

An Asean plan for corporate citizenship?

Such a regional national action plan, in the wake of the Paris Agreement, could tackle issues of climate change and human rights. BY THOMAS THOMAS, MAHDEV MOHAN & JAYA ANIL KUMAR

THIS month, 196 State parties to the United Nations Framework Convention on Climate Change (UNFCCC) met in Paris to agree upon a historic agreement to combat climate change. The Paris Agreement is designed to limit global warming to less than two degrees centigrade. It sends a clear signal to the fossil fuel industry: their unchecked expansion must end.

The handwriting has been on the wall for a while. Ahead of the Paris conference, *The Guardian* reported in September that "institutions worth US\$2.6 trillion have now pulled investments out of fossil fuels". Although it has its fair share of critics, the Paris Agreement is revolutionary and has widespread acceptance. It expressly acknowledges that countries should respect and promote human rights in addressing climate change. Of course, uncertainty is associated with each link of the causal chain of climate change and transboundary pollution. But the agreement reiterates the importance of the precautionary principle enshrined in the UNFCCC decades ago, which states that uncertainty is not a reason for inaction.

Around the world, legislators have introduced bills urging countries to divest from fossil fuels. Closer to home, the Philippine Human Rights Commission will investigate the climate change impacts of more than 50 of the biggest fossil fuel companies. It accepted a petition, filed by Greenpeace Southeast Asia, requesting investigations of these companies for human rights violations resulting from impacts of climate change, and to recommend legislation that will provide for accountability mechanisms relating to human rights and the environment.

The Paris Agreement is welcome news to low-lying island states, such as Singapore, which are particularly vulnerable to the adverse effects of climate change. The precautionary principle enshrined in the Paris Agreement implies an emphasis on the need to prevent such adverse effects. The link the agreement draws between climate change and human rights is especially crucial, and has positive implications. As Singapore prepares for its Universal Periodic Review by the UN Human Rights Council in January 2016, we think that our 50-year-old nation may be ahead of the pack in terms of the national action plans (NAPs) it has put in place to engender and reinforce corporate citizenship, including respect for human rights.

Climate change & human rights

NAPs are policy guidelines by which a country articulates actions that it will adopt to implement a particular prerogative. It comes as no surprise that Singapore has forward-looking NAPs which underscore its environmental and human rights commitments. After all, sustainable development took root in Singapore long before the Sustainable Development Goals were adopted by the UN General Assembly in September 2015. Singapore launched its first Singapore Green plan soon after its participation at the "Rio" Earth Summit where the UNFCCC was negotiated.

That summit's preparatory committee was chaired by Professor Tommy Koh in 1992. That year, Singapore launched the Singapore Cooperation Programme, which extends technical assistance to developing countries on issues pertinent to sustainable development. It remains a committed participant of international and regional forums on sustainable development, and has ratified the UN Framework Convention on Climate Change and the Kyoto Protocol.

Our report

The UN Working Group on the issue of human rights and transnational corporations (Working Group) promotes, among other things, corporate citizenship, and encourages dispute resolu-



In September, when the PSI crossed into the "hazardous" range, the NEA issued "preventive measures notices" to several allegedly errant companies under the Transboundary Haze Pollution Act. PHOTO: REUTERS

tion mechanisms for victims of business-related human rights abuse. In 2013, the UN Working Group commissioned, for the first time, a coalition of African and Asian researchers, to study the prospect of NAPs in the Global South (Coalition). We are privileged to have been part of this coalition, which included members of the Centre for Applied Legal Studies in Johannesburg, the Asian Business and Rule of Law initiative at the Singapore Management University and the Asean CSR Network to study the prospect of NAPs in the Global South.

Last month, we submitted our empirical report to the Working Group at the Asean Responsible Business Forum. A summary of the report has been published. We highlight a few findings here.

