



# Background Document on Guidance to Corporates on the Practical Application of the CFS Voluntary Guidelines on Land Tenure (VGGT)

**Rights and Resources Group**

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## Background Document on Guidance to Corporates on the Practical Application of the CFS Voluntary Guidelines on Land Tenure (VGGT)

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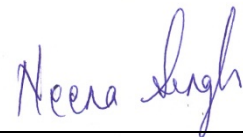
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## *Table of Contents*

<b>1</b>	<b>BACKGROUND AND OBJECTIVE</b>	<b>1</b>
<b>1.1</b>	<b>EMERGENCE OF GOVERNANCE OF TENURE AS A KEY ISSUE</b>	<b>1</b>
<b>1.2</b>	<b>RESPONSIBILITIES OF STATE AND NON-STATE ACTORS UNDER THE VGGT</b>	<b>3</b>
<b>1.3</b>	<b>INITIATIVES FOR IMPLEMENTING THE VGGT</b>	<b>6</b>
<b>1.4</b>	<b>OBJECTIVE OF THIS DOCUMENT</b>	<b>7</b>
<b>1.5</b>	<b>STRUCTURE OF THIS BACKGROUND DOCUMENT</b>	<b>7</b>
<b>2</b>	<b>CORPORATE RESPONSIBILITY: CURRENT PRACTICES AND EXPECTATIONS UNDER THE VGGT</b>	<b>9</b>
<b>2.1</b>	<b>THE EMERGENCE AND PROGRESS IN THE REGULATION OF CORPORATE RESPONSIBILITY AND GOVERNANCE</b>	<b>10</b>
<b>2.2</b>	<b>THEMES FOR CORPORATE RESPONSIBILITY IN THE VGGT</b>	<b>12</b>
<b>2.2.1</b>	<i>Impact Assessment and Risk Management System</i>	<b>13</b>
<b>2.2.2</b>	<i>Community Engagement and Grievance Redress System</i>	<b>13</b>
<b>2.2.3</b>	<i>Transparency and Prevention of Corruption</i>	<b>14</b>
<b>2.2.4</b>	<i>Indigenous Peoples and other communities with customary tenure systems</i>	<b>14</b>
<b>2.2.5</b>	<i>Informal Tenure and Forced Evictions</i>	<b>14</b>
<b>2.2.6</b>	<i>Responsible Investments</i>	<b>15</b>
<b>3</b>	<b>EXISTING STANDARDS AND GUIDELINES FOR CORPORATES VIS-À-VIS THEIR PERCEIVED LIMITATIONS</b>	<b>16</b>
<b>3.1</b>	<b>EXISTING CODES OF CONDUCT AND IMPLEMENTATION MECHANISM</b>	<b>17</b>
<b>3.1.1</b>	<i>Impact Assessment and Management Programs</i>	<b>17</b>
<b>3.1.2</b>	<i>Stakeholder Engagement and Grievance Redress System</i>	<b>18</b>
<b>3.1.3</b>	<i>Corporate Governance and Anti-corruption Measures</i>	<b>19</b>
<b>3.1.4</b>	<i>Human Rights and Responsible Investment</i>	<b>22</b>
<b>3.1.5</b>	<i>Indigenous Peoples and the FPIC Process</i>	<b>24</b>
<b>3.1.6</b>	<i>Right to Livelihood and Food Security</i>	<b>25</b>
<b>3.2</b>	<b>INFERENCES FROM EXISTING CODES AND THEIR IMPLEMENTATION</b>	<b>30</b>
<b>4</b>	<b>STRATEGIC OPTIONS FOR INTERVENTION</b>	<b>31</b>
<b>4.1</b>	<b>POTENTIAL TENURE ISSUES IN DIFFERENT STAGES OF THE BUSINESS PROCESS</b>	<b>32</b>
<b>4.1.1</b>	<i>Feasibility</i>	<b>32</b>
<b>4.1.2</b>	<i>Detailed Planning</i>	<b>33</b>
<b>4.1.3</b>	<i>Establishment or Construction</i>	<b>34</b>
<b>4.1.4</b>	<i>Operation</i>	<b>37</b>
<b>4.1.5</b>	<i>Expansion</i>	<b>38</b>
<b>4.1.6</b>	<i>Investment</i>	<b>39</b>
<b>4.1.7</b>	<i>Merger &amp; Acquisition</i>	<b>41</b>
<b>4.1.8</b>	<i>Closure</i>	<b>41</b>
<b>4.2</b>	<b>AREAS OF INTERVENTION IN DIFFERENT STAGES OF THE BUSINESS PROCESS</b>	<b>42</b>
<b>4.3</b>	<b>WHAT WOULD CONSTITUTE GOOD PRACTICE</b>	<b>44</b>
<b>4.4</b>	<b>STRATEGIC OPTIONS</b>	<b>45</b>

5	<b>HOW TO IMPLEMENT OR IMPROVE PERFORMANCE OF CORPORATE RESPONSIBILITIES UNDER THE VGGT</b>	46
5.1	<i>INTERVENTIONS IN THE FEASIBILITY STAGE</i>	46
5.2	<i>INTERVENTIONS IN THE DETAILED PLANNING STAGE</i>	47
5.2.1	<i>ESIA/ESMP Process</i>	47
5.2.2	<i>Implementation of FPIC</i>	49
5.3	<i>INTERVENTIONS IN ESTABLISHMENT OR CONSTRUCTION STAGE</i>	51
5.3.1	<i>Land Procurement</i>	51
5.3.2	<i>Monitoring ESMP Implementation and Disclosure</i>	51
5.3.3	<i>Stakeholder Engagement and Grievance Redress System</i>	51
5.4	<i>INTERVENTIONS IN OPERATIONS STAGE</i>	54
5.4.1	<i>Stakeholder Engagement Process</i>	54
5.4.2	<i>Monitoring ESMP/Livelihood Restoration Programs</i>	54
5.4.3	<i>Reporting on Social Performance</i>	55
5.4.4	<i>Supply Chain Compliance</i>	56
5.5	<i>INTERVENTIONS IN EXPANSION STAGE</i>	56
5.6	<i>INTERVENTIONS IN CLOSURE STAGE</i>	56
5.7	<i>INTERVENTIONS IN MERGER &amp; ACQUISITION AND RESPONSIBLE INVESTMENT</i>	57
5.7.1	<i>Ethical Conduct in Land Procurement</i>	57
5.7.2	<i>Human Rights Impact Assessment or Due diligence</i>	59
	<b>BIBLIOGRAPHY</b>	61
	<b>A.1: INDUSTRY SELF-REGULATION</b>	1
	<b>A.2 MULTILATERAL REGULATION</b>	1
	<b>A.3 CIVIL REGULATIONS</b>	4

The Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the context of National Food Security (VGGT) were endorsed by the Committee on World Food Security (CFS) on 11<sup>th</sup> May 2012<sup>i</sup>. The objective of the VGGT is to promote secure tenure rights<sup>ii</sup> and equitable access to land, fisheries and forests as a means of eradicating hunger and poverty, supporting sustainable development and enhancing the environment.

The VGGT are complementary to other voluntary guidelines by the FAO such as the Voluntary Guidelines on the Right to Food; Code of Conduct for Responsible Fisheries; International Code of Conduct on the Distribution and Use of Pesticides; and Responsible Management of Planted Forests, etc. These voluntary instruments, including the VGGT, provide frameworks<sup>iii</sup> that can be used when developing strategies, policies, laws and programs.

## 1.1

### *EMERGENCE OF GOVERNANCE OF TENURE AS A KEY ISSUE*

Over the past two decades, natural resources (land, fisheries and forests) which supported the livelihoods of a number of communities have been diverted for the extraction of minerals and oil & gas, as well as for the expansion of industries and urban centres. The industrial scaling-up of the production of food and industrial raw materials (biofuel, starch and resins) has also significantly increased the demand for land. These trends have deprived a number of vulnerable communities access to productive resources on which their livelihoods depend.

These adverse impacts on vulnerable communities have resulted in widespread community protests. Consequently, civil society groups are now more vigilant regarding government policies, financial investments and industrial endeavours which have potential for localised adverse impacts, though they recognise their contribution to overall economic growth. Business enterprises and their investors have realised that if these impending issues are not addressed effectively, they may result in legal actions, costly delays and reputational harm.

Several studies from across the globe show inextricable links between hunger and poverty and people's access to land, fisheries and forests. Access to these crucial natural resources within the national jurisdiction is regulated through

<sup>i</sup> The VGGT were developed through a process of consultations and negotiations held between 2009 and 2012.

<sup>ii</sup> Tenure Rights differ from Property Rights or rights of ownership, recognizing that many of the poor gain access to land and other natural resources through tenure rights other than ownership.

<sup>iii</sup> The voluntary guidelines are usually accompanied with guidance documents that provide technical details on specific aspects when necessary.

systems of tenure, based on written policies and laws, as well as on unwritten customs and practices.

Many tenure problems arise because of weak governance that deprives people and communities of their legitimate tenure rights over land and natural resources and often disturbs social stability. Responsible governance of tenure conversely promotes sustainable social and economic development that can help address poverty and food security issues, and encourages responsible investment (1).

The role of the private sector in driving economic development has increased significantly in the last two decades. The private sector has gained prominence vis-à-vis the government in supplying goods, providing services and creating employment. Corporates not only compete with each other to gain access to markets, there is also an intense competition to access natural resources, which are under the control of government.

Article 11 of the International Covenant on Economic, Social and Cultural Rights and Article 25 of the Universal Declaration on Human Rights recognise the right to food as a fundamental human right. Hence, every state is obliged to ensure everyone under its jurisdiction has access to minimum essential food which is sufficient, nutritionally adequate, and safe to ensure their freedom from hunger. Therefore, states are obliged to refrain from infringing on the ability of individuals and groups to feed themselves where such ability exists and to prevent others – including private actors and corporations - from encroaching on that ability.

The human right to food would be violated if people depending on natural resources for their livelihoods (including cultivators, pastoralists and fishing folks) had their access to these resources severed or denied without suitable alternatives. The impact of this would be exacerbated if local incomes were insufficient to compensate for any localised price increase resulting from the shift towards the production of food for exports; or if the revenues of local smallholders were to fall due to an overall change in the economic environment. Secure access to land and other natural resources enables families to produce sufficient food for self-consumption, thus supporting food security and providing a safety net during times of hardship. People face a life of hunger and poverty if they lose secure access and their tenure rights to their homes and natural resources. Thus, responsible governance of tenure is inherently linked to peoples' right to food, which is an important and fundamental human right.

Appropriate tenure arrangements can also promote sustainable use practices that enhance the environment. Tenure initiatives that promote gender equity may also indirectly serve to further empower women as improved tenure rights can increase women's power in social and political relationships.

The VGGT work towards a more transparent and accountable tenure structure and administration. These changes require interventions in the complex reality of tenure administration and governance systems that differ across geographies and are embedded in their regional socio-political history. These changes can be made possible if actors adopt responsible practices.

## **1.2                    *RESPONSIBILITIES OF STATE AND NON-STATE ACTORS UNDER THE VGGT***

Being voluntary, the VGGT are not legally binding and do not replace existing national or international laws and commitments. However, while the right to ownership of land and natural resources continues to be governed by existing legal provisions, the right to tenure is seen as concomitant to the right to food as a human right. Therefore the principles adopted in the VGGT allow governments, civil society, the private sector and citizens to judge whether their actions and the actions of others constitute acceptable practices from the perspective of human rights.

The VGGT identify two sets of principles for responsible actions, i.e. general principles and principles of implementation. The general principles for state and non-state actors are listed separately. A snap shot of these general principles is provided in Box 1.1.

## *Guiding Principles of Responsible Tenure Governance for State and Non-State Actors*

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### States:

- To take reasonable measures to identify, record and respect legitimate tenure rights holders and their rights and to meet the duties associated with tenure rights;
- To protect the tenure rights holders against arbitrary loss of their tenure rights, including forced evictions;
- To take active measures to promote and facilitate the full realization of tenure rights;
- To provide effective and accessible means to everyone, through judicial authorities or other approaches, to resolve disputes over tenure rights;
- To provide prompt, just compensation where tenure rights are taken for public purposes;
- To take active measures to prevent tenure disputes from arising and from escalating into violent conflicts;
- To prevent corruption in all forms, at all levels and in all settings;
- States, in accordance with their international obligations, should provide access to effective judicial remedies for negative impacts on human rights and legitimate tenure rights by business enterprises;
- The home states of Transnational Corporations (TNC) have roles to play in assisting both TNCs and host States to ensure that businesses are not involved in the violation of human rights and legitimate tenure rights; and
- States should take additional steps to protect against the violation of human rights and legitimate tenure rights by business enterprises owned or controlled by the State.

### Non-State Actors and Business Enterprises:

- Have responsibility to respect human rights and legitimate tenure rights;
  - Business enterprises to act with due diligence to avoid infringing on the human rights and legitimate tenure rights of others;
  - Business enterprises to include appropriate risk management systems to prevent and address adverse impacts on human rights and legitimate tenure rights;
  - Business enterprises should provide for and cooperate in non-judicial mechanisms to provide remedy, including effective operational-level grievance mechanism; and
  - Business enterprises should identify and assess any actual or potential impacts on human rights and legitimate tenure rights in which they may be involved.
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The second set of principles recognised in the VGGT are principles for implementation. There are ten implementation principles which include: human dignity, non-discrimination, equity and justice, gender equality, holistic and sustainable approach, consultation and participation, rule of law, transparency, accountability and continuous improvement. These implementation principles are applicable for both state and non-state actors.



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**Human dignity:** recognizing the inherent dignity and the equal and inalienable human rights of all individuals.

**Non-discrimination:** no one should be subject to discrimination under law and policies as well as in practice.

**Equity and justice:** recognizing that equality between individuals may require acknowledging differences between individuals, and taking positive action, including empowerment, in order to promote equitable tenure rights and access to land, fisheries and forests, for all, women and men, youth and vulnerable and traditionally marginalized people, within the national context.

**Gender equality:** Ensure the equal right of women and men to the enjoyment of all human rights, while acknowledging differences between women and men and taking specific measures aimed at accelerating de facto equality when necessary. States should ensure that women and girls have equal tenure rights and access to land, fisheries and forests independent of their civil and marital status.

**Holistic and sustainable approach:** recognizing that natural resources and their uses are interconnected, and adopting an integrated and sustainable approach to their administration.

**Consultation and participation:** engaging with and seeking the support of those who, having legitimate tenure rights, could be affected by decisions, prior to decisions being taken, and responding to their contributions; taking into consideration existing power imbalances between different parties and ensuring active, free, effective, meaningful and informed participation of individuals and groups in associated decision-making processes.

**Rule of law:** adopting a rules-based approach through laws that are widely publicized in applicable languages, applicable to all, equally enforced and independently adjudicated, and that are consistent with their existing obligations under national and international law, and with due regard to voluntary commitments under applicable regional and international instruments.

**Transparency:** clearly defining and widely publicizing policies, laws and procedures in applicable languages, and widely publicizing decisions in applicable languages and in formats accessible to all.

**Accountability:** holding individuals, public agencies and non-state actors responsible for their actions and decisions according to the principles of the rule of law.

**Continuous improvement:** States should improve mechanisms for monitoring and analysis of tenure governance in order to develop evidence-based programs and secure on-going improvements.

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*Source: Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security, FAO, Section 3B.*

The VGGT consider tenure rights to land, fisheries and forests in an integrated manner, and gender is mainstreamed throughout the Guidelines. The Guidelines are structured as follows:

Part-1: Preliminary

Part-2: General Matters

Part-3: Legal recognition and allocation of tenure rights and duties

Part-4: Transfers and other changes to tenure rights and duties

Part-5: Administration of tenure

Part-6: Responses to climate change and emergencies

Part-7: Promotion, implementation, monitoring and evaluation.

The VGGT recognise that all tenure rights are limited by the rights of others and by measures taken by States necessary for public purposes. Rights to tenure are balanced by duties towards the sustainable use of land, fisheries and forest resources and must satisfy the public purpose at large. Therefore, it also mandates States to consider providing restitution for the loss of legitimate tenure rights to land, fisheries and forests.

### 1.3

#### *INITIATIVES FOR IMPLEMENTING THE VGGT*

The G8 Summit under the US Presidency launched the Land Transparency Initiative (LTI) with country pilot partnerships in seven developing countries to implement the VGGT. A review in May 2014 observed that the VGGT are a rallying point for all actors involved in agriculture, food security and nutrition where incidences of land dispossession continue in various places around the globe. The UN bodies and donor agencies are seen to lead this process, although the participation of Development Finance Institutions (DFIs) and the corporate sector is also growing.

The EU is working closely with technical agencies to provide financing for capacity building and promoting policy dialogue around the VGGT. Similarly, USAID is in the process of preparing an 'Operational Guidelines for Large-Scale Land-Based Investment' which is based on the VGGT and the principles of Responsible Agricultural Investment (RAI).

The FAO is also working with UN Economic Commission for Africa (UNECA) through the Land Policy Initiative (LPI) and NEPAD to promote the integration of the VGGT in national policies across the African continent. IFAD also has a range of related programs and works with governments to ensure implementation of the VGGT through projects. A number of countries have initiated or re-oriented their land reform programs to match the expectations under the VGGT. Most prominent among these countries include Brazil, Sierra Leone, Guatemala and the Philippines.

