BUSINESS AND HUMAN RIGHTS

Learnings from Asia

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Preface

The Working Paper Series of the Asian Forum for Human Rights and Development (FORUM-ASIA) aims to foster research, knowledge and advocacy for human rights and development in Asia and beyond. It seeks, in particular, to bring together theory and practice to build a new praxis for change, through knowledge-networking, advocacy and solidarity actions. Human rights in the context of business is one of the five thematic priorities of FORUM-ASIA, and this knowledge initiative wishes to provide knowledge and evidences for our advocacy efforts at the national, regional and global level.

Large majority of Asian countries have witnessed unprecedented economic growth propelled by neo-liberal free market approaches. This has helped in raising the income levels of professionals and the educated middle-class while the most vulnerable and lower middle class involved in agriculture or the informal sector have not been able to reap the same benefits. In addition to the increasing socio-economic inequality, vulnerable and marginalised groups are also exposed to blatant human rights violations linked to the activities of business corporations. The lack of respect for socio, economic and cultural rights (ESCRs) by these companies poses a critical challenge in Asia, where civil and political rights are already under constant attack in a large number of countries. Through this working paper, FORUM-ASIA intends to play a strategic role in bridging the gap between human rights and development discourses, by voicing the concerns and showcasing the advocacy actions deployed by individuals, communities and organisations addressing violations perpetrated in the context of business operations.

Opposing these operations often have led to being exposed to forced evictions, exploitation of natural resources, as well as threats and harassment. In this grim scenario, corporations are in the position to impact negatively both ESCRs and civil political rights as much as the state actors do, and often with the same level of impunity. Holding business corporations accountable is both challenging and necessary. On the one hand, most Asian states have poor regulatory frameworks, and even when mechanisms are available, governments lack the will to implement them due to the influential corporations dissuading them. On the other, individuals and communities advocating for their rights and seeking corporate accountability often operate in isolation, struggling to receive the needed support to pressure authorities and business corporations. At the same time, some progress has been made to address this burning issue while the international community is trying to put in place mechanisms to prevent, address and remedy human rights abuses committed by business corporations.

Being both a knowledge and advocacy tool, this working paper reinforces the international community's efforts by providing a historical perspective of the business and human rights discourse, proposing policy priorities in the Asian context, and highlighting advocacy experiences and challenges from different regions in Asia. From Mongolia to India, passing through the ASEAN Region and South Korea, the working paper highlights the importance of combining advocacy, and legal and solidarity actions. But more importantly, it reminds us that there can be no development if everyone's rights and fundamental freedoms are not fully recognised, protected and realised.

John Samuel
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Towards Corporate Accountability for Human Rights and Environmental Sustainability

John Samuel*

Abstract

Ensuring corporate transparency and accountability in business is a must. The result would be ethical practices within any business which then looks at itself as a public institution that involves with respect the local people and environment. Then there would be least possiblity of human rights and environmental violations. This article is a forerunner to other corporate cases thoughout Asia narrating how people's movements and civil society organisations have come to the rescue of the affected people to resist disrespectful corporates.

Context

The night of 2 December 1984 witnessed an unspeakable tragedy unfold in the City of Lakes in India. At around midnight in Bhopal, a toxic gas spread death and destruction. This emission spewed out from the Union Carbide India plant – a corporate In the business of producing pesticides. This toxic gas was the life-threatening Methyl Isocyanate (MIC). Over half a million people were affected. The immediate loss of life was 3,787 deaths. A Government affidavit in the court reported that the leak caused 555,125 injuries, including 3,900 people permanently injured. Various reports revealed around 20,000 people dying over the next few years caused by the injuries sustained due to the poisonous gas leakage. The Bhopal Gas Disaster still stands out sorely as an example of one of the biggest disasterous and woeful tragedies caused by the rather menacing lack of corporate accountability and corporate responsibility. It has taken 25 years of legal battle to get some semblance of justice and compensation from the company.[1]

The Bhopal Gas Disaster, the deadliest industrial disaster in human history, indicated the immense need of corporate accountability and corporate social responsibility.[2] It also reminded and alerted us as to how in many countries big multinational companies can violate human rights and operate with the least of any regulatory and accountability framework.

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In the last 30 years, there is an increasing recognition within the private sector and corporate companies as well as within civil society about the need for improved corporate responsibility and corporate accountability. With the emergence of the United Nations Global Compact (UN Global Compact) on 26 July 2000, business and human rights achieved a larger global consensus wherein corporate companies, civil society and governments came together to seek ways and means to ensure human rights, better international labour standards, environmental responsibility and a commitment to address corruption in all forms. The United Nations Guiding Principles on Business and Human Rights (UNGPs) adopted in June 2011 by the UN Human Rights Council (UNHRC) provide for a comprehensive set of operational principles and guidelines to protect human rights in accordance with international standards. The issue with both the UN Global Compact and UNGPs is that each taken independently is intended to be principles that companies are voluntarily expected to adopt.

Why Corporate Accountability?

Business enterprises and companies have an important role in society and in the process of governance and in relation to the state. Private sector and companies play a very important role in economic growth, creating jobs, providing goods and services, innovate and initiate new technology and contribute tax to the state revenue. It is often companies that have innovated technologies, invented medicines and promoted research that have improved the lives of people and have been able to translate these into real benefits. But there are also too many instances where corporations exploited the labour, destroyed the environment, displaced the people, polluted the environment and violated human rights. For example, in Bodo Creek in Ogoniland in Nigeria, oil spills in 2008 destroyed the land and livelihood of thousands of families.[3] It took six years of legal battle and advocacy for Shell Petroleum Development Company to clean up the mess and pay compensation to those who were affected by the oil spills. There are such stories of displacement, and destruction of environment by extractive industries and other major corporate companies in almost all countries in Africa and Asia.

Among the 100 largest economies in the world, 69 are companies and only 31 are countries.[4] In many cases, transnational corporations (TNCs) and rich business tycoons have more resources than most coutries' budgets. More than ever today, large TNCs and multi-national corporations (MNCs) are in a position to gain unprecedented power and influence across the world. In the last thirty years, the paradigm shifts in technology, mode of production, the mode of consumption and the way human beings live have seen change in a dramatic manner. With the advent of social media, smart phones, virtual markets, and shared economy,

more than ever our lives and work are influenced in multiple ways by big companies. Indeed, their control over technologies influence our everyday lives and choices. There is also an unprecedented level of inequality in the world. According to a report published by Oxfam in 2018, 82 per cent of the money generated in 2017 went to the richest 1 per cent of the global population.[5] At the same time, a report from Credit Suisse highlighted how those who constitute 70 per cent of the world population today account for just 2.7 per cent of the global wealth.[6]

In many ways, the rich multinational corporations wield more influence in shaping public policy, governance and the politics of many countries. In the age of the neo-liberal economic policy paradigm, transnational and multi-national companies work across the globe with hardly any restrictions. There are many evidence of an increasing nexus between economic and political elites in shaping policy and political choices in many countries. In most of the countries of the world, mainstream media is taken over by big corporations and serves the interest of the rich companies and market. We live in an age where all our communications, consumptions, social interactions and market interfaces are increasingly influenced by the social media, and new technology controlled by few big companies such as Facebook, Microsoft, Google or Apple.

At the same time, extractive industries, including that of oil, natural gas and minerals not only pose great challenges for the environment but also displace most of the indigenous people and poor people from their habitat and livelihoods. There are also increasing cases of environmental pollution, carbon emission and also corruption. In many countries, crony capitalism is advancing, and elections are increasingly funded by the rich and powerful corporate interests, expecting 'return on investment' through tax rebates and a less regulatory policy environment for them to operate in.

Though there is an increasing awareness about Corporate Social Responsibility (CSR), there is less enthusiasm for corporate accountability. While CSR[7] focuses on voluntary initiatives by companies to develop a multi-stakeholder perspective of serving the interest of investors, workers, community and the planet, corporate accountability is about the public accountability of the corporations for their action in a transparent and accountable way based on a statutory and regulatory framework. Corporate accountability is cardinal as the companies will have to be accountable to the laws of the land and also work in a certain regulatory environment where they need to be transparent, honest and accountable to the people who are workers, consumers and investors. The corporate accountability perspective emphasises on the formal duties, obligations and liabilities as 'duty bearers' within the human rights framework. All private companies work in the public sphere where they too are

dependent on consumers and the people for their business. Hence, this requires an approach towards the three 'Ps – People, Plant and Profits'. This entails a commitment to the dignity and rights of people and also a mission to sustain the planet and protect the environment for the future. Though companies may be privately owned, they work in the public domain. For this, companies need to be accountable to ensure that they do not damage and violate the environment and infringe the human rights of the people and communities where they operate.

States have a major obligation to respect and protect human rights. But with companies being investors, states look up to them as the main source of jobs, and often states do fail in their responsibility to demand accountability from companies when it comes to issues of human rights and protection of the environment. This is invariably due to either one or some of the following: less regulation; crony capitalism; and the nexus between economic, political and media elites. This situation makes it all the more important to develop a broader consensus and legal framework to ensure corporate accountability safeguards human rights and sustainable environment.

Evolution of Perspectives on Business and Human Rights

On 16 June 2011, the UNHRC unanimously endorsed the UNGPs, making it the premier corporate human rights responsibility initiative endorsed by the UN. It is an instrument consisting of 31 principles aiming to put into action the 'Protect, Respect and Remedy' framework to prevent human rights violations and adverse impact by the business enterprises and transnational business entities working across many countries.

These guiding principles do not have the force of an international law. As John Ruggie pointed out, 'The Guiding Principles normative contribution lies not in the creation of new international law obligations but in elaborating the implications of existing standards and practices for States and business; integrating them within a single, logically coherent and comprehensive template; and identifying where the current regime falls short and how it should be improved.'[8]

Historical narratives on business and human rights

Of importace is the endorsement of the UNGPs preceding a series of efforts and campaigns within civil society, the public sphere and political arena against the exploitative and inhuman practices in the context of the oppressive colonial rule, and the massive exploitation of natural resources, labour and destruction of environment. The discourse on the dignity, rights of people, urge for liberty, equality and fraternity that emerged in the context of the American and French Revolutions was in many ways influenced by the perspectives on human rights in the context of the new political economy of industrialisation and colonial trade in the 19th century.

With the advent of the first Industrial Revolution in the 18th Century, there arose critics of the exploitative labour practices including child labour, lack of living wages and the difficult conditions in which people lived in the midst of new forms of urban poverty. Many of the main industries in Europe thrived on the colonial practice of extracting goods, cheap labour and establishing monopoly capitalism. The loathsome practice of slave trade with its entrenched racist, inhuman and exploitative character provided the labour force for America, Europe and other colonies of the European countries. The first global civil society campaign was the campaign against slavery. The Anti-Slavery Society (ASS), formed in London, United Kingdom in 1823, led the campaign against slavery in the British Empire. This made significant gain in 1838 when slavery was abolished under the terms of the Slavery Abolition Act of 1833 in Britain. Anti-Slavery International, the first international human rights organisation in the world, founded in 1839, continued to fight against modern forms of slavery and bonded labour. The Anti-Slavery Convention in London on 12 June 1840, attended by delegates from different parts of the world was in a way the first international conference for human rights. From 1840 onwards, there were several efforts against the exploitation of workers. This resulted in a series of meetings in Europe arriving at multiple narratives against the exploitative practices by the companies that emerged during the first Industrial Revolution. The Communist Manifesto of 1848, in many ways was an effort to assert the rights of the working class. The work of Marx, Engels and many others also provided a larger analytical critic of the forces of production and exploitation of labour under the capitalist system. The struggles against colonialism and the East India Company formed the basis of discourse on the issue of the inhuman and exploitative practices of colonial business and political economy.

It is in the context of the unionisation of workers and the workers' movement that led to the establishment of the International Labour Organisation (ILO) in 1919 in Geneva, Switzerland at the end of the First World War. The Charter of the ILO and its various conventions, and later the Universal Declaration of Human Rights (UDHR) in 1948, formed the basis of the international discourse on business and human rights within the context of workers' rights, freedom of association, freedom of assembly and freedom of expression.

It is against the backdrop of the post-Second Word War era and decolonisation that several new countries began to express concerns about the international trade controlled by the companies in Europe and America. The first UN Conference on Trade and Development (UNCTAD) was held in Geneva in 1964. However, all these initiatives fell short of ensuring corporate social responsibility and corporate accountability.

Various efforts within the civil society initiatives began to focus on socially responsible investment, trade and

business. The Sullivan Principles.[9] and the MacBride Principles[10] addressed the conduct of various companies in apartheid South Africa and Northern Ireland, respectively. The Organisation for Economic Co-operation and Development Guidelines for Multinational Enterprises (MNEs) in 1976 sought to address issues related to employment, environment, science and technology and consumer protection.

Based on the recommendations of the UN Economic and Social Council (ECOSOC), in 1974 the UN established an intergovernmental Commission on TNCs with the intention of developing a code of conduct for TNCs. Despite almost working for two decades, the Commission failed to develop a code of conduct for the TNCs due to the immense disagreement with countries in the global south and north. The Commission was dissolved in 1994. However, in the 1990s, with the advent of the neo-liberal policy regime, free-market liberalisation, privatisation and globalisation resulted in the spread of TNCs across the world. In the absence of any regulatory framework, in many of the developing and less developed countries there have been many instances of plundering of natural resources and destroying the environment, as well as displacing indigenous and poor people. The global campaign for transparency, responsibility and accountability of TNCs was a result of the various campaigns across many countries against unfair mining. The various campaigns against child labour, sweat shops, and for worker's rights led to global initiatives seeking corporate social responsibility and corporate accountability. The global trade justice campaign and the campaign for the rights of indigenous people also raised the call for a regulatory framework to ensure corporate transparency and accountability. The poor working conditions of the global supply chains got exposed fast with the advent of the internet and communication revolution.

