B+HR LAB³
TESTING ASSUMPTIONS

EVENT SUMMARY

Bangkok, Thailand
31 October 2019
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Overview

On 31 October 2019, UNDP B+HR Asia hosted the B+HR Lab III: Testing Assumptions in Bangkok. The Lab was the third such event since the project Business and Human Rights in Asia: Promoting Responsible Business Practices Through Regional Partnerships was launched in 2017. This year, the Lab provided a podium to various ‘outsiders’ to help test the programmatic and policy assumptions that UN and other actors might be operating from.

The aim of the B+HR Lab is to foster collaboration and coordination among UN and other actors working under the heading of the Business and Human Rights agenda. The following report provides an account of the discussions that took place during the Lab while respecting the Chatham House Rule.
Welcoming Remarks

B+HR Asia provided opening remarks introducing key developments of the Business and Human Rights discourse. The first observation was that there seems to be a trend, mainly in Europe, towards mandatory reporting legislation prescribing requirements on Business and Human Rights, ranging from disclosure obligations to full-fledged due diligence requirements.

The second observation was that there has been a lot of talk, planning and action on National Action Plans (NAPs) on Business and Human Rights in South and Southeast Asia. The recent Cabinet approval of the Thai NAP was highlighted, as were the NAPs in development in Malaysia and Indonesia. It was also noted that India, Pakistan, Nepal and the Maldives have shown serious engagement with the Business and Human Rights discourse, while also acknowledging that developments in Bangladesh and Sri Lanka are promising.

The third trend identified is a renewed focus on women. This trend is picking up strongly with new guidelines on the gender dimension of Business and Human Rights, drafted by Dr Surya Deva of the UN Working Group on Business and Human Rights.

Unfortunately, not all developments in 2019 were positive. For example, the situation worsened for human rights defenders (HRDs). Based on data collected by FORUM-ASIA, the number of identified human rights violations against HRDs are increasing.
Part A: Baselines

The first session of the day provided perspectives on political-economy dynamics in the region and the state-of-play on various BHR sub-topics. Those perspectives provided a baseline understanding for the rest of the day, while also identifying trends to monitor in the years to come.

A bifurcation of trends

There is a puzzling divergence in Southeast Asia between human rights policy and practice. While the policy and regulatory environment is strengthening, the situation on the ground may be worsening.

Various interconnected problems relating to the protection of labour rights were identified. For example, it was noted that weak local labour laws fail workers and result in a lack of trade union pluralism and the harassment and killings of labour leaders. Examples were provided for Thailand, Myanmar and Cambodia. Especially restrictions on peaceful public assembly was identified as problematic. In Thailand, a significant decline in the number of strikes was observed, indicating that workers are more afraid to speak out.

Another worrying development is the weaponization of laws against human rights activists and rights-holders, especially through Strategic Lawsuits Against Public Participation (SLAPPs). One participant worried that certain provisions in the Burmese Telecommunications Law, the Thai Computer Crime Law Act, and libel laws in various countries such as Indonesia and Singapore, will be replicated in states where the rule of law is much weaker.

The failure to provide meaningful protection to migrant workers was also highlighted. Collusion allows exploitation to thrive especially between factories employing migrant labour, local government and police officials. Migrants face grim prospects and have little hope for meaningful improvements any time soon.

Finally, raising awareness among consumers is paramount. Especially for consumers in South Korea and Japan, since they seem to lag behind other industrialized nations such as those in Europe, the US and Canada. Essentially, people working on BHR issues need to follow the production of products with adverse impacts on society, and target consumers in the markets where they are sold.
Coalitions are being built to combat government actions that curtail rights. These coalitions are conducting research to better identify and call out systemic offenders. Investigative journalism covering BHR, activism and the use of technologies provide promising developments in this respect. Other positive events include the renewed focus of actors such as the EU and US to use their economic leverage to address human rights concerns.

For example, the use of EU rules to combat illegal, unregulated, and unreported fishing (IUU) has been helpful in addressing human rights concerns in the seafood industry. Vietnam is facing similar scrutiny from the issuance of an IUU yellow card. Another interesting development is that Cambodia might lose its tariff preference under the “Everything but Arms” scheme, the first time the EU is undertaking such action. Finally, European Parliamentarians are being seized of free trade agreements in the region, evidenced by the EU-Vietnam trade negotiations. We are witnessing new actors speaking up for BHR issues. The US initiating import bans on goods related to forced labour is also an interesting development.