A Global Donor Working Group on Land<sup>i</sup> was formed in 2013 to coordinate efforts to improve land tenure arrangements. As part of this initiative, they have developed a database and interactive mapping tool which shows that more than 220 projects and programs linked to the implementation of the VGGT are taking place in 103 countries.

Private sector enterprises such as Coca-Cola, Cargill, Unilever and Nestlé have extended their support and are making serious efforts to apply the VGGT. Other important partners in this process are International Finance Corporation

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<sup>i</sup> Initial members of the group are the members of the existing EU Working Group on Land (ADA, AFD, BMELV, BMZ, DFID, EC, GIZ, MoFA-Austria, MoFA-Denmark, MoFA-Finland, MoFA-France, MoFA-Netherlands, SDC, Sida) and FAO, JICA, IFAD, MCC, USAID, CIDA, UN-HABITAT and WB who agreed at the Donor Roundtable Meeting in Washington at the World Bank on 12 April 2013 to establish the Global Donor Working Group on Land. Afterwards IFC also joined the group.

(IFC) and UN Global Compact (UNGC). These initiatives are summarised below.

**Figure 1.1** *Initiatives for Implementing the VGGT*

<i>Parties</i>	<i>Initiatives</i>
<b>State Parties</b>	
<i>G-8 Summit</i>	Launched Land Transparency Initiative (LTI) with country pilot partnerships in 7 developing countries to implement the VGGT.
<i>EU</i>	Providing financing for capacity building and promoting policy dialogue around the VGGT.
<i>USAID</i>	In the process of preparing operating guidelines for large-scale land-based investment based on the VGGT and RAI (Responsible Agriculture Investments).
<i>FAO</i>	Working with UNECA through the Land Policy Initiative and NEPAD to promote the integration of the VGGT in National Policies in Africa.
<i>Brasil, Sierra Leone, Guatemala and the Philippines</i>	Re-oriented their land reform program to match expectations in VGGT.
<b>Non-State Parties</b>	
<i>A Global Donor Working Group on Land has been formed</i>	In the process of developing a database and interactive mapping tool which covers 220 projects and programs linked to the implementation of VGGT spread across 103 countries.
<i>Coca-cola, Nestlé</i>	Extended their support to VGGT.
<i>IFC and Global Compacts</i>	Actively promoting VGGT in Private Sector Initiatives.

The review of the initiatives around the VGGT suggests that participation and involvement of the non-state actors are limited, though some initiatives in the pipeline look quite promising.

#### **1.4** *OBJECTIVE OF THIS DOCUMENT*

This is a background document on “Guidance to Companies on the practical application of the CFS VGGT”. The objective of this document is to guide the private sector (corporates and investors) and civil society (CSOs, NGOs, not-for-profits, media etc.) in forming a common understanding on how to respect peoples’ “tenure rights to land, fisheries and forest”; and ensure that communities have access to remedies ‘acceptable to both parties’ when such rights are impinged or such potential is recognized.

#### **1.5** *STRUCTURE OF THIS BACKGROUND DOCUMENT*

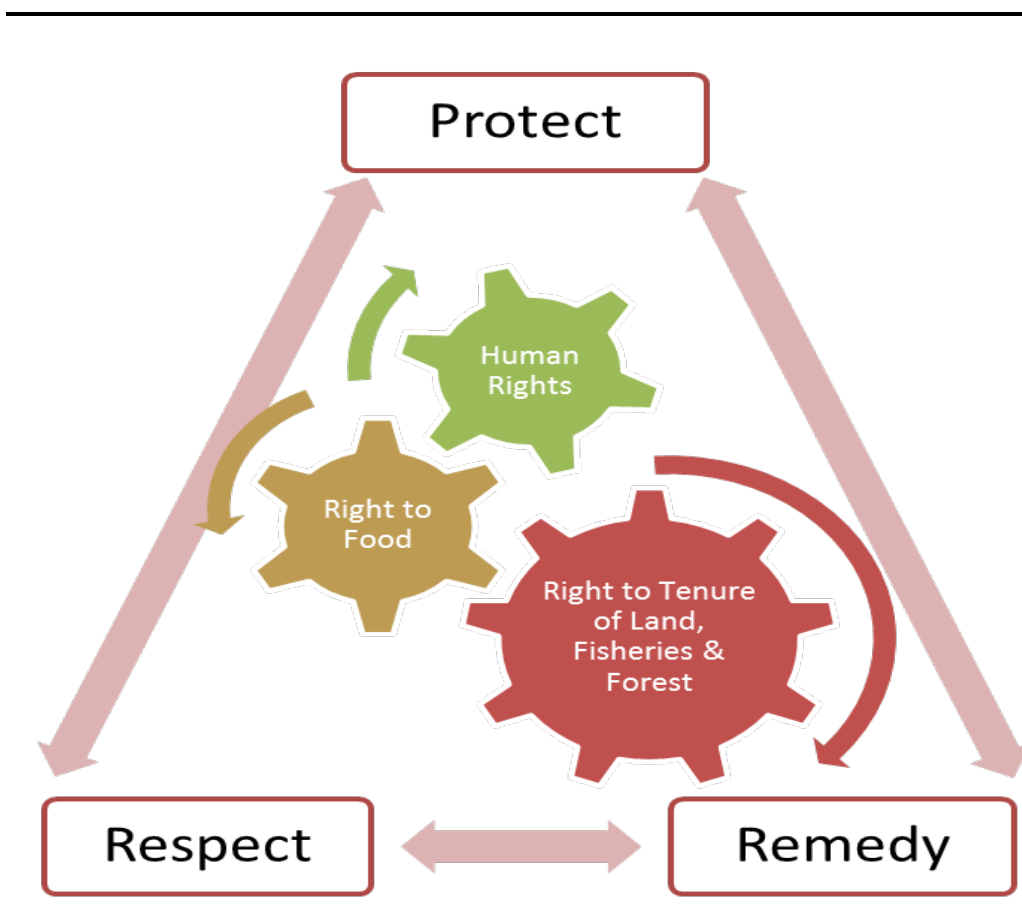
This background document is comprised of five chapters organised in a logical sequence.

First Chapter	provides objectives and the context within which this Guidance to Corporates on the VGGT is to be comprehended.
Second Chapter	describes current practices in the areas recognized as responsibilities of Corporates under the VGGT.
Third Chapter	provides an overview of the existing codes in these key areas of corporate responsibilities under the VGGT vis-à-vis their perceived limitations.
Forth Chapter	deals with potential tenure governance issues and areas for intervention by business enterprises and investors. This chapter also lays out the strategic options for interventions to support implementation of the VGGT.
Fifth Chapter	discusses key questions to implement or improve corporate performance in different themes of corporate responsibility. The chapter provides a list of existing codes and guidance material that can be useful for corporates and civil society organisations.

The responsibilities of non-state actors, specifically corporate responsibilities, are juxtaposed with the United Nations Human Rights Council's Guiding Principles on Business and Human Rights (GPBHR, 2011). Just as the VGGT, GPBHR is not a legally binding document; rather these guiding principles elaborate on the implications of existing standards and practices for States and businesses. The framework adopted in GPBHR is popularly known as the "Protect, Respect, and Remedy" framework. The framework is based on three pillars:

- The State duty to protect human rights;
- The Corporate responsibility to respect human rights; and
- The need for greater access to remedy for victims of business-related human rights violations.

**Figure 2.1** *The VGGT's link to Guiding Principles on Business and Human Rights (2011)*



The actions of business enterprises and other non-state actors can affect (both positively and negatively) the enjoyment of human rights by others. The sphere of influence of business enterprises includes their employees, their customers, workers in their supply chains and the communities around their operations. The people who are disadvantaged, marginalized or excluded

from society are considered more vulnerable to their impacts. This vulnerability is often intrinsic to the context. Further, a particular human rights violation may be salient to a particular sector or region. But, there is nothing in principle that precludes any enterprise from causing or contributing to any potential human rights violation. Hence, an extensive and integrated approach to protect, respect and remedy of all categories of human rights is essential.

## 2.1

### *THE EMERGENCE AND PROGRESS IN THE REGULATION OF CORPORATE RESPONSIBILITY AND GOVERNANCE*

Although interest in the activities of corporate expansion was evident in colonial times, a renewed interest can be traced back to the 1980s. The 1980s witnessed several social and environmental catastrophes<sup>i</sup> that directly implicated TNCs. Such catastrophes exposed the failures of existing regulatory instruments, and emphasized the need for stronger environmental and governance regulation. In keeping with the “free market” philosophy, voluntary initiatives and corporate self-regulation gathered momentum, and a plethora of codes of conduct emerged in the 1990s.

In addition to company codes of conduct<sup>ii</sup>, industry associations spearheaded their own industry codes. Both individual companies and associations emphasized the merits of self-regulation over government regulation, suggesting that private regulation allowed creativity in a firm to flourish<sup>iii</sup>. As a result of deregulation and the more general challenges of globalisation of economic activity, most developing countries were seen to increasingly weaken in both their will and their capacity to perform regulatory functions. As a result, corporations have had an instrumental interest in voluntarily adopting codes of conduct as a way to ease concerns regarding industry practices, assure civil society of their intentions and commitments and pre-empt external regulation.

The corporate social responsibility and citizenship concepts provided an ethical backdrop for companies designing and implementing their own codes of conduct. However, over-time, self-regulatory initiatives were met

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<sup>i</sup> The Bhopal disaster in 1984 and the Exxon Valdez oil spill in 1989 are the most prominent.

<sup>ii</sup> A distinguishing feature of codes of conduct is that they are voluntary in nature<sup>4</sup> rather than legally binding, and thus not legally enforceable. To the extent that they are issued by states, international organizations, non-governmental organizations (NGOs) and the International Chamber of Commerce, codes of conduct fall into the broad normative realm of soft law. Soft law is a generic term referring to a category of social norms that are not legally binding per se as a matter of ‘law’ but which nevertheless have a certain legal relevance in influencing the conduct and decisions of state and non-state actors.

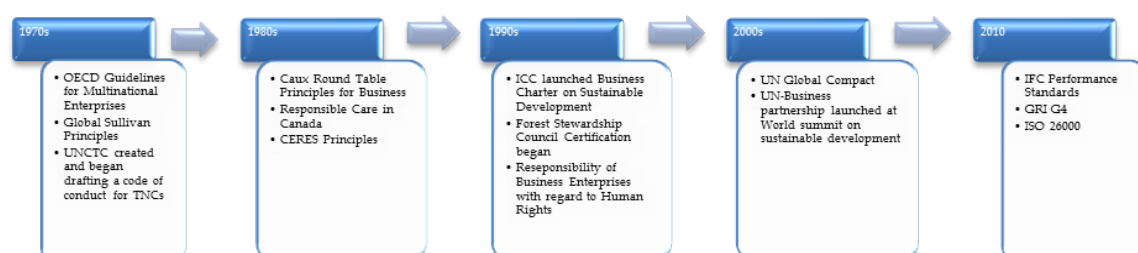
<sup>iii</sup> The Private Sector emphasis on self-regulation is to be understood in the context of broader debate on political economy. The United Nations Center for Transnational Corporations (UNCTC) made an effort to draft a code on TNCs between 1975 and 1992. The G-77 (Developing Countries) supported by Socialist bloc demanded a legally binding international instrument of rules to govern the activities of TNCs. On the contrary, the developed market economies insisted on a voluntary code of principles.

with criticism that they were largely public relations charades. This is partly a result of the failure of self-regulation and a perceived *laissez faire* attitude, which resulted in the economic deliberations that popularised terms such as ‘greenwash’, and ‘the resource curse’. The attention has now shifted from mere enactment of laws to the need for strengthening enforcement capabilities (2) of states and regulators.

By the late 1990s, a new regulatory approach called *multi-stakeholder initiatives* (MSIs) became the norm. They involved participation of multiple stakeholders – including companies or industry associations, NGOs, trade unions and, on occasion, governmental bodies – and involve standard-setting, stakeholder dialogue, social and environmental management systems, and, significantly, certification and monitoring mechanisms related to social and environmental issues. Thus, MSIs provided a better monitoring and reporting mechanism improving accountability and transparency through adopting stakeholder engagement and disclosure of information.

### Box 2.1

#### *Timeline of selected regulatory mechanism for Corporates*



Many voices from international NGOs during the World Summit on Sustainable Development held in Johannesburg in 2002 petitioned for binding international regulation to monitor the activities of TNCs against the backdrop of several exposures of corporate wrong doings. Several northern and southern NGOs joined forces and convened a number of conventions to ensure future corporate activities would not undermine social, environmental and human rights. This involved a redirection of the regulatory process from corporate self-regulation towards multi-lateral regulation and civil society monitoring.

The regulation of corporate conduct can be classified into four categories<sup>i</sup>: (1) Corporate codes of conduct; (2) Industry self-regulation; (3) Multi-lateral regulations; and (4) Civil society regulation. A quick scan of these voluntary codes of conduct shows that most of the early regulations covered environment, resettlement and labour issues. However, progressively the issues of safeguarding human rights and preventing corruption that have emerged as hot topics were in the last decade.

The global deliberation on the voluntary codes of conduct emphasizes that the governance potential of the various codes in existence depends upon whether they are indeed observed in practice. Compliance and reporting mechanisms have gained centre stage to provide legitimacy to these codes of conduct. The voluntary compliance in the context of corporate governance thus essentially draws on self-interest and legitimacy. Apart from the normative pressure, mimetic processes and external pressures for isomorphism helped in the adoption and spread of good practices. The adoption of voluntary codes, in itself, was not sufficient to achieve the desired outcomes. Hence, benchmarking and monitoring of outcomes were considered significant.

Voluntary self-regulation may be incapable of setting bounds to corporate conduct when it is subordinate to profit maximization. However, a globalised world exists where corporate conduct is now significantly guided by consumers, shareholders, civil society groups and other stakeholders. All of them create certain normative expectations relating to business conduct. Thus, the motives of profit maximization have, to a certain extent, been subjugated to ethical business conduct and good corporate governance. As reputational concerns are no longer limited to an individual company, but extended to the whole of an industry, the trend is for codes of conduct to be adopted and adhered to industry wide. Nonetheless, voluntary codes are aspirational in character. Owing to this, they are conditional to a good faith effort for the progressive realisation of their goals. Despite their limitations, voluntary codes do have the potential to provide positive benefits and are becoming increasingly instrumental in improving corporate responsibility.

## 2.2

### *THEMES FOR CORPORATE RESPONSIBILITY IN THE VGGT*

The core responsibilities of non-state or business enterprises under the VGGT include the following:

- Impact Assessment and Risk Management System;
- Community Engagement and Grievance Redress System;

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<sup>i</sup> With corporate social responsibility issues attracting wide attention, many governments have formulated new laws. Australia, Belgium, Britain, France, Germany and Sweden require companies to disclose information about social responsible investment practices and proxy voting.



- Transparency and Prevention of Corruption;
- Indigenous Peoples and other communities with customary tenure systems;
- Informal tenure and forced eviction; and
- Responsible Investments.

Specific provisions under these themes in the VGGT are elaborated in the sections below.

### 2.2.1 *Impact Assessment and Risk Management System*

The responsibility of adopting and implementing an appropriate risk management system is recognised as a general principle for business enterprises (clause 3.2). The specific expectation from the risk management system is to prevent and address adverse impacts on human rights and legitimate tenure rights. It also expects business enterprises to act with due diligence to avoid infringing on the human rights and legitimate tenure rights of others.

States have been urged to provide restitution for loss of legitimate tenure rights to land, fisheries and forests. If such restitution processes involve tenure rights granted to business enterprises, they are principally obliged to cooperate in an appropriate impact assessment process covering human and tenure rights.

### 2.2.2 *Community Engagement and Grievance Redress System*

Consultation and participation with those who have legitimate tenure rights are recognised as one of the implementing principles. The consultations should be held prior to decisions being taken and to ensure the active free, effective, meaningful and informed participation of individuals and groups in associated decision making processes. Transparency is recognised as another important implementation principle. Hence, the decision making process should be widely publicised to make it accessible to all.

Furthermore, with respect to Indigenous Peoples, a good faith negotiation process is to be initiated before commencing any project or before adopting and implementing legislative or administrative measures affecting the resources to which the communities hold right. Such consultation processes should be meaningful and effective and preferably through their own representative institutions in order to obtain their free, prior and informed consent under the UNDRIP, with due regard for particular positions and understandings of individual states.

The VGGT mention 'non-judicial mechanisms to provide remedy including operational-level grievance mechanisms for impacts on human rights and legitimate tenure rights'.

### 2.2.3

#### *Transparency and Prevention of Corruption*

The governance services related to tenure rights for land, fisheries and forest should be transparent. The matters related to records of rights, valuation of tenure rights, taxation, spatial planning and dispute resolution processes should be clearly defined and widely publicised in applicable languages and in formats accessible to all.

State and non-state actors should endeavour to prevent corruption with regard to matters of governance as listed above. Though it is the responsibility of the state to prevent corruption through rule of law and through the enforcement of anti-corruption measures, non-state actors have obligations not to be complicit in any corrupt practices. Business enterprises may have a monitoring system to check how staff working on acquisition and administration of tenure rights is accountable for their actions. They may design and enforce anti-corruption measures such as applying checks and balances, limiting arbitrary use of power, addressing conflicts of interest and adopting clear rules and regulations.

