



C19 Impact Analysis: Business and Human Rights/Access to Remedy in Asia

Summary Findings

Introduction

“COVID-19 has changed everything,” says the expert on the webinar. “Prepare for the new normal,” warns the influencer on twitter. “We must build back better,” insists the blogger on the agency website. At once inspirational and ominous, these messages signal the depth of the challenges we face at the start of a new decade. Recognizing this, governments, businesses, and civil society organizations (CSOs) are beginning to take stock of the wreckage wrought by the COVID-19 virus. As these efforts begin, new baselines are drawn, and new investments are deployed to help our countries recover sustainably.

But from which baseline are we agreeing to start? And what do those baseline conditions look like from the perspective of the most vulnerable? What challenges lie ahead for CSOs working on the Business and Human Rights issues? What does COVID-19 responsive programming look like?

Instead of accepting a vague notion of what the answers to these questions might be, three organizations based in Asia teamed up to invite insights and inputs from CSOs working on the frontlines. In May 2020, the Asian Forum for Human Rights and Development (FORUM-ASIA) and Oxfam, partnered with UNDP Business and Human Rights in Asia programme, funded by the European Union, to conduct a regional impact analysis on the effect of COVID-19 (C19) on Business and Human Rights-related matters across the Asia region. Civil society organizations (CSOs) were **asked 42 questions about their experiences during the C19 response and early recovery period and for their recommendations going forward**. To provide the fullest possible picture, CSOs were also **asked how they were coping with the circumstances induced by the C19 pandemic**. As evidenced below, CSOs were asked both closed and open-ended questions.

We are deeply indebted to the **41 civil society partners** that took the time to complete this online survey and for agreeing to share their reflections with a wider audience. Importantly, these CSO-respondents are of a specific class – those that remain operational as evidenced by the time it took to respond to the survey. Most likely, the views of those organisations that are struggling to maintain operations are underrepresented here. The findings provided in the pages below should be understood in this light.

The most important findings of the survey include:

- Most CSOs remain operational and engaged in priority business and human rights risk areas during the C19-response period; 41% of CSOs reported that they helped shape C19 responses in their country
- Restrictions of movement and limited access to legal services, placed communities and defenders in significant danger, as they were unable to access protective or remedial measures;
- There has been a further deterioration of civic space and fundamental freedoms under the guise of C19 responses; 72% of respondents reported an increase in surveillance and intimidation by authorities

- Businesses in high risk industries often continued operations, under state protection or tacit assent, while communities and human rights defenders were isolated and kept from speaking out and;
- Respondents believe that repurposed programming should focus on stronger data collection and research, capacity building of CSOs, and legal aid provision.

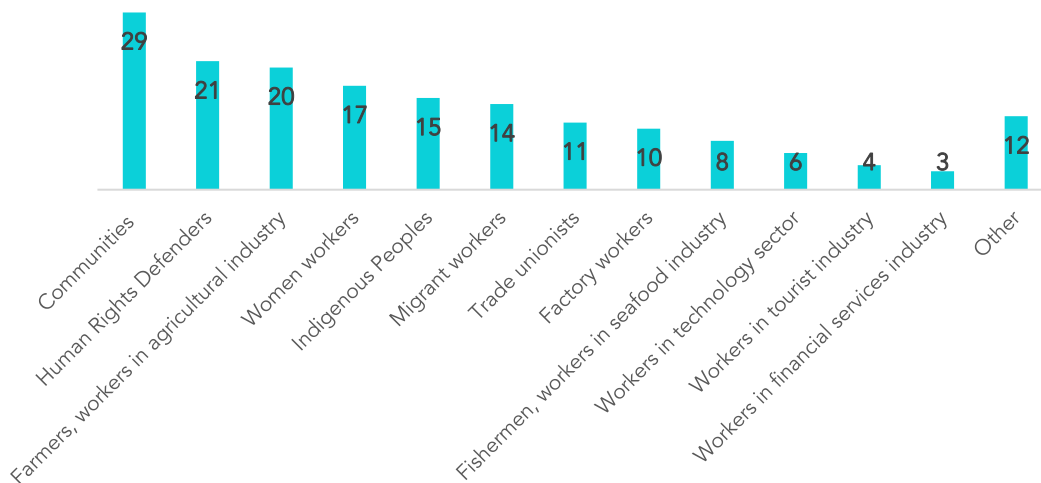
We hope you will find the information below useful as you communicate with policy makers and rights holders, confer with workers and employers, and consult with donors and partners as you repurpose business and human rights related programming. **We also hope, the results of this impact analysis will be used in a constructive way, so that business, government and civil society might “build back better” together.**