In this context, the UN Sub-Commission on the Promotion and Protection of Human Rights established a working group[11] on TNCs in 1998 that completed a final draft in 2003 on the 'Norms on the Responsibilities of Transnational Corporations and other Business Enterprises with regard to Human Rights'. While Civil Society Organisations (CSOs) endorsed the norms, the large businesses and governments supporting their TNCs opposed the norms.

United Nations Global Compact

Parallel to these initiatives, the UN established the Global Compact on 26 July 2000.[12] The UN Global Compact is a 10 princples-based initiative to encourage the business enterprises to adopt sustainable and socially responsible policies. It adheres to the fundamental responsibilities within the ten principles comprising human rights, labour, environment and anti-corruption (Box 1). It provided a multi-stakeholder platform where companies, trade unions, civil society advocacy groups, governments and UN agencies could come together to

develop a broader consensus. There are 13,000 corporate companies from 170 countries participating in the initiatives of the UN Global Compact.

The ten principles of the UN Global Compact announced on 24 June 2004 for the first time gave a broader framework for CSR.

Goals (SDGs) and the Agenda 2030 to the community of business leaders. Though there are UN Global Compact Networks in many countries, they are more of a communication and advocacy network to encourage companies to follow the principles. Critics of the UN Global Compact point out that without any monitoring and enforcement provision, it is a platform

Box 1		
Human Rights	Businesses should	• *Principle 1*: Support and respect the protection of internationally proclaimed human rights; • *Principle 2*: Make sure that they are not complicit in human rights abuses.
Labour Standards		• *Principle 3*: Uphold freedom of association and the effective recognition of the right to collective bargaining; • *Principle 4*: Uphold elimination of all forms of forced and compulsory labour; • *Principle 5*: Uphold effective abolition of child labour; • *Principle 6*: Uphold elimination of discrimination in employment and occupation.
Environment		• *Principle 7*: Support a precautionary approach to environmental challenges; • *Principle 8*: Undertake initiatives to promote environmental responsibility; and • *Principle 9*: Encourage the development and diffusion of environmentally friendly technologies.
Anti-Corruption		• *Principle 10*: Work against corruption in all its forms, including extortion and bribery.

The major criticism against the UN Global Compact is that it does not lead to corporate accountability as it is more of a discussion forum and communication network rather than a regulatory instrument. It is more of a multi-stakeholder advocacy platform that promotes Sustainable Development

many TNCs use as a public relations exercise to give a semblance that they are 'responsible companies'. There is criticism that the UN Global Compact is a vehicle for business leaders to get advocacy access to the UN to indulge in 'blue washing' their own image without necessarily changing

the behaviour of the companies on the ground. However, despite all the criticism, the UN Global Compact for the first time provided a framework for the companies to adopt a socially and environmentally responsible practice.[13]

Extractive Industries Transparency Initiative

The Extractive Industries Transparency Initiative (EITI) was established on 17 June 2003, providing a global standard for responsible management of companies involved in the extraction of oil, gas and mineral resources. This initiative was launched at the World Summit on Sustainable Development in Johannesburg, South Africa in 2002. This initiative is an outcome of the civil society campaign for many years seeking transparency and accountability of the companies involved in the extraction of natural resources. The first conference of EITI was held in London in 2003, where representatives from governments, companies and civil society proposed 12 principles to increase transparency over payment and revenues in the extractive sector. The second conference held in 2005 further developed six criteria based on the principle of ensuring the basic requirement for transparency in the management of extractive industries. So far the EITI standard is endorsed in 52 countries. Each of these countries is expected to publish an annual report of EITI disclosing the details of contracts, licences, productions, revenue collections, revenue allocations and social and economic spendings. Every country is also required to undergo a quality assurance validation at least once every three years. This multi-stakeholder intergovernmental initiative, with its Secretariat in Oslo, Norway is an important milestone in ensuring more responsible behaviour from the corporations involved in extracting oil, gas and natural resources.[14]

UN Guiding Principles on and Business and Human Rights

The UNGPs are the outcome of more than five years of efforts which began in 2005, when the then UN Secretary General Kofi Annan invited a group of the largest institutional investors in the world to join an initiative to develop the Principles of Responsible Investment (PRI). The PRI are based on the consensus that economic and social governance issues such as climate change and human rights can affect investment portfolios. The PRI were launched in April 2006 in the New York Stock Exchange.

Kofi Annan appointed Prof. John Ruggie as a Special Representative of the UN Secretary General (SRSG) with a mandate to identify and clarify standards of corporate responsibility and accountability for TNCs and other business enterprises with regard to human rights. The core task was to develop a framework that would help reduce corporate related human rights harms to the maximum extent possible in the shortest period of time. Based on extensive consultations and research, at the end of the three year mandate, Prof John Ruggie in 2008 presented the 'Protect, Respect, and Remedy: a business and human rights framework' to the UNHRC. The UNHRC welcomed the SRSG report and further extended the mandate for three more years to provide operational aspects of the framework. In the course of three

years, a series of regional consultations all over the world helped to get inputs from every stakeholder including TNCs, civil society and governments. The final UNGPs presented to the UNHRC were unanimously endorsed by the Resolution 17/4 on 16 June 2011.[15]

The three core pillars of the Protect, Respect and Remedy framework are:

a. State duty to protect against human rights abuses by third parties including business, through appropriate policies, regulations and adjudication;

b. Corporate responsibility to respect human rights to act with due diligence to avoid infringing on the rights of others and to address the adverse impacts that occur;

c. Greater access by victims to effective remedy, both judicial and non-judicial.

The UNGPs consist of 31 principles directed at states and companies providing guidance on their duties and responsibilities to protect and respect human rights, and ensure effective remedy for those affected by the activities of business enterprises.[16]

The UNGPs are historically important as for the first time there is an official global reference and standard on human rights and business with a clear focus. Following the endorsement of the UNGPs, the UNHRC established the Working Group on the issue of human rights and TNCs and other business enterprises (Working Group) to disseminate and implement the same. The Office of the United Nations High Commissioner for Human Rights (OHCHR), appointed for a period of three years is responsible for providing support to the Working Group consisting of five independent experts with balanced regional representation, and appointed for a period of three years.

The UNGPs received wide support from civil society as well as companies. Several companies, publicly accepted the UNGPs and agreed to abide by the principles.[17] The UNGPs in themselves are not international law and also not enforceable, but they have become a very important reference point in relation to the non-state actors. Many of the campaigners of corporate accountability recognise the importance of UNGPs as a first step. However, there is demand for more legally binding instruments to ensure human rights in the context of business activities, particularly due to the fact that many countries have got a very weak regulatory framework for TNCs and big business enterprises in their own countries.

Challenges for Corporate Accountably in the Asian Context

Most of the countries in Asia region witnessed unprecedented economic growth in the last 25 years. While this has created a very large number of billionaires in Asia, there is an unprecedented level of inequalities in most of the countries in the region. The region is home for half of the poor people in the world. It is estimated that 1.2 billion people in the Asia-Pacific Region are living on less than US$3.10 per day of which one-third lives with less than $2 a day.[18] The paradox of growth in Asia is that despite economic growth and significant reduction of poverty, gains of growth often have

made rich companies richer. Growing inequalities in Asia have implications for human rights and development and human rights and business.

Another major challenge is the prevalence of crony capitalism in many countries of Asia. The deep nexus between the ruling elites and the rich companies give much impunity to many of the big companies that finance political elites or political parties. Many of the companies are owned by the political elites or their family or the rich business tycoons financing elections and political parties. For example, in India a large number of mining companies owned by politicians or their friends have destroyed the environment and displaced tribal people.[19] Poor implementation of regulations and the active support of law enforcing agencies have resulted in these companies often operating with impunity. There are similar examples in Burma/ Myanmar[20] and the Philippines[21], among many others.

A recent report on Business and Human Rights in Southeast Asia[22] analysed 280 cases of alleged human rights violation over the last ten years. The findings of the report indicated that around 70 per cent of the cases of alleged abuses by the companies were supported by the governments where direct forms of repression such as eviction by the government itself existed. There were many cases of violent suppression of workers' protests. The report also identified many TNCs involved in destruction of environment and violation of human rights. It is reported that the highest cases of alleged abuses occurred in Burma/Myanmar, followed by the Philippines, Cambodia, Indonesia and Malaysia. Over half the violations happened in the extractive sector. There were many cases of eviction and displacement of indigenous people from their land and livelihoods.

In most of the countries in the Asia region, there is an increasing deficit of democracy and shrinking of democratic and civic spaces. As a result, there is an increasing failure of states to respect and protect human rights. There is also an increasing tendency to target civil society and campaign organisations demanding corporate accountability. Indeed there there are growing evidences of various governments targeting civil society and campaign organisations exposing the destruction of environment and violation of human rights. For instance, the Government of India targeted Greenpeace and several other environmental and human rights organisations banning them from raising resources from outside India.[23] The emergence of neo-conservative illiberal politics and the targeting of human rights defenders and human rights organisations in many countries pose great challenges for civil society organisations to seek corporate accountability.

Initiatives for Corporate Responsibility and Accountability in Asia

Ever since the endorsement of the UNGPs, there is an increasing impetuous to promote corporate social responsibility and accountability in Asia. While most of the efforts such as the ASEAN CSR Network (ACN) platform are a result of civil society, trade union and business initiatives, the ASEAN Intergovernmental

Commission on Human Rights (AICHR) formed in 2009, actively promoted the initiatives for business and human rights in the region. These initiatives of AICHR were informed by the Baseline Study on the Nexus between CSR and Human Rights, published in 2014.[24] The Baseline Study was one of the first efforts in the region to understand the context of ASEAN countries in relation to business and human rights. It is due to the constant advocacy by civil society groups and human rights organisations in the region that AICHR began to take an active role in the area of business and human rights. For instance, FORUM-ASIA published a study on 'Corporate Accountability in ASEAN: A Human Rights Based Approach' in 2013.[25] This study is a result of the series of consultations convened by FORUM-ASIA in 2012–13. The report, based on case studies and clear analysis of economy and business in the region, made a series of recommendations to the governments, ASEAN, AICHR, National Human Rights Institutions and businesses.[26]

AICHR, in partnership with the UN Working Group, UN Development Program (UNDP), Human Rights Resource Centre for ASEAN, ASEAN CSR Network (ACN) and others promoted the UNGPs.[27] The 24th ASEAN Labour Ministers Meeting in Vientiane, Lao People's Democratic Republic in May 2016 adopted the ASEAN Guidelines for CSR on Labour. These guidelines are meant for the governments' business enterprises, workers unions and CSOs to encourage CSR, human rights and decent work practices in the context of business. The ASEAN Regional Strategy on CSR and Human Rights was an outcome of a seminar convened by the AICHR in Singapore in November 2016.

Way Forward

While there is a relatively active initiative to promote CSR and corporate accountability in the context of the business and human rights in the ASEAN countries, there is an absence of such regional initiatives in South Asia – and other parts of Asia. Within the Asian context, large economies such as China, India, Japan and South Korea have now large TNCs operating in most of the countries in the region. For instance, the Korean transnational mining company POSCO was forced to withdraw from its investment in India due to strong protests against displacement and environmental implications. (ref. pp.50-57) Many of these large companies are either owned by the state themselves, as in the case of China, or by those companies who are championed by the governments of the host countries. This poses a great challenge for advocacy as, for example, there is less space for it in China and any advocacy in India to demand accountability from Indian companies is dubbed as 'anti-national'. Hence, there has to be much stronger initiatives to ensure that TNCs within Asia adopt responsible policies to protect environment and human rights wherever they operate. It is indeed a step forward that UNGPs provided global standard guidelines and indeed, regional intergovernmental organisations such as ASEAN are playing a role to adopt the UNGPs and come out with regional specific initiatives. Various case studies clearly indicate that despite such efforts, most of the companies give more of 'lip-service' and fail to adopt these principles in their real operations on the ground. Many of the CSR activities of the companies are

often used as public relations exercise or towards building corollary non-profit foundations controlled by the companies.

Hence, it is important to move forward from the voluntary initiatives of CSR to more human rights based approach to corporate accountability. As indicated earlier in my paper on CSR, the rights based approach 'stresses the fact that consumers, employees, affected communities and shareholders have a right to know about corporations and their business. Corporations are private initiatives, true, but increasingly they are becoming public institutions whose survival depends on the consumers who buy their products and shareholders who invest in their stocks. This particular perspective stresses accountability, transparency and social and environmental investment as the key aspects of corporate social responsibility.'[28]

The perspective of FORUM-ASIA on Corporate accountability is that 'Voluntary CSR initiatives promoted by business itself – and by ASEAN state institutions, are insufficient and a move towards principles of corporate accountability is urgently needed. Corporate accountability emphasises the need for legally binding and enforceable requirements upon business with regard to the protection of human rights as detailed in the core international instruments and meaningful redress where human rights violations are found to exist. In this regard, the States have an obligation to ensure a proper legal framework in line with international human rights law to regulate business and to enforce these legislations effectively'.[29]

Indeed, it is important to recognise that many companies and business enterprises have adopted robust policies and principles to ensure better corporate transparency and accountability. While an enabling environment for business enterprises is essential for economic growth and creation of jobs, it is vital to ensure environmental sustainability and the rights of workers, consumers and the community in which the companies operate. There are indeed evidences that increasing inequality, violations of human rights and marginalisation of poor and marginalised often increases violence and political instability. Any good business requires enabling social and economic stability to become a viable business enterprise. It is in the interest of companies to have a regulatory framework to ensure human rights and sustainable environment, while contributing towards a more equal and just society. It requires a multi-stakeholder advocacy approach to move beyond the voluntary corporate social responsibility framework to a human rights based corporate accountability approach.

Endnotes

1. Soutik Biswas, "Bhopal trial: Eight convicted over India gas disaster", BBC, 7 June 2010, http://news.bbc.co.uk/2/hi/south_asia/8725140.stm.
2. There are many books and documentaries on the Bhopal gas disaster. Among them, Dominique Lapierre, Javier Moro, Five Past Midnight in Bhopal (New York: Scribner, 2001), provides a detailed account of the tragedy.