Another potential area of corrupt or complicit practices is related to the judicial or dispute resolution process regarding conflicts involving tenure and human rights. It is the duty of business enterprises not to indulge in non-ethical or corrupt practices in such judicial or dispute resolution processes.

### 2.2.4

#### *Indigenous Peoples and other communities with customary tenure systems*

The VGGT dedicate two extensive sections covering issues specific to Indigenous Peoples and other communities with customary tenure systems and informal tenure. It urges business enterprises to acknowledge that land, fisheries and forests have social, cultural, spiritual, economic, environmental and political values to Indigenous Peoples and other communities with customary tenure systems. Effective participation of all members (men, women and youth) in decision regarding their tenure systems should be promoted through their local traditional institutions, including in the case of collective tenure systems. Business enterprises should respect the right to self-governance and decision making by Indigenous Peoples.

The requirement for good faith negotiation and FPIC (as defined under UNDRIP) as part of the community engagement process is discussed earlier. In continuation with the implementing principles of transparency, equity and justice, business enterprises may provide technical and legal assistance to the affected or potentially impacted population if necessary.

### 2.2.5

#### *Informal Tenure and Forced Evictions*

The establishment and operation of business enterprises often cause indirect and induced impacts resulting from in-migration or influx. Such a situation causes or contributes to the emergence of informal tenure rights which have implications for the government and host populations. While these informal

tenure systems may not be considered as legitimate tenure rights within state laws, it should not be presumed that the human rights of the individuals and communities involved can be extinguished.

In circumstances where they are required to be evicted, this should be undertaken in accordance with due process of law and in compliance with obligations under the Universal Declaration of Human Rights. If government plays the leading role in such an eviction process, business enterprises should not play any complicit role in forced eviction that violates recognised human rights.

## 2.2.6 *Responsible Investments*

The VGGT dedicate a section to investments and the roles and responsibilities of state and non-state actors in promoting responsible investment that aligns with the provisions under the VGGT. It expects investors (both public and private sector) to: invest in projects that do no harm; safeguard against the dispossession of legitimate tenure rights holders; safeguard against environmental damage; and respect human rights. In the case of Indigenous Peoples, all actions should be consistent with provisions under ILO convention No 169 and UNDRIP.

For investments involving large-scale transactions of tenure rights, including acquisitions and partnership agreements, prior independent assessments should be undertaken on the potential positive and negative impacts that those investments could have on tenure rights, food security and the progressive realization of the right to adequate food, livelihoods and environment. The process should systematically identify all existing tenure rights and claims (including those of customary and informal tenure) and study impacts on livelihoods of other people affected by the investment such as small-scale producers.

Land, livelihoods and food security issues shape up in different stages of the business operation, producing a diverse range of challenges. While tenure and human rights issues are most grievous when a new project emerges, governance of land tenure issues are relevant for all stages of business cycle.

Corporates exposed to risk pertaining to land tenure and livelihood issues in different sectors are gradually more aware of the changing context and societal expectations. Accordingly, these companies have developed protocols and procedures to be followed across geographies. However, there are diverse implementation challenges, and overcoming them is crucial to demonstrate that corporate performance with respect to protecting human rights, including the right to tenure and food security, is a reality. Let's recapture key challenges on the ground for the successful implementation of existing corporate codes of conduct.

- Customary ownership over natural resources including land, with individual and collective rights associated with them, are neither documented nor recognised in most of the land and revenue administration system across geographies.
- The governments and the respective land departments lack institutional structure, as well as physical and financial resources, to be able to streamline land records. While urban habitations have shown some limited progress, rural areas still lack clear land details, if they exist at all.
- The laws related to land acquisition are suited to the earlier requirements when the state exercised its authority of eminent domain for public purpose. Hence, most of these laws are not suitably amended to accommodate the land procurement process to meet the requirements of companies.
- With a growing awareness among communities, they are ascertaining control over the resources, and demand higher compensation to alienate such rights over land and resources.
- Determination of the tenure rights of internally displaced populations in post-conflict situations poses challenges due to lack of documentation and counterclaims raised by multiple parties.
- Lack of understanding of the integrated and multi-pronged livelihood strategies of communities and their vulnerability linked to their ability to cope with the changing environment and economic conditions.

- The respect and recognition of the Indigenous Peoples' right to decision making with regard to protection of their cultural heritage and rights over natural resources upon which their livelihood and way of life depends.

### 3.1 *EXISTING CODES OF CONDUCT AND IMPLEMENTATION MECHANISM*

These concerns are aimed to be addressed through a range of corporate policies, protocols and procedural guidelines and are discussed here under the themes of corporate responsibilities recognised in the VGGT and common intervention areas.

#### 3.1.1 *Impact Assessment and Management Programs*

The Impact Assessment process for industrial projects is regulated through enactments by states and governments that require the project proponent to conduct an impact assessment. Though the country-level regulations vary from one to another, there is a broad consensus on a good quality Environmental and Social Impact Assessment (ESIA). The International Association for Impact Assessment (IAIA) is the leading global network on best practice in the use of impact assessment for informed decision making. The IAIA recognises that a good ESIA will adhere to a range of basic principles that include: purposiveness, rigour, practicality, relevant, cost-effectiveness, efficient, focused, adaptive, participative, integrated, interdisciplinary, credible and systematic.

The ESIA process should be applied:

- as early as possible in decision making and when there is a change in the proposed activity;
- to all development proposals that may cause potentially significant effects;
- to biophysical impacts and relevant socio-economic factors, including health, culture, gender, lifestyle, age, and cumulative effects consistent with the concept and principles of sustainable development;
- to provide for the involvement and input of communities and industries affected by a proposal, as well as the interested public; and
- in accordance with internationally agreed measures and activities.

The ESIA, as a management tool, focuses on the pre-decision stages of the process where potential impacts are predicted and their significance is assessed. However, very little attention is paid to whether the actual impacts of the proposed project correspond to what were predicted (3). The knowledge, skills and resources at the disposal of regulatory bodies in different countries vary. Consequently, the enforcement, monitoring and

course-corrections to cover actual impacts of the project remain out of the bounds of this environment management tool.

### **Box 3.1**

#### ***Challenges of ESIA Process Implementation***

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- Most countries have an Environmental Impact Assessment (EIA) Process which focuses on environmental aspects more than socio-economic aspects.
  - The quality of the Impact Assessment Studies varies and they do not necessarily adhere to IAIA principles of purposiveness, rigor, relevancy, practicality, focused, participative, integrated, interdisciplinary, systematic and credible.
  - Actual impacts may not necessarily correspond to what was predicted in the EIA stage. Hence, the management measures are not always effective.
  - The regulatory process of monitoring and enforcement is often found inadequate in developing nations.
  - The quality and credibility of the contents of the EIA is also a widely raised concern in developing and under developed countries.
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The content and quality of the EIA documents depends on the regulatory or administrative reference framework which is used for the assessment and credibility of the agency conducting environment assessment.

### **3.1.2**

#### ***Stakeholder Engagement and Grievance Redress System***

Stakeholder identification, analysis and engagement have emerged as an integral part of business operations. Stakeholder engagement requirements are covered in social performance requirements/standards for international development agencies such as EBRD and IFC.

The stakeholder identification, analysis and engagement process is often considered as secondary significance and is taken up only as a crisis management strategy. It is seldom treated as a tool for prevention of conflict and crisis. Stakeholder engagement practices have been promoted in the last decade by DFIs as part of the risk management system. Guidance notes and implementation handbooks are available to guide companies to design and implement their stakeholder engagement and grievance redress mechanisms. Some of the common challenges in preparation and implementation of an effective stakeholder engagement program are provided in the Box below.

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- Participation of local communities and affected populations in the Environment Impact Assessment process is limited.
  - Senior management typically takes stakeholder engagement activities as a response system for conflict management with local communities.
  - The social and political risk assessment is not covered in the impact assessment process. Hence, stakeholder engagement planning is often based on insufficient information.
  - The consultations held with local communities and affected persons do not adhere to the principles of Informed Consultation and Participation (ICP) or Free Prior and Informed Consent (FPIC) where Indigenous Peoples are impacted.
  - The sharing of information and effective communication with stakeholders is not achieved due to poor preparation.
  - The company does not address grievances or accept its mistakes and does not try to establish mutual trust with its stakeholders.
  - The processes for FPIC, where applicable, are neither well laid out in most of the regulatory regimes nor are they implemented with the earnestness they deserve.
  - Staff involved in the process of stakeholder engagement often lack skills in managing stakeholder relations.
  - Insufficient understanding of the community in terms of its power imbalances, customs, culture and past experiences.
  - The pace of progress expected from stakeholders is often unrealistic and the quality of engagement is comprised in the hurry to complete this additional responsibility.
  - Access to remedy for the affected population is, most of the time, complicated and not suitable to the skills and knowledge of the affected population.
  - Conflict resolutions are mostly done through a country's legal system, which is time consuming and costly. Hence, remedies from human rights violations are rarely available.
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## 3.1.3

*Corporate Governance and Anti-corruption Measures*

The level of corruption in government and business in recent years has raised wide spread concern, and it's realised that there is a great degree of inter-relationship. Corrupt practices are known to be adopted in public procurement; negotiations for terms of investment; and in the formulation and enforcement of laws that affect their business prospects or profit margin. Whether public or private sector, corruption threatens the core principles of the free market system and undermines the rule of law. It manifests in many different ways. Sometimes it is direct, such as a request or demand for a bribe. At other times, it involves inappropriate means to achieve goals or being complicit in illegal or unethical acts for gaining benefit. Corporate corruption is a result of a lack of clear policy regulation or a wilful breach of these rules.

International conventions such as the UN Convention against Corruption and the OECD Anti-Bribery Convention (1999) have been organized for fighting growing levels of corruption. IFC and MIGA have been working for stronger corporate governance and have integrated it into their investment decisions. Industrial associations such as the Extractive Industry Transparency Initiative (EITI) and Forest Law Enforcement and Governance Ministerial Processes take sectoral approaches to promote anti-corruption principles and codes of conduct. OECD-DAC Governance Network (GovNet), Global Integrity Alliance (GIA), Alliance for Responsible Fisheries (ALLFISH), Construction

Sector Transparency Initiative (CoST) are a few more examples. Some country-specific legislation holds the corporates registered within their country responsible for their corrupt practices in other countries. Foreign Corrupt Practices Act (FCPA) of USA and Anti Bribery Law of UK are such examples.

The OECD Guidelines for Multinational Enterprises is a widely followed code of conduct. The code sets the yardstick for corporate conduct in such areas as: 1. obeying the law and observing international instruments; 2. heightened care in managing investments; 3. knowing business partners and clients; 4. dealing with public sector officials; and 5. speaking out about wrongdoing. The International Corporate Governance Network (ICGN) is an investor-led organization of governance professionals with a mission to inspire and promote effective standards of corporate governance. ICGN has formulated a number of guidelines in the matters of corporate governance<sup>i</sup>, out of which the Statement and Guidance on Anti-Corruption Practices (2012) is relevant here.

**Figure 3.1** *ICGN Rules on Combating Corruption*

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<p><b>Article-1:</b> Prohibits corrupt practices including bribery, extortion, solicitation, trading in influence and laundering the proceeds of these practices directly and indirectly including through third parties.</p> <p><b>Article-2:</b> The enterprise should instruct its sub-contractors in its supply chain to 1) neither to engage nor to tolerate that they engage in any act of corruption; 2) not to use them as a conduit for any corrupt practice; 3) hire them only to the extent appropriate for the regular conduct of the enterprise's business; and 4) not to pay them more than an appropriate remuneration for their legitimate services.</p> <p><b>Article-3:</b> An enterprise should conduct appropriate due diligence on the reputation and the capacity of its Business Partners exposed to corruption risks to comply with anti-corruption law in their dealings with or on behalf of the enterprise. It should conduct its procurement in accordance with accepted business standards and to the extent possible in a transparent manner.</p> <p><b>Article-4:</b> Enterprises should take measures within their power to ensure that political and charitable contributions and sponsorships are not used as a subterfuge for corruption.</p> <p><b>Article-5:</b> Enterprises should establish procedures covering the offer or receipt of gifts and hospitality.</p> <p><b>Article-6:</b> Facilitation payments (unofficial, improper, small payments made to a low level official to secure or expedite the process) are to be avoided, and when it is unavoidable it will be accurately accounted for.</p> <p><b>Article-7:</b> Situations where conflict of interest arises should be avoided or disclosed.</p> <p><b>Article-8:</b> Enterprises should ensure that key personnel in areas subject to high corruption risk should be trained and evaluated regularly and the rotation of such personnel should be considered.</p> <p><b>Article-9:</b> Enterprises should ensure that all financial transactions are fairly recorded in appropriate books and there are no 'off the books' or secret accounts.</p>
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A study on the codes of conduct by OECD finds significant variation in the codes and shows a lack of basic consensus on what the scope of bribery commitment, or the definition of bribery and corruption, should be (4). The

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<sup>i</sup> Other ICGN Guidelines include: 1. Statement for Institutional Investor Responsibilities (2013), 2. Statement and Guidance on Gender Diversity on Boards (2013), 3. Model Contract Terms Between Asset Owners and Managers (2012), 4. Executive Remuneration Guidelines (2012), 5. Statement and Guidance on Lobbying and Donations (2011), 6. Corporate Risk Oversight Guidelines (2010), 7. Non-executive Director Remuneration Guidelines and Policies (2010), 8. Statement and Guidance on Non-financial Business Reporting (2008), 9. Securities Lending Code of Best Practice (2007).



study finds that terms used in the codes are ambiguous and do not replicate the terms used in the OECD Bribery Convention.

Corporate reporting and disclosure is no longer limited to providing financial statements and details on the ownership of the corporation. Reporting on sustainability performance of the business is not the only integral part; there is a growing demand for providing more specific and concise information in the specific areas of environment, labour, occupational health, and benefit to local communities.

UN Global Compact is the most popular voluntary corporate citizenship initiative where members disclose and report on their performance through their annual communication in progress. The Global Reporting Initiative (GRI) framework sets out the principles and indicators that organizations can use to measure and report their economic, environmental and social performance. The framework includes sector supplements and national annexures. Sector-specific supplements provide, amongst other things, sustainability indicators specific to the needs of sectors<sup>i</sup>. International Standard Organization (ISO) 14000 series standards address the organizational and management aspects for environment issues. ISO 14001 indicates that a policy for communication is required. ISO 14063 gives further guidance to an organization on general principles, policy, strategy and activities relating to both internal and external environmental communication. ISO 26000 is a guidance standard dealing with social responsibility exclusively.

In addition to these global standards, country-level legislation also mandates disclosure of information. The expectations under these country-level disclosure requirements vary. Apart from regulatory requirements, some of the non-profit organizations also have developed indicators and evaluation systems for social performance, such as Ethos Indicators on Corporate Social Responsibility in Brazil<sup>ii</sup>.

This is complemented through UN Principles for Responsible Investment (UNPRI) which is an investor initiative. UNPRI is also a set of voluntary best practice principles to assist investors in integrating environmental, social and corporate governance issues.

The Interfaith Centre on Corporate Responsibility<sup>iii</sup> recommended self-regulating guidelines for responsible investment in commodities markets and for responsible land investments. The guidelines recommended that land

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<sup>i</sup> As of now, three sector supplements have been finalized: Financial Services Sector Supplement (FSSS), Electric Utilities Sector Supplement (EUSS), Mining and Metals Sector Supplement (MMSS) and a number of other supplements are available in pilot versions.

<sup>ii</sup> See Carrot and Sticks- Promoting Transparency and Sustainability by KPMG, GRI, UNEP and Unit for Corporate Governance in Africa.

<sup>iii</sup> The membership of the Interfaith Centre on Corporate Responsibility is comprised of 300 institutional investors with over \$100 billion invested capital.

investments should assess impacts and risks, implement human rights and environmental policies, establish grievance mechanisms, as well as monitor and disclose information about their environmental and social impacts.

### **Box 3.3**

#### ***Challenges in Corporate Governance and Anti-Corruption Measures, Transparency, Disclosure and Reporting***

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- There is a significant variation in the codes for corporate governance and anti-corruption with a lack of consensus on what the scope of bribery commitment or the definition of bribery and corruption should be.
  - There are only a few country-specific legislations that hold the corporates registered within their country responsible for their corrupt practices in other countries.
  - The OECD Guidelines for Multinational Enterprises and International Corporate Governance Network (ICGN) which are used by Investors do not help specifically to probe into unethical practices in land procurement (acquisition, lease or purchase) processes.
  - Sharing of information and effective communication with stakeholders is not achieved because of lack of commitment and poor preparation.
  - Insufficient understanding of the community in terms of its power imbalances, customs and past experiences affects the disclosure process.
  - There are multiple reporting protocols that cover human rights and social performance. Most prominent are Global Compact, Global Reporting Initiative, ISO 26000 and International Integrated Reporting Council.
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There is increasing momentum towards integrated reporting for sustainable business worldwide, led by the International Integrated Reporting Council (IIRC). Integrated reporting reflects and supports 'integrated thinking', defined as the ability of those within the organisation, particularly management, to understand the interconnections between the full range of functions, operations, resources and relationships which have a material effect on the organization's ability to create value over time (5).

