

Kathmandu School of Law Review

ISSN 2091-2110
Human Rights and Democratisation

Volume 3

Special Issue

May 2013

FOREWORD BY EDITOR-IN-CHIEF

Ravi Prakash Vyas

FEATURE ARTICLE

BREAKING THE GENERATION THEORY OF HUMAN RIGHTS

Prof. Geeta Pathak

ARTICLES

Gender, Culture and Human Rights: The Tensions and Possibilities of Resolving Them

Tracie Lea Scott

Defining and Achieving Freedom from Hunger: A Rights-Based Approach

Saurav Ghimire

Economic, Social and Cultural Rights in the Transition- al Justice Remit

Shreejana Pokhrel

The Sisyphus Trap: The Committee on the Elimination of All Forms of Discrimination against Women on Eliminating Gender Stereotypes in South Asia

Hasini Rathnamalala

Special Procedures of the UN Human Rights Council and Protection and Promotion of the Human Rights: Fact or Myth

Bineet Kedia

Historical Account of Democratization and Constitutional Changes in Fiji

Ilana Harriet Burness

Human Rights and Financial Institutions: Pinning the Responsibility

Nidhi Modani

International Humanitarian Law in India: A Critical Case Study

Anita Yadav & Amit Yadav

The Protection of National Minorities within the Council of Europe: An Analytical Review

Jabbar Aslan & Khabbat Aslani

'From the Frying Pan into the Fire', IDPS in a State of Emergency: Sri Lankan Context

Mahesha Jayawardana

Rights Protection Regime for Internally Displaced Women and Children: Towards the Formation of A Metaframework

Rathin Bandyopadhyay & Chandrani Das

The Transfer of Asylum Seekers in Australia to Third Countries: A Case Study of Sovereignty versus International Law

Hugh S. Tuckfield

NOTES

A Critical Analysis of Right to Life and Judicial Intervention in South Asian Countries

Prakash K.C.

Corporate Social Responsibility (CSR): An Accommodating Tool for Business Enterprises to Respect Human Rights

Amarjibi Ghimire

BOOK REVIEWS

Human Rights Law and the Marginalized Other

Petra Gimbad

International Watercourses Law and A Perspective on Nepal - India Cooperation

Yubaraj Sangroula



Kathmandu School of Law (KSL)

Dadhikot-9, Bhaktapur, Nepal, Ph: 6634455, 6634663,

Email: info@ksL.edu.np, www.ksL.edu.np

Corporate Social Responsibility (CSR): An Accommodating Tool for Business Enterprises to Respect Human Rights

Amarjibi Ghimire¹

This article articulates on number of issues on CSR with an analysis of the importance in safeguarding human rights. It explains the comprehensible understanding of CSR and how it has evolved. Further, it highlights what should be the role of human right commission of Nepal in promoting CSR and what should be the corporate behavior of business enterprises under CSR in Nepal upon examination of human rights treaties and exploration of the specific business risks posed by the CSR dilemma. It makes some suggestions on range of actions that responsible business enterprises can take in order to respect and encourage human rights protection.

Introduction

There have been always challenges to responsible business enterprises, companies, corporations, business groups, project developers etc (hereinafter referred to as business enterprises) to accomplish their activities ensuring that their behaviors are not undermining the rights of people. It is further difficult for the Project Development Companies (PDC) whose businesses are related with infrastructure project development, to carry out their developmental activities ensuring that their activities are not infringing the rights of Project Affected Peoples (PAPs). General understanding of businesses enterprises on corporate social responsibility (CSR) is that: CSR is nothing more than forcibly demanded benefits to stakeholders which they are not presumed to obey. However, in different private sector opinions, CSR has become an established part of the global landscape, with companies throughout the world abiding by the United Nations Global Compact and many governments starting CSR initiatives. Hence there are clear differentiations even among the investors. The major reason of the CSR dilemma that business enterprises have is that they do not possess adequate knowledge on CSR. This dilemma is really jeopardizing

¹ LLM in Corporate Law; Associate Professor at Kathmandu School of Law.

the project developmental activities at various levels, hence the necessity to write on these issues.