3. A detailed report of this is published by Amnesty International, Negligence in the Niger Delta (London: Amnesty International, 2018). Centre for Environment, Human Rights and Development worked with communities to sue the Shell Company to clean up the mess from two oil spills in 2008. The Bodo community directly affected by the oil spill, won a legal case, and in December 2014 Shell was forced to pay GBP55 million in compensation after a prolonged legal action in the United Kingdom.

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Seeking Corporate Accountability: Learnings from Mongolia

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Abstract

Based on its mining resources, the Mongolian Government visualised a positive shift from a centrally planned economy to a free market economy. This paper takes us through the experiences of the country in opening up its market to the outside world for foreign investment that comes in many a time on hidden exploitative terms. In particular, the paper provides an overview of the challenges faced by the Mongolian people, together with recommendations to the Government and the international community.

General Overview of Mongolia Mining Sector

The mining sector in Mongolia has been witnessing an escalation since the 1990s, with it having had the unique potential to attract foreign investment. The Parliament of Mongolia approved the Foreign Investment Law, 1993, and the Minerals Law, 1997 that was further amended in 2006. The Government introduced the "Gold" and "Gold 2000" programmes for 1992–2016[1] that would increase the domestic consumer price of the goods without impacting the domestic producer price. This would in turn help raise the country's economy that was severely affected by the transition to market economy.

The two laws have been very liberal with tax havens of 100 per cent income tax exemption for the initial three years and 50 per cent for the following three years. If more than 50 per cent of the investor's products is exported then there is 100 per cent exemption for the initial five years and 50 per cent exemption for the following five years. As for the sustainability agreement, it was inclusive of these conditions for the foreign investors. Unfortunately, the regulations for mining, exploration, land reclamation and environmental

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impact assessment were very weak and implementation was poor.

In 2006, exploration and mining licences issued by the Minerals Authority reached 11000. What ensued were huge environmental and social problems with continuous impact on the livelihoods of local communities and herders, whose nomadic style of livestock breeding is fully dependent on pasture for grazing and water for drinking and livestock watering systems. In mining affected areas, a number of herders had to leave for cities and this further added on to the urban poor expansion within the informal sector.

It is the responsibility of the mining company, even before the execution of the project, to finalise the plan for restoring the land after it is mined. In this case, there has been a sizeable 42556ha of land in 699 sites – 60 per cent used by mining companies and 40 per cent by small scale artisanal miners[2] – that were left without reclamation after mining according to the state inspection conducted in 2012. Restoration of one hectare of this land would require on an average 25 mln. MNT ultimately utllising 80–100 bln. MNT from the state budget.[3]

The Minerals Law has been reviewed twice by the Parliament in 2006 and 2015, with significant amendments made including a new regulation on investment agreement with sustainable tax conditions, extending terms of land use and renewal of land use agreement, among others. Several environmental laws have also been revised and ratified by the Parliament in 2012. Even though the provisions on transparency, participation for public and redress for environmental damage and loss of livelihoods have been improved, there is a need for further improvement, especially on access to redressal of property lost by herders, access to legal assistance, and accountability on violation of laws on environmental protection. The number of licences has decreased three times. As of August 2017, 3447 licences are being held by national, foreign companies and by joint ventures for exploration and mining activities. Out of 3447 licences, 1599 are mining licences and 1849 are exploration licences. Area under the mining and exploration licences equals around eight per cent of the country's total territory.

Key mineral products of Mongolia are gold, acidspar, metspar, coked coal and concentrates of copper, molybdenum, zinc, tungsten, and tin. Currently, the mining sector accounts for approximately 20 per cent of GDP and 71 per cent (worth 7 trillion MNT[4]) of the Gross Industrial Output in 2016.[5] Businesses licensed for mineral extraction paid 638.7 billion MNT in tax to national and local governments in 2016.

Mining and the Rights of Herders

The rights of herders to live in safe and healthy working conditions, to self-determination, to continue their traditional nomadic living and to choose the local development path have been severely violated. There is a lack of proper

provisions for the following: protection of the rights of the local communities to access to information; participation in decision making on licences being issued; access to justice to redress the violation of those rights and damages faced by mining. All these factors have resulted in the weakening of the Minerals Law and the Environmental Impact Assessment Law. Mining has devastating social impacts exacerbating poor public service further because of the huge influx of formal and informal miners. Moral codes of local citizens have been destroyed by alcoholism, violence, crime and corruption at all levels.

Many are the violations, such as pollution of water sources, and pasture land, while unreclaimed deep-holed mining sites with stagnant underground water have all been dangerous for livestock and even for people as they fall in and get injured or even lose life. These have occurred at mining sites with communities not even aware of how to deal with this problem. There were no lawyers with expertise in mining and environmental issues to protect the rights of the herders.

Centre for Human Rights and Development (CHRD) – a non-governmental organisation (NGO) – learnt about public interest litigation and introduced it for mining cases in 2004 with support from the Open Society Forum, Mongolia and Global Rights and others. The very first action was learning from the experiences of other countries such as India, Bangladesh, and the Philippines on public interest and strategic litigation by translating some resource materials on the best cases, producing a training manual for lawyers, and organising training for them. In 2004–2006 CHRD conducted fact-finding missions on human rights violations caused by mining involving herder communities, small-scale artisanal miners, local authorities and mining companies and produced the 'Discussion Paper on Mining and Human Rights'.[6] The discussion paper highlighted how mining companies and the local and central governments violated both the rights of herders and small scale miners, in particular the rights to live in a safe environment, earn for livelihood, get access to public services and justice, among others. As for the small-scale miners, since their mining was illegal and they were contributing to the destruction of land and water sources, they faced even more severe atrocities and were treated severely by local authorities, mining companies, local police and local herders who were hostile to them. This discussion paper, presented widely on national policy forums and consultations, was used as advocacy paper for the 2006 review of the Minerals Law.

It was in 2005 that CHRD started public interest strategic litigations. To date, CHRD has worked on 22 cases in total, of which 11 cases are on since 2010. All 22 cases may be divided into three groups relating to the:

- Process of issuing minerals licences. The claims made to courts were to cancel these illegally issued licences.[7] In fact, licences were issued without any or inadequate environmental impact assessment, or sometimes even on lands that are 'special protected areas' by the State or local authorities,
- Environmental impact assessment report was inadequate because of lack of proper consultations with local communities.[8] Therefore the claim was to invalidate the report and stop the mining,
- Claim to rehabilitate the land after mining.

In the beginning it was very difficult to work on the cases because NGOs did not have open access to the courts or were not able to make claims on public interest cases. The existing laws demanded that directly affected people/herders make claims with clear evidence of damages they had incurred. When the case started, local herders as claimants encountered pressure in different ways such as being threatened and excluded from different benefits and services, or even having a case framed against them from the company or local Government. Invariably, this resulted in the herders cancelling the claim. In order to overcome this, CHRD put in a lot of efforts to create awareness and empower the local communities.

The lack of open standing became an important advocacy issue for CHRD and other NGOs who had gradually got involved in public interest litigation. This was after almost 10 years of advocacy that Civil Society Organisations (CSOs) recognised the right to make claims on issues of public interest.[9]

The cases taken up have been successful and some have failed. The lessons from even the failed cases have revealed the gaps in the laws, implementation mechanisms and capacity of law enforcers. For example, in the cases demanding rehabilitation of land, CHRD found out that there were no guidelines to assess the environmental damages and as a result, they were unable to demand the cost. Raising this issue, CHRD could influence the authorities to develop and adopt guidelines. However, one year after their approval, the guidelines were still not used by the courts. This is why CHRD undertook the case on the Shaazgait River to create a precedent case on the use of the guidelines, showing that they were indeed workable.

Another example is related to the provision in the Environmental Impact Assessment Law on conducting consultations with communities at risk of being affected by mining. The law did not describe how to organise the consultation. There was lack of awareness on the international concept of Free Prior Informed Consent. The issue was raised again by CHRD and then a Regulation providing public participation in Environmental Impact Assessment (EIA). The Regulation was adopted by the Ministry of Environment and Nature on 6 January 2014.

Several such examples can be highlighted to show how public interest litigation has helped influence improvements of laws and implementation mechanisms.

There were many other issues to be tackled that could provide local communities with full and adequate access to justice, benefit from mining projects, and protect land, water and soil to safeguard ecological balances. While advocating for these issues, we tried to use the international human rights mechanisms, such as the Universal Periodic Review (UPR) of the United Nations Human Rights Council.

Some of the issues that CHRD's advocacy needs to tackle are:[10]

1. **Limited opportunity for the local people, particularly the local herders to receive legal assistance and appeal to the court to protect their rights.** There is no opportunity to get legal assistance in the *soum*[11] level since soums do not have advocates. The head of a soum governor's office performs the duty of a notary at the soum level. In total, 29 soums and inter-soum courts operate in Mongolia settling civil and criminal cases. Out of them, 21 soum and inter-soum courts are located in the *aimag*[12] centres. All of the 20 administrative courts are located in the aimag centres as well. Having a soum governor's office head as notary and going for redress to aimag courts make it challenging for the local communities. CHRD assumes that it is perhaps for this reason that many environmental cases have not been addressed.

2. **Costs related to getting public interest cases settled by court.** With the new General Administration Law, the costs associated with experts and relating to collecting evidences have to be settled by the court. As for the state stamp duty, it needs to be paid by the claimants on condition of compensation from the defendant's side, if the case is won. Meanwhile, the Advocate's fee continues to burden the claimants. No effective policy and regulation supporting public interest advocates exist in Mongolia.

3. **Bureaucracy and liability.** For example, the court examination in the case of the Khushuut coal mine took 3 months. Environmental issues for court proceedings do not have easy access to expert advice on how to go about them. This is a major challenge. The court appears to be in no hurry to identify the defendants, resulting in undue delay of court hearings. In CHRD's case, the defendants are mining companies who conveniently disappeared from the mine site without any reclamation. Other examples are:

    - In environmental cases, inspectors from the Inspection Agency, specialists from the Environment Ministry and relevant special agencies such as water and forests are appointed as experts. Another

challenging issue related to experts is their fees. The behaviour and efficiency of the experts are predetermined by the previous behaviour of the court in earlier court hearings. If fees had been either delayed, not paid or pending, then their work is lackadaisical and finally the burden of identifying efficient and responsible experts falls on the claimant organisation. In case of environmental issues, there is no guarantee that experts and laboratory staff who make a conclusion and testing in environmental cases work independent of the government. For example, an expert who is capable of making a conclusion in the case concerning claiming of citizens' health damages caused by air pollution, was not available at all. They would even delay or not conduct tests on the soil, water and air to check on arsenic-heavy metal presence. This uncalled for delay then demands that the claimant (mostly NGOs or local communities who are often low in resources) takes on the burden of identifying experts and paying their fees. All this leads to uncalled for delay in court proceedings that could stretch on for a couple of months. Examples of this are: Khongor, Shariingol and Dariganga soums' cases.

- Courts are incapable of identifying the environmental cases' defendant(s). CHRD has experienced several cases wherein the defendants do not respect the summons of the court and the latter then is left helpless. The defendant company could have moved from the given address it was registered under without prior notification of the forwarding address. This then hinders the court proceedings. In many cases, even the police have proved ineffective. A situation of helplessness then sets in with the claimant pursuing the case only with the defendant company that can be brought to court. CHRD has had instances where none of the defendants have been identified and finally, the case had to be dropped. Case examples: Burenkhaan case in Khongor case.

- Court decision regarding the search of a defendant is not enforced. Even the police in certain instances are unable to enforce the appearance – either timely or delayed – of the defendant in court. This perhaps could be genuine because the claimant is expected to invest a lot more in the case. Due to this reason, the court procedure is delayed since many months. Case examples are: Burenkhaan cases in Khuvsgul soum and Khongor soum.

4. J**udges not complying with independence principle when settling environmental cases.** It is clearly observed that the courts

work in congruence with the relevant Government organisations. For example, in the Khushuut case, the court hearings were postponed many times directly depending on a Government representative's work schedule. No liability was pinned on the government. Another issue is that although the Supreme Court made a decision to cancel the licences issued in the Burenkhaan phosphorus deposit in 2013, after a year it referred the case to the first instance court citing 'newly discovered circumstances'. In doing so, the Supreme Court did not impose any liability on the Ministry of Environment even though the latter gave conflicting statements to the court – the initial statement declared that the project did not have an environmental impact assessment but later the Ministry went back on its statement and testified that assessment had been carried out for the same project. Finally, none of the court decisions by which CHRD's 22 environmental cases (worked since 2005) settled contains any provision imposing liability on the government authorities. The point to observe is that these cases would not have been filed if the government authorities actually enforced laws.

Based on the experience of environmental public interest cases and observations of the big strategic minerals deposits, CHRD concluded that small procedural improvements could be carried out in the laws by CSOs. In case of big deposits like the Oyu Tolgoi copper mines[13] implemented by the transnational mining giants like the Rio Tinto group, the Government totally failed to make a just contract. Mongolia does not have the capacity to investigate corruption cases. The Panama Papers indicate that around 49 Mongolian high level politicians and public officers have accounts in offshore areas. This number has increased now up to 65 with the Paradise Papers.[14] The environmental, social and moral costs of mining are gigantic.

Another reason for concern of the Mongolian people is the country's experience with investment treaties and arbitration cases that have led to fines of hundreds of millions of US dollars. Since 2007, Mongolia has been brought to court in three cases related to investments in the mining sector, and lost in two of these cases.[15] Mongolia adopted a very liberal investment law protecting the rights and property of foreign investors in the country, as well as very generous tax incentives, including tax exemptions and tax stabilisation agreements. Unfortunately, this failed to attract investments that would improve the well-being of its people. On the contrary, they have to pay huge environmental, social and moral costs for the mining. Mongolian people will need to pay these costs for many decades in the coming years to mitigate and eradicate the mining impacts and restore the environment.