### **3.1.4**

#### ***Human Rights and Responsible Investment***

The global standard of practice for business enterprises in the matters of human rights is based on the 'protect, respect and remedy' framework. Though it is the duty of the State to protect human rights, it is the responsibility of corporate actors to respect human rights and provide greater access to remedy for victims of business related rights' violations. The role of the non-state actors including TNCs, international and regional financial institutions and multilateral development banks to protect human rights is envisaged in the Post-2015 Development agenda. While self-regulation has been the most common approach to strengthening corporate accountability, its shortcomings have highlighted the need for more effective enforcement mechanisms.

Several voluntary or non-binding principles, guidelines and standards have been created since the 1990s to ensure responsible investment. While enforcement remains a global concern, there are successful instances of behavioural changes in some sectors and it has succeeded to generate reputational accountability. The post-2015 framework is looking towards

strengthening the responsibility, answerability and enforceability to address the existing weakness arising from the voluntary and self-regulatory human rights instruments (6).

Industry associations (e.g. ICMM 2012, IPIECA 2012), where human rights concerns exist, suggest corporates must either integrate human rights issues into their Environmental and Social Impact Assessments or conduct standalone Human Rights Impact Assessments (HRIA). However, it is important to recognize the relatively low level of consensus around shared values and appropriate standards of good practice in HRIA. A number of these impact assessments were strongly criticised in judicial review proceedings in the UK courts (7). However, there is a growing body of assessments (as well as toolkits and guidance) in relation to HRIAs and Human Rights Impact Resource Centre lists a range of tools<sup>i</sup>. It is expected that the more individual and collective reflections there are, the better the resources to support assessments.

#### **Box 3.4**

#### ***Challenges of Human Rights and Responsible Investment***

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- The performance standards and codes of practice adopted by Investors have achieved great levels of sophistication over the years. However, there are challenges in their application.
  - The decision making for responsible investment bids depends on the existing database and Environmental and Social Impact Assessments conducted during earlier stages. The inadequacies of the country system thus have a bearing on the efficacy of the screening process adopted by Investors.
  - The monitoring and disclosure of the social performance by Financial Investors has proved inadequate.
  - When Investors enter into the scene where decisions on the land procurement process have been completed, there are limitations to identify legacy issues and provide suitable remedial measures.
  - The remedial measures adopted rarely consider the restoration of tenure rights and in most cases are based on mutual consent.
  - Most legislation dealing with land rights or the land acquisition process does not recognize informal tenure holders. Hence, forced eviction of these sections is a reality in many parts of the world.
  - Business enterprises gaining access to land through State acquisition of land do not take responsibilities in the event of forced eviction or remain complicit during such processes.
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Review of the HRDD/HRIA practices show there is a need for minimum standards to be clearly set out to ensure that effective scrutiny and evaluation can occur: first, on transparency and openness; second, in relation to external participation and verification; and third, with regard to independent monitoring and review. Improvements in practice at generic and sector-specific levels require an intense involvement of a professional community of human rights impact assessors.

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<sup>i</sup> Guide to Human Rights Impact Assessment and Management, 2010. Global Compact Self-Assessment Tool 2010. Equalities and Human Rights Assessment 2010. Public Health and Human Rights Impact Assessment 2011, DOVA, the Human Rights Impact Assessment Instrument on Domestic Violence 2011, The Human Rights Impact Assessment for Security Measures 2012. Reproductive Rights: A tool for Monitoring State Obligations 2013. See more in <http://www.humanrightsimpact.org/toolsinstruments/>

Concepts like Good Faith Negotiation (GFN) and Broad Community Support (BCS) have gained popularity in the sphere of stakeholder engagement by business enterprises. The concept of FPIC is distinct as it is premised on a rights based perspective. It is a collective right now universally recognised for Indigenous Peoples and other minority ethnic groups. The FPIC process intends to achieve negotiated agreements between Indigenous Peoples and the business enterprises through harmonious relationships of respect, understanding and trust. FPIC ultimately requires a political process that prioritizes people's right to decide on economic, cultural and ecological outcomes from the process of development.

The World Bank, International Finance Corporation and many bodies of the United Nations have, since 2005, aligned their policies to FPIC<sup>i</sup>. Several Guidelines and Best-practice Manuals have been prepared to guide business enterprises, civil society members and Indigenous Peoples for its effective implementation and monitoring. However, complexities of socio-economic reality, lack of skills and knowledge of actors, and complicit behaviour of vested interest groups harm the attempt to create mutual trust and sustainable relationships between the affected population and business enterprises.

FPIC requirements have more or less remained a voluntary guideline driven by International Finance Institutions (IFIs) and International Development Organizations (IDOs). As it is embedded in the UN Declaration on the Rights of Indigenous Peoples, it is the responsibility of the state to ensure a successful FPIC process takes place and business enterprises have the responsibility to respect this. Not many states with significant populations of Indigenous Peoples have integrated this into their national legal framework. Some of the countries where FPIC is integrated into the legal system, such as the Philippines and India, have established no credible monitoring system.

The challenges reported by Ms. Joji Carino in 2005, drawing from the experience of FPIC implementation in the Philippines, more or less remains relevant for the rest of the world today (8). The challenges for a successful FPIC implementation process include: prior communication and consultation with communities on site, control of relevant and material information flow, clear communication on potential and actual impacts, misrepresentation of facts in local and international media, as well as complicit and corrupt behaviour to influence the decision making process.

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<sup>i</sup> International bodies who have taken up FPIC into their agenda include: UN Permanent Forum on Indigenous Issues, UN Working Group on Indigenous Populations, Convention on Biological Diversity, World Intellectual Property Organization, World Trade Organization, UN-Food and Agriculture Organization, UN-REDD, World Conservation Union, United Nation Environment Program (UNEP) etc.

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- There is variation in definition and identification of Indigenous Peoples in different countries. Hence, country legal systems do not provide uniform treatment.
  - Customary ownership of land and natural resources is also prevalent in many communities which do not come under the Indigenous Peoples category.
  - The implementation of the FPIC process with respect to Indigenous Peoples is rarely done with full disclosure of relevant information; lack of knowledge and capacity of Indigenous Peoples is a major impediment.
  - Indigenous Peoples are generally not enabled to participate in the FPIC process.
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## 3.1.6

*Right to Livelihood and Food Security*

Prior to the VGGT, the coverage of the right to food and livelihood was implied within the broad precinct of human rights. The right to food was understood in terms of availability of food, access to food and adequacy of food. Several studies in the past decade showed that the food security of the rural poor is intimately linked to tenure rights. Hence, the VGGT explicitly recognise the requirement for better governance of tenure and business enterprise's obligation to respect the rights of the poor to legitimate tenure over land, fisheries and forest.

In 2004, the FAO created a set of internal and voluntary guidelines to support progressive realization of the right to adequate food in the context of national food security. The guideline covered a range of issues and programs for States to implement for progressive realization of the right to adequate food. The areas of intervention identified included: good governance, human rights, rule of law, market systems, access to resources and assets, food safety and consumer protection, nutrition, support for vulnerable groups, safety nets, disaster management, education and awareness raising.

The Committee on World Food Security (CFS) is in the process of developing a set of principles for responsible agricultural investments (RAI) that respects rights, livelihood and resources. This supplements the VGGT. The RAI principles will be submitted to the CFS for endorsement in its 41<sup>st</sup> session in October 2014. If it receives endorsement, this would be the first instrument with intergovernmental backing.

There is no consensus to treat the right to food as a human right. Hence, the business responsibility to respect human rights (as under the UN Framework on Business and Human Rights) did not explicitly include food security concerns. This gap is filled by the explicit inclusion of legitimate tenure rights in the VGGT.

The UNDRIP Business Reference Guide also directs business enterprises to understand and respect Indigenous Peoples communal land ownership systems where they exist. The CBD Akwe Kon Guidelines mention that the development proponents should take into account the rights of indigenous and local communities over lands and waters traditionally occupied or used

by them and the associated biological diversity. In all circumstances, the customary laws and intellectual property rights of indigenous and local communities with respect to their traditional knowledge, innovations and practices, should be respected.

Some of the sectorial or industrial associations, such as Sustainable Palm Oil Principles, Biofuel Sustainability Standards and Responsible Soy Production, recommend to respect the existing land-use rights of local and indigenous communities. WWF 2050 Criteria<sup>i</sup> include respect for the rights of local people and negotiation with Indigenous Peoples based on free, prior and informed consent. The better sugarcane initiative (Bonsucro) standards in 2010 prepared a set of production standards and chain of custody standards for improving the social, environmental and economic sustainability of sugarcane.

IFC Performance Standard-7 states if the client proposes to locate a project or commercially develop natural resources on lands traditionally owned by or under the customary use of Indigenous Peoples, and adverse impacts can be expected, the client will identify and review all property interests and traditional resource uses prior to purchasing or leasing the land; assess and document the affected communities of Indigenous Peoples' resource use without prejudicing any Indigenous Peoples land claim- the assessment of land and natural resource use should be gender inclusive and specifically consider women's roles in the management and use of these resources; and ensure that affected communities of Indigenous Peoples are informed of their land rights under national law, including any national law recognising customary use rights. Where involuntary resettlement is unavoidable, either as a result of a negotiated settlement or expropriation, a census will be carried out to collect appropriate socio-economic baseline data to identify the persons who will be displaced by the project, and determine who will be eligible for compensation and assistance. Displaced persons may be classified as persons (i) who have formal legal rights to the land or assets they occupy or use, (ii) who do not have formal legal rights to land or assets, but have a claim to land that is recognised or recognisable under national law; or (iii) who have no recognisable legal right or claim to the land or assets they occupy or use. The census will establish the status of the displaced persons.

The principle of Responsible Agricultural Investment also advocates respect for tenure rights whether statutory or customary, primary or secondary, formal or informal, collective or individual. It also makes identification of all rights holders necessary.

In 2008, UN Global Compact invited companies to share best-practices regarding water management, agricultural inputs and infrastructure, financial mechanisms, risk management instruments and job opportunities for rural low income populations. These case studies were put together to guide private

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<sup>i</sup> WWF 2050 Criteria: Guide to Responsible Investment in Agricultural, Forest and Seafood Commodities, 2012

sector action under the title: 'UN Global Compact Food Sustainability- A Guide for Private Sector Action'.

In 2011, OnValues Ltd created 'The responsible investor's guide to commodities: an overview of best practices across commodity-exposed asset classes' which included a special section on investments in agriculture and farmland. It recommends that investments in farmland should assess the impact of an investment on smallholder farmers and local communities, it should support measures aimed at improving the livelihoods of local populations, avoid investments in crops that are unsuited to local conditions and avoid investments that require conversion of land e.g. forest land turned to pasture or fields.

More recently, in 2012, the Rural Infrastructure and Agro-Industries Division of the FAO prepared Guiding Principles for Responsible Contract Farming Operations. It aims to promote good practices and maintain an atmosphere of trust and respect that is essential if contract farming is to provide an effective mechanism for governing transactions in agrifood supply chains and as a tool to promote the access of smallholder farmers to markets. The Guidelines embody principles such as adherence to a legal framework, clear documentation, readability of contracts, due attention and review, disclosure, transparency in price determination, transparency and fairness in clauses related to quality, fairness in risk sharing, prevention of unfair practices in buyer-farmer relations, open dialogue and clear terms to settle disputes.

The African Union and United Nations Economic Commission for Africa (ECA) and the African Development Bank (AfDB) made a regional guideline to guide member states to prepare and adopt land policies that promote sustainable human development.

The Institute for Human Rights and Business (IHRB) prepared a set of practical guidelines in 2012 for businesses that wish to acquire and use land. The purpose of the guideline was to set out best practices for business to ensure respect for human rights relating to land and to change the thinking process across multiple sectors, from agribusiness to mining. The guidelines are based on rights-based principles of transparency, accountability and non-description. The recommendations for procedural steps for a business to acquire and use land are provided in the box below.

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- Conduct a baseline study
  - Assess conflict potential and impact
  - Identify legal owners
  - Assess own needs fairly
  - Make information accessible
  - Consult all stakeholders
  - Pay particular attention to women
  - Consult without armed guards
  - Consult communities early and often
  - Continue to consult communities throughout the operation of the project
  - Ensure that the rights of disadvantaged groups are protected
  - Identify local needs
  - Use government support to ensure fair purchase of land
  - Use government support for arbitration where appropriate
  - Avoid the use of armed forces for land clearance
  - Avoid using the State to obtain community consent
  - Respect cultural norms but support international human rights standards and democratic processes
  - Do not assume that relocated communities wish to live together
  - Create structure that provides ongoing income stream to communities
  - Provide legal assistance to communities to realize their rights
  - Ensure that alternative accommodation is of the same or superior quality and follow international standards
  - Provide and maintain access to rivers, lakes, grassland or pasture to communities dependent on such access
- 

In 2009, the UN Special Rapporteur on the right to food developed a set of eleven principles for large-scale land acquisitions and leases. These principles were based on human rights principles. The purpose of these principles was to ensure that negotiations leading to land acquisitions and leases comply with a number of procedural requirements, including the informed participation of local communities, and to ensure adequate benefit sharing. A snap shot of these eleven principles is provided in the box below.



***Large-scale land acquisitions and leases: A set of minimum principles and measures to address the human rights challenge***

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**Principle 1:** The negotiations leading to investment agreements should be conducted in a fully transparent manner and with the participation of the local communities whose access to land and other productive resources may be affected as a result of the investment agreement.

**Principle 2:** In general, any shifts in land use can only take place with the free, prior and informed consent of the local communities concerned. This is particularly important for indigenous communities, in view of the discrimination and marginalization to which they have historically been subjected.

**Principle 3:** In order to ensure that the rights of local communities will be safeguarded at all times, States should adopt legislation protecting these and specifying in detail the conditions according to which shifts in land use, or evictions, may take place, as well as the procedures to be followed.

**Principle 4:** The local population should benefit from the revenues generated by the investment agreement. Investment contracts should prioritize the development needs of the local population and seek to achieve solutions which represent an adequate balance between the interests of all parties.

**Principle 5:** In countries facing important levels of rural poverty and in the absence of employment opportunities in other sectors, host States and investors should establish and promote farming systems that are sufficiently labour-intensive to contribute to employment creation.

**Principle 6:** Host States and investors should cooperate in identifying ways to ensure that the modes of agricultural production respect the environment, and do not accelerate climate change, soil depletion, and the exhaustion of freshwater reserves.

**Principle 7:** Whatever the content of the arrangement, it is essential that the obligations of the investor be defined in clear terms, and that these obligations be enforceable, for instance by the inclusion of predefined sanctions in case of noncompliance. For this mechanism to be effective, independent and participatory ex-post impact assessments should be made at predefined intervals.

**Principle 8:** In order to ensure that they will not increase food insecurity for the local population, particularly as the result of increased dependence on international markets or food aid in a context of higher prices for agricultural commodities, investment agreements with net food-importing countries should include a clause providing that a certain minimum percentage of the crops produced shall be sold on local markets, and that this percentage may increase, in proportions to be agreed in advance, if the prices of food commodities on international markets reach certain levels.

**Principle 9:** In order to highlight the consequences of investment on the enjoyment of the right to food, impact assessments should be conducted prior to the completion of the negotiations on (a) local employment and incomes, disaggregated by gender and, where applicable, by ethnic group; (b) access to productive resources by local communities, including pastoralists or itinerant farmers; (c) the arrival of new technologies and investments in infrastructure; (d) the environment, including soil depletion, the use of water resources and genetic erosion; and (e) access, availability and adequacy of food.

**Principle 10:** Under international law, Indigenous Peoples have been granted specific forms of protection of their rights to land. States shall consult and cooperate in good faith with the Indigenous Peoples concerned in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.

**Principle 11:** Waged agricultural workers should be provided with adequate protection and their fundamental human and labour rights should be stipulated in legislation and enforced in practice, consistent with the applicable ILO instruments.