Understanding CSR

Before defining all three words of corporate social responsibility collectively, firstly, it is significant to define the word corporate, because it is found confusedly used. General understanding of the word corporate is associated to companies and corporations. Theoretically, it is not true. Corporate is the word representing business or group or team, as it is derived from Christian theology while articulating the concept of 'Corporate Personality'. However, the principle of the independent corporate existence and the principle of corporate personality of a company were recognized in the English case *Salomon v. Salomon & Co Ltd*². Hence, the word corporate does not only represent companies and corporation; rather it represents every business community. The word corporate is used to reflect the words - businesses, companies, business corporations, business enterprises etc.

Now let us examine the meaning of second and third words 'social' and 'responsibility'. The term social implies towards societies or communities. Responsibility means liability or accountability. Hence, Corporate Social Responsibility (CSR) collectively corresponds to the 'responsibility of businesses towards societies'. In other words it can also be called as 'liability of businesses to the communities'. Business actions make various impacts on societies. The impacts of business actions on communities insist the business to consider their acts in terms of a whole social system, and hold the businesses responsible for the effects of their acts. If you are earning from the society you are responsible to contribute to the society. This concept is not only good for your business profit however also advantageous for the society and helps in the nation building. Sidestepping from respecting the right of communities and stakeholders to be involved in decision process does not let the business grow sustainably. Yes, it is possible that you can make good profit in short time but you cannot exist there for a long time.

Responsible businesses are the baseline of sustainable businesses. Hence while defining CSR in multifarious form, it stands for the business practices of business enterprises that integrate various factors such as economic, social, environmental, human rights etc and seeks to fulfill the interests of all

² *Salomon v A Salomon & Co Ltd* [1897] AC 22. It is a landmark English case based on [UK company law](#). In this case the court upholds the doctrine of company being separate corporate legal personality. As decided therein, creditors of an insolvent company could not sue the company's shareholders for demanding payment of outstanding debts.

stakeholders and societies including the interest of business itself. To be clear about CSR, it can be grasped as a 'theory' or a 'principle' or a 'phenomenon' based on the context. CSR means something, but not always the same thing to everybody³. CSR is also called as corporate responsibility, corporate conscience, corporate citizenship, social performance, sustainable responsible business, responsible business etc. Whatsoever words are used to reflect CSR the 'responsibilities of business enterprises towards communities and people' is its fundamental essence and following are the things to know importantly while understanding CSR:

Fulfilling Objectively Defined Legal Obligations is not CSR

Objectively stipulated legal roles and implications that business enterprises follow are different than CSR. The impact of actions of business enterprises on society require a business enterprise to consider its acts in terms of whole social systems, and such business enterprises is to be held responsible for the effects of its acts anywhere in that system. In a country like Nepal, the compensation of the social damage that businesses do is not possible only through objectively defined legal means, because the laws Nepal has are not progressive and that the courts it has are not aggressive. Therefore, communities and stakeholders demand to communicate on the communities' problem, damage in system and its renovation as these cannot be found objectively articulated in laws. Nevertheless, subjective obligations defined in laws can be articulated under CSR. For example, laws require safety at work. Now a question is who is responsible to define the types of safety. It is the business enterprises who are to define safety as per the ability of the respective business enterprises since they better know their economic and financial ability and such is to be defined under CSR principles of those business enterprises.

CSR is not Solely the Responsibility of Companies or Corporations

It is mainly found that companies' responsibilities are defined under CSR. As companies dominate today's business world, the word corporate is wrongly substituted for company. However, such definition confuses other business enterprises. Hence, all ventures that are in businesses are to be considered as corporate. As has been said, corporate represents the group or businesses not only company. There are other businesses found to be run by other means such as cooperative, partnership, corporations, associations etc. They are not

³ See Elisabet Garriga & Dome'nec Mele, 'Corporate Social Responsibilities Theory: Mapping the Territory' (2004) 53 *Journal of Business Ethics* 51, 51–71.

excused from their social responsibilities towards societies. As has been explained above, corporate does not only mean company, rather corporate represents business as a group.