Recommendations:

- ***to the Government of Mongolia***

1. Create effective and efficient publicly accessible legal services and courts to enrol superior values and genuinely

interested and trusted legal advisors, effective notarial service and if necessary, preparedness to mobile court hearings at the soum level.

2. Exempt public interest claimants from paying state stamp duty. Activities to introduce and support pro bono should be undertaken among the Mongolian advocates. The advocates who provide free legal advice and litigation should be supported and rewarded.

3. Form an independent team of environmental experts. Establish an environmental court. Undertake appropriate measures to promptly enforce the court decision to search for the defendant company and prepare without uncalled for delay the final conclusion of the experts. Undertake measures to free the dependence on political and high level authorities in the appointments of the judges and court decision-making.

4. Ensure independence of experts and scientific laboratories.

5. Hold judges accountable and make them comply with the code of conduct.

6. Meaningfully involve in all matters related to mining, by setting up a legal framework for the exploitation of mineral resources and addressing the issue of mine rehabilitation and closure in line with international standards as per the Government Action Program for 2016–2020.[16]

7. Regulate the creation of cooperatives of individual artisanal miners in accordance with Article 3.1.2 of the 'State Minerals Policy' and the Government Action Program for 2016–2020.[17]

8. Ensure that state entities charged with the monitoring and enforcement of laws regulating business activities can count on adequate human resources and technical capacity, as already recommended by the United Nations Working Group on Business and Human Rights in 2012.[18]

9. Conduct a comprehensive review of foreign investment treaties and investment impact assessments through national consultations with CSOs and other stakeholders on extractive industries and human rights.

- ***to the UN Human Rights Council and international human rights community***

10. Adopt an International Convention on Business and Human Rights that would include provision to ensure that investment agreements established between the developing states and investors are just, fair and respectful of interests and rights of local communities.

11. Make the United Nations Declaration on the Right to Development a binding human rights convention with accountability mechanisms to protect the rights of local communities to participate in the political, social and

economic development processes and benefit equally from the development processes, and stopping the violations against local communities in the name of development.

12. Assess the negative impacts of the current state investor dispute results for the people of developing countries.

Endnotes

1. "Gold 2" programme adopted in 2017 is to be implemented during 2016–2025.
2. State census on the degraded land by mining in 2012.
3. Ministry of Natural Environment and Tourism. The Report on Environmental Status of Mongolia for 2015–2016.
4. MNT is national currency "tugrug". Approximately MNT 2400 is equal to US$1.
5. Online data on the website of Mineral Resources and Petroleum Oil Authority of Mongolia:http://invest.mrpam.gov.mn/detail/107
6. Centre for Human Rights and Development (CHRD), Discussion paper on Mining and Human Rights, 2006.
7. Centre for Human Rights and Development (CHRD), Report on monitoring of the process of issuing minerals licenses, 2007.
8. Centre for Human Rights and Development (CHRD), Report on monitoring of local communities participation in the Environmental Impact Assessments, 2010.
9. Open standing on environmental public interest cases was established in the Environmental protection law in 2012 for NGOs with charter purpose to protect environment. Open standing for other NGOs working on wide arrange of public interest is established in the General Administration law effective from 1 July 2016.
10. The following points were submitted to the UN Human Rights Council for the second UPR of Mongolia by CHRD in 2015 under the title: "Challenges to get environmental cases settled by courts".
11. Soum is a small administrative unit in rural Mongolia. There are 330 soums in Mongolia.
12. Aimag is the biggest administrative unit in rural Mongolia. There are 21 aimags in Mongolia. Each aimag is divided into soums. Small aimag have three soums. Big aimags have more than 20 soums
13. Oyu Tolgoi is one of the biggest gold-copper deposits in the world with high content of gold and silver. The amendment in the Minerals Law in 2006 made possible the percent share of the government up to 34%.
14. "Диваажингийн баримт"-аас хамгийн түрүүнд "Петровис" гарч ирлээ", Times Mongolia, http://www.times.mn/f/28477/.
15. The cases are Paushok v. Mongolia, 2007; China Heilongjiang v. Mongolia, 2010; Khan Resources v. Mongolia, 2011.
16. Action Program of the Mongolian Government 2016-2020, Provision n. 2.67, available online http://www.mfa.gov.mn/wp-content/ uploads/2015/06/2016-2020_Gov_AP_ Eng_Revised.pdf
17. Ibid., Provision n. 2.64
18. Statement by member of the Working Group on the issue of human rights and transnational corporations and other business enterprises, Ms. Margaret Jungk: End of country visit to Mongolia, available online http://newsarchive.ohchr.org /EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=12674& LangID=E

Thai Outbound Investments in ASEAN: Human Rights Violations, Extra-Territorial Obligations and Accountability

Thailand's Extraterritorial Obligations-Watch; Community Resource Centre

Abstract

Thai foreign direct investments have demonstrated significant opportunities to expand markets and access to the transboundary supply chain in ASEAN countries. Undoubtedly, the benefits of investments have resulted in large revenues and profits for both Thailand and the host countries. Regardless of this, adverse environment and social impacts of Thai outbound investments and key human rights implications, including lack of accountability for human rights violations and exploitation of the environment have pressured the affected local communities to submit complaints and seek remedies.

Introduction

Thai foreign direct investments in the countries of the Association of Southeast Asian Nations (ASEAN) have been showing firm aggressive growth in the past years – especially in Cambodia, Lao People's Democratic Republic (PDR), Burma/Myanmar and Vietnam (CLMV) region. Thai outbound investments have demonstrated the immense potential and opportunities to expand markets and access to the transboundary supply chain in ASEAN countries. Undoubtedly, the benefits of investments have resulted in large revenues and profits for both Thailand and the host countries. Regardless of this, there are arresting negative implications on the ground such as land grabbing, forced evictions and human rights violations on the local people by the practices of Thai investors overseas. The practices include discreet decisions, absence of accountability, inappropriate compensation, poor public participation and lack of compensation and responsibility to provide remedy and redress to the affected communities.

It is some of these unregulated Thai outbound investments in the CLMV region and the human rights liability such

as the cases of Dawei Special Economic Zone (SEZ) in Burma/Myanmar, Hongsa coal fire power plant in Lao PDR and Oddar Meanchey sugar plantation in Cambodia that are analysed here. The cases have undergone investigation from the National Human Rights Commission of Thailand (NHRCT) and played a significant role in shaping the cabinet resolutions on Thai outbound investment issued in 2016 (Dawei and Hongsa cases) and 2017 (Oddar Meanchey case), respectively.

Specific to the case of Oddar Meanchey sugar plantation in Cambodia, this article discusses key policy drivers that promote certain goods and products to export to the European Union (EU) countries. The 'EU's Everything-but-Arms' Initiative, under which all imports to the EU from least developed countries are duty-free and quota-free except armaments, is the main policy driver that boosts sugar exports to the EU countries with a guaranteed minimum price. The sugar giant from Thailand, SugarBee,[1] has invested in the Oddar Meanchey province in Cambodia and been granted 20,000ha of land for sugar plantations.

The trend of growing Thai investments in the CLMV region, at a breakneck pace without mechanisms to ensure compliance with international human rights standards and good practices, has resulted in a lot of adverse environment and social impacts of Thai outbound investments. The key human rights implications are: land grabs, forced eviction and destruction to livelihoods and rights abuses, such as right to clean air and a healthy environment and right to food security. Growing lack of accountability and disrespect for transparency in decisions being made at the risk of human rights violations have pressured the affected communities to submit complaints to NHRCT and seek remedies.

The case of Oddar Meanchey is chosen as a specific case study in order to demonstrate that seeking remedies though the non-judicial channels such as NHRCT's official investigation is effective. Although the SugarBee has withdrawn its investment from Oddar Meanchey,[2] there is still a strong need to take responsibility for the violations of human rights that have occurred earlier. The affected communities are still awaiting compensation and remedy.

Scope of Thai Investments in CLMV Region

Thai foreign direct investment is defined as an investment transaction in which an investor is based in Thailand but has controlling stakes in an entity or project in a foreign country, though procedures vary depending on the investment. Common patterns include investing in subsidiary companies, purchasing entire enterprises, investing in joint ventures, and acting as both developer and investor for projects.

Across ASEAN countries, Thai foreign direct investment are rapidly growing, specifically in the CLMV region. According to Thailand's Board of Investment (BOI), Thai investment abroad totaled US$13.3 billion in 2016.[3] The Stock Exchange of

Thailand (SET) announced double profits for outbound investments in 2016. A research by SET has documented that up to 192 Thai firms have invested abroad, out of which 79 per cent invested in ASEAN and 60 per cent invested in the CLMV region in 2016.[4] A common thread running through most of the investment patterns and procedures is that Thai investors have registered their business in a third country such as Singapore, and British Virgin Islands, and then invested in the CLMV region. These countries, having initiated tax incentives and convenient transactions are attractive popular destinations for capital transfer. The target for investments in 2020 is approximately US$53 billion, taking into account the existing trade agreements and plans announced by the Ministry of Commerce.[5]

Most of Thai foreign direct investment is in the electricity and energy sector,[6] oil and gas exploration, steam and domestic air cooling, financial sector, industrial production sector (e.g., sugar and textile), loans transaction among affiliates, trade credits, mining and quarry and concrete. The energy sector is heavily invested in. Thai investors are firmly backing energy and economic infrastructure projects having little regulation and often even disregarding their human and environmental rights impacts. The Electricity Generating Authority of Thailand (EGAT) is pushing for aggressive expansion to the CLMV region in order to secure long-term energy security for Thailand's economy. Thailand's Power Development Plan for 2015–2036 includes the following:[7] the Xayaburi dam[8] (completed), the Pak Beng Dam (approved) and the Hongsa coal-fired power plant[9] (operational) in Laos; the 7000 MW Mong Ton Dam[10] (planned), the Hatgyi Dam[11] (planned), the Ban Chaung coal mine[12] (operational) and the Ye, Hpa-An and Andin[13] coal-fired power plants (planned) in Burma/Myanmar; and the Stung Nam dam[14] (planned) and the Koh Kong coal-fired power plant[15] (planned) in Cambodia. More than 90 per cent of the electricity generated by these projects is for export to Thailand.[16] For most of these projects, EGAT subsidiaries, EGAT International and the Electricity Generating Public Company Limited (EGCO) enter into joint ventures with domestic energy operators and enterprises. There are documented human rights concerns around many of these projects and public pressure to stop them or protect the affected communities' rights to remedies.

Beyond the energy sector, Thai foreign direct investment focuses on SEZs and Industrial Complexes, including deep sea ports, crude oil and petrochemical factories and oil refineries. These investments include the US$37 billion Dawei SEZ[17] and Heinda tin mine[18] in Burma/Myanmar, and sugar plantations in Cambodia, primarily operating for export to Europe.

In one case, Thai company SugarBee,[19] the world's second-largest sugar producer after Brazil and No.1 in Asia, invested in 20,000ha land for sugar plantations in Oddar Meanchey province, Cambodia.

SugarBee is a major sugar supplier to Coca-Cola and PepsiCo. In the case of Oddar Meanchey, concerns soon arose over massive land grabs, forced evictions, irresponsible business practices and human rights violations. Following public pressure, SugarBee withdrew its concession in Cambodia in 2014.

SugarBee is not the first Thai investor in the sugar plantation in Cambodia where investments are controversial and known to violate human rights. The Khon Kaen Sugar Industry Public Company Limited (KSL) has invested in sugar business in the Koh Kong province where serious human rights violations[20] were investigated into by the NHRCT during 2007–2015.

The trend of growing Thai outbound investments overseas continues to be worrying to the larger public. While benefits are tangible, there is a growing concern over a lack of accountability for the human rights violations. Negative impacts include land grabs, forced eviction and damages to livelihoods. Communities have voiced their concerns and sought remedies through litigation and non-judicial mechanism such as the NHRCT.

NHRCT's Investigation and Cabinet Resolutions

With the sharp growth of Thai investments in ASEAN countries and evidences of adverse impacts of mega projects developed by Thai investors abroad, affected communities and CSOs in Thailand have realised the need to use judicial and non-judicial channels to seek remedies and force redress. Through non-judicial mechanism channels such as the NHRCT, complaints have been submitted, and several concerns from the affected communities have been heard and addressed. At the NHRCT, dispute resolution meetings and discussions provided additional information about the progress of the project and the plan to engage affected people in discussion about compensation and remedies.

Since complaints have been submitted, the NHRCT played an active role and exercised its duty to investigate Thai foreign direct investments in at least four cases in the past five years: Hongsa transmission line in Lao PDR; Koh Kong and Oddar Meanchey sugar plantations in Cambodia; and Dawei SEZ and Ban Chaung coal mine in Burma/Myanmar. Official reports have been written to document the situation of human rights violations and concerns from affected communities. The companies who committed human rights violations were asked to submit additional information and plan to redress human rights abuses. However, this process is not always successful. Many a time, the investor does not show up at the meeting. When the former management who had invested in the project and signed the agreement has passed away, the new one is unable to handle the dispute and does not cooperate with the affected communities any longer. While lawsuits have been used to demand for human rights redress and remedies, the NHRCT has avoided intervention.

The case of Koh Kong sugar plantation in Cambodia is the first case wherein a full process of investigation has been closely monitored and observed by non-governmental organisations (NGOs) in Cambodia,[21] members of Thai Extra-Territorial Obligation Watch (Thai ETO-Watch) and international communities. An official investigation[22] led by the then Commissioner of NHRCT, Dr. Nirun Pitakwatchara and his team took place, and an official statement reflecting the situation of human rights violation in the Koh Kong case was released in March 2015. The report highlighted that the Thai investors follow and comply with the principles of human rights, and United Nations Guiding Principles on Business and Human Rights (UNGPs) approved by the UN Human Rights Council in June 2011.[23] According to Daniel King, Regional Director of EarthRights International and a key member of Thai ETO-Watch, the process of investigation by the NHRCT in 2015 has been monitored closely and participated in by CSOs both in Cambodia and outside.[24] He stipulates that:

'The NHRCT highlighted the applicability of the UN Guiding Principles on Business and Human Rights, noting that all businesses enterprises have an obligation to ensure respect for human rights in their business activities, regardless of where they operate and even if they have not directly contributed to the human rights abuses'.

