



A family engaged in river bed gravel mining in the Mahakali river, Kanchanpur

Photo: Jyotiraj Patra/Oxfam

# **WATER, BUSINESS AND HUMAN RIGHTS IN TRANSBOUNDARY BASINS: PERSPECTIVES FROM THE GANGES-BRAHMAPUTRA-MEGHNA (GBM) AND SALWEEN BASINS**



**OXFAM**



In the Ganges-Brahmaputra-Meghna (GBM) river basins of Bangladesh, Bhutan, China, India and Nepal and the Salween river basin of China, Myanmar and Thailand, millions of people depend on rivers to provide the water that is essential to produce food, ensure their health, secure a livelihood and enjoy cultural practices. The COVID-19 pandemic has highlighted the critical importance of the human rights to sufficient, safe, acceptable, physically accessible and affordable water in preventing people from contracting and spreading disease. Yet unregulated and unsustainable business activity is having serious negative impacts on the health of the GBM and Salween rivers and river basins, and on the lives of the people who depend on them. Bridging the gaps between business and human rights, and water governance practice offers the potential to find some solutions. This, and governments and businesses better meeting their human rights obligations, will have positive outcomes for the environment, and people and their right to water.



Gravel and bolder mining in the Mahakali river, Nepal

Photo: Jyotiraj Patra/Oxfam

This Briefing Note has been prepared by Oxfam's Transboundary Rivers of South Asia ([TROSA](#)) programme. TROSA is a regional water governance programme implemented by Oxfam and partners in Bangladesh, India, Myanmar and Nepal. Adopting a human rights-based approach to governance of shared waters in transboundary basins, the programme supports communities' participation and women leadership in water governance, and engage in dialogue, build evidence base and contribute to policy reform and formulation in order to secure their rights to water, and to a secure and resilient livelihood. TROSA works with civil society organisations (CSOs), governments and the private sector, including through multi-stakeholder partnerships and dialogues. One of the key programme objectives is to engage with businesses and private sectors to ensure business practices and investments respect peoples' rights, and embrace responsible and inclusive business practices.

#### **Disclaimer**

The views and opinions expressed in this paper do not necessarily reflect those of Sida. Sida are not responsible for any errors or omissions in the translation of this paper from the original version to other languages. The designation of geographical entities in this paper, and the presentation of the material, do not imply the expression of any opinion whatsoever on the part of Sida concerning the legal status of any country, territory, or area, or of its authorities, or concerning the delimitation of its frontiers or boundaries.

©Oxfam, June 2020

Published by TROSA Programme, Oxfam

## Threats to rivers and peoples' right to water in South Asia

The rivers of the Ganges-Brahmaputra-Meghna (GBM) and Salween basins face numerous threats. Unregulated infrastructure developments, unplanned land use practices, climate change, agricultural run-off, poor household waste management practices and increased urbanisation are all serious threats. Conflict and limited cooperation amongst river stakeholders also work to leave poor and marginalised riverine communities vulnerable. Women are often disproportionately impacted when the health of rivers and river basins is undermined because of their significant contribution to agriculture and significant role managing household water consumption and food sources.

Business activity can also create additional threats. Private sector activity – undertaken by SMEs and large multinational enterprises – is essential and provides many of the goods and services consumed in the region, and provides employment for millions of people. Yet private sector activity can also undermine peoples' human rights. South Asia remains home to the largest number of working children in the world; supply chains of apparel, agribusiness, electronics, and others expose workers to unsafe working conditions and labour rights abuses, and gender discrimination and gender-based violence; and human rights defenders continue to face attacks, reprisals and criminalisation including for opposing extraction of natural resources without meaningful consultations with affected communities.<sup>1</sup> Private sector activity can also impact on peoples' right to water by diverting, degrading, depleting and polluting rivers and other water sources, or restricting community access to rivers.

