

# *India Land and Development Conference 2021*

## **The State of UNGPs in Asia: Measuring the Progress, Assessing Hurdles, and Identifying Opportunities**

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Geminiano Sandoval Jr.

# Order of Presentation

- Right to Land as a Human Right
- Status of NAP Development in Six Asian countries (as of March 2021)
- Hindrances and Challenges to promoting NAP-BHR
- Recommendations

# Right to Land as a Human Right

- International Bill of Rights (UDHR, ICCPR, and ICESCR) and other Human Rights Treaties
- Land issues cut across various domains of human rights; interrelationship and interdependency of all human rights
- Land rights do not only refer to losing land or title to property, as many other resources, abilities, and freedoms may be lost

# Right to Land as a Human Right

- Land rights violations also serve as means to commit violations of other fundamental human rights
- Protection of HR largely depends on States; hence, the Duty to Protect
- CESCR Draft General Comment No. 26 on Land Rights
- There is an observable set of rules of general application from the wide State acceptance

# National Action Plan for BHR

- Defined as “evolving policy strategy developed by a State to protect against adverse human rights impacts by business enterprises in conformity with the UNGP-BHR”
- To be effective:
  - be founded upon the UNGPs;
  - respond to specific challenges of the national context;
  - be developed and implemented through an inclusive and transparent process, and
  - be regularly reviewed and updated
- Development of NAP promotes BHR

# Stage of NAP development

- Bangladesh – Not initiated
- Cambodia – Not initiated
- India – Drafting - zero draft in development (but focus is on labor rights)
- Indonesia – Assessment & Consultation - included in NAP on human rights that expired in 2019 and has not been renewed
- Nepal – Not initiated
- Philippines – Initiated - commitment made by past administration

# Hindrances/Challenges

- Lack of awareness of BHR or even if aware, understanding of BHR concepts is low
- Governments withhold resources to and undermines independence of NHRIs/Cs
- Shrinking civic space and use of laws to stymie free speech, expression, assembly, and association
- Inconsistent and incoherent land governance policies
- COVID-19 pandemic limited activities and face-to-face interactions

# Recommendations

- PROTECT

- Governments must adhere to their commitments to human rights and their “Duty to Protect;” refrain from enacting laws that undercut BHR; be creative in promoting compliance with BHR (smart mix)
- Address the root causes of human rights abuses
- Governments should uphold the spirit of and comply with its obligations under international human rights instruments



# Recommendations

- PROTECT (cont'd)
  - Governments should ensure the integrity of safeguard mechanisms that regulate public and private land investments and strengthen local mediation mechanisms; strengthen the principle and practice of Free, Prior, and Informed Consent; integrate the UNGP-BHR in land and resource governance
  - Governments should institute UNGP BHR principles in all State-run corporations and plantations

# Recommendations

- PROTECT (cont'd)
  - Governments should curb corruption especially in land management bureaus and prosecute all those involved
  - Governments should include BHR in their Covid 19 responses

# Recommendations

- RESPECT

- Companies must realize it is cost-efficient to observe and implement BHR now than later
- Private sector should have independent BHR policies apart from regulations in host countries
- Companies must listen to their BHR-conscious investors
- Stock exchanges can require more BHR relevant disclosures
- Businesses must learn to balance their COVID-19 responses with BHR

# Recommendations

- REMEDY

- State-based remedies must be supported by relevant and effective legislation
- Establish independent land dispute commissions to speed up the response to, and resolution of, land-related cases.
- Strengthen local mediation mechanisms to address local land conflicts, especially those at community level.

# Recommendations

- REMEDY (cont'd)
  - Disclose ownership/investment when acquiring land and offer information on how jurisdiction over such persons may be acquired in order that full and effective relief may be delivered to victims of land rights violations.
  - Efforts of businesses to remediate and redress their shortcomings must be appreciated; alleviate “first-mover challenge”
  - COVID-19 should not be an excuse to close offices addressing BHR issues or grievances

# Conclusion

- Protect, Respect, Remedy Framework has attained consensus
- Significant growth in the number of businesses committing to human rights
- In terms of acceptance and implementation on the ground, UNGP needs further promotion/mainstreaming
- Protect, Respect and Remedy Framework relies heavily on national action
- NAP development must get back on track

**END**

Thank you