In the Oddar Meanchey case, a complaint from 600 families who lost their lands due to sugar plantation concessions has been filed in the NHRCT in 2014.[25] Referring to the Koh Kong case, the NHRCT issued an official report in July 2014 highlighting the situation of human rights violations[26] and demanded SugarBee to provide compensation and engage the affected communities in remediation. As a result of the investigation and NGOs' pressures that have mounted over the years from both Koh Kong and Oddar Meanchey cases, the image of SugarBee has been sullied. Coca Cola had to announce an international investigation of the allegation of land grabbing in the Oddar Meanchey case.[27]

Following the investigations, public hearings and meetings with the affected communities, the NHRCT has developed a set of recommendations that target policy makers in Thailand and Ministries involved in foreign investment such as the Ministry of Trade and Ministry of Foreign Affairs. The policy recommendations from at least investigations of three cases have resulted in the enactment of cabinet resolutions in May 2017, for Oddar Meanchey case, and May 2016 for Dawei SEZ in Burma/Myanmar and Hongsa coal power plant in Lao PDR.[28] The cabinet resolutions for regulating Thai outbound investments align with the principles of human rights as articulated in the UNGPS with the obligation to fulfil and redress human rights abuses.[29]

CSO's Campaigns and Role of Thai ETO-Watch

Affected communities from four main cases of Thai outbound investments, Hongsa transmission line in Lao PDR, Oddar Meanchey sugar plantation

in Cambodia, Dawei SEZ and Heinda tin mine, and Ban Chaung coal mine in Burma/Myanmar, have submitted official complaints to the NHRCT to seek compensation and remedies. Based on the direct involvement of each member organisation of Thai ETO-Watch, it was estimated that there are approximately more than 50,000 people directly impacted by the Thai investments in Burma/Myanmar, Lao PDR and Cambodia. Adverse impacts of Thai outbound investments include land grabs, health impacts due to direct exposure to toxic substances released from coal mining and power plants, and contamination of toxic substances in the river system and food sources.

There is a multi-array of human rights abuses as demonstrated in the four cases submitted to the NHRCT.[30] These abuses include land grabbing, forced evictions and a disregard for national and international laws. A common factor in those cases is that the communities are excluded from any decision making process of the project and the environmental impact assessment of the project is not being conducted efficiently and adequately. Concerns from the affected communities are not respected including their rights to healthy environment, clean air and food security. Community's rights to participation and access to information about the project impacts and design of compensation and remediation are not honoured.

To address these issues, Thai CSOs and NGOs have come together in Thai ETO-Watch, working to stop human rights violations, environmental damages and social impacts caused by Thailand's outbound investments.[31] There are approximately six to eight NGO members in the , ranging from local, national and international NGOs. Thai ETO-Watch covers approximately 12 case projects and directly monitors five operative projects, such as: Oddar Meanchey and Koh Kong sugar plantations in Cambodia; Xayaburi Dam and Hongsa transmission line in Lao PDR; Heinda tin mine and Ban Chaung coal mine in Burma/Myanmar; and two in the process of being constructed projects such as Dawei SEZ-road link from Thailand, SEZ, and the industrial complex. Others are planned projects such as Hatgyi Dam in Karen State, and in Burma/Myanmar,where indigenous Karen communities are facing forced evictions,[32] as well as the Anhdin coal fire power plant and Hpa-An geo-thermal plant in Kayin State, Burma/Myanmar.

Each member of the coalition has experienced monitoring practices of Thai investors in dam, coal, SEZ and land concessions in the Mekong countries (Cambodia, Lao PDR, Thailand and Viet Nam) and Burma/Myanmar. The rich experiences that each member brings to the coalition include legal advocacy, lobbying, lawsuit, campaigns against dams and mega projects in the Mekong region, and researching and upholding human rights. The coalition members campaign with the states, and at the ASEAN and UN levels for the application of extra-territorial obligation in policy

regulations.[33] At the national level, lawsuits have been filed in the Thai Administrative court in order to demand for greater accountability of Thai investors in transboundary impacts that have occurred from projects such as dams. Additionally, the lawsuits aimed at raising the bar of extra-territorial obligation of Thai investors abroad. Each member has worked directly with the affected communities who are negatively affected by Thai outbound investments in defending their rights to natural resources and remedies in cases of abuses.

Thai ETO-Watch is actively campaigning on Thai outbound investments and extra-territorial obligation. The ultimate goal of the campaign is to demand for a stronger mechanism in place to force accountability of the Thai investors in their overseas investments so that effective and efficient remedy is provided to the affected people. Additionally, Thai ETO-Watch demands the Thai Government to take steps to monitor, prevent, investigate, redress human rights abuses of Thai investors and call for Thai investors to conduct human rights due diligence in their overseas businesses and respect the community's rights to remedies.

The Thai outbound investment campaign is very unique as it includes multi-level advocacy (local, national and international), policy, lobbying, and lawsuits. The campaign seeks to provide justice to the victims of human rights abuses, in particular those who have lost their lands, and had their livelihoods damaged and health deteriorated. In the light of this, one the main objectives is redress and compensation for the community members seeking remedies. The strength of the campaign depends on the documentation of human rights violations through research, interviews and testimonies that have been collected over years. Coordinating site visits of the NHRCT members, hosting meetings with affected communities, commissioning scientific and academic research to fill the gaps of project information, legal and policy analysis on cross-border issues, and UN lobbying[34] are widely applied in the campaign's strategies. In addition, networking with partner NGOs and academics in each country of the CLMV region and with international organisations that specialise in thematic-based advocacy, such as sustainable financing, lobbying, corporate analysis, coal and climate change, is extremely vital for enhancing policy advocacy and extra-territorial obligations of Thai investors overseas.

In addition to campaigning, Thai ETO-Watch monitors the implementation of the cabinet resolutions, tracking the progress and achievement whether the concept of responsible business and human rights due diligence has been respected throughout the engagement of the Thai investors within the project timeline. Although the cabinet resolutions clearly stipulate an obligation on Thai investors overseas to comply with human rights principles, they also imply respect of community rights to compensation

and remedy. The challenge remains that the cabinet resolutions are not widely known among the Thai public and Thai investors; and the implementation of the resolutions via responsible agencies such as the Ministry of Trade, Justice and Foreign Affairs is not progressive to the binding level. At the UN Working Group on Business and Human Rights Meeting in Geneva, Switzerland (28 November–1 December 2017),[35] Sor. Rattanamanee Polkla of the Community Resource Centre Foundation[36] and member of Thai ETO-Watch pointed out that:

'The Cabinet had come out with a resolution on controlling human rights violations from transboundary investment in May last year, and this June, Prime Minister General Prayut Chan-o-cha had just announced the Government stance on tackling this issue. However, there still has been no concrete measures from the government to regulate Thai investors so they respect human rights'.

The campaign of Thai ETO-Watch draws on international standards and human rights principles to demand for policy change within Thailand and an inclusion of extra-territorial obligations in Thai's overseas businesses. The international human rights principles and standards are such as the UNGPs Protect, Respect and Remedy framework,[37] the General Comment no. 24 on extra-territorial obligation[38] under the International Covenant on Economic, Social, and Cultural Rights (ICESCR), and the Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights.[39]

Through several years of experience in campaigning on Thai outbound investments, Thai ETO-Watch has acknowledged issues that hinder the success of the campaign, as well as the key challenges such as the following:

1. Access to information on the project (dam, coal, and SEZ) and its environmental impact assessment (EIA) or environmental health impact assessment (EHIA) report;

2. Poor awareness and understanding of key stakeholders such as communities and project developer about impacts of certain projects that are transboundary in nature;

3. Poor understanding of policy makers and planners regarding the scope of the Thai outbound investments and assumptions that going out to expand markets is actually good for Thailand's development;

4. Lobbying with high level officials who are responsible for drafting national action plan on businesses and human rights,[40] regarding an inclusion of extra-territorial obligations in the national development plan that engages Thai investors overseas. Looking beyond the scope of Thailand's geographical territory and jurisdiction is somewhat challenging and irrelevant to those officials;

5. Lack of relevant mechanisms at the ASEAN level that could draw from in terms of good practices and standards;

6. Realisation that the campaign involves powerful actors such as project developer and their profits so that partnering with profound academics, lawyers and policy lobbyists (such as Green Banking policy and those who have connection with Stock Exchange of Thailand) who are globally known as a leverage that the Thai ETO-Watch has been using;

7. The cabinet resolutions are not widely known among Thai public and Thai investors. A lot of work has to be done via media advocacy, publication and direct stakeholders' engagement and discussion in order to distribute widely the key messages of the resolutions on respecting human rights and conducting human rights;

8. Responsible agencies in charge of implementing the cabinet resolutions have called off the stakeholders' engagements among concerned Ministries such as the Trade, Justice and Foreign Affairs. They consider the discussion completed under their mandate and scope of the resolutions. Further engagement has been recommended by the NHRCT to discuss and design the implementation of the cabinet resolutions, while a concrete monitoring of Thai outbound investments and a framework of accountability are put in place.

Beyond Thai ETO-Watch, there is a coalition built among CSOs in Cambodia and international NGOs concerning practices and accountability of Thai investors overseas and in ASEAN countries. The Clean Sugar Campaign[41] is one example whereby a network of affected communities and CSOs working on sugar campaign have built across Cambodia regarding cases of sugar plantations that indulge in human rights violations such as land grabs, forced eviction, and lack of compensation and remedy, and violation of indigenous rights. Some of the members are also members of the Thai ETO-Watch Working Group and close partners in the economic land concessions and just remedies network.

The campaign targets the sugar production companies, their investments, and multi-national sugar retailers that are selling the sugar in European countries, such as the United Kingdom. Cases covered by the campaign include the case of the sugar plantations such as Kampong Speu and Chinese's overseas investment in Phra Vihear province, such as Lan Feng, Heng Nong and Rui Feng, one of the largest sugar plantations and refineries in Asia. Additionally, the Clean Sugar Campaign monitored the cases of Thai outbound investments in Koh Kong and Oddar Meanchey provinces. Clean Sugar Campaign[42] is working to stop human rights abuses and environmental damage caused by the sugar industry and brings about just remedies for the individuals and communities who have been harmed by

the industry. The campaign has achieved some important wins so far, including the expulsion of Tate & Lyle, sugar supplier in the United Kingdom, from Bonsucro,[43] a sugarcane multi-stakeholders initiative, until it reaches an agreement with the Cambodian farmers displaced by its supplier. The case of Oddar Meanchey sugar plantation has also informed a resolution from the EU Parliament calling for an EU investigation of the abuses and revoke trade preferences from the sugar industry.[44]

Extra-Territorial Obligations and Community's Rights to Remedy

The chapter has extrapolated adverse impacts of Thai outbound investments and human rights infringement borne from at least five mega projects developed by Thai investors in Cambodia, Lao PDR and Burma/Myanmar. The cases of Koh Kong, Hongsa, Oddar Meanchey, Heinda tin, Dawei SEZ and Ban Chaung have demonstrated concrete and strong evidences of human rights violations and have demanded for international compliance of human rights in overseas business. At the same time, there are also largely negative consequences to the businesses of Thai investors according to the evidences demonstrated over the years. These businesses end up destroying their image and reliability, being boycotted from a list of top suppliers, joining the list of irresponsible business developers and losing profits.

.human rights violations in the cases of Thai outbound investment and campaigning, the Thai ETO-Watch has drawn the following policy recommendations from key lessons learnt, the successes and challenges of transnational corporate accountability:

1. An application of the cabinet resolutions needs to be enhanced including the roles of responsible agencies strengthened: improving direct engagement with NHRCT and encapsulating the recommendations on extra-territorial obligations is fundamental to greater accountability of Thai investors overseas;

2. An upscale of the cabinet resolution to an act is crucial towards more responsible and accountable Thai investments in ASEAN countries;

3. The companies listed in SET should follow strictly the principles of human rights and engage the project affected communities throughout the project cycle; concerns from the project affected people should be informed of the design of the compensation package, types of remedies and the process of remediation;

4. The countries hosting Thai outbound investments should develop guidelines for responsible business of foreign investments[45] and demand the foreign investors to adhere to them strictly. The guidelines should be used as one of the monitoring instrument

for a decision whether the project should get approval.[46] Concerned communities should be consulted meaningfully and Thai investors should allow the public to determine the investment.

5. A policy approach toward extra-territorial obligations of Thai investors as demonstrated in documentation and reports of NHRCT's investigations has shown an advanced step towards human rights protection beyond the state's territory. This policy approach stems from strong evidences on the ground and should play a significant role in shaping the National Action Plan (NAP) on Businesses and Human Rights in Thailand that is being drafted at the moment. Voices and concerns from CSOs actors and affected communities should fundamentally be informed of the policies concerning community's rights to remedy. If extra-territorial obligations are largely ignored or excluded, it is a risk that the NAP will be tokenistic and may be used as a reference to support irresponsible investors to further commit human rights violations and continue exploiting ASEAN's natural resources and people without respecting the spirits of the ASEAN communities.

Based on the policy approach and documentation through NHRCT's investigation, it is acknowledged largely by the public that Thai outbound investments have caused human rights violations and adverse impacts to communities. Community's rights to seeking remedy should be respected in all Thai investments. Dr. Surya Deva, Chairperson of UNWG on Business and Human Rights[47] posited that victims of human rights abuses should take centre stage in corporate human rights remedy. Central to his report to the UN Human Rights Council in October 2017, is that effective remedy should be responsive to the needs of individuals and the communities as a group.[48] It is vital that states have an obligation to set up effective remedial mechanisms to investigate, punish and redress human rights abuses caused by businesses. At the same time, the investors also have the primary obligation to provide remedy and cooperate when they have caused and contributed to human rights violations.