Respondent profile

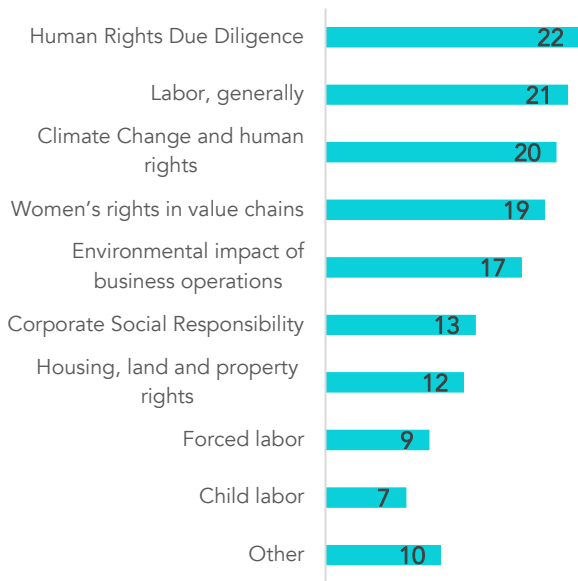
Forty-one CSO-respondents provided answers to the questionnaire, many working in multiple locations as either national or international organizations headquartered primarily from 12 countries across the region—Bangladesh, Cambodia, India, Indonesia, Japan, Kazakhstan, Malaysia, Nepal, Pakistan, Philippines, Tajikistan and Thailand. Feedback was gathered from CSOs of different sizes and service profiles. Forty-nine percent of responses were from small organizations of ten employees or less. Reportedly, the majority of organizations were active in South and Southeast Asia with 24 CSO respondents working in South Asia, 21 in Southeast Asia, 3 in Northeast Asia and 2 in the Pacific.

Most respondents work on human rights due diligence matters, labor issues and climate related impacts. Respondents also tended to work on issues related to the agriculture, infrastructure, manufacturing and finance industries. CSO-respondents identified community members, human rights defenders and workers in the agricultural sector as the top three most common constituents.

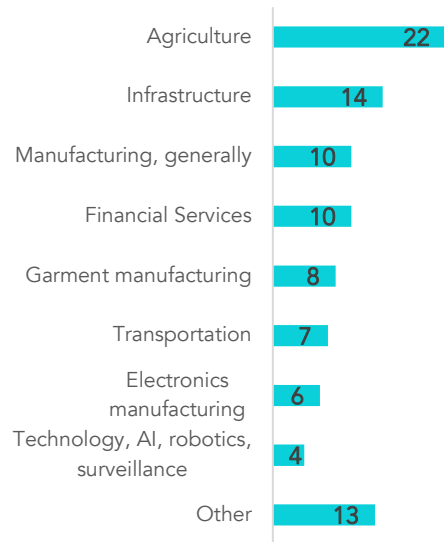
Your organization is working primarily with which populations?



Your organization is primarily working on which BHR-related issues?



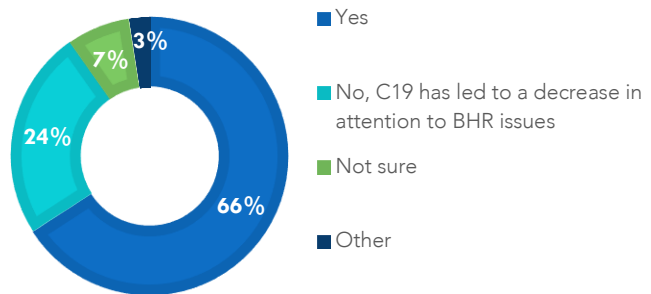
Your organization is primarily working with individuals impacted by which industries?



