

EXECUTIVE SUMMARY OF THE INDIA COUNTRY RISK ASSESSMENT

The CRA performed on India has investigated each human right from the Universal Declaration of Human Rights (UDHR) at three levels. First, the rights were investigated for areas of conflict between the prevailing national laws and international human rights law. Second, the prevailing social and cultural practices were analysed to identify any inherent human rights violations frequently perpetrated at the societal level. Third, each right was assigned an overall company risk rating, based on the ratings in the formal law and practice categories and the proximity to company operations. The results of the CRA produced the categorisation of 13 human rights as high-risk areas, 5 human rights as medium risk areas and 2 human rights as low-risk areas for companies operating in India. The following presents the overall results of the CRA, including a short description of each right. The full CRA offers a detailed in-depth description of each right.

COMPANY RISK

The following rights received a red rating in the Company Risk category in the CRA, which indicates that these human rights constitute high-risk areas for companies operating in India. A short description of each right follows below.

- Right to Freedom from Discrimination (art. 2)
- Right to Freedom from Forced Labour and Servitude (art. 4)
- Right to Freedom from Torture, Cruel, Inhuman or Degrading Treatment or Punishment (art. 5)
- Right to Freedom of Movement (art. 13)
- Right to Own Property (art. 17)
- Right to Peaceful Assembly and Freedom of Association (art. 20 and 23)
- Right to Work and Just and Favourable Conditions of Work (art. 23, 24 and 25)
- Right to an Adequate Standard of Living (art. 22)
- Right to Health (art. 25)
- Right to Food (art. 25)
- Right to Adequate Housing (art. 25)
- Right to Participate in Cultural Life (art. 26)
- Right to Education (art. 26)

Right to freedom from discrimination and the right to freedom from torture, cruel, inhuman, degrading treatment and punishment constitute high-risk human rights areas in India that require special attention from companies. Scheduled Castes (Dalits), Scheduled Tribes (Adivasis), women, people with HIV/AIDS, and homosexuals constitute particularly vulnerable groups who are especially susceptible to discrimination in the whole spectrum of human rights. They are subjected to harassment and degrading treatment not only by police and security forces, but also by non-state actors. Dalits constitute the bottom level of the Indian caste system, which delineates a clear social strata and segregates the population into 5 different groups and thus legitimising descent based discrimination. Even though Indian law has officially abolished the caste-system, the practice continues in many places throughout the country, continuing the tradition of stigmatization, discrimination and degrading treatment of Dalits. As a result, Dalits sometimes live in segregated areas and are forced to do dirty and dangerous jobs, often with little or no payment.

Gender-based discrimination is another wide-spread problem in India and gender disparity manifests itself in various forms, evidenced by open discrimination against the girl child, adolescent girls and women. Domestic violence and mistreatment in the form of rape are reported to be a serious problem. Furthermore, women are less educated than men, more malnourished, and they receive less health care. Discrimination is also evident in the workplace, with differential treatment in remuneration, access to employment and promotional opportunities. Moreover, sexual harassment is reported to be a widespread and increasing problem.

Right to freedom from forced labour and servitude constitutes a high-risk human rights area in India requiring special attention from companies. Forced and bonded labour is extremely widespread in India, and according to human rights



groups, 40 million bonded labourers exist in the country; 15 million of whom are children (1999). Debt bondage is largely confined to those outside of the traditional Hindu caste system, such as Dalits and Adivasis, and people from the lower castes. Debt bondage usually occurs when workers have obtained loans from landlords or employers for basic living expenses, such as housing, health care, or food etc., but due to high interest rates charged on the loans and abysmally low wages the debtor is unable to repay and is forced to work for the lender to pay the debt. Debts incurred by one family member are also transferred to other family members causing enslavement to the same employer for generations. Broader socio-economic problems, such as surplus labour, unemployment/under-employment, inequitable distribution of land and assets, low wages, distress migration, and culturally-embedded traditions constitute the main causes for forced and bonded labour in India.