Evolution of CSR

It is not impossible to trace evidences relating to the concern of the business communities towards society in many centuries. Hence, it can be said that CSR has a long and varied history. Developed form of CSR as it is understood today is the outcome of the human right pressure groups for which there are difficulties to trace the actual evolution. Archie B. Carroll of University of Georgia in his article 'Corporate Social Responsibility- Evolution of a Definitional Construct' argued that CSR began in the 1950s⁴, expanded during the 1960s⁵ and proliferated during the 1970s⁶. However, this is hard to justify with concrete evidence. Nevertheless, in 1953, when Bowen wrote the seminal book *Social Responsibilities of the Businessman*, since then there has been a shift in terminology from the social responsibility of business to CSR⁷. As to the case of Nepal, CSR has now become a concern of business communities. Business enterprises have become concerned since UN's initiative of UN Global Compact. Few Nepalese companies have also taken membership of UN Global Compact, for example *Himal Power Limited*, a company registered in Nepal, took membership of UN Global Combat on 2006.⁸ Many business enterprises are found to be active in performing different supports for communities.

Interlinking Human Rights and CSR

Human rights are momentous and further, universal and absolute. Human rights are universal because everyone is born with and possesses the same rights, regardless of where they are born and live, what is their gender or race, or what is their religious, cultural or ethnic background. Further, human rights are said to be absolute because people's rights can never be taken away. Hence one of the major aspects of human rights is that it applies equally to all, and all have the right to participate in decisions that affect their lives. It is the duty of the responsible business to respect human rights and involve the peoples and communities in decisions that affect their lives. Hence, responsible project

⁴ Archie B. Carroll, 'Corporate Social Responsibility- Evolution of a Definitional Construct' (September 1999) 38(3) *Business & Society* 268, Vol. 38, 268-295.

⁵ Ibid 269.

⁶ Ibid 273.

⁷ Garriga & Mele (n 3).

⁸ 'UN Global Compact: Nepal' (*UN Business*) <<http://business.un.org/en/documents/133>>, accessed 1 April 2013.

development companies must respect this view for the sake of uninterrupted project development activities.

Business enterprises may cause impacts on human rights in diverse ways. These impacts may aggravate as economic strength and political influences of business enterprises are increasing. Though primary responsibility for the enforcement of international human rights standards lies with the governments, business enterprises also have important roles to play at various levels. As today's business enterprises have become more involved in delivering services those previously provided by governments, human right issues associated to business enterprises become serious.

Human Rights principles impose six primary duties on 'business corporations'.⁹ They are: first, equal opportunity and treatment in the work place; second, respect for the security of persons by refraining from engaging in war crimes, crimes against humanity, genocide, torture, forced disappearance, forced or compulsory labor, hostage-taking and other violations of humanitarian law; third, protection of workers' rights through prohibitions upon slavery and forced, compulsory and child labor, maintenance of a safe working environment, payment of fair and reasonable remuneration and recognition of freedom of association and collective bargaining; fourth, respect for the sovereignty of states, local communities and indigenous populations; fifth, consumer protection; and finally sixth, environmental protection.

Today, many business enterprises have come to recognize the basis for being a good corporate citizen is respecting human rights of those who come into contact with the business enterprises in some manners. Contact between businesses enterprises and stakeholders either can be direct or indirect. Direct contact means contact with employees, customers etc and indirect contact are those with the likes of workers of suppliers or people living in areas affected by the activities of business enterprises. This development shows how business world are becoming sensitive towards human rights standards.

There are number of international instruments interlinking the CSR with human rights, such as:

International Convention on Economic, Social and Cultural Rights (ii) ILO Tripartite declaration of principles concerning multinational enterprises and social policy, (iii) Right to Organize and Collective Bargaining Convention,

⁹ (U.N. Sub-commission on the Promotion and Protection of Human Rights)
<<http://www.jussempo.org/Resources/Corporate%20Activity/Resources/CSRandHRnorms.pdf>>
accessed 1 March 2013.