In conclusion, while the situation on the ground is worsening, the policy environment is strengthening. The question is what the BHR community and others can do to bring those two sides together.
Lessons from the Thai seafood scandal

It has been over five years that the story highlighting concerns over modern slavery in the Thai seafood industry was brought to light. Individual lives were saved through investigative journalism. The Thai government seems to be undertaking some action through, for example, ratification of a fishing convention and mandatory inspection in Thai ports. According to some, there are fewer injuries and disappearances at sea, as well as easier access to social benefits.

However, it is not clear that structural change has taken place. Companies are still seeking savings on labour costs, and reports indicate that forced labour and human trafficking continues to occur. After the EU lifted the yellow card against seafood exports from Thailand, the industry began to push back even harder, especially on issues that facilitate forced labour and human trafficking. Worryingly, the situation may be worsening.

Thai fishing vessels are travelling further and further, now even beyond the shores of Africa, turning off their transponders to cover up dubious practices. The decision of the US to end GSP status for 1.3 billion USD worth of Thai exports, including all seafood, indicates a fair degree of scepticism towards lessons learned by the Thai private sector and government. Although the Thai seafood scandal initially saved some people when the story broke, this is a drop in the bucket compared to the millions of people who are still trapped in forced labour.

The scale of the problem was highlighted recently with the tragic discovery of 39 corpses in a lorry in the United Kingdom. These people were likely to end up in nail salons, assist in the producing or harvesting of illicit substances, the sex industry and other sectors taking advantage of cheap illegal labour. The problem is widespread across various industries globally. Instances of forced labour are rampant in the service industry, including five-star hotels. A recent article by the Guardian, moreover, highlighted the use of forced construction labour used for the 2022 FIFA World Cup in Qatar. Supermarkets and retailers are also accused of using forced labour. Forced labour, along with a plethora of other business and human rights issues, is embedded in our computers and phones. Workers in a Samsung factory in South Korea are dying due to exposure to heavy metals and toxic chemicals. According to some observers, we will need to free 10,000 people per day to end modern slavery by 2030. The ILO estimates that forced labour and human trafficking generate 150 billion USD annually.

The erosion of labour conditions is not just confined to Asia; it also happens in countries such as the US. Worker rights are essential to human justice; they are the foundation of sustainable business. They ensure that people can afford to pay for the goods and services they produce. In short, there is a need for a systemic approach towards improving working conditions, as opposed to using CSR merely out of self-interest and as window-dressing. In this respect, the media can use its tools to hold States and the business sector accountable.
The link between international trade, ideology and human rights

Trade is increasingly being linked to ideological issues and human rights. We are witnessing watershed events in the global trade landscape. Developments that are reshaping the global landscape include the following.

First, we are witnessing a fragmentation of the agreed terms of international trade into three camps. The first we might call a “progressive” grouping focused on linking trade with labour and environmental standards, transparency and accountability. This first bloc of States reflects liberal Western standards. The second is what one could call China Inc., a mercantilist bloc purely focused on the economic benefits to one exporter at the expense of a competitor. The third bloc is the unilateralist and US-centric approach to trade, which might be characterized as a big hammer with which you can hit others into submission. The friction between these three camps is the factor responsible for much of the headlines we see today.

Vietnam is interesting in this respect since the differences of approaches come together in a single geography. Vietnam signed a free trade agreement with the EU and is a member of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP). Both these FTAs will be considered deep FTAs with rules and frameworks governing social issues. At the same time, when looking at investment figures, China is the biggest player in Vietnam. In Vietnam, we can see two parallel developments when it comes to trade: transparency vs opaqueness. How is that going to play out? Vietnam does not perform well when it comes to press freedom. Corruption is an ongoing problem. The right to assembly and expression is severely restricted in Vietnam. Recently, a 24-year-old blogger was jailed for writing about corruption. Villagers demanding that a Taiwanese steel mill shut down after poisoning ocean waters and killing off sea life were thrown in jail.

What will be the role of non-state actors in Vietnam as the EU-Vietnam FTA takes root? Will multinational companies step up? Who will be the rule-makers and who will be the rule-takers?

One could also question the recent US withdrawal of Thailand’s preferential treatment under the GSP regime. Was this ideologically driven? One would hope that it has to do with human rights concerns. One thing for certain is that the trade dispute between China and the US has played a significant role in this respect.

In respect of trade and human rights, we should closely follow the trends. What will the role of technology be in relation to human rights? How transparent can we make global supply chains to measure, monitor and manage issues such as forced labour? Can we use blockchain technology? If so, how far could we take that? SpaceX just launched mini satellites, which are now being used by NGOs to track environmental matters. Nevertheless, governments also need to play their part by facilitating public-private partnerships.
Moreover, we should keep an eye out on two contradictory developments: FTAs that link values (human rights) with trade, and trade with China. This will cause competition between companies from these different blocks. In sum, it will become very important that key stakeholders identify dubious practices.