Large infrastructure projects, such as hydropower dams, can cause major changes to river flow regimes, destroy fisheries, reduce sediment transport downstream, cause loss of productive land and force the relocation of entire communities. The Salween river which runs through China, Myanmar and Thailand is currently free flowing and as such development of hydropower dams on the Salween river is particularly contentious. Activities such as sand mining, which is prevalent across many parts of the GBM river basin, can also alter river flow regimes, and exacerbate erosion, lower groundwater levels and impact on water quality. Sand mining is often informal or illegal, and is sometimes enabled by violence and corruption. Poor waste management practices by a range of industries – including sugar mills, pulp and paper production, tanneries and textiles – is also a significant source of pollution in the GBM river basin. The disposal of toxic wastes has significantly disrupted peoples' livelihoods by contributing to a decline in fish populations or causing crop damage and the death of cattle where wastes enter fields.



## Human rights and the environment, and the right to water

### *International human rights standards*

The right to clean water is a fundamental human rights<sup>ii</sup> and one that is clearly established in international human rights law. Water is essential for the full enjoyment of life, and is essential to the enjoyment of all human rights.<sup>iii</sup> Water is necessary to produce food, ensure environmental hygiene (an aspect of the right to health), secure a livelihood and, for many people, to enjoy cultural practices.<sup>iv</sup> The human rights to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses.<sup>v</sup> Realising the human rights to water and sanitation is critical to preventing the contraction and spread of life-threatening diseases such as COVID-19. People with limited access to water and safe sanitation services are at a much higher risk of COVID-19 infection.<sup>vi</sup> Frequent hand washing with soap and water, necessary to prevent the spread of COVID-19, is not possible without access to sufficient, safe, acceptable, physically accessible and affordable water.

The right to water should be enjoyed without discrimination, and enjoyed equally between women and men.<sup>vii</sup> The right of women to water (along with other things important to enjoy adequate living conditions) is specifically recognised in the Convention on the Elimination of All Forms of Discrimination against Women.<sup>viii</sup>

The enjoyment of human rights is closely linked to the environment in which people live. For river dependent communities, the environmental health of those rivers and the forests, floodplains and other areas in their watersheds are critically important for the realisation of a range of rights. The UN Special Rapporteur on Human Rights and the Environment has made clear that a safe, clean, healthy and sustainable environment is necessary for the full enjoyment of human rights.<sup>ix</sup> Further, the exercise of human rights, such as freedom of expression and association and rights to information, helps to protect the environment.<sup>x</sup>

The right of Indigenous Peoples to the conservation and protection of the environment is specifically promoted in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).<sup>xi</sup> The UNDRIP also promotes the rights of Indigenous Peoples to participate in decision-making in matters which affects their rights; to determine and develop priorities and strategies for the development of their lands and other resources; and to give their free, prior and informed consent for the development of projects that affect their lands and resources, including their water resources. These rights exist in addition to the right to water that all people enjoy.

### *National and regional framework*

Courts in both Bangladesh and India have interpreted each country's constitution to encompass or imply the protection and preservation of a healthy environment or the right to a healthy environment.<sup>xii</sup> The Nepalese constitution explicitly promotes the rights of citizens to live in a clean and healthy environment, and to obtain compensation for inquiry caused by environmental pollution or degradation. No such rights-based provisions (or court interpretations) exist in Myanmar's constitution (although the constitution includes a more general duty of the state to protect and conserve the natural environment).<sup>xiii</sup> However, the Association of Southeast Asian Nations ([ASEAN](#)) Human Rights Declaration, which Myanmar and neighboring Thailand have affirmed, promotes the right to safe drinking water and sanitation, and to a safe, clean and sustainable environment.<sup>xiv</sup>

The South Asia Association for Regional Cooperation ([SAARC](#)) does not have its own equivalent to ASEAN's Human Rights Declaration. Nor does it have an equivalent to the ASEAN Intergovernmental Commission on Human Rights, whose work occasionally considers issues of business and human rights,<sup>xv</sup> and human rights and the environment.<sup>xvi</sup> Sub-regional initiatives such as the South Asia Subregional Economic Cooperation ([SASEC](#)) and Bay of Bengal Initiative for Multi-Sectoral Technical and Economic Cooperation ([BIMSTEC](#)) whose work includes a focus on issues such as inland water transport and fisheries, do not have mechanisms on human rights either. This is something that should be rectified.