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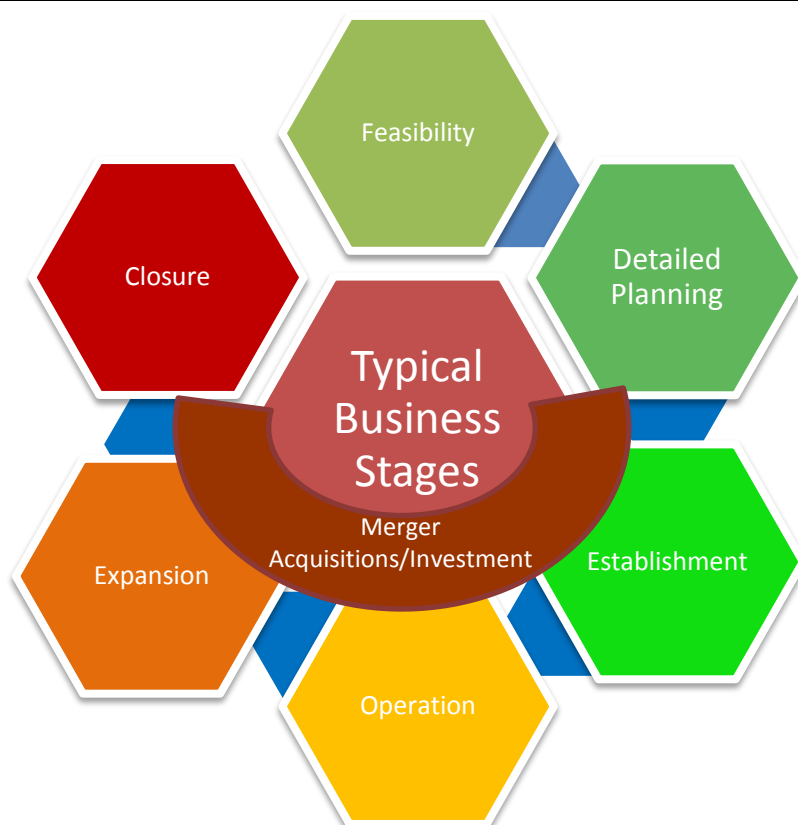
The existing codes of conduct and their implementation have enriched the knowledge base for dealing with these issues. The success stories have been compiled and shared in different forums to improve the implementation of these codes of conduct or performance standards. The broad inferences from the experience of preparing and implementing these existing codes are as follows:

- Multiple Codes of Practice and Guidance Literature exist for themes of responsibilities recognized in the VGGT for non-state actors.
- Some of these Guidance and Codes of Practice are sector-specific while others are general guidelines.
- These available guidelines and codes of conduct can be divided into four categories:
  - o Corporate Code of Conduct;
  - o Industry Self-regulation;
  - o Multi-lateral regulations;
  - o Civil Society regulations; and
  - o Multi-stakeholder Initiatives.
- Capacity building and training of the executing/implementing staff is a crucial need for effective execution of these codes or protocols.
- Corporate or industry self-regulation codes are monitored internally and disclosure of information varies.
- The multi-lateral regulations, civil society regulations and multi-stakeholder initiatives involve third party monitoring and reports are disclosed.
- Some of the multi-stakeholder initiatives involve certification. The certification process provides a better monitoring and reporting mechanism, improved accountability, transparency and reliability.
- Most of the Certification programs involve 'products' and 'process' certification is rare.
- Civil society groups, multi-stakeholder initiatives and multi-lateral agencies have developed capacities and a working relationship with corporates in the past decade, which can be used.
- There is a significant gap in skill level and clarity at corporate and project levels.
- Similarly, the knowledge and understanding of NGOs at an international, national and local level on scope and coverage is widespread.
- The Private Sector has created structures and processes that need better integration into the core business functions. Hence, an integrated approach for business responsibilities would be more sustainable.

Land is an important resource for business enterprises. Location and resources attached to the land play a significant role in the feasibility of the business and its profitability. Growing industrialisation and urbanisation have created competition to traditional land uses including farming, livestock rearing and forest. The area and characteristics of the land required for different business or industrial sectors differs. Hence, the interface of different business sectors with land tenure issues also varies.

The requirement of land and impacts of a business on land, fisheries and forest undergoes changes in different stages of the business life cycle. Hence, our priority should be addressing land tenure issues at the right time to prevent or to plan for managing them effectively. It may not be feasible to intervene at the right time in all occasions. In such cases, we engage in a gap assessment process, and through a robust stakeholder engagement process, arrive at a mutually agreed road-map for restitution or redress of such impacts. The monitoring and reporting process which is transparent, accountable and reliable and which continuously evolves to integrate the learning or respond to changing contexts should be a strong component of the strategy. In order to evaluate the significance of these issues, let us take a quick glance over potential tenure issues encountered by business enterprises in different stages of the business process.

**Figure 4.1** *Typical Stages in the life cycle of a business process*



A typical business process constitutes six distinct stages, as shown in the figure above. The requirement of finance and capital gives rise to needs for investment in the business cycle. Business investment can take place at any stage starting from planning to expansion. It has also been observed that mergers and acquisitions of existing business enterprises is a popular mode for entering into a business or expanding the business. Hence, we recognise eight stages or processes of business enterprise, with the inclusion of investment and mergers and acquisitions in a typical business process.

#### **4.1** *POTENTIAL TENURE ISSUES IN DIFFERENT STAGES OF THE BUSINESS PROCESS*

##### **4.1.1** *Feasibility*

The feasibility stage in any business endeavour involves technical and commercial assessments. This stage needs a very high-level assessment of the risks associated with the proposed business endeavour. The broad aspects for such screening at this stage may include: presence of any restricted or conservation areas; availability of required land; adverse livelihood impacts; and the overall governance atmosphere.

During this phase there should be an initial screening of possibilities of existence of customary rights of the local communities along with formal

rights. The screening should also consider due processes outlined in law for the local communities to document their rights. Most often, as described earlier in this document, informal tenures and certain user rights may not be covered by the legal provisions.

In recent times, when business enterprises move to new areas and countries to establish their operations, access to the land is often facilitated by the local government. Through this process, companies get easy access to land, but as governments have fundamentally not addressed issues such as land tenure and rights to resources, these issues persist, often creating impediments to the investment.

#### **4.1.2 Detailed Planning**

The detailed planning stage of an enterprise evaluates options identified in the previous feasibility stage. The detailed execution plan and cost estimation is also prepared at this stage. The technical design and cost estimate of the business also include social and environment aspects and their cost. The significant environmental and social elements and the decision making processes associated to them are as follows:

- Selection of sustainable technology;
- Requirements to meet sustainable sourcing;
- Requirements to safely dispose of industrial wastes;
- Assessment of minimum requirement of land and best use of land;
- Detailed Environmental and Social Impact Assessments (including environment, social and governance issues); and
- Integration of environmental and social management plans to business planning and its financial model.

#### **Box 4.1 Limitations of legal due diligence on land at the detailed planning stage**

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During the detailed planning phase, many business enterprises undertake a legal due diligence of land and other natural resource assets associated with project development. Such a due diligence process typically approaches land tenure from a strictly legal stand point and, as such, does not encompass customary and informal tenure rights to the land and resources in question. Such insufficient coverage fails to take cognisance of the risks in undermining the tenure rights of Indigenous Peoples and other communities with customary tenure systems or informal tenures.

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The technical and commercial team of the business enterprise plays the lead role in the planning stage and inputs from environmental and social experts at this stage is negligible or rare. Most often this results in finalization of the detailed business plan without exploration of alternatives which could address stakeholder concerns more effectively. Hence, business impacts which could have been otherwise avoided or minimized are not well integrated.

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The cost estimate is a significant activity in the business planning process. The planned and perceived feasibility and returns from the business activity is based on financial modelling. It is often noticed that the costs associated with sustainability and compensations (land and other social benefits) are understated. The estimates of land valuation universally refer to the market price of the land. In the areas where the land market is incipient or non-existent, the cost estimate for land is seriously flawed. The valuation of the land is never based on the opportunity cost and livelihood loss for the individual or the community who have been dependent on the land or enjoy a legitimate tenure right.

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## 4.1.3

*Establishment or Construction*

The construction or establishment phase of the business enterprise is about procurement and execution of the capital investment required for starting the business. This capital investment phase is executed as per the technical and commercial plan prepared in the earlier planning stage. The most significant activity which has a decisive bearing on the tenure right issues is the procurement of land.

The procurement of land required for the project has assumed a great significance in recent years, particularly in developing countries where land suitable for industrial or commercial use is limited. The limitations arise due to intense demand from the growing population, a concentration of the requisite modern infrastructure, and the availability of social infrastructure to attract staff and human resources, etc.

Depending on the complexity of the land procurement at a particular area and country, business enterprises take one of the following routes or a combination of them.

- Purchasing the land from the land owners (private and public) directly;
- Purchasing the required land through an intermediary (land aggregator, land agent, business subsidiary, or a business partner);
- Long-term lease from the private and public owners;
- Using government's sovereign power of 'eminent domain' to acquire the land in due process of law;
- Public-private partnerships or collaborative development activities; and
- Cooperative or contractual arrangements for desired commercial use of the land.

The preference for a particular mode of procurement or access to the land differs across sectors and different regions of the world. Each of these modes of land procurement has been criticised for being unilaterally advantageous to the business enterprise and being unfair to the former owners or users of the land. The most significant and well-known concerns associated with some of

these land procurement modes for business enterprises is summarized in the box below.

The gender dimension of the impacts of the land acquisition process and its outcome is rarely considered. The rights of women to own land and access other resources vary in different legal systems. Societies governed by customary rights and practices recognize women's right to land ownership in a variety of specific circumstances. However, it is more common that women in different communities have rights to the food produced even if they do not enjoy legal ownership of the land. The land acquisition process tilts more towards the legal ownership of the land, paying compensation to the legal owner. Women, in such circumstances, neither get a share or control over such compensation nor get other economic or employment benefits. Moreover, they face loss of employment opportunities and long-term secure access to resources that played a crucial role for supplying food to the family. Hence, the land acquisition and rehabilitation process should be gender sensitive and responsive to differential needs and specific rights of women as recognised under different UN instruments.

The risk on tenure rights, especially informal rights, is increased when there is a lack of consultation and participation of the stakeholders in the identification of rights to be impacted, alternatives to the project site and the compensation to be provided. In the case of evictions, there is a risk that informal rights will not be recognized or adequately compensated and that access to productive land, fisheries and forests will be impacted. Tenure rights can also be impacted in the case where there is a lack of appropriate dispute resolution methods.

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- The negotiation takes place between parties with a great disparity in knowledge, authority and purchasing power.
  - No uniformity in the compensation process.
  - No accountability for the adverse impacts of land alienation.
  - Purchasing land through an intermediary.
  - The intended change of the land-use or end-use of the land and resources is not disclosed.
  - The means for purchasing the land is not always ethical.
  - Disproportionate share of the benefits going to the intermediary rather than the land owners.
  - No process for checking the human rights reputation for the intermediaries, hence complicity in their unethical and illegitimate transaction processes.
  - The land transaction processes using black-money and illegitimate accounting processes.
  - Long-term leases of private or public land.
  - The lease rates are too low and unfairly determined.
  - Complaints of corruption and scams by public authorities.
  - Limited accountabilities are accepted by business enterprises though the land use rights in long-term leases are near equal to ownership rights.
  - Land acquisition by State or expropriation of land.
  - The compensation offered for the land is low and does not cover the vulnerabilities it causes to land owners.
  - Eviction by use of force.
  - Customary land use or informal land tenure holders are not taken into account.
  - Abuse of a State's eminent domain for gains of business enterprise.
  - The land acquisition processes are misused by vested interest groups and opportunistic settlers.
  - Public-Private Partnerships (PPPs).
  - The land acquired by the state for PPPs is not strictly for public purpose.
  - The business enterprise is exonerated from accountability for impact of land acquisition as this responsibility is taken by a State entity as a business partner.
  - Cooperative and contractual arrangements.
  - The terms for land-use exclusively focus on immediate benefit from the land, hence may not be in the long-term interest of the land owner.
  - Unfair terms and conditions, particularly in insurance, natural disasters and product quality parameters.
- 

Transparency in the land acquisition process is the greatest challenge. Business enterprises fear misuse of information flow by opportunists and turn the land acquisition process against them. The process of land acquisition in real terms is never seen taking place in an ideal circumstance. The actual situation is overtly complex and a potential opportunity for corporate staff, public officers, intermediaries and elite in the community to make a windfall gain.

The situations are often complex with actors having diverse interests and developing such complicit relationships that good practices in this realm look theoretical and devoid of any realistic relevance. Therefore, the community engagement and consultation process almost everywhere takes place in an environment of mutual distrust. Although the guidelines on free, prior and informed consent lay out norms for corporate behaviour, the responsibilities and duties of other equally powerful actors, such as public officers and



community elites, are conspicuously absent in the discourse. Considering the potential for illegitimate gains from this process by multiple parties, the review and audit mechanism available and adopted by Governments, Development Finance Institutions and Corporates is not effective. The reviews and audits, even when conducted, do not sufficiently result in the restitution of aggrieved parties and the perpetrators of such illegitimate actions are seldom punished.

#### 4.1.4

#### *Operation*

The process of establishment of the business operation takes possession and control over the land and other assets it acquires for the purpose. During the operation stage, the business continues to make changes in the land and resource use of the acquired territory. Legitimate business use of the land can avoid social impacts. However, the establishment of the business enterprise often results in changes in the environmental conditions and in the socio-economic context of the locality and the region at large. The sphere of such indirect influence is contingent upon the nature and scale of the business operation.

The indirect and induced impacts of a business operation in rural or other inaccessible areas cause a range of social and environment impacts. On the one hand, they play the role of a catalyst for economic development and social change, while also causing or contributing to predictable impacts including a range of unplanned and unintended changes. A representative set of such changes that have potential for creating land tenure governance issues are listed in the box below.

#### *Box 4.4*

#### *A set of potential land tenure issues in the operation stage of business enterprises*

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- Access and easement rights of neighbouring communities.
  - Changes in customary territorial rights of communities or households depending on livestock keeping, collection of food and other essential provisions, fishing and other land and natural resource dependent activities.
  - Changes in the access to land and natural resources for domestic use for women, prospects of their inclusion in the economic and employment scenario.
  - Indirect impacts on natural resources around or downstream on which local livelihoods depend. This may include soil fertility, quality of vegetation consumed directly or through primary consumers, water resources, wildlife and biodiversity.
  - A set of induced impacts such as ecosystem services affects the quality of life and degree of resilience of subsistence economies to natural adversities and climatic fluctuations.
  - Influx and unplanned growth of the population and habitation in the local area alters the demand and supply situation in both the local natural resource base and commodities markets.
  - Growth of people with informal tenure use who are adversely impacted when further expansion is planned or other associated development work is undertaken.
- 

Transfer of ownership of the land also includes the transfer of resources fastened to it or associated with it and easement rights. The neighbouring land owners and earlier land users similarly should continue to enjoy such land

transferred to the business enterprises. These rights include, for example: the right to passage for nomadic pastoral communities, which may be affected by boundary walls erected; customary practices of setting traps and nets by hunting communities; the right to fish for downstream fishing communities; and the collection of minor herbs and fuelwood, etc. The curtailment of these easement rights for the local communities may remain unaddressed due to the unequal power relationships of the business enterprise with its neighbouring communities. Often, the local communities have to take a judicial route to raise such concerns and restore their rights.

#### 4.1.5

#### *Expansion*

The expansion stages of the business may or may not involve procurement of additional land. In most of the cases, the procurement of land during the planning and establishment stage is done considering the future expansion of the project. This protects the business enterprise against future uncertainty of the land availability and reduces the capital cost. The escalation of land cost over years due to industrial growth is a significant factor when business enterprises decide to avail maximum possible land for their immediate and future business requirements.

In a similar vein, the local community perceives an almost certain future escalation of land cost as an opportunity cost for them. Hence, they would not like to alienate all their land to the business enterprise that compromises their future interest and, to some extent, even the interest of their next generation. This raises two significant questions. First, how to determine the minimum and legitimate land requirement of a business enterprise or plan. Second, how to estimate the opportunity cost of the land owners and integrate it to the valuation methodology and calculation of a fair compensation.

#### **Box 4.5**

#### ***Concerns when future expansion of a business enterprise is cloaked in real intention of land and resource grabs***

- 
- It is often experienced that business enterprises propose ambitious business plans which are disproportionate to their relevant business experience and reliable access to the capital requirements.
  - The land requirements assessed on such business plans give these business entities access to more land than their legitimate requirement. This results in business entities being labelled as 'land grabbing' entities.
  - The use of resources associated with land (such as ground water, natural features, etc.) for commercial purposes which were not as per the proposed business plan for which the land was procured gives business enterprises undue advantages.
  - Changes or modifications to business plans undermine the justification or the social benefits considered in decision making for allowing such commercial or industrial developments of the region.
  - Safeguarding future business prospects by ensuring access or ownership of land while undermining the future requirements or access to land and livelihoods of local communities is detrimental to the enterprise. Hence, such leniency to allow business enterprises to procure and own land for their future expansion is perceived as unfair and an illegitimate bias.
-

Similar to the land tenure issues faced during the planning and construction phase, there is limited integration of social and environment concerns in assessing alternatives to the expansion plan, resulting in ineffective and inefficient business planning. Access to additional land and other natural resources is considered as a legitimate demand and inherent business requirement. Hence, meeting such a requirement is seen in the broader social and national interest. Such justification for land expropriation undermines the legitimate individual or collective rights of local and minority communities.

In most countries, land acquisition for smaller parcels of land escapes not only the legal and regulatory requirement, but also the attention of media and civil society. In the expansion stage the requirements for additional land may be small in quantity; hence, the number of impacted households is usually small. Unlike the establishment or construction phase when the land requirement is absolute and a pre-condition to starting the business operation, the land required for expansions can be procured over a longer period. As the business enterprise deals with a smaller number of land owners and not in immediate need for the land, it is even in a stronger position for negotiation. In the absence of support from media, civil society and regulatory mechanisms, land acquisitions by business enterprises have greater chances to undermine individual human rights. Such incremental expansion isolates unwilling individuals or minority communities avoided in the initial stage. Conflict resolution in such cases is mostly judicial recourse, which is to the advantage of the business enterprise.

The impact assessment for business expansions are often exempted or merely a procedural requirement. The cumulative impact of business expansion may have the potential to alter the baseline condition significantly. The changes could be decisive in causing irreversible impacts and beyond the resilience of the local ecology or vulnerability of the local livelihoods. Most of the developing and least developed countries do not have set standards or methodology to factor the cumulative impacts of the expansion of a particular business enterprise or a particular sector. The sector-wide or region-wide cumulative impact assessments integrate multiple impacts that can be more accurate for prediction and management of social and environment impacts.