NAPs & sustainable development

We found that large-scale infrastructure projects that were carried out without adequate safeguards have led to local communities being evicted without free prior and informed consent. There is also currently little public access to concession contracts in several countries in the region. Fortunately, several progressive businesses interviewed seem to understand that inclusive and sustainable growth is necessary. These businesses, supported by like-minded business associations, have had a critical role to play in devising NAPs in their countries.

It may make sense to integrate an NAP for corporate citizenship or responsible business into an existing regional plan, such as the Bali Concord III Plan of Action, which is a policy document that reflects Asean's commitment to address global challenges. Notably, this regional NAP states that Asean countries shall, "where appropriate, integrate the programmes and activities of the Plan of Action into their respective national development plans".

Soon to be launched, the Asean Economic Community (AEC) aims to transform Asean into a single market. Asean represents a market of about 620 million people, with a combined GDP of about US\$2.3 trillion and upwards of US\$1.2 trillion in trade flowing throughout the region.

In light of the AEC, NAPs should look to regional and mega-regional agreements. The Trans-Pacific Partnership and the Asean Comprehensive Investment Agreement contain provisions that allow states the right to regulate in the public interest. That is, to ensure that investors respect environmental, health and other regulatory objectives. NAPs should reference these provisions, which oblige foreign investors to respect environmental and social governance.

NAPs & haze pollution

Are NAPs ineffectual without laws or treaties? We do not think so, as each mutually reinforces the other. We believe NAP processes in Asean should first identify gaps in existing legislative and regulatory frameworks, and then outline ways in which to bridge them.

This is precisely what Singapore's sustained national strategy to combat haze pollution has sought to do. Singapore's Inter-Agency Haze Task Force was set up in September 1994, after the UNFCCC entered into force, to coordinate efforts across the Singapore government.

Today, the Transboundary Haze Pollution Act (THPA) gives wide powers to environmental regulators and is based on the precautionary principle. In September 2015, the Pollutant Standard Index had crossed the 300-mark, into the "hazardous" range. Environment ministers from Asean countries attended a meeting on transboundary haze pollution on Oct 29. In a joint press release, they expressed concern over the "unprecedented severity" and geographical spread of the haze. Referencing Singapore's efforts, Singapore's Foreign Minister Vivian Balakrishnan has described the haze as a man-made tragedy and a crime. Singapore's National Environment Agency has also issued "preventive measures notices" to several allegedly errant companies under the THPA. These notices require the firms in question to take specific action to prevent, reduce or control haze pollution in Singapore on penalty of prosecution.

NAPs & TIP

Our research shows that where norms are enshrined through NAPs, and have tri-sector support, laws and remedies follow. There are other examples. The National Plan of Action against Trafficking in Persons was the brainchild of the Singapore Inter-Agency Taskforce on Trafficking in Persons (TIP). This National Plan of Action recommended that Singapore should review its legislation to ensure a legislative framework that facilitates the achievement of key TIP objectives. In November 2014, Parliament passed the **Prevention of Human Trafficking Act** that was designed to deter and punish TIP and to protect and assist trafficked persons.

Other Asean states should also consider having NAPs to combat regional problems such as haze pollution and TIP. We believe NAP processes in Asean should first identify gaps in existing legislative and regulatory frameworks, and then outline ways in which to bridge them. A regional NAP for corporate citizenship, in the wake of the Paris Agreement, could be seen as an important source of cross-cutting standards for the humane treatment of migrant workers.

In summary, we find that unprecedented foreign investment and trade in Asean bring considerable benefits as well as potential environmental and human rights risks. To understand the true value of an NAP, policymakers must understand the background to what has prompted, and perhaps, continues to prompt a response to a national or global challenge.

As Asean countries develop climate change NAPs in response to the Paris Agreement, dialogue is key. Responsible businesses and other relevant stakeholders should have a seat at the table. NAP processes should also be subject to domestic reporting and periodic review to ensure that they remain relevant. With this in mind, Singapore should continue to play a major role in the regional conversation about climate change and corporate citizenship.

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