1949 (No. 98) etc. Two of the prominent guiding principles concerning international standards and initiatives regarding business enterprises and human rights are: first, ILO's tripartite declaration of principles concerning multinational enterprises and social policy which is known as the MNE declaration, and second, UN Global Compact Principles.

The MNEs provides a comprehensive international instrument on labor dimension of CSR. MNEs sets international guide on enterprises and their interaction with labor and social policy issues. It offers guidelines to governments, and employers' and workers' organizations in such areas as employment, training, conditions of work and life and industrial relations. The declaration encourages the positive contribution that enterprises can make to economic and social progress.¹⁰

Further UN Global Compact also has played an important role in promoting human rights through CSR. UN Global Compact, launched at UN HQ in New York on 26 July 2000¹¹ is a strategic policy initiative for businesses that are committed to aligning their operations and strategies with ten universally accepted principles in the areas of human rights, labor, environment and anti-corruption. Following are those ten principles:¹²

Human Rights related Principles: Principle 1: Businesses should support and respect the protection of internationally proclaimed human rights; Principle 2: make sure they are not complicit in human rights abuses.

Labor related principles: Principle 3: Businesses should uphold the freedom of association and the effective recognition of the right to collective bargaining; Principle 4: Elimination of all forms of forced and compulsory labor; Principle 5: Effective abolition of child labor; and Principle 6: elimination of discrimination in respect of employment and occupation.

Environment related principles: Principle 7: Businesses should support a precautionary approach to environmental challenges; Principle 8: Initiatives should be undertaken to promote greater environmental responsibility; and

¹⁰ 'Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy' (*ILO Standard*) <http://www.ilo.org/dyn/normlex/en/f?p=1000:62:3149253107920436::NO:62:P62_LIST_ENTRIE_ID:2453910:NO>, accessed 2 April 2013.

¹¹ 'The Global Compact' (*UN Procurement Division*, 25 October 2004) <<http://www.un.org/Depts/ptd/global.htm>> accessed 2 March 2013.

¹² Initially there were nine principles. 'The Ten Principles' (UN Global Compact, 24 June 2004) <<http://www.unglobalcompact.org/AboutTheGC/TheTenPrinciples/index.html>>, accessed 2 March 2013.

Principle 9: Development and diffusion of environmentally friendly technologies are encouraged.

Anticorruption related principle: Principle 10: Businesses should work against corruption in all its forms, including extortion and bribery.

After initiating these ten principles, United Nation has done a lot in promoting responsible business enterprises. To trace the development, UN reviewed the global compact in 2011 and had significant findings explained below.¹³

CSR under Nepalese Prospects

Universal Declaration of Human Rights (UDHR) is considered the major document defining and highlighting human right principles. This is one of the fundamental documents for Nepal as well. All business enterprises must examine this document and check how they can follow the standards set out by this instrument. As has been highlighted, human rights are very much relevant from economic, social, and environmental aspects. For example, labor rights demand business enterprises to pay fair wages which is the economic aspect of human right, the right to non-discrimination are relevant to the social aspect of human rights; and right to clean drinking water, right to health relate to environmental aspects of human rights and all these rights can be well respected while carrying out different corporate activities.

There are many other documents to be considered by business enterprises importantly. International Covenant on Civil and Political Rights (ICCPR)¹⁴ and International Covenant on Economic, Social and Cultural Rights (ICESCR)¹⁵ are among those. These documents have enshrined many human right standards. A range of local laws currently adopted the standards mentioned in these conventions requiring Nepalese business enterprises to respect and obey human rights standards; though it is not possible to find these local laws framed in the language human rights. However, the standards of local laws are in fact based on human rights; for examples - laws prohibiting discrimination and harassment in the workplace and laws requiring employers

¹³ The report is called as '2011 Annual Review of Business Policies and Actions to Advance Sustainability'. In 2011, 1,325 companies from over 100 countries responded to the Global Compact Implementation Survey –making it the largest annual study conducted on corporate responsibility policies and practices by business globally. See Global Compact, *Annual Review of Business Policies and Actions to Advance Sustainability* (2011)

<http://www.unglobalcompact.org/AboutTheGC/annual_review.html> accessed 25 March 2013.