**Part B: Mapping**

The session that followed Part A: Baselines sought to collect the most pressing challenges facing assembled organizations. The mind-map below illustrates the issues that participants struggled with most.

As indicated below, the most pertinent issue was how to engage business actors. Many actors working on BHR struggle to find the right balance between calling for business accountability and constructively engaging the business sector. The same could be said about governments as they explore the need for more stringent, binding rules. A practical and very pressing challenge, moreover, relates to HRDs; in particular, how to engage with HRDs more fully.

**Part C: Catalysts**

This session reflected on how to get governments and business enterprises to change their policies, operations and attitudes. How can we address the root causes of human rights abuses by business enterprises? How can we get relevant actors to undertake action effectively and cohesively? And what are some of the blind spots of the BHR community?
**BHR and privacy**

The BHR community focuses mostly on land, resources and poverty issues. However, discussants suggested that we should focus more on the adverse impact of technology on privacy. As clients and even close political allies to technology companies, governments are increasingly abdicating their role in protecting human rights against infringements to the right to privacy.

Especially worrying developments relate to biometrics and databases. People sometimes do not understand the severe implications of biometric technology. Biometrics can be used in a decentralized and disaggregated way. Biometrics can become especially worrying when they are used to create digitized databases. Who will be able to access these databases? How are technology companies applying this information and how will it affect citizens? We are seeing a trend where universal digitization of mass databases, combined with Artificial Intelligence, could have severe human rights implications. When private information becomes an essential commodity in business models, we need to worry. After water and natural resources, now the ownership of data is being taken away from us.

**Engaging the business sector**

How do we succeed in engaging the business sector to promote the BHR discourse? One participant said that he never uses the term ‘human rights’ when engaging with companies since it can be such a loaded and politicized term. Especially in China, using the term can prove counterproductive. A possible solution to this problem is framing discussions around economic and social welfare. Although there are companies that want to do the right thing and realize this can make financial sense, smaller companies with supply chains not extending into industrialized States may not yet be aware of such benefits.

If we evaluate business engagement with human rights in Asia, the results are depressing. One participant assessed the 50 largest stock-listed corporations of six countries in the region. Results showed that only approximately 20% have a human rights policy in place. One participant argued that companies often look at human rights issues from a strict compliance perspective. Therefore, this person argued that legal requirements are one of the most important ways to move companies. In turn, this requires us to consider how we can get governments to care and regulate business enterprises.

However, it seems that things are starting to change in the Asia-Pacific region. This is driven by activism and pressure from the West. Highlighting front-runners and naming-and-shaming offenders can act as a platform for change, since most companies will change their practices when significant pressure is applied. One participant argued that Asian sustainability teams are mainly concerned with corporate
branding and public relations. Therefore, practices such as naming-and-shaming can produce additional pressure for companies, especially when consumers and ESG investors have access to this information. Although the Sustainable Development Goals are helpful in showing companies what to aim for, ESG targets and indicators are more helpful. Furthermore, it seems that CSR is no longer in vogue among companies.

Another problem is that in Asia, business enterprises do not leverage their collective weight with the goal of changing government policies for the better. Moreover, government enforcement is lacking. Maybe the government enforces one month, the other it does not. Furthermore, there seem to be many inconsistencies in laws themselves.

Moreover, public-private partnerships can be a boon and a curse at the same time. They can be problematic because they could confer undeserved credibility on a company because it collaborates with a trusted civil society organization. At the same time, if a company engages in public-private partnerships, this forces it to at least reconsider and adjust some of its internal policies to not face scrutiny from its partners or their stakeholders.

Climate activism

How do we get communities, consumers and the general public to care about grand issues such as climate change? How does one gather people to build momentum, especially in this region?

One of the biggest regional issues seems to be a lack of awareness across the whole spectrum of sustainable development issues. There seems to be a lot of talk, though specific action is absent. In international schools, they teach children about development and climate change, but this is not the case in local school in Thailand. Many activists focus on risks that will materialize in the next 30 to 50 years, which is difficult for many people to grasp. Why should people who currently struggle to survive care about something so distant? Not everyone has the privilege to care about climate change.

Moreover, we have also been made to believe that sustainable development is all about individual action: “do not buy plastics, do not fly”. However, people forget to look at the larger picture, structural issues in our economic and political systems.
Another crucial issue is how cultural context affects development and advocacy. Saving face is an important aspect of Asian cultures. A Thai person called on participants to use the culture of saving face to their advantage: pressure governments and companies putting their reputation on the line; hold them accountable though do not humiliate them. We should be looking at meta-activism, meaning not organizing strikes to demand change, but organizing strikes to make consumers care, who in turn can affect change by voting with their baht, dollars or euros.