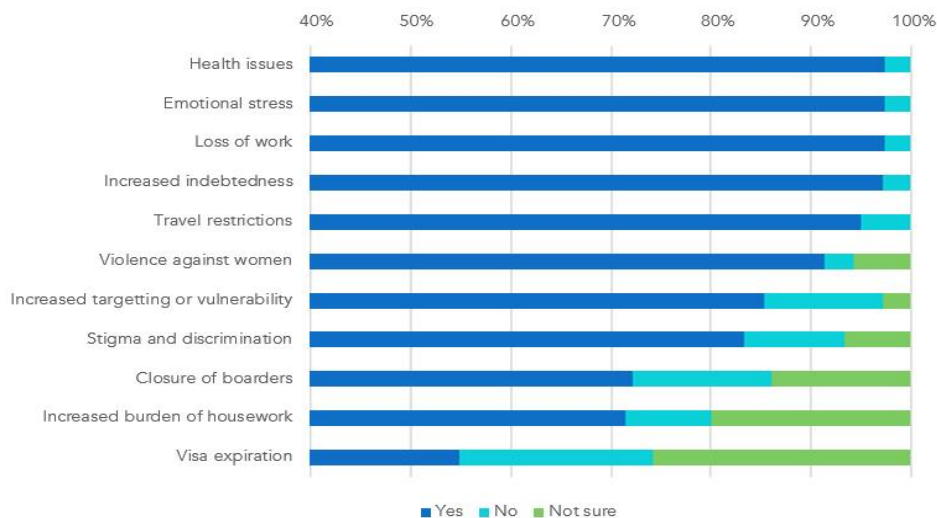
The effect of C19 on BHR issues in Asia

Do you believe that there has been an increase in attention to Business and Human Rights (BHR) issues since the C19 crisis?

The majority of CSOs (66%) agreed that there has been an increase in attention among CSOs and their beneficiaries to Business and Human Rights (BHR) related issues since the outbreak of the C19 pandemic.



Based on your work on Business and Human Rights related matters, which of the following C19-related issues have had an impact on workers and communities?

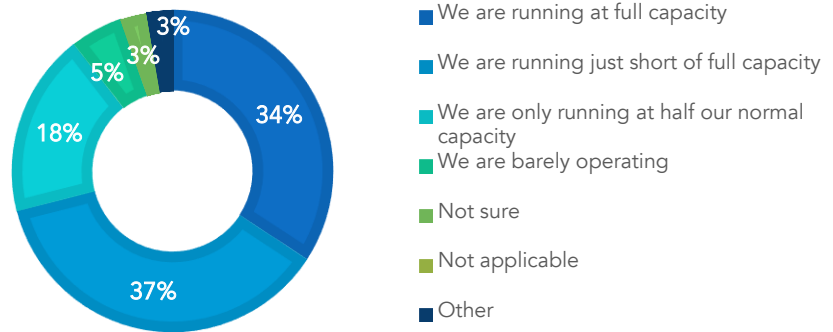


CSOs identified health issues, the loss of work, increased indebtedness and emotional stress as the most pertinent matters affecting workers and communities. CSO-respondents also pointed to other pressures due to C19 including, the lack of essential goods (food, medical supply) in some areas, the restriction of fundamental freedoms, the lack of access to social protection schemes, the increased vulnerability of children, and the lack of access to education. One of the respondents emphasized: *“Children of workers suffered most. Their education and other human development needs are seriously curtailed.”*

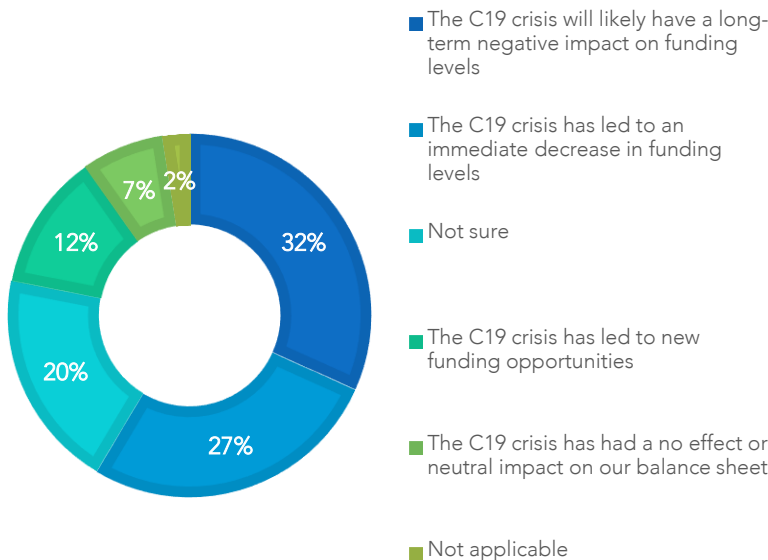
Operational challenges

What describes your current operational capacity?

