministry of Corporate Affairs especially to ensure transparency in data flow and quicker action.

<table>
<thead>
<tr>
<th>Experiences from the Ground: Violations in Bhubaneswar</th>
</tr>
</thead>
<tbody>
<tr>
<td>Talking about huge number of cases, participants in Bhubaneswar observed that past crimes like Kalinga Nagar massacre for Tata Steel, murder of Adivasi leaders in Kashipur for Aditya Birla Hindalco, etc. are yet to be resolved. Justice is yet to be delivered. Companies and state agencies enjoy absolute impunity despite crimes committed against Adivasi people. Companies are not penalised</td>
</tr>
</tbody>
</table>
for inciting violence against Adivasi communities. They suggested that central and state human rights commissions should create a section specifically for addressing human rights violations by corporations. Alternatively, like the National green tribunal, a separate legal body is required to address such cases.

SECTION 7:

CONCLUSION

1. An effective national action plan on business and human rights can be of immense advantage in the long term, through imbibing a strong culture of human rights that protect the rights of all, especially those at the margins, and reducing business related risks and rights violations. However the following will need to be an important consideration before we arrive at an effective NAP:

2. Firstly, the principles underlying the development process of the NAP need to be grounded so as to make them inclusive, transparent and credible. This can be done by ensuring that all stakeholders participate in the development process, and there are active measures to specifically involve vulnerable groups (such as migrant workers, people with disabilities, indigenous communities, those from conflict affected areas), and ensure their meaningful participation, that is not hampered by power play. The summaries of these engagements should be publicly available for assessment of incorporation of inputs into the drafts and final plan.

3. In terms of the substance, a NAP that results in real change and protects the human rights of all members of society, particularly groups experiencing vulnerability is key. In this regard the impacts of businesses, both directly, as well as via supply chains, on worker’s issues, especially those regarding wages, and the ability to collectivise and form unions to help change working situation that is beneficial to workers as well as promoting their voice in decision making, become key issues requiring being addressed in the Plan. The State-Corporate nexus that often results in exacerbating human rights violations is another critical aspect that needs specific responsive measures to be defined within the Plan. Addressing tax evasions by Corporates and leveraging its role as a consumer and through procurement of goods and services, the State can and must address human rights issues of risk and concern.

4. Secondly, the first pillar of the Principles framework is the states’ duty to protect against human rights abuses by third parties, including business. The government in this case needs to bring in stronger legal frameworks that incorporate human rights standards in domestic law, support independence of judiciary, and the creation and strengthening of national institutions for the
promotion and protection of human rights. Strengthening legal frameworks will ensure that cases like Nestle, where it used the loose provisions in the law to downplay its own irresponsible behaviour, don’t occur. Specific measures could include a separate section in the National and State human Rights Commissions that deal with Corporate violations, or even the creation of a separate legal body like the National Green Tribunal. These would help in greater oversight as well as quicker addressing of issues. Where there is State involvement in development or investment projects (as in the case of PSU’s), it should also commit the public sector to fully integrating human rights considerations into all facets of its business operations and relationships.

5. Thirdly, for citizens to be well informed about Corporate activities and their implications with regard to their rights as workers or consumers, and have the ability to raise their voices against potential or experienced violations, or express views and influence public policies, a vibrant civil society sector and an independent media are essential pre-requisites. Unfortunately, that space is shrinking in India. With a plethora of restrictive laws being passed in the recent time, licences being cancelled, the ability of civil society organizations to operate freely or receive foreign funding is severely hampered. Criticism of the government in the media has attracted penalties, including that of imprisonment. These civic spaces need to develop free of government constraint on the fundamental freedoms of association, assembly and expression.

6. Fourthly, the UN Guiding Principles on Business and Human Rights (UNGPs) call upon businesses to make a public commitment to respect human rights, carry out human rights due diligence, and provide a remedy when things go wrong. The first step here could be that of promoting transparency in all aspects—starting with a disclosure on contributions to political parties. This will also obviate the apparent State Business Nexus which can result in gross violations, as in the case of anti-Sterlite protests in Thoothukudi earlier this year. Details of spending under the CSR funds could also be made available publicly. The State’s role here could be to support the creation of a monitoring agency which looks at how businesses implement UNGP principles in their operations, which will do away with certification agency under corporate control. To promote transparency, RTI could be made applicable for all information relating to business operations.

7. Fifthly, to provide remedy for violations, the government besides strengthening quasi judicial mechanisms, needs to invest in the capacity building of diverse stakeholders to build their understanding on the issues, provide free legal aid to victims of violations and support mechanisms for speedy redressal.
Overall, in the current context of extreme privatisation of social and economic development, UNGP Pillars 1, 2 and 3 cannot be compartmentalised as State, Business and Judicial or quasi-judicial institutions. Their roles need to be looked very comprehensively, especially the need for protection of human rights need to be ‘imposed and mandated’ upon businesses through state legislations.