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Waterfront Development in India – a Guise

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Abstract

Vishwamitri River in Vadodara city, Gujarat is known for its luscious ecosystem. This fast expanding industrial hub witnessed a near total degradation of the river front environment. Civil society organisations (CSOs) resorted to protests and the Government made a public announcement to 'rejuvenate' the riverfront. But it was all a facade. As part of the cleansing, slums were demolished and several poor and marginalised people were adversely affected. CSOs continued the struggle with the local people joining hands along with other environmental groups and carried out campaigns and resorted to law suits. These have yielded some positive results. But the struggle goes on.

Vadodara City and the Vishwamitri River Ecosystem

Vishwamitri River is the heart line of Vadodara city. Vishwamitri River originates from the western and southern slopes of Pavagadh hills, and flows westward through the city of Vadodara across a length of 26.8km, before culminating in the Gulf of Kambhat. Its unique ecosystem comprises of the main river corridor, its associated tributaries, ravines, streams (*nalas/kaans*), wetlands, ox-bow lakes and human-made ponds. These serve as a natural habitat for legally protected species of crocodiles and is home to abundant flora and fauna including vulnerable species such as Ravan Taad (*Hyphaene dichotoma*), turtles, and the like.

Historically, this rich ecosystem has been providing natural floodwater control, ground water recharge, habitat for different flora and fauna, promoting biodiversity and ameliorating adverse climatic conditions. It served various communities as alternative sources of irrigation, water supply, food, recreation and livelihoods.

Vadodara, being the third largest city of Gujarat state, India – known for its industrial development and environmental pollution in equal

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measure – is founded on the banks of the Vishwamitri River. The city has suffered enormously from the deterioration of the Vishwamitri River on account of rapid urbanisation and resulting pollution, encroachment and neglect of the river. Broadly speaking, the major causes of the degradation are improper sewage management, increased impervious surface and deforestation throughout the watershed, encroachment within the floodplain, lack of concern for ecological processes, invasive species (such as *Prosopis juli ora*), open dumping of solid waste and lack of sensitivity for historical context in development.[1] Indiscriminate and rampant encroachment and filling up of the ravines with waste – such as construction debris, municipal and industrial waste, dead carcasses, untreated and inadequately treated sewer water – and local authorities neglecting and even contributing to the deterioration have led to choking of the ravines and wetlands, and shrinking of the river. Consequently, the monsoon season has seen the low-lying areas of Vadodara city being inundated due to loss of natural space for the floodwaters to drain out. This deterioration of the Vishwamitri River has been causing severe misery to the underprivileged people living in the highly vulnerable low-lying areas.

A Defective and Unsustainable Project

In 2014, following several civil society pleas for rejuvenation of the Vishwamitri River and its habitat, and previously failed attempts at implementation of several such plans by the government, the Vishwamitri Riverfront Development Project (VRDP, referred to henceforth as the Project) was publicly announced by the Vadodara Municipal Corporation (VMC)[2] to "rejuvenate the Vishwamitri River, restore the connection with the people and address the future needs of the (Vadodara) city".[3] The VRDP Master Plan's cited objectives included water management, restoration of ecology and bio-diversity of the river, accessibility and connectivity, and land management. It involved the development of a riverfront over a project area of 953.5ha (1093ha as per the proposal submitted to the environment authority) with an overall length of 16.5km and average width of 500m.

The VRDP had a role to play in the Smart City[4] development plans being promulgated by the government towards its neo-liberal urbanisation goals, and followed the Sabarmati Riverfront Development model in Ahmedabad.[5] The mainstream media and official narrative projected the SRDP as proof of Ahmedabad being a pioneer in urban transformation in India. This project only facilitated another blatant instance of "accumulation by dispossession" of the 70 formal and informal settlements that housed about 40,000 families, in the name of flood water control and beautification.[6]

VRDP Master Plan admitted that rapid urbanisation in Vadodara City had led to deterioration of the Vishwamitri River.

It reported that storm water outfalls and tributaries were contaminated with sewage, garbage was being dumped in the river and slums were encroaching on the banks. Encroachment, here, is a planning lexicon that is often equated with illegality and directed towards slum dwellers occupying waterways in cities. Slum demolitions have acquired a synonymous status with clearing spaces, cleaning up cities, beautification and the rising culture of malls and parking lots.[7] The Project envisioned the reorganisation of land for the purpose of commercialisation of the riverfront and paving way for redistribution of the land. This was to be carried out by acquisition of land surrounding the river and resultant demolition of slums and displacement of its socially and economically backward dwellers.

VRDP Master Plan in its objectives claimed that the Project aimed to increase the flood carrying capacity of the river, strengthen the river edge, retain and replenish the water and make the river pollution-free. Although the VRDP Master Plan projected superficially overreaching objectives, it was in fact ridden with negative social and ecological impacts of change of land user, including replacement of the natural riparian edge of the river with a concrete riverfront and involving further filling and encroachment of the river bed for commercial exploitation. Encroachment of the natural streams and watercourses due to rapid urbanisation is, in fact a major contribution to urban flooding.[8]

Amongst its other shortcomings, the Project presented a flawed plan for flood management. Retrograde techniques incapable of adequately enhancing flood carrying capacity of the river left room for hazardous development and proposed an environmentally unsustainable, unscientific, incomplete and fallible model for river replenishment, water retention, sewage treatment and water quality improvement.[9] However, its glaring defect was in its blatant disregard of the environmental policies and applicable law, especially concerning the natural habitat and ecosystem of the river.

Intervention by Paryavaran Surakhsha Samiti and Local Environmentalists/Activists

In the backdrop of the rapid degeneration of the Vishwamitri River, Paryavaran Suraksha Samiti (PSS),[10] a local environmental organisation, and other conscientious citizens, had been monitoring and advocating for rejuvenation of the river. Upon news reports of the Project surfacing, the citizens had already appealed to the Government not to repeat the Sabarmati Riverfront Development fiasco in Vadodara.[11] Meanwhile, more than 2,000 slum houses of socially and economically underprivileged persons mainly belonging to the minority Muslim and oppressed Dalit community, in the area of Kalyannagar and Kamatipura, were cleared, shifted and demolished, to pave way for the Project.[12] Following

initial enquiries and investigation into the mandatory Environmental Impact Assessment (EIA) of this large Project, PSS activists, Rohit Prajapati and Trupti Shah found that no steps had been taken by VMC in that regard. This stood in blatant violation of the Environment Protection Act, 1986[13] and the EIA Notification, 2006,[14] among other applicable environment laws. They accordingly addressed demand letters in May 2015 to the Ministry of Environment, Forests and Climate Change (MoEF),[15] Government of India, Government of Gujarat, Urban Development Department, Gujarat, Collector, Vadodara and the Municipal Commissioner, VMC, demanding inter alia that all project activities be ceased until due process for environment clearance be undertaken. Pursuant to the campaign following the demands made by the local activists and intervention by way of meetings held with VMC officials, VMC submitted its application/proposal for Environmental Clearance before the State Level Environment Impact Assessment Authority (SEIAA)[16] in November 2015.

Meanwhile, the activists at PSS proactively obtained information and documents pertaining to the Project and development plans and policies of VMC under the Right to Information Act, 2005 (RTI).[17] They closely scrutinised the VRDP Master Plan and galvanised other local stakeholders and environmental and urban planning experts, scientists and activists by holding meetings to understand the project design and plan, and its probable impact. Local stakeholders also commissioned the work of critiquing and redesigning the project to landscape architects who presented and published their report.[18] With several environmentalists joining the campaign, joint letters were issued to VMC and various government authorities highlighting the flaws of VRDP and demanding immediate cessation of activity and withdrawal of the Project. The growing controversy and resultant litigation also piqued the interest of local and national media, resulting in a far-reaching civil society campaign.[19]

Legal Intervention before the National Green Tribunal

In spite of the assurances of VMC officials to carry out EIA of the Project in the period October/November 2015, local media carried reports and vigilant local activists confirmed on-site that construction activities had been commissioned and were being undertaken in the VRDP area. This although the EIA process was pending and no Environmental Clearance had been granted to the Project. The Environment Protection Act, 1986 read with the EIA Notification, 2006, provides that no construction activity can be executed prior to obtaining such Environment Clearance from the concerned authority. The reported and observed illegal constructions pertained to land reclamation and filling of ravines, slum rehabilitation and building construction activities on the riverfront area. Meanwhile VMC also advertised Expression of Interest to private partners for developing lakes

forming part of the Project. Joint notices were issued and complaints addressed to VMC and government authorities between December 2015 to March 2016, demanding the immediate halting of the unauthorised and illegal constructions in VRDP area pending the EIA process and environmental clearance. But several such demands went unheeded.

Pursuant to meetings held with local activists and stakeholders, it was decided to escalate the matter through litigation.[20] In April 2016, a complaint/case was filed on behalf of local activists before the National Green Tribunal (NGT), Western Bench, Pune.[21] This complaint was against VMC and various government authorities, inter alia seeking directions for cessation of the unauthorised and illegal construction activities in the VRDP area and demanding action against erring individuals.[22] Subsequently notice was issued to the respondents by NGT in respect of the contentions raised in the complaint. Photographic and videographic evidence of the violating illegal and unauthorised constructions was produced by the applicants before the NGT. Their exact location mapping and progress from the time of filing of the complaint to the dates of hearing, including of constructions taking place in the riverbed were provided. During the course of the exhaustive hearing that followed, VMC took the stand that the constructions did not concern the Project although they could not refute that they were in the VRDP area. An interim injunction order dated 25 May 2016 was passed by NGT, injuncting VMC from proceeding further with any construction or development activity within the VRDP area. Even with the injunction order, construction activities continued unabated on certain sites. Upon the same being reported to NGT, at the following hearing, vide its order dated 1 July 2016, NGT directed SEIAA and the Collector of Vadodara district to conduct a joint inspection of the Project area and report the status of construction. NGT also granted liberty to SEIAA to lodge prosecutions against the delinquents who are found violating the EIA Notification, 2006 and the injunction order. An execution application was also filed in respect of the non-compliance of the injunction order by VMC.[23] The joint inspection report was not submitted in compliance of the order. NGT took notice of the conduct of the respondents and issued an order of penalty.

Some Achievements

Following these successive orders, VMC informed NGT that it had taken a decision not to go ahead with the Project as per the Master Plan. VMC submitted an affidavit undertaking not to carry out any construction in respect of the Project. VMC submitted an application for withdrawal of the environmental clearance application before SEIAA, with an undertaking not to carry out any construction in violation of the environmental law. Citing its reasons for withdrawal of the Project, VMC claimed that the same was not properly conceptualised, and the environmental

application prematurely filed. The application was accepted by SEIAA in August 2016, subject to the undertaking given by SEIAA and the areas being restored to *status quo ante*.

The matter continued before the NGT in respect of the violations committed prior to withdrawal of the environmental application and continuing violations. The VMC sought to justify them by saying that the same did not concern or no longer fell within the Project. Several orders were passed by NGT including to conduct a fresh joint inspection of the sites for a comprehensive report on violating constructions, pursuant to which SEIAA filed a further inspection report in February 2017. Although not adequate, pursuant to the report it was clear that unauthorised construction was ongoing and had progressed substantially in the riverbed involving filling of a notified lake that formed part of the Vishwamitri River. At another site of unauthorised construction in the VRDP area projected by VMC to be a separate and distinct slum rehabilitation project between VMC and a private contractor, it was found that no separate environmental clearance had been obtained prior to commencing construction, and such an environmental clearance was applied for only after the filing of the VRDP dispute before NGT. Pursuant to these facts being placed before the NGT, prosecution was launched in February 2017 by the Gujarat Pollution Control Board (GPCB)[24] in respect of the violation in the slum rehabilitation project.[25]

The Execution Application and the main complaint are still pending before the NGT on the point of non-compliance of the injunction order and continued violations by VMC. The prosecution on the violations is being continued under the strong apprehension that VMC, to escape compliance with environment law regulations and subvert the process of law, would carry out concretisation and land reclamation on the sites of the violation as per the original Project through its private partners by way of separate smaller projects.

Meanwhile, VMC recently invited the local stakeholders involved in the legal battle for joint discussions to formulate an alternative project plan for Reinvigoration of the Vishwamitri Riverfront under the National River Conservation Plan (NRCP).[26] One of the environmentalists has also been included in their panel. Several recommendations of the environmentalists participating in the process are being considered in the meetings, although formal orders are yet to be passed. Local stakeholders are also involved in a separate plan to revive Bhukhi Nala, a tributary of Vishwamitri River.[27]

Challenges

VMC, playing simultaneously the roles of the local area development authority as well as the project proponent, presented a unique problem. This posed a conflict of interest and hurdle to fair trial and blatant non-implementation of orders and directions passed by NGT. The official

documentation was invariably in favour of VMC who acted with impunity, though the conflict of interest was brought out before NGT in a timely manner through various documents obtained under RTI and other sources. Since VMC was also a government body, there was interdepartmental complicity with the environmental and government authorities, on account of which interventions with them failed miserably at each stage. Although NGT directed SEIAA to conduct joint site inspections, the reports filed were fault-ridden, inadequate and watered down, necessitating constant monitoring of the sites. The large expanse of the project area posed a huge problem for effective monitoring and many areas were not inspected. However, it was decided that the identified sites would be regularly monitored, and both photographic and videographic evidence would be collected with time and date imprints, to be presented before NGT from time to time.