## Duties and responsibilities of governments and businesses

Governments and businesses have the potential through their actions and inactions, and both positively and negatively, to impact on human rights including people's right to water. Yet they have different obligations with respect to human rights. The different obligations of governments and business are best articulated in the UN Guiding Principles on Business and Human Rights ([UNGPs](#)).

The UNGPs are based on three complementary pillars.<sup>xvii</sup> These are:



The state duty to protect human rights sits alongside obligations to not undermine or interfere with the enjoyment of human rights including the right to water, and to fulfill human rights including to water. The duty to protect requires governments to take action to prevent, investigate, punish and redress any human rights abuse by third parties, including business, through policy, legislation and adjudication.<sup>xviii</sup> This may require that governments adopt legislation to stop businesses from denying equal access to water, or from polluting water resources.<sup>xix</sup> Importantly, the state duty to protect has extraterritorial obligations. This requires governments to take steps necessary to prevent human rights violations abroad by corporations domiciled in their territory or jurisdiction.<sup>xx</sup>

Unlike governments, businesses are not obligated to ensure that people have access to water. Instead the corporate responsibility to respect human rights requires that business do not cause or contribute to human rights abuse<sup>xxi</sup> or, in other words, not infringe on peoples' rights including to water. The corporate responsibility to respect human rights is exercised, in part, through corporate due diligence processes. This

means businesses should assess the potential and actual negative human rights impacts of their own activities.<sup>xxii</sup> Once identified negative human rights impacts should be prevented, mitigated or otherwise addressed. The corporate responsibility to respect human rights exists regardless of governments' ability or willingness to meet their own human rights obligations, and exists wherever businesses operate,<sup>xxiii</sup> applies to businesses of all sizes,<sup>xxiv</sup> and applies to project investors and financiers.<sup>xxv</sup> Examples of sustainability of business practices which use water resources are presented in this Box.

### Improving the sustainability of business practices

There are of course numerous examples of governments, the private sector and other stakeholders coming together to address the negative impacts of private sector activity on water resources and communities' rights to these water resources. Two initiatives in the textiles sector, which is a significant user of water and source of water pollution, are the Partnership for Cleaner Textiles ([PaCT](#)) in Bangladesh, and the Swedish Textile Water Initiative ([STWI](#)) which has projects in both Bangladesh and India. Among other things these projects have worked with factory owners to reduce water consumption in their dyeing processes (through improved water metering and reuse of process wastewaters), and to reduce the volume of wastewater requiring treatment.<sup>xxvi</sup>

The huge number of textile factories operating across Bangladesh and India, complex supply chains, and poor monitoring and enforcement of relevant laws presents significant challenges. Yet replicating efforts such as those mentioned above to scale up outreach to a greater numbers of factories, at all levels of the textile supply chain, is necessary to improve business practice in this sector and to improve business respect for human rights.

Finally, the UNGPs emphasises the critical importance of victims of business related human rights abuse to be able to access some form of remedy.<sup>xxvii</sup> Remedy may take the form of an apology, compensation or guarantees to prevent any future harm. Both governments and business have obligations to provide mechanisms through which grievances can be raised and remedies sought. Examples include the courts and National Human Rights Institutions (NHRIs), and mechanisms developed by business, which if designed to be fair, accessible and human-rights compatible can be highly effective.