#### 4.1.6

##### *Investment*

Investment, in a true sense, is not a business stage. Investment rather brings a powerful stakeholder into the operation of a business enterprise. Investments into a project can take place at the planning, establishment, operation or expansion stage. Their incorporation into the business cycle depends on the financial requirements to execute the business plan. The involvement of the investor in a particular business enterprise can be for short-term or long-term. The mode of investment also differs from case to case. For example, the investment can be in the form of a business loan or equity partnership.

Investors play a significant role not only to establish new businesses or help businesses to realise their full potential, they also play a very crucial role in reviving sick enterprises. The social significance of such investments is well recognised and there are several instances of such successful interventions. Hence, investment and investors are considered as a significant stakeholder in economic development today. Their environmental and social obligations are regulated mostly through voluntary codes developed by them or by multilateral global or regional agencies.

The sustainability performance standards or requirements as per the policy and procedural guidelines prepared by investors face the challenges of implementation. Civil society and media groups have brought to notice several instances where policy intentions to safeguard the environment and human rights have not been met in practice. The internal monitoring mechanisms and views of stakeholders are integrated into the policy and procedural guidelines periodically to make them more effective and efficient. While the self-regulation process of investors has been improving, there are some significant gaps presented in the box below:

**Box 4.6**      *Spheres of further improvement in self-regulation mechanisms for investors for sustainable development*

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- Investors are approached by business enterprises at different stages of the business cycle. The discretion over the choice of investors and when they need to be involved reflects implicit consideration of the social and environmental safeguard systems adopted by them.
  - When investors are involved in a more benign stage where most adverse impacts of the projects have already taken place, the accountability for restitution of legitimate rights as per the environmental and social safeguard policies of investors is greatly diluted.
  - Inadequate mechanisms and explicit procedures and guidelines fixing the accountability for full compliance to social and environment safeguard policies with retrospective effect provides opportunities to business enterprises to avoid the safeguard process of investments.
  - Implementation of social management plans is not adequately monitored and accountability mechanisms for breaches of such responsibilities are not effective.
  - Community or stakeholder participation in monitoring the performance of environmental and social management plans is limited. This keeps the implementation process within closed doors and information dissemination on such performance is limited.
  - Non-performance in social and environment obligations remains a contractual issue between the business enterprise and the investor. As performance standards are voluntary and non-performance only considered a breach of contractual obligations, stakeholders as third parties have access to limited legal remedies. Grievance redress mechanisms are often found to be inadequate.
  - Barring a few instances of FPIC processes, tripartite agreements between a business enterprise, investors and affected communities on social and environment performance are rare. Hence, the risk for non-performance in the implementation of social and environment management plans is a reputational risk. Consequently, the compliance to these plans can be correlated to the stakeholder awareness, media attention and the level of civil society scrutiny.
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#### 4.1.7

#### *Merger & Acquisition*

Mergers and acquisitions in recent years have become modes for business expansion for powerful corporates. Merger and acquisition can take place at any stage of the business cycle. Merger and acquisition decisions are based mostly on the commercial interests of the business enterprise going for the merger or acquisition. The evaluation of the business asset is done on the basis of the physical assets, brand value, market demand, and its legal liabilities. The social and environmental issues consequential for a merger and acquisition decision making process include the operational risks, legal liabilities to meet environmental performance and social reputation.

Possession of large land assets contributes to a higher valuation of the business enterprise. Business enterprises based in developing or least developed countries have less evolved corporate codes of conduct and do not attract the same level attention from civil society groups as that of a transnational or multinational enterprise. The procedural requirement for establishing such enterprises is merely a regulatory or legal requirement along with any associated costs, without the obligations to meet higher environmental and social performance standards, making it more competitive. Once the most impactful stages of the business development are passed, the residual risks of operating the business are minimum.

When a transnational or multinational enterprise takes the route of merger and acquisition to expand its business, its corporate code of conduct is not implemented with retrospective effect. The legacy issues however are addressed, but they mostly cover operational risks and a social license to operate. The legitimate impacts on tenure rights which were ignored in the business establishment stage are treated from the corporate responsibility perspective rather than from a human rights perspective.

The merger and acquisition as a mode for business expansion should be treated at par with investment. The accountability of corporates considering a merger and acquisition should be similar to investors and all sustainability standards applicable for responsible investment must be applied for merger and acquisition drives.

#### 4.1.8

#### *Closure*

The closure phase of the business operation is when the on-going land-use ceases or changes from one industry to another. The industrial use of the land creates structures and facilities to treat or discard the resultant waste. Such facilities need regular maintenance and monitoring. In addition to the safety concerns of the industrial land for neighbouring communities, restitution of the tenure rights of those who lost their right for allowing the industrial or commercial activity is often demanded.

The closure responsibility for many industry sectors is not clearly defined. In the mining and extractive sector, the restoration of the land for alternate land-

use for the local community is gradually becoming the norm. Similarly, in the Chemical and Pharmaceutical sector, the recognised responsibilities at the closure stage are safe disposal of industrial waste and remediation of any contaminated resources such as soil and ground water. In agriculture, particularly for industrial and contract farming, closure phase responsibilities are not defined. Hence, even after the business enterprise ceases its operation, the land may not be good enough for its alternate use. Hence, ecological and provisioning functions of such land become irreversible.

## 4.2

### *AREAS OF INTERVENTION IN DIFFERENT STAGES OF THE BUSINESS PROCESS*

The range of impacts on the tenure of land, fisheries and forest in various stages of business operation were discussed in the previous section. Now, let us map the themes for corporate responsibilities as recognised in the VGGT in these stages. Many of these thematic areas of corporate responsibilities are addressed by corporates through a range of actions. These existing actions to meet the expectations under the VGGT are listed below.

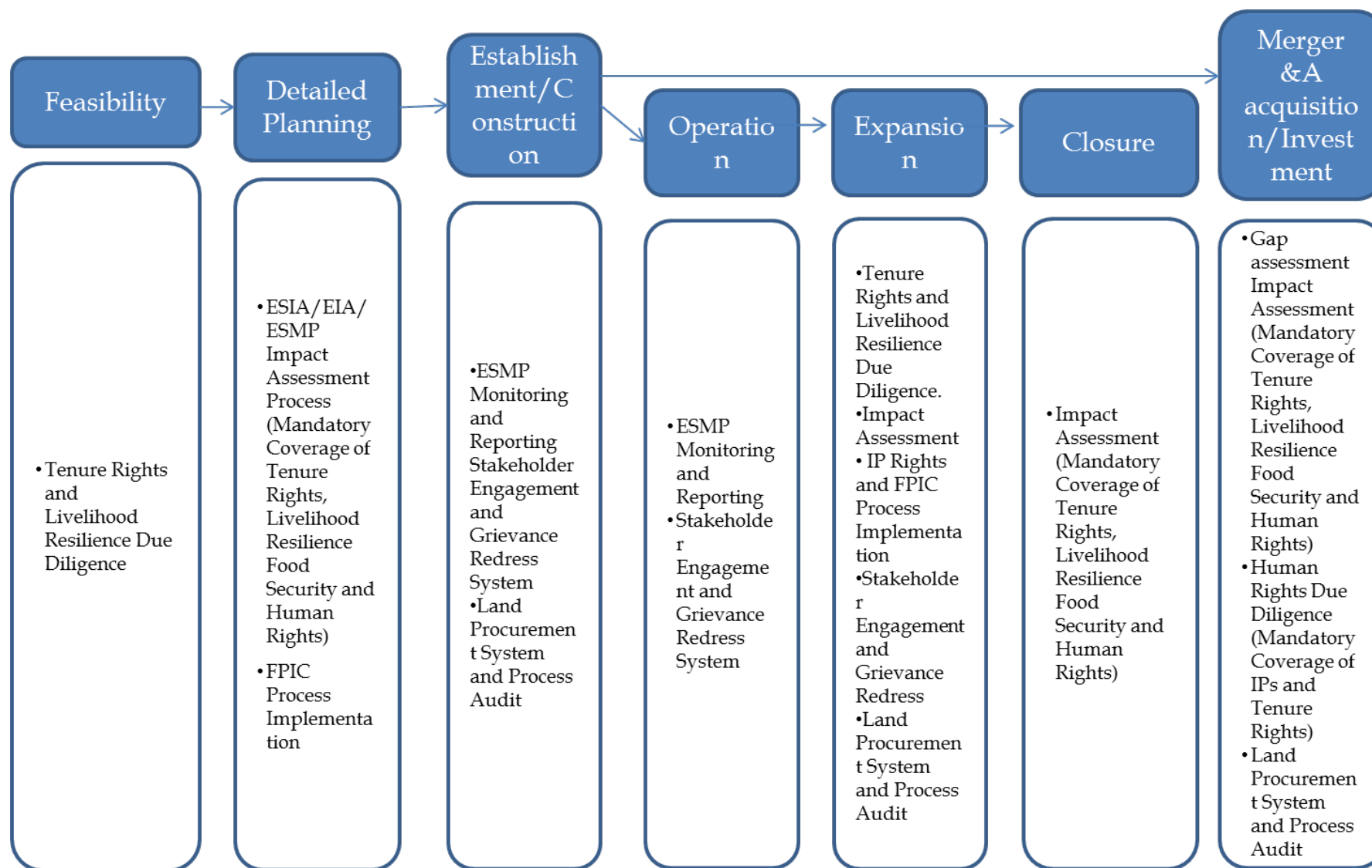
- Coverage or gap assessment of ESIA/EIA/ESMP (adequate coverage on tenure rights, livelihood, food security, human rights);
- FPIC process Implementation/Due Diligence;
- Human Rights Due Diligence (with Indigenous Peoples & Tenure Rights and Forced Eviction focus);
- Stakeholder Engagement and Grievance Redress System and Process Audit/Certification;
- Address closure at the early stages of planning and development; and
- Assessment and management of cumulative impacts including indirect changes in land use.

In these existing social and environmental management or performance systems, the human rights perspective adopted in the VGGT and improvement in the intensity of scrutiny and assessment of food security and livelihood issues through ensuring better recognition and governance of tenure rights should be adopted. In addition to these, two more action points are proposed which would focus on business enterprise performance in tenure rights, livelihoods, food security and the FPIC process. The proposed additional safeguard activities are as follows:

- Multi-stakeholder approaches to regional land use planning;
- Tenure Rights and Livelihood Resilience Due Diligence; and
- Land Procurement System and Process Audit/Certification (with focus on Forced Eviction, Informal Tenure, Customary Rights and anti-corruption).

The summary of the themes for corporate responsibility, the potential business stage when they are encountered, existing and proposed actions to ensure that concerns in these relevant themes are addressed, and the implementation principles set in the VGGT is provided in Figure below.

Figure 4.2: Interventions in different stages of business-cycle



It is now understood that the mere adoption of codes of conduct is not adequate to label a corporate as responsible. The quality of implementation of these interventions should be the most significant performance criteria. Different industrial associations, multi-lateral bodies and multi-stakeholder initiatives have adopted a range of criteria to assess performance of corporates vis-à-vis the recommended codes of conduct. The VGGT also list a number of implementation principles which can be adopted to evaluate if these interventions can be considered as acceptable and good practice. The table below lists the areas of corporate responsibilities under the VGGT, respective interventions and relevant implementation principles in the VGGT.

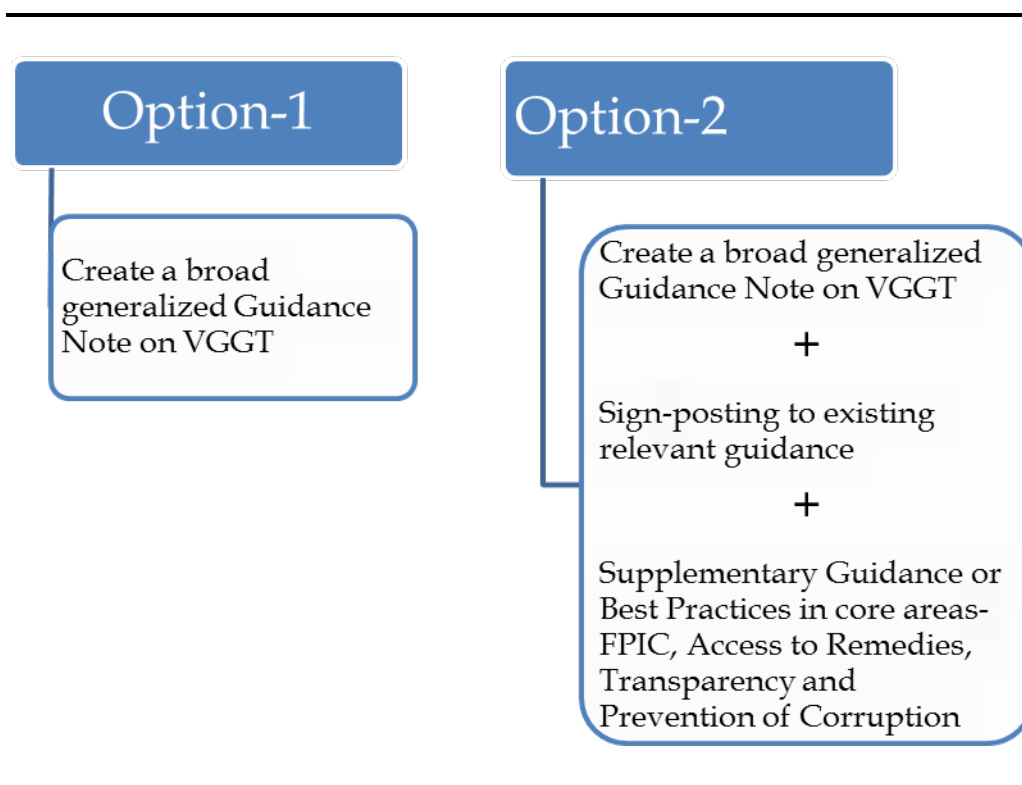
**Table 4.1** *Implementation Principles of the VGGT that qualify an intervention as Good Practice*

<i>Corporate Responsibility in the VGGT</i>	<i>Intervention Activity</i>	<i>Relevant Implementation Principles in the VGGT</i>
Impact Assessment and Risk Management System	<ul style="list-style-type: none"> <li>Environmental and Social Impact Assessment (adequate coverage on tenure rights, livelihood, food security, human rights)</li> <li>Gap Assessment of ESIA/EIA and ESMP.</li> </ul>	Equity and justice, Holistic and sustainable approach, Transparency, Accountability, Continuous improvement.
Community Engagement and Grievance Redress System	<ul style="list-style-type: none"> <li>Stakeholder Engagement and Grievance Redress System and Process Audit/Certification</li> </ul>	Transparency, Accountability, Consultation and participation, Gender equality, Human dignity, Non-discrimination.
Transparency and Prevention of Corruption	<ul style="list-style-type: none"> <li>Land Procurement System and Process Audit/Certification</li> </ul>	Transparency, Equity and justice, Rule of law, Transparency, Accountability, Continuous improvement.
Indigenous Peoples and Communities with Customary Rights	<ul style="list-style-type: none"> <li>FPIC process</li> <li>Tenure Rights and Livelihood Resilience Due Diligence</li> <li>Human Rights Due Diligence with Indigenous Peoples focus</li> </ul>	Consultation and participation, Holistic and sustainable approach, Gender equality, Equity and justice, Non-discrimination, Human dignity.
Informal Tenure and Forced Evictions	<ul style="list-style-type: none"> <li>Human Rights Due Diligence</li> <li>Land Procurement System and Process Audit/Certification</li> </ul>	Human dignity, Equity and justice, Rule of law.
Responsible Investments	<ul style="list-style-type: none"> <li>Tenure Rights and Livelihood Resilience Due Diligence</li> <li>FPIC Process Due Diligence</li> <li>Land Procurement System and Process Audit/Certification</li> </ul>	Transparency, Accountability, Equity and justice, Human dignity.



It is evident from the review of the existing codes of conduct, performance standards and guidance materials on the themes of responsibilities recognised under the VGGT that a vast body of literature and knowledge base is already available. The provisions of these existing codes and standards can be compiled to form a general guidance note for corporates and civil society. Such a compilation will make all available provisions in a single source and build consensus among corporates and civil society groups by creating common understanding. However, it should be noted that such a broad Guidance Note may not be adequate to address sector-specific or geographical-specific concerns.

**Figure 4.3** *Strategic Options for Supporting Implementation of the VGGT*



To address the sectoral or geographic specificities, it may be possible to sign-post good-practices or detailed guidance notes that are available. However, such sign-posting depends on the availability of such detailed guidance literature that complies with the implementation principles listed in the VGGT. These gaps in existing guidance literature may be addressed through supplementary guidance or best-practices in identified areas of concern such as FPIC implementation, transparency in dealing with tenure rights, prevention of corruption in acquiring and using land, forest and fishery resources.

The actual implementation of existing codes of conduct requires leadership commitment, allocation of resources (both finance and man-power) and innovations that can surpass specific challenges. The specificity of implementation challenges may depend on following factors:

- How developed are the country and its institutions?
- How evolved are national policies and procedures?
- Are there adequate physical and financial resources to effectively implement laws?
- Do national politics and governance uphold the rule of law?
- Are there precedents and industrial practices setting up norms?