¹⁴ 'Nepal: Status of Ratification of Key International Instruments' (*Human Rights Treaty Monitoring Coordination Committee*, 11 February 2008)

<http://www.insec.org.np/files/documents/Nepal_Treaties.pdf> accessed 29 April 2013.

¹⁵ Ibid.

to provide equal employment opportunities are the human right prospective of CSR. Such laws address the rights to equality and non-discrimination, which are set out in various international treaties including the ICCPR.

Similarly, ICESCR commits its parties to work toward the granting of various rights to individuals such as labour rights, right to health, right to education, the right to adequate standard of living etc. The spirit of ICESCR provides a legal, political, and moral framework to challenge policies against poverty alleviation. ICESCR also provides a framework for people to participate in claiming their own rights. ICESCR recognizes the rights of all peoples to self determination including the right to freely determine their political status, pursue their economic, social and cultural goals, and manage and dispose of their own resources.

Further following are the major instruments¹⁶ related to labor rights which business enterprises must be aware with while forming their respective CSR principles: Right to Organize and Collective Bargaining Convention 1949 (No. 98); Equal Remuneration Convention 1951 (No. 100); Discrimination (Employment and Occupation) Convention 1958 (No. 111); Minimum Age Convention 1973 (No. 138); Worst Forms of Child Labor Convention 1999 (No. 182); Indigenous and Tribal Peoples Convention 1989 (No. 169).¹⁷

In addition to the human rights standards which Nepalese companies are legally obliged to comply with under domestic laws, there is a broader range of human rights that are relevant to corporate activity. Depending on the specific activities carried out by a corporation, these might include: right to liberty and security of the person; right to an adequate standard of living (including adequate food, water, shelter and clothing); right to education; right to health and other economic, social and cultural rights; right to freedom of thought, conscience and religion; right to freedom of expression; rights of Indigenous peoples.¹⁸

Many Nepalese companies have incorporated various activities into their CSR policies. However majority business enterprises are still found confused about CSR policies and benefit of CSR. Though few Nepalese companies has gone beyond domestic legal requirements and participate in voluntary initiatives on CSR and human rights, including the United Nations Global Compact and the Global Reporting Initiative, many business communities are far behind to

¹⁶ Ibid.

¹⁷ See 'List of ILO Core Conventions' (*ILO Policy*, 28 July 2010) <http://www.ilo.org/asia/decentwork/dwcp/WCMS_143046/lang--en/index.htm> accessed 1 March 2013.

¹⁸ These rights are as also enshrined as fundamental rights of people in Nepal. See Interim Constitution of Nepal 2007, art 12-32.

apply CSR principle for being responsive business enterprises.¹⁹ Two major aspects that can boost business enterprises in adopting better CSR policies are - first proper human right audit by Nepal Human Rights Commission (NHRC) has said CSR is the outcome of the pressure group working in the field human rights. There are numbers of association and institutions working in the field of human right in Nepal. Understanding and practice of CSR is quite low in Nepal and it demands a strategy for building awareness among businesses enterprises. Otherwise pressure groups may develop various pressures leading to ego conflicts.²⁰

Many business enterprises make very few contributions and argue that they have done much. Business enterprises think CSR are burden to them. It is the time that business enterprises need to seek answers to following questions: Does business have a social responsibility? If so, what is the extent and type of the responsibility? Is it a management initiative? Is it a negotiated agreement?

Concept of CSR is even much imperative to the business enterprises working in infrastructure project development. Getting license at the central level from central government does not denote that they are now equipped with full authority to go the project sites and start working as they wish. Business enterprises must understand that what they will be getting is the outcome of the society not the result of the license awarded by the central government.

Without educating public about CSR in Nepal, dilemma of the people residing at the project vicinity (PPC) cannot be eradicated. Critics of CSR debate that business enterprises working in this field are not found serious while dealing with PPC. In developed world there are significant levels of effective social organizations combating for the rights of PAPS, however, in developing countries like Nepal there are not many organization that really can fight effectively to serve the purpose. Due to the lack of supporting organizations, political activities are coming forward in the name of benevolent supporter of the local in protecting their right. Due to this fact, all PAPS are compelled to follow unpleasant move through the means of demonstration and all other unpleasant violent activities which ultimately lead to political bargaining. Business enterprises in Nepal must therefore need to keep in mind what they can do by defining their own CSR program; however few of them can be as highlighted as below:

¹⁹ Global Compact (n 13).