Seventy-one percent of CSO-respondents report that their organizations are operating at full capacity or nearly full capacity. Eighteen percent of respondents are only running at half of their normal capacity while 5% report that they are barely operational.



To what extent has the C19 crisis increased or decreased your funding levels?



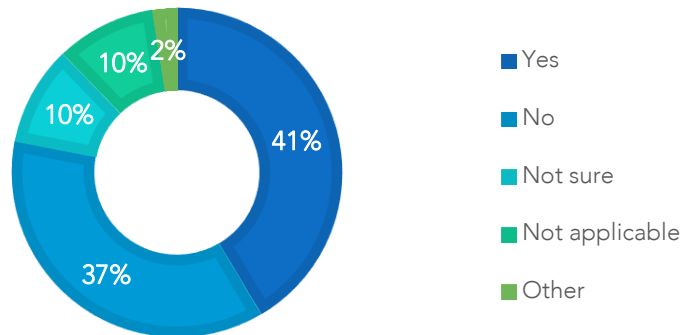
CSO-respondents painted a rather bleak picture of their organization’s financial situation under C19.

Twenty-seven percent of respondents indicated that they saw an immediate decrease in funding. Another 20% are unsure of what the future holds, while 32% are seemingly preparing for a negative impact on funding in the long term. As one respondent pointed out: *“Donor countries are also severely affected by COVID-19. It seems that they will invest their resources to recover from the economic crisis.”*

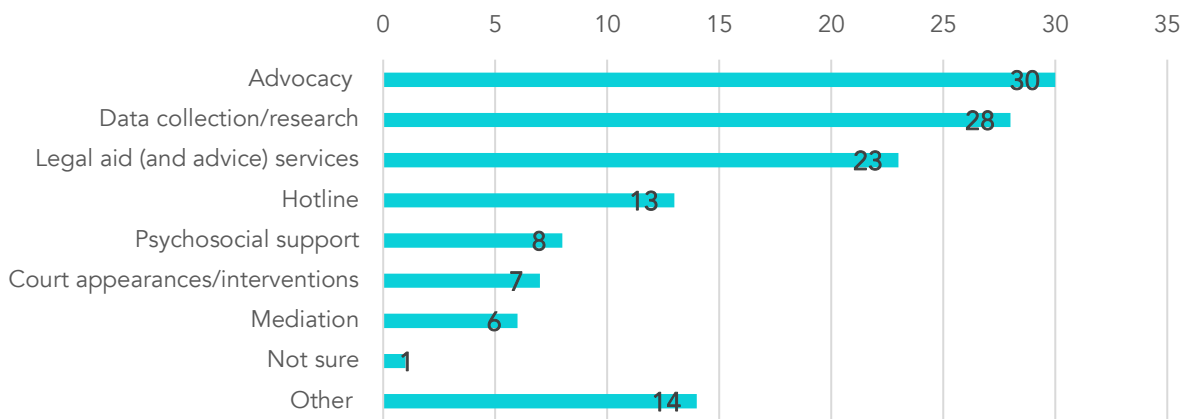
Programmatic challenges & mitigation measures

Has your organization been able to participate in shaping the C19 response and/or recovery planning?

Despite operational challenges 41% of CSO-respondents have been able to participate in shaping the C19 response and/or recovery planning in the countries where they are present. Nearly an equal number (37%) did not have the opportunity to take part in such activities.



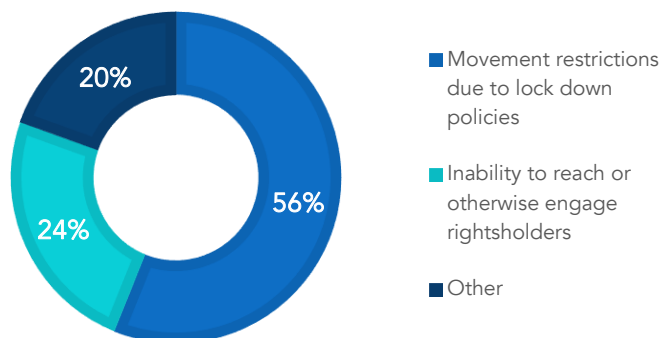
What services are you currently providing to stakeholders?