VMC took a stand throughout that the violating constructions were independent constructions and not linked to VRDP. This despite VMC being the sanctioning authority in respect of all constructions under its jurisdiction in Vadodara city. Meanwhile, there was a fear and largely realised apprehension that VMC would continue constructions by way of separate smaller projects causing damage to the riverbed, and posing fresh challenges. In December 2017, local activists found that VMC was dumping debris on the river bank in violation of the injunction order, and allowing clearing of vegetation, tree-felling, dredging, levelling and discharge of sewage on the river bank, prompting them to address a fresh notice to VMC.[28] Exception was also taken to such illegal activities being carried out during the breeding season of crocodiles, but all charges were denied in the media by the VMC Municipal Commissioner.[29] Meanwhile, in February 2018, the local activists sought a judicial probe into the Project and its subsequent removal.[30]

The Struggle Continues

For the most part, the campaign against VRDP was successful in halting the unsustainable and unscientific Project, and was a moral boost to the local stakeholders in their struggle against environmental pollution. It saw the coming together of local coordination teams and experts to conduct environmental research and analysis, as well as effective and simultaneous use of court mechanisms and local campaigning in the advocacy process. Meanwhile, the process of monitoring, interventions and prosecutions along with demanding accountability will continue to ensure that the Project is not re-introduced in an unviable form or by indirect means, through smaller projects. Local stakeholders hope to work in collaboration with VMC through the process that has already been initiated, to come up with a sustainable plan for reversion of the environmental damage and rejuvenation of the Vishwamitri River.

Endnotes

1. Mittal Dhara, Alex de Sosa Kinzer; Xinming Liu; Rubin Sagar; Krithika Sampath; Chase Stone; Yundi Yang, "Vishwamitri: A River and its Reign, 2017 (University of Michigan: School of Natural Resources and the Environment, April 2017); see also Dr Nirlesh Kothari and Anitha Thomas, "Reviving Vishwamitri River: an effort to a Sustainable Impact", presented in October 2015 at the National Conference on Innovating for Development and Sustainability organised by Navrachana University, Vadodara.

2. Vadodara Municipal Corporation (VMC) aka Vadodara Mahanagar Seva Sadan (VMSS) is the local area development authority/sanctioning authority for all building, construction and development plans in Vadodara district of Gujarat State in India.

3. Vishwamitri Riverfront Development Project Feasibility Report Master Plan dated 16 December 2014, presentation to Advisory and Technical Committee by VMSS and HCP Design, Planning & Management Pvt. Ltd., Ahmedabad.

4. Some online news report on Vadodara Smart City Plan including the Vishwamitri Riverfront Development Project (VRDP): "Vadodara ranks fourth in Smart City plan implementation", WallsnRoof, 9 March 2007, https://www.wallsnroof.com/blog/vadodara-ranks-fourth-in-smart-city-plan-implementation/; "A Smart City in the making – Vadodara", Times Now News, 15 May 2016, http://www.timesnownews.com/mirrornow/videos/trends-research/smart-city-making-vadodara/18730.

5. The waterfront development along the banks of the Sabarmati River in Ahmedabad city of Gujarat that was embroiled in controversy and criticisms, including intervention through orders passed by the Gujarat High Court for protecting rights of displaced slum dwellers.

6. Navdeep Mathur, "On the Sabarmati Riverfront – Urban Planning as Totalitarian Governance in Ahmedabad", Economic & Political Weekly, volume XLVII, Nos. 47 and 48, (2012).

7. Usha Ramanathan, "Demolition Drive", Economic & Political Weekly, volume XXXX, No. 27 (2005).

8. National Disaster Management Guidelines: Management of Urban Flooding dated September 2010 by National Disaster Management Authority, Government of India, New Delhi http://www.ndma.gov.in/images/guidelines/management_urban_flooding.pdf.

9. Dhara Mittal, Alex de Sosa Kinzer; Xinming Liu; Rubin Sagar; Krithika Sampath; Chase Stone; Yundi Yang, "Vishwamitri: A River and its Reign, 2017 (University of Michigan: School of Natural Resources and the Environment, April 2017.

10. Paryavaran Suraksha Samiti (PSS), literally translates in English to Environmental Protection Committee, is a civil society organisation working on environmental matters. It was founded in the 1990s to highlight attention to the indiscriminate industrialisation and dumping of hazardous waste. Since then, members of PSS have been actively raising several environmental issues for over two decades and are involved in investigations in and surrounding industrial areas and in working with tribals and villagers for a sustainable lifestyle, on alternative technology, Gandhian movement and networking with other organisations. In February 2017, following legal intervention by PSS, the Supreme Court of India in Writ Petition (C) No. 375 of 2012 inter alia passed far-reaching directions against all State governments for setting up functional common effluent and sewer

treatment plants within a time frame set by the court, setting up of an 'online, real time, continuous monitoring system' to display emission levels in the public domain by all State governments and ordered court monitored strict implementation of its order. See order here: http://www.indiaenvironmentportal.org.in/files/Paryavaran%20Suraksha%20Samiti%20industry%20CETP%20Supreme%20Court%20Judgement.PDF.

11. "Architects, urban planners ask Gujarat authorities not to repeat Sabarmati riverfront 'model' in Vadodara", Counterview, 18 August 2014, https://www.counterview.net/2014/08/architects-urban-planners-ask-gujarat.html.

12. "Slum demolition in Vadodara: Gujarat's cultural capital 'fails' Right to Education law for displaced children", Counterview, 23 December 2014, https://www.counterview.net/2014/12/slum-demolition-in-vadodara-gujarats.html.

13. Environment Protection Act, 1986 is a statute enacted by the Indian Parliament for the protection and improvement of environment and the prevention of hazards to human beings, other living creatures, plants and property, following decisions taken at United Nations Stockholm Conference on the Human Environment in which India participated.

14. Environment Impact Assessment (EIA) Notification, 2006 is a notification passed under the sub-section (1) and clause (v) of sub-section (2) of section 3 of the Environment (Protection) Act, 1986, read with clause (d) of sub-rule (3) of rule 5 of the Environment (Protection) Rules, 1986, being the rules framed under the Act. The EIA Notification imposes certain restrictions and prohibitions on new projects and activities, or the expansion or modernisation of existing projects and activities based on their potential environmental impacts as indicated in the Schedule to the Notification, being undertaken in any part of India, unless prior environmental clearance is accorded to the project/activity.

15. Ministry of Environment and Forests (MoEF) is an instrumentality of the Central Government and sanctioning authority empowered to assess and grant environment clearance to projects/activities listed as Category "A" projects in the Schedule to the EIA Notification.

16. State Level Environment Impact Assessment Authority (SEIAA) is a government/sanctioning authority constituted by the Central Government under sub-section (3) of section 3 of the Environment (Protection) Act, 1986 empowered to assess and grant environment clearance to projects/activities listed as Category "B" projects in the Schedule to the EIA Notification.

17. Right to Information Act, 2005 is a statute enacted by the Indian Parliament to promote transparency and accountability in the working of every public authority that provides for furnishing information to citizens who desire it. It is a legal tool available to citizens to secure access to information under the control of public authorities in India.

18. See supra note (9).

19. Some initial news coverage on VRDP – "Vishwamitri Riverfront Project: 'VMC bid for green nod too late", The Indian Express, 15 May 2015, http://indianexpress.com/article/cities/ahmedabad/vishwamitri-riverfront-project-vmc-bid-for-green-nod-too-late/; Prashant Dayall, "Work on Vishwamitri riverfront to begin soon", Times of India, 17 September 2015, https://timesofindia.indiatimes.com/city/vadodara/Work-on-Vishwamitri-riverfront-to-begin-soon/

articleshow/48999944.cms; "Gujarat activists: Vadodara riverfront project "begun" sans environmental nod, violates wildlife law", Counterview, 9 January 2016, https://www.counterview.net/2016/01/gujarat-activists-vadodara-riverfront.html; "NGT seeks answers on Vishwamitri riverfront plan", Times of India, 5 May 2016, https://timesofindia.indiatimes.com/city/vadodara/NGT-seeks-answers-on-Vishwamitri-riverfront-plan/articleshow/52119686.cms; "NGT restrains Gujarat authorities from construction at Vadodara riverfront without environmental clearance", Counterview, 2 June 2016, https://www.counterview.net/2016/06/ngt-restrains-gujarat-authorities-from.html.

20. The author is general counsel and legal advisor to PSS and held meetings with its members and local stakeholders to initiate the proceedings before the National Green Tribunal. The author is also the legal attorney advising and representing the applicants in all the matters concerning the Project, pending before the National Green Tribunal.

21. National Green Tribunal (NGT) is a tribunal established under the National Green Tribunal Act, 2010 for the effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment and giving relief and compensation for damages to persons and property and for matters connected therewith or incidental thereto. The Western Bench of the Tribunal is situated at Pune and hears cases forming part of the Western region/ territory including the state of Gujarat.

22. Original Application No. 49/2016 under sections 18(1) r/w 14 and 15 of the NGT Act, 2010; In the matter between Rohit Prajapati & 5 Others vs. MoEF and 6 Others.

23. Execution Application No. 45/2016 in Original Application No. 49/2016.

24. Gujarat Pollution Control Board (GPCB) was constituted by the State Government of Gujarat on 15 October, 1974 in accordance with the provision of the Water Act, 1974. Its main function is to control pollution and the protection of the environmental quality with sustainable development.

25. Criminal Case No. 9466 of 2017 filed by Gujarat Pollution Control Board (GPCB) against concerned SEIAA officials, M/s Manav Infrastructure and others.

26. National River Conservation Plan (NRCP) is a scheme started by the Central Government in 1995 for preventing pollution and improving water quality of major rivers.

27. "As factories, populace choke Vishwamitri in Gujarat's cultural capital, riverfront project poses new threat to aquatic life", Counterview, 7 February 2018, https://www.counterview.net/2018/02/as-factories-populace-choke-vishwamitri.html.

28. "VMC gets notice for dumping debris, filling up riverbank", Times of India, 26 December 2017, https://timesofindia.indiatimes.com/city/vadodara/vmc-gets-notice-for-dumping-debris-filling-up-riverbank/articleshow/62245301.cms.

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Grassroots Movements and Role of Civil Society Organisations

A case of POSCO in India

Sejin Kim*

Abstract

India's first biggest foreign direct investment, the POSCO steel project is a good example of corporates conducting business with disrespect for human rights and environmental rights. This article is a narrative of how the local communities and civil society organisations got together and put up 12 years of stiff resistance within India and outside, and never let the project take off. Finally, POSCO was forced to withdraw the project. But is the game truly over?

Introduction

On 22 June 2005, Pohang Steel Company (POSCO), a large South Korean corporation, signed a Memorandum of Understanding (MoU) with the State Government of Odisha in India. This MoU outlined POSCO's plans to invest in setting-up an integrated steel plant of a total capacity of 12 million tons per annum in Odisha. POSCO's investment was considered one of the highest foreign investment projects in India involving US$12 billion.[1]

After signing the MoU, the land acquisition process was initiated to acquire land from the villagers and transfer it to POSCO. The State Government of Odisha agreed that three land parcels be given to POSCO. In this agreement, about 25 acres of land in Bhubaneswar were to be acquired to establish POSCO India headquarters; about 4,000 acres to set up a steel plant, build port infrastructure, establish a storage yard for coking coal, and other associated facilities. Then around 2,000 acres of land were to be acquired to develop a township with recreational activities and all related social infrastructure. Around 4,000 families – approximately 22,000 people – were to be affected by the project. As 3,500 out of the total 4,000 acres required for the steel plant is classified as public land, POSCO and the State Government of Odisha had assumed that the project could be launched without any difficulty or opposition.[2]

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Since then, POSCO and the State Government of Odisha have faced sturdy resistance from the communities affected by the POSCO project. The Gram Sabhas (assembly of elders in the village/ Panchayat of the concerned villages) shared their opposition to any acquisition of their land. People who opposed the project and refused to give up their agricultural lands formed an anti-POSCO project group called POSCO Pratirodh Sangarm Samiti (PPSS),[3] a grassroot and community-led movement developed under the leadership of the PPSS. This represents a collective, peaceful[4] effort to promote and defend the human rights of communities who are against the project and struggling to fight back land acquisition and eviction. The members of the PPSS are mainly farmers – betelvine and rice paddy cultivators – as well as herders, fisherfolk and day labourers.[5] They participated for more than 10 years in this effort in an exclusively voluntary capacity, to defend and promote the human rights of the affected communities. PPSS has consistently demanded accountability from the Government of India as well as the POSCO Corporation.

The conflict between the company and the communities has escalated over time, and involved multiple incidents of violence and harassment by police and other actors against members of the PPSS. In response to the PPSS and local communities' opposition, the State Government of Odisha used several tactics to hinder the movement. For instance, Indian authorities filed hundreds of criminal charges against peaceful protestors.[6] The villagers and members of the PPSS constantly face threat of arrest and prosecution. There have been several incidents of violence including bomb blasts in the past.[7]

Furthermore, people of the communities could not go out and receive medical treatment because of the threat of arrests. Many cases did not have any basis. Some cases were concocted by the police to confine the people inside jail for as many days as possible, and thereby oppress the grassroots movement of PPSS.

Threats to the Resistance Grassroots Movement

In Odisha, members of PPSS have been subjected to harassment, intimidation and violence as well as false charges due to their legitimate activities.

One of the key and emblematic cases of violation against a member of the PPSS is judicial harassment and threats against Abhay Sahoo, the President of the PPSS. On 12 October 2008, he was arrested by the Paradeep police while returning with his family from Vishakapatnam to Dhinkiy after a medical visit. Sahoo had been undergoing treatment for his rheumatism, diabetes and high blood pressure. During that time, police had filed against Sahoo 36 false cases on charges of murder, kidnapping, and assault. On 3 December 2008, Sahoo was hospitalised after his blood sugar levels shot up. But he was not given a bed and was illegally and inhumanely chained to the leg of a bed.

Up to 2016, Sahoo had been arrested three times for anti-POSCO activities. Again he was arrested for leading the movement of people displaced by the India Oil Corporation Limited (IOCL) at Trilochanpur village of Jagatsinghpur district, Odisha. The police have filed a total of 63 cases against him. Out of which in three cases he has received acquittal in the Court. Other cases are still pending. As the police filed a number of cases against him, Sahoo had to go into hiding but continued to give leadership to the movement.