The UNGPs are one important framework to address the many issues of business impacts on peoples' right to water, along with other fundamental rights. It is not the only framework though. The Convention on the protection and use of transboundary watercourses and international lakes (1992) and the Convention of the law of the non-navigational uses of international watercourses (1997) are also relevant, especially given the transboundary nature of the GBM and Salween rivers. The 1992 convention focuses on preventing and controlling pollution likely to have a transboundary impact, ensuring ecologically sound and equitable water use, and encouraging bilateral and regional cooperation to implement environmental impact assessments relating to transboundary waters.<sup>xxviii</sup> The 1997 convention includes obligations related to pollution, notification in emergency situations, and obligations to not cause significant harm.<sup>xxix</sup> Even in

the absence of governments signing these treaties, they provide a useful framework on which regional cooperation among governments, and the private sector, can be built.

### *Gender, business and human rights*

The UN Working Group on Business and Human Rights has highlighted the differentiated and disproportionate impact of business activities on women and girls, and the additional barriers they experience in seeking effective remedies. The Working Group has developed guidance for governments and business on how they can work to eliminate discrimination against women and achieve substantive gender equality in the context of meeting their human rights obligations as described in the UNGPs.<sup>xxx</sup>

Ways governments and businesses can do this include:

**A**

Taking appropriate steps to ensure that all business enterprises respect women's human rights, including to prevent all forms of discrimination, harassment and violence against women

**D**

Working to overcome practical barriers, patriarchal norms or threats of violence that might discourage potentially affected women from participating in impact assessment processes

**B**

Ensuring the participation of women and women's organisations in developing legal and policy measures to implement the UNGPs, including through the development of National Action Plans on Business and Human Rights (NAPs)

**E**

Ensuring that state-based judicial and non-judicial mechanisms are responsive to additional barriers faced by women in seeking effective remedies for business-related human rights abuses

**C**

Integrating a gender perspective in mandatory human rights due diligence laws and integrating a gender perspective in carrying out all steps of human rights due diligence processes



## Addressing the threats to rivers and peoples' right to water

A range of complementary approaches can address some of the threats from private sector activity on the transboundary rivers of the GBM and Salween river basins, and to peoples' right to water. Some of these approaches might usefully bridge the gap between business and human rights, and water governance practice by, for example ensuring that human rights focussed NAPs prioritise water and environmental issues, and that a human rights lens is applied to environmental assessment and water governance tools (such as Strategic Environmental Assessment (SEA). This, and governments and businesses better meeting their human rights obligations, will have positive outcomes for the environment and people of the GBM and Salween river basins, and on peoples' right to water.

### *Meeting human rights obligations*

1. Governments and businesses have different human rights obligations including with regards to the right to water. Oxfam encourages states and business to meet their human rights obligations consistent with the UNGPs, and to be guided by the UN Working Group on Business and Human Rights' gender guidance.
2. Oxfam also encourages businesses operating in GBM and Salween river basin countries to embrace responsible and inclusive business practices. This means business should engage with affected communities, be open to understanding community information on potential business impacts, engage in prior consultation and share information with communities (consistent with free, prior and informed consent), and ensure there are opportunities for communities to benefit from business activity.
3. Oxfam encourages GBM and Salween river basin governments to strengthen access to remedy for victims of business related human rights abuse including to support the independence, capacity and effectiveness of NHRIs. Oxfam also encourages governments to develop an extraterritorial mandate for their NHRIs.
4. Oxfam encourages governments and businesses in the GBM and Salween river basins to respect community determined priorities and strategies for the development and use of their natural resources. Oxfam also encourages governments and businesses to respect Indigenous People's rights to self-determination, and other rights promoted in the UNDRIP.
5. Oxfam encourages GBM and Salween river basin governments to provide a safe and enabling environment for human rights defenders and CSOs working on water issues, and encourages businesses to prevent and address attacks against human rights defenders linked to their activities.
6. Oxfam encourage all stakeholders in the GBM and Salween river basins to work together to improve water governance and the sustainability of business activities that directly affect the health of rivers, and to ensure that human rights issues are given sufficient attention in collaborative work and multi-stakeholder initiatives.