According to one Thai activist, most calls for change within Thailand, surprisingly, are not coming from local youth but from foreigners. This has various reasons. In Thai culture, young people are discouraged from speaking out and disagreeing with more senior members of society. Moreover, foreigners are perhaps more knowledgeable about development topics and climate change risks. In Thailand, currently, the engagement with climate change is limited to the people who already care. A problem that complicates matters further is that people stop listening when you start talking about what is the right thing to do. So how can we get the attention of those that do not yet care? That is a pressing question for which we do not yet have an answer. We should adopt the strategies employed by marketing agencies, public relations specialists and influencers; use them to reach consumers. One problem which has become more urgent recently was air pollution. When the issue is tangible it seems possible to engage people. We also need to face up to the task of making information more digestible. When we talk about carbon emissions, many people do not understand what we are talking about. The way we exchange information needs to be improved. For example, we could highlight stories from people impacted by climate change.

Part D: Co-creation

During the co-creation session, participants were divided into groups and had to come up with a tangible concept to raise awareness and/or motivate action on climate change, to be funded by UNDP B+HR Asia with $10,000. The proposal that garnered the most votes had presented a specific proposal to produce a video advertisement ironically titled “Amazing Thailand 2050”. The audience was informed that this idea may or may not be realistic given the project mandate.
Part E: Next Steps

The discussion that followed focused on the Responsible Business and Human Rights Forum to take place in 2020 June. UN system collaboration would be at the heart of next year’s event.

Concluding remarks

Seven key takeaways were provided as closing remarks.

A first critical observation is that the BHR community must preach to the unconverted. Now that BHR is gaining traction, we need to approach States and other actors that have not yet started to move in the right direction. Second, we need to find the right balance between incentives and disincentives; we need to both push and pull business enterprises to do the right thing; find the right balance between regulation and advocacy. Third, we need to engage more with HRDs. They require more representation in the activities of BHR actors, though always while remembering the “Do No Harm” principle. Fourth, we need to reflect on how to share resources better. Fifth, there seems to be an urgent need to document violations. As one participant noted: “when you document, they change”. This means we need more analysis and reports, but we also need to work more with the media. Sixth, we need to engage more with business. This is perhaps one of the greatest takeaways from this Lab. Seventh, we need to put more effort into activism and question how we can move people, how can we get them to care.
## Annex I: Participants list

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<th>Participant</th>
<th>Organization</th>
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<td>Elaine Kurtenbach</td>
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<td>Nanticha Ocharoenchai</td>
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Annex II: Agenda

United Nations Development Programme
Bangkok Regional Hub

B+HR Lab³ – Testing Assumptions
31 October 2019
Novotel Bangkok - Ploenchit

8:30 Registration
9:00 Introduction
- Agenda review
- Opening remarks from the UNDP B+HR Asia team, with a regional scan of Business and Human Rights developments in 2019

Part A: Baselines
9:15 Facilitated discussion including presentations from leading journalist, academic, and human rights advocate providing perspectives on the political-economy dynamics of the region and the state-of-play on one or more Business and Human Rights sub-topics. Presentations provide a baseline understanding, while also detailing trends and things to watch for in coming years

10:30 Coffee break

Part B: Mapping
11:00 Participants introduce themselves and organizations and provide updates on their work. In a mapping exercise, challenges are outlined and compared to the results of a similar exercise hosted in 2017. Facilitated group discussion follows.

12:30 Lunch

Part C: Catalysts
1:30 Facilitated discussion with [participants] and [participants] on the challenges and motivating governments and businesses to change their policies, operations, and attitudes. Presentations by experts are followed by
questions and comments, facilitating conversations about current lines and approaches to work.

Part D: Co-creation
2:45 With an allocated budget, attendees break into groups to develop a concept for taking BHR advocacy or awareness raising effort forward. Participants vote on the best idea and UNDP puts 10,000 USD+ towards its realization. Project is unveiled to the public at the Responsible Business and Human Rights Forum in June 2020.

Part E: Next steps
3:45 Facilitate discussion on the 2019 Responsible Business and Human Rights Forum with a view towards a more defined output and wider engagement in 2020. Participant inputs shape Asia’s largest yearly event on Business and Human Rights.