Most of the CSOs are working on advocacy, data collection, research and offer legal aid services. Some of the respondents also provide relief to affected communities and take part in education and disseminating crucial information on how to prevent the spread of C19.

What has been the most significant impediment to conducting your programmatic work?

CSOs reported that the most significant changes to conducting programmatic work proved to be the movement restrictions enforced in many countries as a mitigation measure through the C19 crisis, making it hard to reach rights holders, provide legal aid services or collect adequate data or evidence.



Movement restrictions motivated many CSO-respondents to enhance their online presence with a number of organizations turning to new technological solutions to contact beneficiaries. Respondents reported that technological platforms (online and telephone) proved to be an effective, cost effective, flexible and environmentally friendly alternative. However, respondents also pointed out that these tools fail to serve the most vulnerable populations especially women, indigenous peoples, farmers and miners in rural areas. As one CSO noted: *“Technology-based platforms are not inclusive. Many people cannot be reached as they do not have access to technology-based platforms. Even those who have, may lack the skills to navigate online systems.”*

Respondents also expressed a need for funding to build digital and communication capacities, improve digital literacy and develop reliable platforms ensuring rightsholders’ data security.

Legal aid services

Have legal aid services been affected by the C19 context?

Ninety-two percent of the CSOs providing legal aid services reported that the pandemic affected service delivery. Movement restrictions have made it difficult to reach clients for legal consultations, to gather evidence or to attend court.

Organizations reported that they are providing legal aid through telephone, text messaging and social media platforms, but as noted above, technological solutions are not available to all beneficiaries.

“Though we have opened an online consultation and crisis centre, the number of reports made have been very low.”



As one of the respondents reported: *“Many of the beneficiaries belong to vulnerable communities. They can not avail the services online. Staff were not able to get out of their houses. Only telephonic services were possible and only few people could avail that.”* Other responses also pointed out that while certain kinds of services were moved online, others cannot be replaced with technological solutions:

- Our organization typically provides legal aid and education directly in communities. During the C19 outbreak all activities were cancelled, we had to shift giving legal aid on Facebook and SMS.
- Services are prioritized using hotlines and e-mail. [But] safe houses that are not operated affecting the victims of violence who must receive protection.

In some cases, government partners reportedly lack adequate digital infrastructure. Courts are closed in some countries. Even where court administrators have made online platforms available, some users still worried that their confidentiality is not protected. Respondents felt that free and fair trial standards might not be ensured. As one respondent pointed out: *“Access to prisoners or other people is restricted. Because of the weak internet and some other reasons like lack of confidentiality of counselling the online trials do not follow the standards of free and fair trial.”*

Human rights defenders

How has your work with human rights defenders been impacted?

Sixty-three percent of CSO-respondents indicated that they work with Human Rights Defenders (HRDs). The responses also revealed that the impact of C19 on HRDs varied, with some respondents noting that, “there has been no impact on our work with human rights defenders.”

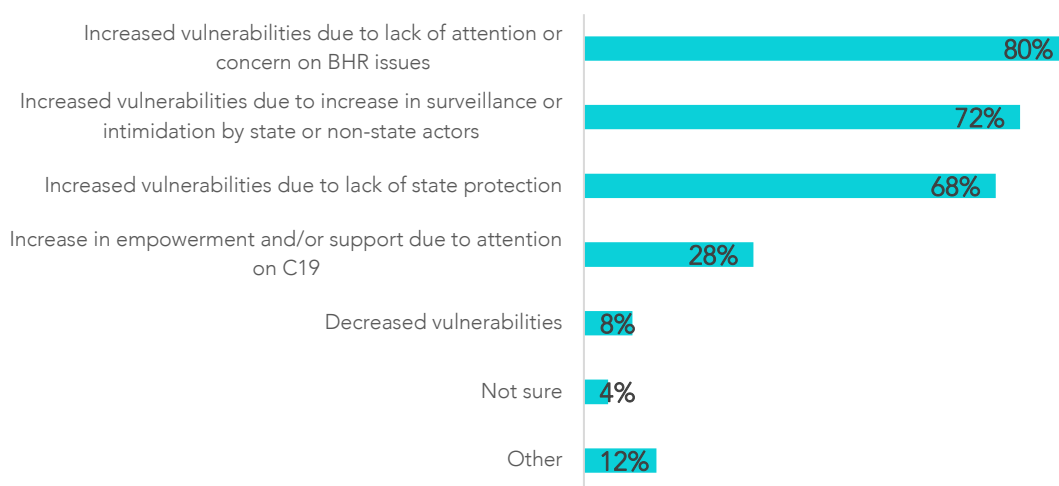
However, the vast majority of respondents reported that their work has been complicated by movement restrictions, with significant consequences to defenders. “Due to strict lockdown,” one respondent wrote, “it is very hard to mobilize, if at all, when illegal arrests and abuses are reported.” Other responses included:

- We have been severely impacted as we can't do visits and face-to-face meetings and documentation work is slow. [There is] limited communications with defenders and the media is too focused on COVID19 news and topics, and less on human rights.
- We are not able to closely work with them, not able to provide enough support, in certain countries these human rights defenders have become more targeted.
- Our justice systems are closed due to lock down.

“There are many things that need urgent attention, but our hands are tied, we are locked up, those whom we want to engage in resolving the issue are not available due to C19.”



How have human rights defenders been impacted by the C19 crisis?



Ninety-two percent of CSO-respondents working with HRDs reported that the crisis increased the vulnerabilities of HRDs. This may have emerged due to a combination of factors: a sudden lack of public attention or concern with human rights issues in the face of public health crisis, coupled with the increase in surveillance or intimidation by state or non-state actors. CSO-respondents also reported that HRDs are impacted by movement restrictions; diverted attention of policy makers and the general public and; harassment and intimidation.

One respondent noted that, “With movement and other restrictions brought about by the pandemic, HRDs are now unable to access the scarce protections/remedies that were previously available to them.” The protection work of HRDs is also affected as reported by respondents:

- Due to COVID 19 pandemic the HRDs are restricted to their homes. They are unable to communicate with decision makers and raise issues related to human rights violations.
- During lockdowns, defenders and communities can't go outside to protest or resist, but government and corporations continue their operations (e.g. mining).

Respondents also reported that the crisis linked to COVID-19 has been used as cover to avoid confronting issues linked to Business and Human Rights. One respondent noted that, “States are trying to make a good use of the crisis and are diluting civil rights, mostly labour rights.” Others concurred:

- The outbreak provided a reason for decision makers to avoid the protection of human rights;
- Police and military are used to protect the operations and activities of corporations;
- There's worry that certain businesses are taking this opportunity to expand their operations illegally.

Respondents overwhelmingly found that civic space to voice opposition or hold power to account was curtailed. “Criminalization for criticizing state policies and laws in handling C19,” is a growing pattern in some countries. Respondents noted that:

- As part of C19 response, the government is cracking down on fake news purveyors but so far has only done so when the news or post in question is critical of the government.
- As mostly the human rights work turns to the social networks and online communications the bullying is becoming a serious problem.

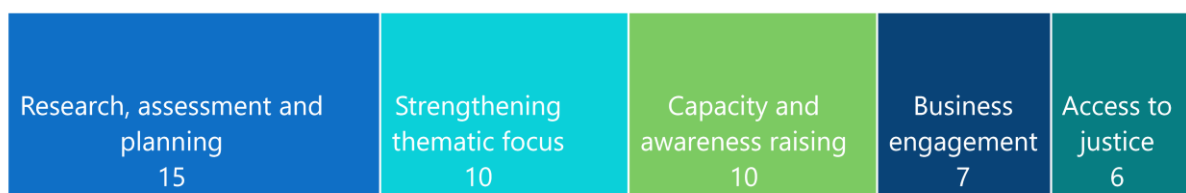
Some of the respondents reported that space for human rights defenders to work shrank even further from levels before the C19 crisis. One respondent claimed that, “the police have become more abusive while the legal system have no accountability.” Other remarks included:

- There has been no national action plan & systematic framework for health governance/determination;
- There has been no people centered democracy or participatory planning approach to ensure the engagement of human rights defenders or health rights defenders.

CSO needs for response & recovery

What should new response and recovery programmes look like?

CSO-respondents made a variety of comments on programming needs for the C19 response and recovery period to strengthen business and human rights-related activities. Many of the CSOs have identified the same or similar areas for support and improvement: most of them commented on the importance of research, assessment and planning, while strengthening thematic focus, and capacity and awareness raising were also mentioned repeatedly as an area where CSOs need more support.