Furthermore, Sahoo's life has been under threat by non-state actors such as the pro-POSCO supporters. There have been number of instances where Sahoo has been manhandled, assaulted and dragged to the police station. Judicial harassment as well as different types of intimidation are aimed to immobilise him from continuing his peaceful advocacy against environmental destruction and land grabbing in the POSCO project.

Another example of harassment against communities is the brutal police violence and crackdown against the communities. On 3 February 2013, twelve units of police force entered villages Dhinkia and Govindpur. They beat up women and children as well as arrested some of the villagers including key defenders and supporters of PPSS. Video Volunteers Community Correspondent Debendra Swain was one of them. Around 1,600 arrest warrants were issued against the villagers and members of PPSS. Eight key leaders of the communities were charged under Sections 307 and 395 of the Indian Penal Code.[8]

These incidents are just few examples of the kind of harassment and intimidation that members of the PPSS and communities have been experiencing on a daily-basis. There are more such instances wherein the defenders have been persecuted by the Government in reprisal for their activities while defending land and environmental rights for their communities.

Korean CSOs, Regional and International Solidarity

Since POSCO India's parent company is based in South Korea, Korean Civil Society Organisations (CSOs) came together and raised issues resulting from the POSCO project. One of the Asian Forum for Human Rights and Development (FORUM-ASIA) members in South Korea and the Korean House for International Solidarity (KHIS) played an important role to raise such issues within South Korea as well as the international community. FORUM-ASIA as a membership organisation supported KHIS' efforts to promote and protect human rights of the marginalised groups of communities in Odisha.

In April-May 2008, KHIS and the Korean Confederation of Trade Union (KCTU), representing 18 CSOs in South Korea, conducted a research on the human rights situation related to the POSCO project in Odisha. The results of the research brought initial attention within South Korean CSOs to the issues.

Beginning from 27 April 2008, KHIS and KCTU held discussions with various Indian organisations in New Delhi, India who opposed the establishment, and managed to collate varying thoughts related to forced migration, demonstration and violent suppression of defenders and affected communities. This included talks with residents who were either for or against the POSCO project, and also through meetings with the head of the All India Trade Union Congress (AITUC) in the State of Odisha, CSOs and defenders groups, as well as Ki-Woong Sung, the Director of POSCO India.[9]

In March 2013, FORUM-ASIA, together with KHIS and Indian CSOs including the PPSS, conducted an advocacy and solidarity mission. The objectives of the mission were to create space for Indian defenders to express their concerns on the POSCO project in South Korea; awareness among the Korean CSOs about the issue; and pressure on the Government of Korea and POSCO.

Several meetings with Korean Government officials were facilitated by KHIS including meetings with the Ministry of Foreign Affairs, Korean National Contact Point of Organisation for Economic Co-operation and Development (OECD) Guidelines, and others like progressive lawmakers and the National Human Rights Commission of Korea. Indian activists, together with Korean CSOs, held a protest action outside the POSCO building in Seoul, South Korea. There have been several interviews with the Korean media regarding a campaign against the POSCO project as well as key Korean CSO groups.

The protest staged by the mission team and local and international CSOs during the POSCO Annual General Meeting was covered by the mainstream print and broadcast media. Some POSCO staff members closely monitored and even collected flyers circulated at the protest. The Korean Broadcast System (KBS) produced a 10-minute video clip on the POSCO Odisha project.

FORUM-ASIA facilitated this mission based on demand and recommendations by the grassroots activists from PPSS. The mission was organised and assisted by KHIS, a FORUM-ASIA member who had been following the POSCO project issue since the early days. This mission centered on raising awareness among the South Korean activists, media, and policy makers on the threats and harassment, including the use of force and mass arrest of members of the PPSS and villagers who had been protesting against the consistent land grabbing in Odisha by the POSCO project. As POSCO had always promoted a good image of itself in South Korea, this mission was an eye-opener to the local communities on the real impact of the POSCO project abroad. The timing of the mission was significant due to several bomb attacks against the community members as well as human rights defenders in Odisha, causing the death of three defenders. Furthermore, POSCO India's parental company POSCO Korea was scheduled

to hold its annual general meeting on 23 March 2013.

The mission was able to build a solidarity network with the local CSOs and other groups in South Korea protecting people affected by this project. The activities in Seoul also gave space for South Korean CSOs to understand the real impact of the POSCO project on the ground. More importantly, other South Korean CSOs, mostly church-based groups, expressed their commitment to explore with their Indian counterparts the possibility of opposing the human rights violations against the people in Odisha.

This mission served as an impetus for the POSCO Korea officials to pay attention to POSCO-related human rights violations with the momentum against the project's impact having started to build up. As a highly respected company, POSCO Korea seemed alarmed at the South Korean response to the information shared during the mission.

As a follow-up to the mission in Seoul in November 2013, FORUM-ASIA extended an invite to the key members of PPSS, KHIS and the Korean TNC Watch (a network of human rights, labour, lawyers and Democracy groups) to participate in the Peoples' Forum on Human Rights and Business (the Forum) . This was an opportunity to share the strategies used by the affected local communities to counter POSCO's activities and plans. The Forum was co-organised with the International Network for Economic, Social and Cultural Rights (ESCR-Net), another key international non-governmental organisation (NGO) working on the POSCO project issues. During the Peoples' Forum, participants from India and South Korea had a brief meeting on enhancing communication strategies with regard to their advocacy against the POSCO project.

FORUM-ASIA invited a member of PPSS to the 6th Asian Regional Human Rights Defenders Forum (AHRDF6). This provided an opportunity for PPSS to interact with the UN Special Rapporteur on the situation of human rights defenders and highlight the urgent needs and concerns of the affected communities. Not only did PPSS create awareness among other Asian defenders on the situation of communities affected by the POSCO project in Odisha, but also meaningfully engaged with the Special Rapporteur.

It was at the sub-regional bilateral meeting with the Special Rapporteur when the PPSS participant realised the importance of documenting cases of violations against human rights defenders. He took back some learnings on the technical aspects of sending communications and urgent appeals to the United Nations. Most importantly, the AHRDF6 opened avenues for future collaboration with other groups around the region for international advocacy on the struggle of the people in Odisha. This motivated PPSS to improve their development in capacity building and incorporate international human rights laws and methodology in their advocacy efforts.

All these activities of FORUM-ASIA provided opportunities to members of the PPSS to acquire skills for effective campaigning and advocacy at the national, regional and international levels. Some of the key assistance and support measures to shield grassroots activists from direct attacks were to: enhance their knowledge and skills on protection measures; share good practices: establish networks of support regionally and internationally; and thereby raise an alert on the human rights violations in the POSCO project.

FORUM-ASIA's efforts are particularly important as they connect grassroots movements to broader solidarity networks at the regional and international levels. Coming together in solidarity lends solid support to the defenders, providing them with opportunities for reflection, dialogue and adequate action to address the concerns. Defenders and members of PPSS have brought the POSCO project's human rights violations to the attention of regional and global partners with support from FORUM-ASIA and other groups. At the same time, FORUM-ASIA has been raising the problems of the communities affected by the POSCO project in the international arena, through the United Nations Human Rights Council session and the United Nations Special Procedures .

There have been more global awareness campaigns together with ESCR-Net, CSOs in the Netherlands, Norway and in the US, such as the Anti-Mining Solidarity Group and Greenpeace. However FORUM-ASIA, as a regional organisation comprising members from India and South Korea, has played a strategic leadership role in linking different actors at the local, national, regional and international levels, facilitating meetings and keeping the discussions on the violations in the project alive. The grassroots movement in Odisha and PPSS have received solidarity from international communities, with FORUM-ASIA, together with its members and partners taking the lead.

Conclusion

After 12 years, on 18 March 2017, POSCO officially withdrew from the project in Odisha due to its inability to continue. The State Government of Odisha claimed that POSCO would surrender the land it had acquired in the POSCO project. It was, indeed, initially a victory for the people on the ground and grassroots social movement. But this victory was short lived and soon turned bitter sweet. A few months later, PPSS and communities learnt from the local media that the State Government of Odisha was planning to sign a MoU to hand over this 'surrendered' land to another company, JSW Steel Limited. JSW Steel Limited is a part of the Sajjan Jindal controlled JSW Group from India. The news that JSW Steel Limited is likely to invest in a power plant has been devastating. The company has pledged an investment of Rs2,000 crore to set up a captive port along the Odisha coast at Jatadhari Muhan near Paradeep. In late May 2017 the Industrial Development Corporation of Odisha (IDCO) started to build a boundary wall near Nuagaon. As

noted by PPSS, this wall is likely to be built around 18km covering adjacent villages Nuagaon, Govindapur, Polanga, Gadakujanga and Baynapala kondh at an estimated cost of Rs13 crore. The nearby villages of Dhinkia and Gobindpur will also be eventually fenced off by the wall.[10]

Members of the PPSS from Nuagaon village strongly protested against the construction of the boundary wall around a 1,700ha piece of land on the village periphery. The fencing of the land by IDCO has been unwarranted, as the authorities have not settled their forest rights claims. The State Government of Odisha has consistently failed to recognise their individual and community rights over forest lands under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights Act) Act (FRA) 2006. As pointed out by PPSS in October 2017, residents of Nuagaon, Dhinkia and Gobindpur villages have submitted applications to the local authorities to claim their land and forest rights, but these claims have not been processed even as early as 2011.[11]

Even though POSCO has pulled out their project from Odisha, the struggle of the PPSS and communities have to continue. The repression against members of the PPSS and villagers continue to remain the same as before. On 19 December 2017, the police arrested two villagers Judhistira Jena and Babula Samal from Dhinkia village. They were put into jail.[12] Currently PPSS also struggles to fight against judicial harassment of a total 420 defenders and villagers. In addition, police warrants issued against 2,500 people are still valid and around 400 people have been arrested. The remaining people are at risk of arbitrary arrest and detention.

A short victory but a long and continued struggle awaits PPSS. At the same time, communities together with PPSS are stronger than before and stress that they will continue to fight against forceful acquisition of their land and eviction. The PPSS and people feel more empowered through the 12 long years of battle against forced land acquisition, harassment and intimidation. Furthermore, they draw a lot of strength from the existing regional and international solidarity groups who continue to support and assist their struggle. It now becomes all the more imperative to tackle the root causes of violations against PPSS and the communities. How can PPSS ensure that the local communities in Odisha are able to protect and sustain their rights to land and environment? How should the Indian Government as well as the State Government of Odisha ensure transparency and accountability of the JSW steel power plant project? POSCO has gone; but a similar problem remains. Unless these questions are answered and the root cause of their struggle is confronted yet not resolved, the battle to protect land, environment and livelihoods of members of PPSS and people in Odisha will not stop.

Endnotes

1. "Heightened tensions in POSCO Project Area", Fact Finding Report on the situation in the wake of bomb blast in Jagatsinghpur District, Odisha, April 2013, http://alice.ces.uc.pt/news/?p=1938.

2. Korean House of International Studies (KHIS), "Human Rights and Environmental Violations of the POSCO Project", Asian Human Rights Defender, volume 6, number 2, (December 2010).

3. Ibid.

4. In accordance with the United Nations Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (Declaration on human rights defenders).

5. "India: Planned forced land acquisitions and repression of dissent", ESCR-Net, 17 June 2011, https://www.escr-net.org/docs/i/1607712

6. Samantha Balaton-Chrimes, "Posco's Odisha Project: OECD National Contact Point Complaints and a Decade of Resistance", Corporate Accountability Research, http://corporateaccountabilityresearch.net/njm-report-v-posco-odisha/

7. Ibid.

8. Section 307 of the Indian Penal Code: Attempt to murder - Whoever does any act with such intention or knowledge, and under such circumstances, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and, if hurt is caused to any person by such act, the offender shall be liable either to imprisonment for life, or to such punishment as is hereinbefore mentioned. Attempts by life-convicts – When any person offending under this section is under sentence of imprisonment for life, he may, if hurt is caused, be punished with death.

   Section 395 of the Indian Penal Code: Punishment for dacoity —Whoever commits dacoity shall be punished with 1[imprisonment for life], or with rigorous impris¬onment for a term which may extend to ten years, and shall also be liable to fine.

9. FORUM-ASIA, "INDIA: Human rights violations of steel plant workers", 10 October 2008, https://www.forum-asia.org/?p=6600

10. Update sent via email to the author by POSCO PRATIRODH SANGRAM SAMITI (PPSS) on 20 October 2017

11. Ibid.

12. Update sent via email to the author by POSCO PRATIRODH SANGRAM SAMITI (PPSS) on 1 January 2018

About FORUM-ASIA

The Asian Forum for Human Rights and Development (FORUM-ASIA) is the largest membership-based human rights and development organisation in Asia with a network of 58 members in 19 countries across the region. FORUM-ASIA works to promote and protect all human rights for all, including the right to development, through collaboration and cooperation among human rights organisations and defenders in Asia and beyond. FORUM-ASIA seeks to strengthen international solidarity in partnership with organisations and networks in the global South.

FORUM-ASIA was founded in 1991, and established its Secretariat in Bangkok in 1992. Since then, other offices have been opened in Geneva, Jakarta, and Kathmandu.

FORUM-ASIA has consultative status with the UN Economic and Social Council (ECOSOC Status) and a consultative relationship with the ASEAN Intergovernmental Commission on Huma Rights (AICHR).

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Business and Human Rights is one of the five thematic priorities of the Asian Forum for Human Rights and Development (FORUM-ASIA). This Working Paper Series seeks to bring together theory and practice to build a new praxis for change, through knowledge-networking, advocacy and solidarity actions. The large majority of Asian countries have witnessed unprecedented economic growth propelled by neo-liberal free market approaches. In addition to the increasing socio-economic inequality, vulnerable and marginalised groups are also exposed to blatant human rights violations linked to the activities of business corporations.

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