*Bridging the gap between the right to water, water governance and business and human rights*

7. Oxfam encourages all governments in the GBM and Salween river basins to develop a NAP and for these plans to give attention to the right to water (and related environmental protection issues). Oxfam also encourages governments to ensure NAP development processes are inclusive and involve the meaningful participation of civil society and affected communities including women and indigenous peoples.
8. Oxfam encourages all stakeholders to commit to bringing a human rights lens to environmental assessment and water governance tools, such as SEA, integrated resource planning and river basin planning.
9. Corruption has the potential to undermine the realisation of human rights, including in the context of business activity. Oxfam encourages all stakeholders in GBM and Salween river basin countries to consider the outcome of the UN Working Group on Business and Human Rights' study on the connection between business, human rights and corruption and to respond accordingly.
10. Oxfam encourages greater regional cooperation on water governance issues aimed at improving environmental and human rights outcomes, including in relation to business activity. Further, governments should ensure that sub-regional initiatives such as SASEC and BIMSTEC have a more explicit focus on protecting and respecting human rights.

## Notes

- <sup>i</sup> United Nations Development Program, 2<sup>nd</sup> UN South Asia Forum on Business and Human Rights, Concept Note, 2019, [https://www.ohchr.org/Documents/Issues/Business/AsiaForum/2020/2020UNSA\\_ForumConceptNote.pdf](https://www.ohchr.org/Documents/Issues/Business/AsiaForum/2020/2020UNSA_ForumConceptNote.pdf)
- <sup>ii</sup> UN General Assembly Resolution 54/175, The right to development, A/RES/54/175, 15 February 2000, <https://undocs.org/pdf?symbol=en/A/Res/54/175>
- <sup>iii</sup> UN General Assembly Resolution 64/292, The human right to water and sanitation, A/RES/64/292, 3 August 2010, <https://undocs.org/A/RES/64/292>
- <sup>iv</sup> Committee on Economic, Social and Cultural Rights, General Comment No. 15 (2002) The right to water, E/C.12/2002/11, 20 January 2003, [https://www2.ohchr.org/english/issues/water/docs/CESCR\\_GC\\_15.pdf](https://www2.ohchr.org/english/issues/water/docs/CESCR_GC_15.pdf)
- <sup>v</sup> *ibid*
- <sup>vi</sup> Dina Lupin Townsend, COVID-19 Symposium: COVID-19 and the Human Right to Water and Sanitation, 31 May 2020, <https://opiniojuris.org/2020/03/31/covid-19-symposium-covid-19-and-the-human-right-to-water-and-sanitation/>
- <sup>vii</sup> *above iv*
- <sup>viii</sup> Convention on the Elimination of All Forms of Discrimination against Women, Article 14, <https://www.ohchr.org/Documents/ProfessionalInterest/cedaw.pdf>
- <sup>ix</sup> UN Special Rapporteur on Human Rights and the Environment, Framework Principles on Human Rights and the Environment (2018), <https://www.ohchr.org/Documents/Issues/Environment/SREnvironment/FrameworkPrinciplesUserFriendlyVersion.pdf>
- <sup>x</sup> *ibid*
- <sup>xi</sup> United Nations Declaration on the Rights of Indigenous Peoples, Article 29, [https://www.un.org/esa/socdev/unpfii/documents/DRIPS\\_en.pdf](https://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf)
- <sup>xii</sup> Special Rapporteur on human rights and the environment, Recognition of the Right to a Healthy Environment in Constitutions, Legislation and Treaties: Asia-Pacific Region, A/HRC/43/53/Annex V, 14 February 2020, available at <https://www.ohchr.org/en/issues/environment/srenvironment/pages/annualreports.aspx>
- <sup>xiii</sup> *ibid*
- <sup>xiv</sup> ASEAN Human Rights Declaration, 18 December 2012, <https://asean.org/asean-human-rights-declaration/>
- <sup>xv</sup> See for example <https://aichr.org/news/aichr-interregional-dialogue-sharing-good-practices-on-business-and-human-rights-4-6-june-2018-bangkok-thailand/>
- <sup>xvi</sup> See for example <https://aichr.org/news/asean-explores-framework-for-an-effective-environment-impact-assessment-to-ensure-sustainable-development-2/>
- <sup>xvii</sup> United Nations Guiding principles on business and human rights, 2011, HR/PUB/11/04, [https://www.ohchr.org/documents/publications/guidingprinciplesbusinessshr\\_en.pdf](https://www.ohchr.org/documents/publications/guidingprinciplesbusinessshr_en.pdf)
- <sup>xviii</sup> *ibid*
- <sup>xix</sup> *above iv*
- <sup>xx</sup> Committee on Economic, Social and Cultural Rights, General Comment No. 24 (2017) on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities, E/C.12/GC/24, 10 August 2017, <https://digitallibrary.un.org/record/1304491?ln=en>
- <sup>xxi</sup> *above xvii*
- <sup>xxii</sup> *above xvii*
- <sup>xxiii</sup> *above xvii*
- <sup>xxiv</sup> Human Rights Council, Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises, A/HRC/35/32, 24 April 2017, [https://www.ohchr.org/Documents/Issues/Business/ExSummary-WGBHR-SOE\\_report-HRC35.pdf](https://www.ohchr.org/Documents/Issues/Business/ExSummary-WGBHR-SOE_report-HRC35.pdf)
- <sup>xxv</sup> UN General Assembly, Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises, A/73/163, 16 July 2018, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N18/224/87/PDF/N1822487.pdf?OpenElement>
- <sup>xxvi</sup> See for example <https://stwi.se/projects/india/> and <https://www.textilepact.net/pdf/publications/case-studies/aboni-final.pdf>