Research, Assessment and Planning

CSOs respondent stressed the importance of data collection and documentation. Respondents highlighted the “greater necessity to document violations at the grassroots.” Other respondents called for:

- Reassessing and identifying the baseline for the new normal before programs are resumed or implemented;
- Deep conversations and strategizing on how to change the enabling legal and policy environments so that protection is extended not just to sectors that are inherently vulnerable even without a pandemic but also to sectors that have been made vulnerable by the pandemic.

Others called for “contingency plans for disaster risk reduction,” and “integrated short term & long-term recovery plans.”

New research was also called for to study the impact of C19, including, “research on the health industry and access to health by citizens” and “research on the application of health protocols by manufacturing factories.” Under the advocacy heading, CSO-respondents called for, “advocacy to push for policy maker to pause, stop and re-thinking of future development.”

“Rigorous documentation of how states and non-state actors are making use of the crisis to curtail rights.”



Strengthening thematic focus

Respondents identified an array of thematic areas for priority programming including the needs of children, safety, health care and living wage issues. For example, a respondent noted that, “there should be a focus on community health resilience and advocacy on health sector reform.” In fact, food security was a significant theme among programming ideas including:

- Emphasis should be given on basic human rights like right to food, right to life, right to health and right to education. Once people have all these rights, they will claim their spaces for right to choose, liberty and freedoms;
- Ensure agrarian reform to have access to the land and to others fundamental rights to overcome hunger, malnutrition.

Programming on the environment was also a priority, with one respondent noting that “the increase degradation of environment and the increase or ongoing practices of business sector in natural resources sector will continue or fuel this kind of outbreak.”

Rights of workers, especially migrant workers, were also identified as areas for priority programming.

“Response programming needs to focus on holding governments, employers and multi-national businesses accountable for meeting their human rights obligations to the workers.”



Capacity and awareness raising

CSO-respondents noted that CSOs themselves needed capacity development assistance, including around tech-based and digital platforms to support work of HRDs. Other needs identified included:

- Building capacities and support to infrastructure (hardware and software) of communities and CSOs on online workshops, monitoring and policy work;
- CSOs linking with community-based radio programs in relation to information, education and monitoring work can be explored.

During the response and recovery period, CSO-respondents called for greater, “capacity to communicate findings to a wider audience” and identified, “a need for more big data solutions.”

Donor flexibility was also requested, including for shorter evaluation periods and flexibility to change programming.

“Civil society must also respond directly to support the workers who inevitably fall through the cracks of employer and government schemes.”



Business engagement

CSO-respondents also called for greater business engagement. One respondent noted that repurposed programming, “include a strong financial sector advocacy component to ensure FIs reorient their resources and financing to recovery initiatives and greater compliance to ESG standards.” Others highlighted the need for:

- Realignment and renegotiation related to community relations with business;
- Public-private and farmers collaboration;
- Observation and research on the application of health protocols by manufacturing factories.

Several CSOs underscored the need to, “sensitize the business community on the human rights and on the Business and Human Rights.” This would require:

- Monitoring due diligence of corporations;
- Compliance of corporations to quarantine and “new normal” guidelines; and
- Support to multi-stakeholder mechanisms that will pursue BHR

Access to justice

With C19 one CSO-respondent noted that, “there should be a quick legal response organized in various countries in order to [...] identify loopholes in relief/emergency policies that result in exclusion of certain groups in government support & subsidy programmes.” Legal responses would also include or require:

- Sufficient capacity [of rightsholders] to engage lawyers. Greater capacity [for lawyers] to communicate to the constituencies as well as supporters;
- Better access to justice via online systems.

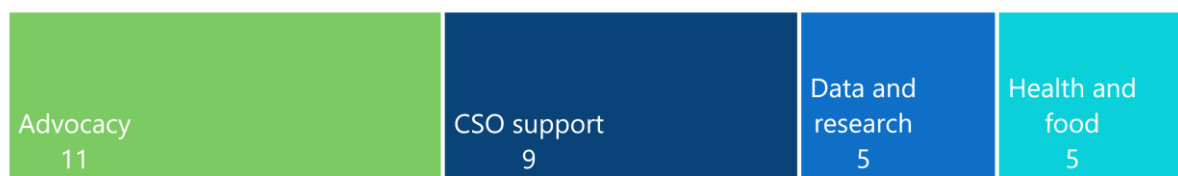
Response-period programmes should include, “information hotlines, assistance to support and subsidy programmes.”