Right to freedom of movement constitutes a high-risk human rights area due to the problem of forced and bonded labour and the massive flux of inter-state migrant workers in India. Families migrate in order to seek employment and better livelihood; however, very often they are subjected to exploitation and severe human rights violations. Migrant workers are often denied access to suitable residential accommodation, medical facilities and protective clothing, and they live and work under appalling conditions with no access to healthcare or social insurance. The vast majority of the migrant workers are Dalits, Adivasis, and people from the lower castes.

Right to own property and *right to adequate housing* constitute high-risk human rights areas, which require particular attention from companies. Both rights are violated through the practice of forced evictions and relocations that occur as a result of development projects and slum dwellings evictions in the big cities. Human rights groups document that citizens are being evicted and relocated without consultation or adequate compensation, and usually offered poor or no resettlement options. Relocation victims are often poor or indigenous people (in India called Scheduled Tribes or Adivasis). When indigenous people are forcibly relocated, they are also denied access to their food and water resources since they generally live off the land. Indigenous people have special property rights in Indian law as well as in international law, and even though the violations are perpetrated within the governmental realm, companies must remain vigilant for complicity when purchasing or renting property from the Government. Moreover, companies should be aware that conditions of employee housing are often below international standards. The facilities typically lack basic necessities such as showers or clean toilets.

Right to work and just and favourable conditions of work is a high-risk human rights area in India. Even though the law offers good protection, only 8% of the workforce is employed in the formal sector, leaving 92% to be employed in the informal sector where implementation and enforcement of the law is very weak. Common violations include: lack of labour contracts, excessive work hours, insufficient rest periods, low wages, unsafe working conditions, and unsuitable work environments. Dalits, Adivasis, women, internal migrant workers, contract workers, plantation workers, children, and juveniles constitute particularly vulnerable groups in India.

Right to food constitutes a high-risk human rights area in India. Poverty is a widespread problem in India; approximately 34% of the population live below the poverty line (i.e. less than 1 \$ a day) and 21% of the population is undernourished. Pollution and environmental damage are also serious problems in India. Deforestation, soil erosion, water pollution and land degradation have worsened the conditions for economic development of rural India. India's huge number of residents puts immense pressure on the country's resources, and industrialization and urbanisation have caused a profound deterioration of India's air quality and water resources.

Right to peaceful assembly and freedom of association is a high-risk human rights area in India. In spite of adequate protection in law and the existence of several powerful trade unions in the formal sector, legislation is not enforced in the informal sector and only very limited union representation exists. According to the International Confederation of Trade Unions (ICTU), workers who try to engage in union activities and fight for workers' rights in the informal sector fear retaliation by management. Anti-union discrimination remains a problem in both the formal and informal sector, however particularly in the informal sector.



Right to an adequate standard of living is a high-risk human rights area in India and requires special attention from companies in two vital areas: minimum wage, and social security. Even though India operates with a minimum wage system and a social security system, implementation of the law in the informal sector is confronted with many obstacles. As a result, workers are often paid below the minimum wage, which is often too low to maintain an adequate standard of living. People in the informal sector are seldom covered adequately by either a contribution-based insurance scheme or any other social assistance scheme, and only about 35 million out of a work force of 400 million have access to formal social security.

Right to health is a high-risk human rights area in India, which requires special attention from companies. Enforcement of occupational health and safety laws (OSH) is generally regarded to be poor, particularly in the informal sector, and as a result, industrial accidents are common and widespread. Even though it is difficult to get an overview of accident or occupational disease statistics in India because of the lack of reporting, studies have revealed the existence of many occupational diseases, most notably respiratory diseases caused by dust. The most common diseases reported are bysinosis, asthma, allergies, chronic lung diseases, heavy metal poisoning, chemical poisoning, and deafness.

Child labour is widespread in India and *the right to education* constitutes a high-risk human rights area, which requires special attention from companies. Due to differing definitions and methods of estimation, the total number of estimated child labourers varies between 60-115 million, and India holds the largest concentration of child labourers in the world. Child work in India not only includes children working under horrendous work conditions that result in disability and serious work injuries, it also includes children working under bonded labour arrangements. Child labour is a complex issue, which is deeply linked with the lack of access to education in India, as well as widespread malnutrition, poverty and the culturally embedded caste system.