4:30 End. Concluding remarks on B+HR Lab³ are offered and reflections registered.
The 2019 B+HR Lab will take place in one week’s time! With speakers and participants from across sectors we will challenge assumptions about directions and impact of our work on progressing the Business and Human Rights agenda in the region. Our reading list is comprised of articles reflecting the most important developments in the business and human rights sphere of 2019 and help drive a rich dialogue during the Lab.
The Future of Business and Human Rights

Editorial: Business and Human Rights Scholarship: Past Trends and Future Directions
(Cambridge Business and Human Rights Journal)

As BHR starts to mature as a distinct field, BHR scholars in the future should move beyond the UNGPs and pay greater attention to a wider range of research strands, some of which are outlined in this editorial. Read more

Navigating a new era of business and human rights (Article 30)

From child rights to automation to ethical investing, this innovative publication seeks to question various hot topics in the business and human rights field. Read more

Trade and Investment

Labour Provisions in G7 trade agreements: A comparative perspective (ILO)

There is a need for increased dialogue and policy coherence among social, economic and trade policies to fulfil the human-centred agenda for growth and development. In line with those needs, this report provides an analysis of labour provisions in G7 trade arrangements. Read more

Money, Millennials and Human Rights: Sustaining ‘Sustainable Investing’ (John Ruggie & Emily Middleton; Global Policy)

This paper examines the rise and current state of investing in line with the Environmental, Social and Governance standards. It should be of particular interest to investors, issuers and human rights advocates alike. Read more

Human Rights and the Environment

Global Environment Outlook, Asia-Pacific Regional Assessment (UNEP)

UN Environment paints a comprehensive picture of the environmental factors contributing to human health and well-being at the regional level. It highlights that soon development will start to undermine itself and that, therefore, decision makers face complex and interlinked environmental, social and economic challenges. Read more

Women’s Rights


The working group highlights the disproportionate impact of business activities on women and girls. It develops a gender framework and proposes gender guidance for each of the UN Guiding Principles. Read more
Empowering Women Migrant Workers from South Asia: Toolkit for Gender-Responsive Employment and Recruitment (UN Women)

The toolkit provides guidance on ensuring protection and promotion of the rights of women migrant workers throughout the labour migration cycle. Read more

Migrant Workers

Migrants and their Vulnerability to Human Trafficking, Modern Slavery and Forced Labour (IOM)

What makes migrants vulnerable to human trafficking, forced labour and modern slavery? The report shows that migrants are particularly vulnerable when the State cannot protect them, such as with private dwellings, border crossings, irregular migration routes and conflict zones. Read more

State Action


If States are to effectively implement the UNGPs, they need to ensure policy coherence across all levels of government and in line with international human rights standards. The working group offers valuable insights on how States can take action cohesively. Read more

Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises on its mission to Thailand (OHCHR)

Although Thailand has taken promising steps regarding business and human rights, according to the Working Group in reality numerous challenges remain, including the public orders imposed by the interim military government, unreasonable and unwarranted restrictions on peaceful protests, and the harassment and filing of strategic lawsuits against human rights defenders. Read more

Case studies and workshop report: Remedy in business and human rights cases: The role of NHRIs (Danish Institute for Human Rights)

In October 2018, the Danish Institute for Human Rights and the German Institute for Human Rights hosted a workshop gathering business and human rights experts who shared experiences and collectively reflected on common approaches to enhance remedy. Read more

Corporate Accountability

Responsible business conduct as a cornerstone of the 2030 Agenda – a look at the implications (Danish Institute for Human Rights)

This report considers the connections between responsible business conduct and the 2030 Agenda and reiterates that the implementation of the UNGPs can be the single most important contribution by business to the realization of the SDGs. Read more
**Fig Leaf for Fashion: How social auditing protects brands and fails workers** (Clean Clothes Campaign)

Civil society argues that the multi-billion-dollar social auditing industry is a farce, a market for fake virtue serving corporate interests. [Read more](#)

**The Duty of Care of the Parent Company: A Comparison between French Law, UK Precedents and the Swiss Proposals** (Dalia Palombo; Cambridge Business and Human Rights Journal)

As litigation for business and human rights abuses intensifies, victims of human rights abuse in Asia are potentially presented with transboundary access to justice. This article explains that the developing jurisprudence on the parental duty of care can already provide such access in UK courts, while the focus of laws in Switzerland and France is of a different nature and require further clarification. [Read more](#)

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**Event logistics**

**DATE AND TIME**

Thursday, 31 October 2019

8:30 AM - 5:00 PM

**LOCATION**

Novotel Ploenchit, BTS Ploenchit, 566 Phloen Chit Rd, Lumphini, Pathum Wan District, Bangkok 10330

**GET IN TOUCH**

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