In developed countries, awareness of rights and understanding is clear, institutions and systems are in place, and differences are usually resolved through proper stakeholder engagement, following the rule of law and available recourse to legal systems of the country. In some developing countries, the above mentioned aspects have made good progress; though potential for improvement remains. In other developing countries, these aspects are still in nascent stages or their implementation is weak. The performance of companies, which depends on existing systems, will differ in these three contexts. However some of the fundamentals, which are based on global consensus, have to be set as the minimum standard with which every business enterprise must comply.

### **5.1 INTERVENTIONS IN THE FEASIBILITY STAGE**

The key interventions during the feasibility stage include tenure rights and livelihood resilience due diligence and multi-stakeholder initiatives in regional land-use planning.

Some of the key questions to ask at this stage are as follows:

- Is there a due process in the relevant law(s) for local communities to document or formalize their tenure rights?
- Does the project area come under any regulated land-use zone - specifically as farming or pasture areas?
- If the government or local business partner is providing the access to land, are they committed to respect and protect human rights, including rights to tenure?
- Is the project area inhabited by communities whose livelihoods are dependent on natural resources, i.e. land, fisheries and/or forest?

- What are the existing risks to these livelihoods and how would the proposed project contribute to it?
- What is the public opinion on transforming the local economy?

The Feasibility Stage Due Diligence is mostly technical and financial. Hence, a screening checklist with open-ended questions can be helpful to business enterprises.

## 5.2 *INTERVENTIONS IN THE DETAILED PLANNING STAGE*

At the detailed planning stage, Environmental and Social Impact Assessments (ESIA) and the FPIC process (relevant when the project is located in land belonging to or used by Indigenous Peoples) are the two most significant activities.

### 5.2.1 *ESIA/ESMP Process*

The impact assessment process has evolved through years of practice, with evolving methodologies helping in the accurate prediction of impacts and in the assessment of their significance. The areas of refinement required to integrate concerns about livelihood, food security and tenure rights include the following aspects:

- how to identify all forms of tenure rights - specifically informal tenure and customary rights;
- how to evaluate the dependency of communities on land (owned individually and collectively); and
- when do the project benefits replace the provisioning services that the collectively owned land supplied to the traditional land-based communities.

The impact assessments conducted by companies should ensure that even if the local laws and regulations do not recognise these dependencies and vulnerabilities (and hence do not entitle them for compensation and support) the social impact assessment or ESIA (undertaken internally and through third party specialists) should be able to clearly assess these impacts. The findings should inform the project design. Appropriate compensation or rehabilitation options should be considered in keeping these vulnerabilities and dependence in context.

The social impact assessment process should look at conflicting claims on land ownership and tenure rights. The context of the land tenure claims may vary considerably, depending on the state of development of the country (in all realms including the economy, institutions, policies, laws and regulations etc.). Land tenure claims have usually emerged where the legacy related to land tenure issues has not been properly addressed. Often, the reasons for land issues not being addressed are: political overtone to the issue; lack of

adequate financial and physical resources; lack of a supporting institutional framework; lack of sensitivity to the plight of the people; fighting over access to those resources (including government departments like the Forest Department); or general insensitivity to these issues.

Working with and without Government provides opportunity as well as challenges. It is recommended that companies develop their own policies and procedures, strengthened in due course to deal with the issue of tenure rights. These policies and procedures should be informed by global best practice and international standards.

### **Box 5.1**

#### ***Case Study on Stakeholder Consensus on land and tenure issues***

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In one of their plantation projects, a company obtained a huge concession for a palm oil plantation. In this case, the concession area did not have legal individual rights. The terms of profit sharing and revenue to be paid were agreed and the terms and condition also included an amount to be submitted by the company for the development of local areas. However, this amount was agreed and submitted with the Federal Government and not with the local authorities or to the community.

The community lost patience and directly approached the company for compensation and benefits and also blocked its operations. Seeing no option, the company agreed to pay compensation to the community. At this stage, the Federal Government intervened and asked the company to stop any such intervention as the land was provided by the Government.

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Where companies are involved in any acquisition of assets or any project, it is suggested that they undertake due diligence of the various issues pertaining to the tenure rights, livelihoods and food security and any other such issues which may have implications for the future operations of the company.

This is important for various reasons. While certain issues may have been present for a long time or were not important at an earlier point in time, they may have started assuming importance. The example below identifies some issues which may become a liability for the company, if they are not identified and accounted for at the right stage. Due diligence and self-assessment from time to time helps in the identification of important issues, significant impacts and any associated risk.

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A state-owned company had operated a timber concession since the early 1970s. The boundaries of the concession were not sacrosanct and people had informal access to the concession for a variety of purposes including timber collection, hunting and NTFP collection. In some cases, even agriculture activities were permitted on some plots of land. When operations started in the 1970s, the laws and regulations pertaining to conservation, forest protection, hunting and encroachment of forest land were either too benign or did not exist at all; the concept of the declaration of forest reserves or sanctuaries or the protection of certain endangered species also did not exist.

However, with growing awareness of the efficient management of resources and maximisation of resource use, private parties were invited to take over the management of the company. At the same time, the concession area was also declared a forest reserve, greatly restricting the rights of local communities to access and exploit the resources. The population of local settlements also grew during this time and so did the requirement for land and hence the claim for agricultural and plantation land within the concession area. The private company was now responsible for handling issues related to land tenure, NTFP rights and other access related rights. Though the concession agreement absolved the private company of such responsibility, the community did not understand or appreciate these complexities.

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Some of the key questions that would determine the effectiveness of the Environmental and Social Impact Assessment process are as follows:

- Is the proposed disposal of the industrial waste safe? What is the potential impact on the natural resources and livelihood of the community dependent on them?
- Does the sourcing of raw-materials required for construction and operation have potential impacts on tenure or ecosystem services?
- Was there a rigorous assessment of the minimum requirement of land and best use of land?

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- [International Principles of Social Impact Assessment, IAIA.](#)
  - [Participatory Impact Assessment- A Guide for Practitioners- Tufts University.](#)
  - [UNEP Training Manual on Integrated Environment Assessment and Reporting- 2011](#)
  - [European Commission Impact Assessment Guidelines- 2009](#)
  - [Environmental Assessment Source Book, World Bank- 1999 and updates](#)
  - [The Livelihood Assessment Tool-kit: Analysing and responding to the impact of disasters on the livelihoods of people. By FAO 2008.](#)
- 

Free, prior, informed consent process is usually required when there are indigenous communities likely to be impacted by the project; however, it could also be good practice to implement the principles of FPIC for communities not considered as indigenous, particularly when they are vulnerable.

Companies need to undertake due diligence from time to time on their various operations and on the way the FPIC process is being carried out across the life cycle of their projects. A company's various policies and procedures need to be reviewed for their adequacy in terms of adhering to FPIC requirements. This will also include a review of the implementation process of the procedures in place. The assessment should check if the staffs involved in carrying out the FPIC process are well informed and trained to effectively roll it out across projects.

A review of grievance records is expected to serve as an important source to verify if the FPIC process is being followed. The information being shared with the community, the adequacy of the information, the time being provided to the community to absorb and understand the information, consultations after sharing information, the process of consensus building being followed, the way concerns raised are being addressed and the disclosure process followed by a company will all serve as key indicators for self-assessment/due diligence of the FPIC process.

Some of the key questions pertaining to the FPIC implementation process are as follows:

- How to determine if an FPIC process is required?
- Is the valuation of the land and livelihood loss realistic and in alignment with stakeholder expectations?
- How to identify and agree on the people that represent the IP community and can negotiate on FPIC?

#### **Box 5.4**

#### ***Existing Codes and Guidance Material on FPIC Implementation***

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- [Engaging with Free, Prior and Informed Consent \(2012\) by Business Social Responsibility \(BSR\)](#)
  - [Implementing a Corporate Free, Prior and Informed Consent Policy: Benefits and Challenges \(2010\) by Foley Hoag LLP.](#)
  - [Guidelines on Free, Prior and Informed Consent \(2013\)](#)
  - [Legal Companion to the UN-REDD Programme Guideline on Free, Prior, and Informed Consent \(2013\)](#)
  - [Training Manual on Free, Prior and Informed Consent for Indigenous Peoples \(2012\) by UN-REDD Programme](#)
  - [Indigenous Peoples Guidebook on Free, Prior, Informed Consent and Corporate Standards by First Peoples Worldwide](#)
  - [FSC Guidelines for the implementation of the Right to Free, Prior and Informed Consent \(2012\) by Forest Stewardship Council](#)
  - [Guide to Free, Prior, and Informed Consent \(2010\) by Oxfam](#)
  - [Indigenous Peoples' Rights and the Role of Free, Prior and Informed Consent: A Good Practice Note Prepared by Amy K Lehr \(2014\) by Global Compact](#)
  - [Respecting Free, Prior and Informed Consent: Practical Guidance for Governments, Companies, NGOs, Indigenous Peoples and Local Communities in Relation to Land Acquisition- FAO Governance of Tenure Technical Guide.](#)
  - [RSB Guidelines for Land Rights: Respecting Rights, Identifying Risks, Avoiding Disputes and Resolving Existing Ones and Acquiring Lands through Free, Prior and Informed Consent \(2012\) by Roundtable on Sustainable Biofuels](#)
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## 5.3 *INTERVENTIONS IN ESTABLISHMENT OR CONSTRUCTION STAGE*

### 5.3.1 *Land Procurement*

The most significant activity of the establishment or construction phase of any business is the land procurement (acquisition, lease, purchase, etc.). Some of the key questions which would determine the process of land procurement as compliant to the VGGT are as follows:

- Is the land procurement based on a fair assessment of the land requirement?
- Is the land procurement process being undertaken in a transparent manner and has it engaged with all stakeholders early and often?
- Is there effort to protect the rights of disadvantaged groups?
- Is the process of land procurement adhering to the principle of respect for human rights and the democratic process?
- Is the process open to non-judicial measures for conflict resolution or can community members be supported to seek legal assistance to protect their rights?

#### *Box 5.5 Existing Codes and Guidance Material on Land Acquisition Process*

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- [Principles for large-scale land acquisition and leases by UN Special Rapporteur on the Right to Food in 2009.](#)
  - Practical Guidelines for Businesses to Acquire and Use Land, by Institute of Human Rights and Business (IHRB)
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### 5.3.2 *Monitoring ESMP Implementation and Disclosure*

In addition to land procurement, it is important that all planned activities are implemented effectively in the establishment or construction stage. Hence, monitoring and evaluation of the effectiveness of the ESMP provisions should receive adequate attention in this phase. Some of the key questions in monitoring and evaluation of ESMPs are as follows:

- Is the baseline or pre-project value or description of these indicators available and appropriate?
- What is the appropriate frequency of such monitoring?
- Who is accountable for monitoring? What is the plan for disclosing the findings from monitoring?
- Is there a possibility to undertake participatory monitoring?

### 5.3.3 *Stakeholder Engagement and Grievance Redress System*

Another key activity in the construction and establishment stage is stakeholder engagement and the grievance redress system. Depending upon the country, context, socio- economic development and political space, the impact influence and risk of the various stakeholders associated with the project also change. Imbalances in stakeholder influence and authority exist owing to various factors including: resource capture, or control over resources

by few; political affiliations; the institutional mechanism (with different levels of efficacy, efficiency, mandate and capacity, etc.); adaptability, capacity and vulnerability of the communities likely to be impacted because of the project; security and governance; and presence of media, NGOs, civil society, etc.

The vulnerability of sections of local communities and their ability to claim their tenure rights is to be captured through stakeholder identification and analysis. Existing power imbalances are dynamic and may change over a period of time depending upon changing socio- economic and political equations in the community. The identification of stakeholders and their issues and starting a preliminary level of stakeholder engagement at the very early stages of the project is crucial.

### **Figure 5.1**      *Case Study on Stakeholder Engagement*

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In a large-scale project, a large number of workers had been brought in by a previous company to work on the project and were allowed to settle with their families. The workers not only came from various parts of the country of operation but also from various other neighbouring countries. The earlier project was in operation for almost 80 years and closed operations in the mid-1980s which, by then, the government had taken control of the project land and the people settled on the land were not properly informed of their status (political considerations made it difficult to close the issue amicably and also some resource rich families slowly captured huge tracts of the land without any legal mandate). The economy of that area slumped owing to the closure of the project operations. After almost 20-25 years the government thought of revising the concession and invited private actors to invest. However, the government did not take any concrete steps to proceed and the new concessionaire, left with no option, went ahead with the clearing of the land and the assets therein. A committee was formed (with the representation of the Government and some powerful people in the local community) which went on to identify a list of families which had likely been impacted. Almost 1600 families were identified; however, in due course it was identified that only up to approximately 950 families could be compensated as there was not enough land available to be given to the people in the resettlement area. The entitlement agreed for each affected family was 5.50 acres (homestead and farmland included).

It was identified after a detailed survey intended to cover almost 950 families that:

- Some families (almost 100) remained intentionally unnoticed because they had settled in the area around 60-70 years earlier for employment. The present generation did not have citizenship of the country from where their ancestors came, nor did they have citizenship of the country where they continued to live. The local laws made it mandatory to have national ID cards even for private employment and hence they could not even get private jobs after being displaced. As they did not have citizenship, the land could not be awarded in their names (although they were classified as Project Affected Families (PAFs)).
  - Almost 200 families could not be identified, as they were not locals and had benefitted through some connections in the right places.
  - The detailed list of the earlier identified 1600 families could not be collected as the records were lost by the land department.
  - It was also reported that the ethnic groups from other parts of the country (not locals or PAFs) were being provided titles in the resettlement area so as to change the ethnic profile of the local area, as well as improving the economic condition of the majority community.
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It is important that each of these stakeholder groups (especially the ones from the community such as land owners, users, sharecroppers, labourers, fishing groups, grazers, hunters, women groups, religious groups, youth groups,



disadvantaged groups and ethnic minority groups, to name a few) should be given the space to voice their views and concerns. There are concerns which, owing to a variety of reasons, cannot be raised in big groups or varied groups for fear of further exclusion and retribution. It is only in the due course of time, once these groups are ready and able to discuss on a common platform, that such joint engagement be planned.

It is important that communities are given material information to understand the project and its environmental and social impacts. Such information should be in a simple and easy to understand language, prior to starting any form of engagement. One-way information sharing, without opportunity for communication from the stakeholders, will not lead to meaningful engagement.

**Box 5.6**

***Significance of Stakeholder engagement for understanding tenure issues***

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In one mining project, construction camps were supposed to be constructed to facilitate the laying of a large railway network passing across some of the remotest regions of the country where the project was located. Communal ownership of the land was identified as common practice with no identified statutory ownership of land. Additionally, the normal trend observed was that most of these communities had been present since their forefathers settled in those areas, some 300-400 years previously. However, there were other communities which were separated from their lineage for various reasons including diseases, ethnic clashes and disasters, and they sought shelter from the established communities. The established communities (with huge informally demarcated areas) gave permission to the new community to settle as a good will gesture, if there were no sensitivities attached.

Once the company went to identify the land for labour camp, the required land turned out to be the one which was given by the older, established community to the new community 75 years previously. The ownership issue became a matter of contention, with compensation attached to it. The matter went on for months. When the established community was present in joint stakeholder meetings, the newer community could not manage to show its resentment and discontent; however, when contacted alone for conducting field inventory, they showed considerable resentment. The presence of government representatives did not help the matter either.

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Some of the key questions for determining the quality of a stakeholder engagement and grievance redress process are as follows:

- Is the information provided to the stakeholders relevant and material for the decision making process?
- Was the process of engagement free from any pressure, intimidation or such unfair practices?
- Was there a grievance redress mechanism to register protests and complaints?

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- [Asian Development Bank \(ADB\): Strengthening Participation for Development Results: A Staff Guide to Consultation and Participation \(2006\)](#)
  - [African Development Bank \(AfDB\): Handbook on Stakeholder Consultation and Participation in AfDB Operations \(2001\)](#)
  - [EBRD PR-10: Information Disclosure and Stakeholder Engagement](#)
  - [International Finance Corporation \(IFC\): Stakeholder Engagement: A Good Practice Handbook for Companies Doing Business in Emerging Markets \(2007\)](#)
  - [Accountability: AA1000 Stakeholder Engagement Standard \(2011\)](#)
  - [Business Social Responsibility \(BSR\): Back to Basics: How to make Stakeholder Engagement Meaningful for your Company \(2012\)](#)
  - [A Guide to Designing and Implementing Grievance Mechanisms for Development Projects- CAO Advisory Note \(2008\)](#)
  - [Better Practice Guide to Complaint Handling, Commonwealth Ombudsman, Australia, \(2009\).](#)
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**5.4****INTERVENTIONS IN OPERATIONS STAGE**

Operation phase interventions include the monitoring and reporting of the ESMP and stakeholder engagement. Stakeholder engagement and reporting on social performance assumes significance in this stage.

**5.4.1****Stakeholder Engagement Process**

Some of the key parameters for the stakeholder engagement process in the operation stage are as follows:

- Is the stakeholder engagement only reactive? Or it is used for preventive purposes as well?
- Is the learning from stakeholder engagement incorporated in project operations?
- Is there a functional Grievance Redress System for the project during the operation stage?
- Is the grievance mechanism adequate to respond to expected and unexpected project impacts on its stakeholders?