Right to participate in cultural life constitutes a high-risk human rights area due to the caste-system and the existence of indigenous people (Scheduled Tribes/Adivasis) in India. Both Dalits and Adivasis are subjected to severe discrimination on the whole spectrum of human rights. Both groups are under-represented in political life; are more often malnourished; are generally engaged in the most exploitative forms of labour and they lack access to basic healthcare and education. Moreover, Adivasis are also deprived of customary rights over natural resources such as land, forests, cultural identity and heritage, and traditional knowledge, including intellectual property rights.

COMPANY RISK

The following rights received a yellow rating in the Company Risk category in the India CRA which indicates that these human rights constitute medium-risk areas for companies operating in India. A short description of each right follows below.

- Right to Life, Liberty and Security of Person (art. 3)
- Right to Family Life (art. 16)
- Right to Freedom of Opinion, Expression, Thought, Conscience and Religion (art. 18 and 19)
- Right to Take Part in Government (art. 21)
- Right to Intellectual Property (art. 26)

Right to life, liberty and security of person has been categorised as a medium-risk human rights area in India. The Indian police and security forces have a bad reputation among human rights organisations and are reported to be involved in arbitrary killings, disappearances, torture as well as arbitrary arrest and detention. Human rights groups report that some of the worst human rights violations currently taking place in India are the ones committed by the police, security forces, and the military, in the areas of Kashmir and Jammu and the North-eastern states. Even though violations are perpetrated in the governmental realm, companies should remain vigilant for complicity. Companies may risk direct



involvement in violations of the right to life, liberty and security of person if the company uses state security forces either to guard premises or to maintain orderly and effective production.

Right to family life constitutes a medium-risk human rights area in India. This is particularly due to the fact that women working in the informal sector rarely receive the required maternity leave and benefits required by law. The women most likely to be denied their rightful benefits are migrant workers, Dalits and Adivasis, and women working in the Export Processing Zones.

Right to freedom of opinion, expression, thought, conscience and religion constitutes a medium-risk human rights area in India. With some exemptions, the Government is generally considered to respect the right to freedom of speech and the press as well as the right to freedom of religion. However, intra-group conflicts between Muslims and Hindu-nationals and Christians and Hindu-nations exist and have, in some cases, had violent outcomes, which threaten the continued religious freedom and tolerance in India. The company must therefore establish protective safeguards to avoid discrimination and harassment of religious minorities, and should address the issue of expressive and/or religious activity at the workplace in order to protect the safety, health and fundamental rights of others.

Right to take part in government constitutes a medium-risk human rights area in India. India is regarded as the biggest democracy in the world, and citizens have the right to peacefully change their government through periodic, free and fair elections. However, corruption, (a sub-category of the right to take part in government) is a serious problem at all levels in India and obstructs the realisation of many human rights.

Right to intellectual property constitutes a medium-risk human rights area in India. Even though information on violations of the intellectual property rights of Adivasis in India is very limited, companies may risk violations if they do not take special efforts to identify and protect the intellectual property rights of indigenous people, especially considering the general discrimination and marginalisation of the Adivasis.

 COMPANY RISK

The following rights received a green rating in the Company Risk category in the India CRA which indicates that these human rights constitute low-risk risk areas for companies operating in India. A short description of each right follows below.

- Right to Privacy (art. 12)
- Right to Fair Trial and Recognition as a Person before the Law (art. 6,7,10 and 11)

Right to privacy constitutes a low-risk human rights area for companies operating in India. However, India does not have a data protection law, and even though information on violations of the right to privacy is limited, the company should protect against direct violations when collecting data on employees. This is particularly relevant when considering the discrimination of vulnerable groups in India, such as homosexuals and persons with HIV/AIDS.

Right to fair trial and recognition as a person before the law constitutes a low-risk human rights area in India. India's legal system complies with international standards on the right to fair trial and recognition as a person before the law and the problems currently facing the Indian legal system are most likely beyond the companies' sphere of influence. However, the company should be aware that marginalised groups in India, in particular Dalits and Adivasis, experience discrimination of their right to a fair trial and recognition as a person before the law.