“[We need] strong networking to provide support to each other in terms of legal knowledge and access to national and international grievance forums.”



What would you like to see UNDP do to assist rightsholders during the recovery period?

CSO-respondents highlighted the need for UNDP's support in some of the areas where the organizations' expertise, partner network and/or resources would allow to make significant impact.



Advocacy

CSO-respondents also asked UNDP to leverage its convening and advocacy role to greater effect. It was suggested that UNDP, "persuade governments not to weaken labor rights." CSO-respondents also asked for guidance on Business and Human Rights (BHR) issues, including:

- Support to state efforts to produce and implement National Action Plans for BHR;
- Support to programs for NHRIs to sustain engagement with communities and corporations on co-implementation BHR initiatives;

CSO-respondents also sought, "support to revamp communications capacities," and to promote "effective networking through discourse and action plans." Some requests were more specific. For example, one CSO asked for, "help to plan the restart of travel and tourism in the region in a sustainable way, with child protection in focus." Others suggested that UNDP, "expand legal aid and legal training support, activate conversations towards the development of HRD protection and anti-SLAPPs legislation among Asian judiciary and prosecutorial branches, continue supporting national action plan developments and advocate for responsive proposals that will address the impact of Covid19 and future crisis."

"Convene high-level forums at regional, sub-regional and national levels to bring civil society and workers organizations together to play for a just recovery."



CSO support

CSO-respondents also suggested that UNDP assist civil society with funding support. For example, it was suggested that UNDP, "enable a 'Just Recovery Fund' to provide direct funding opportunities to human rights defenders, worker's organizations and CSOs to deliver research, campaigns and programmes focused on achieving a just recovery for working people in Asia Pacific." Others suggested:

- Support to small-grant programs for capacity-building of communities on digital and tech-based platforms;
- Playing a role to connect small organizations with other funding agencies to strengthen their [work];
- Provide support for CSOs who give a legal aid or other services for workers and vulnerable groups.

Leveraging its convening role, UNDP might also consider, "providing sufficient support to HRDs and communities by linking them with groups (paralegal groups, mediation groups, advocacy groups, etc.) who may address land conflicts or violations that occurred during the C19 response period."

"Provide information on how the C19 crisis impacted communities and defenders in light of BHR around the world and help elevate these stories to national and global policy discussions."



Data and Research

Respondents asked UNDP to conduct, “research on trends that affect development needs” and “funding to study rights violations.” Relatedly, respondents suggested that, “UNDP can collaborate with human rights-based organizations to collect data of HRD to know more about their exact situation.”

Others called on UNDP to:

- Provide more information, data and strategy in comparative perspective;
- Produce reports on how vulnerable sectors and affected communities responded to Covid-19;
- Publish data related to the impact of C19 on workers and vulnerable groups;

In developing any research resources, UNDP was asked to build upon, “the analysis done by a variety of civil society and worker’s organizations.”

Health and Food

UNDP was asked to address food-security and health needs through its Business and Human Rights programming. As one CSO-respondent wrote, “first of all, people's need security - of food and physical/health security. The government has some schemes/program to cover this, but indigenous peoples were not informed/included and always left behind.”

- Rightsholders may also be assisted through their day-to-day struggles (i.e., getting sufficient and nutritious food, for smallholder farmers to be able to transport their produce and find buyers for their goods).
- Assist in access to immediate cash transfers, prevent harmful impacts to the health of the most marginalized communities, take a gender-responsive lens to address gendered risks and impacts

Conclusion

This CSO Impact Analysis is not a definitive picture of the effect of C19 on Business and Human Rights issues in Asia, but it is indicative of the depth of challenges we face as some countries move into a recovery phase. The analysis tends to show that the C19 pandemic may have set human rights realization in business operations back many years from where we were before C19 emerged. Substantial new investments will be required in accountability and remedy provision. But this will require resources, and where will those resources come from?

The survey also outlined the operational and programmatic challenges CSOs are facing, while profiling CSO ideas for C19 recovery programming. Interestingly, a large number of CSO-respondents suggested that documentation and research was needed to take an accurate accounting of the abuse and setbacks experienced. The message from these respondents is seemingly clear, holding power to account is the prerequisite of any effort to “build back better”.