---

<sup>xxvii</sup> above xvii

<sup>xxviii</sup> Convention on the Protection and Use of Transboundary Watercourses and International Lakes Helsinki, 17 March 1992,

<https://www.unece.org/fileadmin/DAM/env/water/pdf/watercon.pdf>

<sup>xxix</sup> Convention on the Law of the Non-Navigational Uses of International Watercourses. New York, 21 May 1997, [https://legal.un.org/ilc/texts/instruments/english/conventions/8\\_3\\_1997.pdf](https://legal.un.org/ilc/texts/instruments/english/conventions/8_3_1997.pdf)

<sup>xxx</sup> UN General Assembly, Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises, Gender dimensions of the Guiding Principles on Business and Human Rights, A/HRC/41/43, 23 May 2010, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/146/08/PDF/G1914608.pdf?OpenElement>

---

This briefing note is written by Christina Hill (Independent Consultant) for the Transboundary Rivers of South Asia (TROSA) program and builds on the report Water, business and human rights in South Asia written by the author.

For further information on the issues raised in this paper please email [info.trosa@oxfam.org](mailto:info.trosa@oxfam.org)

This publication is copyright but the text may be used free of charge for the purposes of advocacy, campaigning, education, and research, provided that the source is acknowledged in full.

The copyright holder requests that all such use be registered with them for impact assessment purposes. For copying in any other circumstances, or for re-use in other publications, or for translation or adaptation, permission must be secured.

## OXFAM

Oxfam is an international confederation of 20 organizations networked together in more than 90 countries, as part of a global movement for change, to build a future free from the injustice of poverty. Please write to any of the agencies for further information, or visit [www.oxfam.org](http://www.oxfam.org)

With support from

Oxfam and TROSA support the Water Action Decade



Sweden  
Sverige



Join the conversation



[@RiversTROSA](https://twitter.com/RiversTROSA)



[@RiversTROSA](https://www.facebook.com/RiversTROSA)