²⁰ Ibid.

Health related assistance: assistances to run health camps, free medicine distributions, cooperation in running health posts, financial contribution to local health post to purchase medicines, distribution of educational and basic materials to patient of various hospitals, financial contribution to various imitative against HIV.²¹

Drinking Water and Sanitation related assistance: UN has declared a safe drinking water as human right 2012²². Every country is under pressure for supplying safe drinking water to its citizen. To support state's responsibility business enterprises should help people living at different parts of Nepal by providing them safe drinking water and assistance for better sanitation.

Environment related assistance: construction of parks arks mainly children parks at various place across Nepal; tie up with various local bodies for nature conservation to support fight against climate change regarding their "Think Locally Act Globally Tree plantation initiative across Nepal; restoration and maintenance of lakes across Nepal; support for awareness campaign on plastic less environment by distributing jute bags; fund support to wild life conservation activities.²³

Education related assistance: financial assistance to upgrade the school facilities such construction of school building of basic infrastructure salary provision for 2 teachers, financial Support to help to the helpless children for purchasing educational materials, supporting orphan children and sending them to various local schools.²⁴

Community development related assistance: assisting communities on income generating activities and supporting through technical support to protect their natural resources such as forestry, water etc.²⁵

Role of Nepal Human Right Commission (NHRC) in promoting CSR

Though Nepalese business enterprises can form their own CSR policies to acquire support of local communities for their own business development, a number of time, they are found to be unsuccessful. Hence there is the necessity

²¹ Global Compact (n 13).

²² On 28 July 2010 UN published the news stating that Safe and clean drinking water and sanitation is a human right essential to the full enjoyment of life and all other human rights, the General Assembly declared today, voicing deep concern that almost 900 million people worldwide do not have access to clean water. 'Safe Drinking Water as Human Right' (*UN News Story Service*) <<http://www.un.org/apps/news/story.asp?NewsID=35456#.UWskEqJTCS0>>, accessed 25 March 2013.

²³ Global Compact (n 13).

²⁴ Ibid.

²⁵ Ibid.

of a strong organization who can pursue human rights audit and communicate with the local what they should expect maximum under CSR. NHRC can be a model institution for this purpose. NHRC must monitor and visit various business sites whether there are aggressively articulated human rights issues. NHRC must feel responsible for monitoring and implementation of a range of international human rights standards interlinked to CSR that have been agreed to by the government of Nepal. The NHRC must embark on a project that can focus on the role of Nepalese companies in respecting and protecting human rights.²⁶

Some of the questions which NHRC can streamline include: what do Nepalese business enterprises understand by human rights to be? How do Nepalese business enterprises see human rights as being relevant to the economic, environmental and social aspects of their activities?

Which of the various national and international guidelines and codes are currently being used by Nepalese business enterprises? What practical steps are Nepalese business enterprises taking in order to comply with human rights standards? What practical steps could be taken to increase the role of Nepalese business enterprises in protecting and promoting human rights as part of their everyday activities?

Conclusion

Roles of business enterprises are enormous for nation building. Business enterprises are therefore to be supported for the national economy to flourish; however, it is also the duty of the business enterprises to communicate with societies. When business enterprises prosper they have to be even closer to the stakeholders as they are under the responsibility to work jointly with the society for overall system development.

Business enterprises are required to be responsible on various aspects of their operations. Firstly they need to be responsible for the quality of their management in terms of protection of right of business affected people. Business community must understand that as per CSR, they are under continuing obligation to behave ethically and morally and endeavor to make various contributions to achieve economic development by improving the quality of life of the workforce and their families, as well as the living standard of the local communities and society at large. Hence there is a need for the business enterprises to develop uniform standard and framework regarding CSR which they can apply in their activities.

²⁶ Global Compact (n 13).