**5.4.2****Monitoring ESMP/Livelihood Restoration Programs**

The effectiveness of livelihood restoration programs is a key element of social impact assessments. Adequacy of the specific livelihood restoration plan is a key question during the operation stage. Their effective implementation is to be ensured through a robust monitoring and evaluation mechanism.

Monitoring and evaluation systems need to provide a feedback loop to improve the planned intervention whenever required. There should be scope for iteration to enable the integration of stakeholder feedback as there may remain issues for mid-course correction relating to market linkages, credit

requirements, hand holding related issues, and training needs as per existing capacity, etc.

The monitoring and evaluation of livelihood restoration plans should be done in a manner capturing the process aspects as well as the output aspects. Employment benefits to the local population are often limited. This happens for two reasons: 1) operations are now generally more mechanised, requiring less manpower; and 2) limited skill sets available in the communities reduces their employability. Hence, providing alternative livelihood opportunities or enhancing existing livelihood practices is essential for providing local benefits.

Companies should ensure that even if the local laws and regulations do not recognise these dependencies and vulnerabilities (and hence do not entitle them for compensation and support) its own assessment (internal and through third party specialists) should be able to clearly identify and assess the level of possible impacts envisaged. These findings should inform the project design and options should be considered keeping these vulnerabilities and dependencies in context. It is an unavoidable fact that many large-scale projects are established in areas where such issues continue to be unaddressed or the communities are less exposed to such developments and lack diversified options to combat such changes effectively.

Usually, communities are not vocal in terms of explaining their experiences and consider livelihood restoration interventions as 'freebies' from the companies, while continuing to develop a sort of dependency on them. Companies should therefore seek continuous feedback through assessment by third parties over the effectiveness of their livelihood restoration programs. The findings from these assessments should inform changes in the livelihood restoration plan on a continuous basis. Most importantly, these interventions should look at long-term sustainability, even if immediate benefits (though required to keep the interest of the community) are not that significant.

### **5.4.3 *Reporting on Social Performance***

Reporting on corporate performance, including sustainability aspects, are most often restricted to energy efficiency, carbon, water, waste management and, at maximum, CSR performance of the company and stakeholder engagement, which includes shareholders too. Presently, reporting on land tenure issues, resettlement and human rights related performance of companies is missing and probably often neglected because of a lack of reporting requirements.

Therefore, companies may consider reporting more explicitly on such issues of land acquisition, total families affected by the project, livelihood restoration activities, land tenure security being provided to the PAFs, anti-corruption measures being followed by the company and the company's stand on common property resources. This information can be both quantified and in

terms of successful case studies. Innovative approaches can be studied along with the challenges or lessons learnt.

#### 5.4.4 *Supply Chain Compliance*

Social and environment commitments should be extended to include the supply chain in the operation stage. A due diligence and capacity building program for compliance of the supply chain to similar codes and ensuring their performance to a similar level of excellence is desired.

### 5.5 *INTERVENTIONS IN EXPANSION STAGE*

The expansion of the production capacity or its associated facilities may require additional land. The requirement of additional land would invite impacts on tenure rights and livelihood issues. Key questions at the expansion stage are as follows:

- Is the assessment for land requirement fair?
- What would be the cumulative impacts due to the additional land requirement?
- Has the cumulative impact of the project (both direct and indirect) got the potential to affect the resilience of any livelihood practices of the local community?

#### Box 5.8 *Existing Codes and Guidance Material on Livelihood Assessment*

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- [The Livelihood Assessment Toolkit: Analysing and Responding to the impacts of disasters on the livelihood of people, FAO \(2008\)](#)
  - [Roots of Resilience: Growing the Wealth of the Poor, World Resources Report \(2008\).](#)
  - [Increasing the contribution of small-scale fisheries to Poverty Alleviation and Food Security, FAO \(2006\)](#)
  - [Assessing the Environmental, Forest and Other Natural Resource: Aspects of the Development Policy Lending, A World Bank Toolkit \(2008\).](#)
  - [Banking on Nature's Assets: How Multilateral Development Banks can Strengthen Development by Using Ecosystem Services , World Resources Institute \(2009\)](#)
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### 5.6 *INTERVENTIONS IN CLOSURE STAGE*

Industrial closure is usually understood as abandonment of the business operation at a particular site. The closure of one business or production process may give way to another production process. Such industrial re-use of the land changes the existing relationship with stakeholders living close to it. However, when such industrial sites are abandoned, several questions on accountability arise. Some of the key questions associated with the closure stage are as follows:

- Is there a screening of the impact of the closure on the livelihoods of the people dependent on natural resources?
- What are the predictable impacts of the mine closure on the livelihoods and food security of the adjacent communities?

- Does the mine closure plan take into account the possible return of the land to those who owned it earlier?

#### **Box 5.9**

#### ***Existing Codes and Guidance Material for Mines and Industrial Closure***

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- [Planning for Integrated Mine Closure Toolkit, ICMM, \(2008\)](#)
  - [Mine Closure and Completion, Commonwealth of Australia \(2006\).](#)
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### **5.7**

#### ***INTERVENTIONS IN MERGER & ACQUISITION AND RESPONSIBLE INVESTMENT***

The merger and acquisition process should be treated at a par with responsible investments. The transfer of ownership or stakes in ownership should promote practices that are compliant to the VGGT. From the perspective of the VGGT, the ethical and transparent practices with regard to the land procurement system and process are of paramount importance.

#### **5.7.1**

##### ***Ethical Conduct in Land Procurement***

Land tenure transaction related corruption issues have been another of the major challenges identified, particularly where the identification of impacted families has not been undertaken properly. The identification and enumeration of land owners and land users is an exercise to obtain a holistic understanding of the scale of land related direct impacts and indirect impacts.

Multiple transactions of land, claims by multiple communities, the non-recognition of local land rights issued by traditional communities (e.g. tribal certificates or squatter certificates used in urban areas), the lack of proper inventory of land records, demographic changes due to disasters or civil war/conflict situations, etc., all contribute to land tenure transaction related corruption across communities.

The situation is further complicated where there is a lack of access to land and revenue records and related information, a general lack of awareness of rural communities on the land registration process, marginalised and remotely located communities and resource rich land grabbers. Where the land is owned on a communal basis and records of rights are maintained at the communal level through informal systems, records are especially prone to beneficial manipulation by those in power either because of their status or their monetary capacity.

Keeping in context the capacity of local land institutions and the robustness of the complete process, companies should work with these institutions to streamline the process of identification of rightful entitlement holders. For example, companies may try bringing these institutional representatives to the people, rather than expecting the people to work around these institutions, especially when the communities are least exposed to these institutions. Companies, depending upon the gravity of the situation and the literacy and

awareness levels of the community, may also consider conducting a community level workshop to improve understanding of the local community on land records, registration processes, and land application processes, etc., and the various risks associated with improper land practices.

**Figure 5.2**      *Case Study of Unethical Practices in Land Procurement*

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In one project involving resettlement, letters were awarded to identified affected families holding proper registration numbers. However, the procedure to be followed after this was not clearly communicated to the PAFs. Most of them were quite vulnerable as they were physically displaced and waiting for land to be awarded so that they could start working.

The assessment team working in the field took the help of one local resource person who seemed to be well aware of the project demarcated area and the resettlement sites. It was also reported by community members that even other department officials used his services while in the field. This gave a general impression in the community that the resource person was well connected and the most informed person.

Upon detailed discussion in the community, it was brought to light that the resource person was in possession of almost 300 letters issued to the PAFs with the promise that he would help them to obtain their land. Further, he had taken payment from some of them to facilitate the whole process. Some other instances came to light in which the said resource person had taken benefits from an elderly lady who was poor and vulnerable. She was told that somebody was interested in buying the plants and fruits on her land. The elderly lady agreed and signed some papers. However, later she was made to understand that she had sold not only the plants but the land.

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Instances like these are suggestive of the kind of malpractices involved in land transactions at various levels.

Some of the key questions to guide due diligence of the land procurement process are as follows:

- Does the land procurement process comply with ethical and anti-corruption guidelines? Is there adequate documentation of past monitoring and findings?
- If agents, intermediaries or third parties were involved in land procurement, do they comply with the ethical and anti-corruption standards?
- If the project is located in a weak governance zone, are the risks of corruption or unethical practices in the land procurement process recognized and addressed?
- What is the stakeholder perception of the land procurement process by the business enterprise?

**Box 5.10**      *Existing Codes and Guidance Material on Prevention of Corruption and Ethical business practices*

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- [International Chamber of Commerce \(ICC\) Rule for Combating Corruption \(2011\)](#)
  - [ICC Fighting Corruption Handbook \(2008\)](#)
  - [ICC Ethics and Compliance Training Handbook \(2013\)](#)
  - [ICC Guidelines on Gifts and Hospitality \(2014\)](#)
  - [International Chamber of Commerce \(ICC\): ICC Guidelines on Agents, Intermediaries and Other Third Parties](#)
  - [Overseas Private Investment Corporation \(OPIC\): Anti-corruption Policies and Strategies Handbook](#)
  - [International Corporate Governance Network: ICGN Global Governance Principles \(2014\)](#)
  - [OECD: Good Practice Guidance on Internal Controls, Ethics, and Compliance \(2010\)](#)
  - [OECD Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones \(2006\)](#)
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**5.7.2**      *Human Rights Impact Assessment or Due diligence*

The other significant issue for merger and acquisition or investment activities in the business life cycle is the assessment of the human rights impact of the business to be acquired or on which financial investments are to be made. The human rights impact assessment or due diligence process should be conducted where such potential impacts or issues are identified. Some of the key questions regarding human rights are as follows:

- What is the reputation of the business enterprise in social performance, in general, and in respecting human rights, in particular?
- What were the potential social impacts of the business enterprise/project since its inception? Is there adequate information on their successful mitigation?
- Was there any human rights impact study conducted for the business enterprise?
- Were human rights and tenure rights impacts covered in the Impact Assessment for the project?
- Did the business enterprise follow any voluntary disclosure or reporting on human rights and social performance? What was the trend?
- Are there Indigenous Peoples in the project area? Is there sufficient information to infer that their special rights were respected?

**Box 5.11**      *Existing Codes and Guidance Material for Human Rights Impact Assessment and Due diligence*

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- [ICMM: Integrating Human Rights Due Diligence into Corporate Risk Management Process \(2012\)](#)
  - [Special Representative of the Secretary General on the Issue of Human Rights and Transnational Corporations and other business enterprises, John Ruggie, 2005-2011](#)
  - [United Nations: The Corporate Responsibility to Respect Human Rights: An Interpretative Guide \(2012\)](#)
  - [United Nations: Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework \(2011\)](#)
  - [ICMM, ICRC, IFC, IPIECA: Voluntary Principles on Security and Human Rights: Implementation Guidance Tools \(2011\)](#)
  - [IFC: Guide to Human Rights Impact Assessment and Management \(HRIAM\) \(2010\)](#)
  - [European Commission: Oil and Gas Sector Guide on Implementing the UN Guiding Principles on Business and Human Rights \(2011\)](#)
  - [UK Trade and Investment Department, DFID: Business and Human Rights Toolkit: How UK overseas missions can promote good conduct by UK companies](#)
  - [ILO: ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy](#)
  - [Extractive Industries Transparency Initiative \(EITI\): Voluntary Principles on Security and Human Rights](#)
  - [United Nations High Commissioner for Human Rights and Global Compact: Human Rights Translated: A Business Reference Guide \(2008\)](#)
  - [United Nations High Commissioner for Human Rights and Global Compact: Embedding Human Rights in Business Practice \(2007\)](#)
  - [IPIECA: Human Rights Due Diligence Process: A Practical Guide to Implementation for Oil and Gas Companies \(2012\)](#)
  - [IPIECA: Integrating Human Rights into Environmental, Social and Health Impact Assessments: A Practical Guide for the Oil and Gas Industry](#)
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11. *Governance of Tenure in the Lake Victoria Fisheries, Tanzania.* **Onyango, Paul.** 2013, Land Tenure Journal, pp. 68-89.
12. *Governing Tenure in Norwegian and Sami Small-Scale Fisheries: From Common Pool to Common Property.* **Jentoft, Svein.** 2013, Land Tenure Journal, pp. 91-115.
13. *Emerging Proposals for Tenure Governance in Small-Scale Fisheries in South Africa.* **Sunde, Jackie, et al., et al.** 2013, Land Tenure Journal, pp. 117-144.
14. *Tenure in the Grenada Beach Seine Fishery.* **Finlay, James, McConney, Patrick and Oxenford, Hazel A.** 2013, Land Tenure Journal, pp. 147-173.
15. *Marine Protected Areas: Securing Tenure Rights of Fishing Communities.* **Sharma, Chandrika and Rajgopalan, Ramya.** 2013, Land Tenure Journal, pp. 175-200.
16. **FAO.** *Implementing Improved Tenure Governance in Fisheries.* s.l. : FAO, 2013. A Technical Guide.
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## A.1: INDUSTRY SELF-REGULATION

<i>Year</i>	<i>Title</i>	<i>Coverage</i>
1992	Dundersverband der Deutschen Industrie (BDI) Perspective 2000	Sustainable development guidelines for German Companies promoting environmental protection and responsible use of natural resources at home and abroad.
1991	ICC Charter for Sustainable Development	A voluntary set of guidelines to prevent serious or irreversible environmental degradation.
1986	Caux Round Table Principles for Business	A set of seven principles that aims to be a CSR guideline for companies.
1989	CERES Principles for Corporate Environment Responsibility	A 10 point environment code to guide companies to become sustainable producers and consumers.
1995	Code of Conduct for Tea Sector	A 14 point plan asks for fundamental human rights to be adhered to by tea industry.
1993	International Council on Mining and Metals Voluntary Environmental Charter	Focused on environmental and product stewardship.
2000	ICMM Sustainable Development Charter	A broad based charter covering social and environmental sustainability.
2002	International Fertilizer Industry Association	Mission statement on Sustainable Development.
2002	International Iron and Steel Institute	Policy statements on Sustainable Development.
2002	International Road Transport Union charter for Sustainable Development	Sustainable development through a “three-I’s” approach which stands for Innovation, Incentives and Infrastructure.
1994	Keidanren’s Guidelines for Japanese Companies Operating Abroad	A 10 point guideline to improve environmental management systems.
1987	Responsible Care Ethic and Codes of Practice	Generic guidelines focusing on chemical management problems to promote social and environmental responsible management.
2000	World Diamond Council Resolution on Conflict Diamonds	Resolution outlining steps for the prevention of rough diamonds from entering the market.
2000	World Federation of the Sporting Goods Industry Model Code of Conduct	A guideline on collective bargaining that reiterates the need for third party monitoring.
1997	Worldwide Responsible Apparel Production Principles (WRAP)	12 WRAP production principles dictate that garments and footwear should be produced under lawful, humane and ethical conditions.

## A.2 MULTILATERAL REGULATION

<i>Year</i>	<i>Title</i>	<i>Coverage</i>
1992	Agenda 21 of Rio de Janeiro UN Conference on Environment and Development specifically applicable to TNCs	TNCs and other industrial actors should report annually on their environmental record as well as on their use of energy and natural resources. Rio Forest Principles was also a non-binding agreement with implications for business.
1995	Code of Conduct for Responsible Fisheries	The voluntary code aims to promote responsible fishing by addressing the social,

<i>Year</i>	<i>Title</i>	<i>Coverage</i>
		environmental, economic, commercial, biological and technological aspects associated with fishing.
1963	Codex Alimentarius Commission developed by FAO and WHO	Promotes universal food standards for protecting consumer health and fair trade practices.
1987	UN Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment	Aims to prevent inhuman treatment of workers in sweatshops, factories and other places of work and provides a strong legal argument opposing any form of physical and mental harm to people.
1972	UNESCO Convention for the Protection of the World's Cultural and Natural Heritage	It protects natural and cultural heritage sites (including those belonging to Indigenous Peoples) and commercial exploitation of traditional wisdoms and customary usages.
2003	Aarhus Convention on Access to Information, Public Participation in Decision Making and Access to Justice in Environment Matters	The convention states that citizens must have complete 'access to information, be entitled to participate in decision making and have access to justice in environmental matters'. The convention recognises that members of society, including the private sector, are responsible for environmental protection.
1979	Convention on the Elimination of All forms of Discrimination against Women	It sets out elimination of discriminations faced by women, particularly in sex-role stereotyping, sexual exploitation and violence, discrimination in education employment and health.
1994	Convention on the Law of the Sea	It establishes guidelines that aim to safeguard the sea and oceans from over-use and pollution. It is relevant for fishing, mining, oil & gas and shipping industries.
1989	Convention on the Rights of the Child	The convention addresses child prostitution, domestic servitude, child trafficking, drug trafficking, child pornography and children in armed conflicts and such other child related issues. It has direct and indirect links notable in situations where child labour has been used either as affiliates or suppliers.
1988	WHO Ethical Criteria for Medicinal Drug Promotion	Ensures ethical standards are upheld in all medicinal promotions and promotional activities.
1994	UN Framework on Climate Change- Kyoto Protocol	It imposes legally binding constraints on levels of greenhouse gas emissions on parties. Places great emphasis on the State to curb TNCs that emit high-levels of waste.
2003	The Framework Convention on Tobacco Control	It imposes restrictions on advertising, promotional activities and sponsorship, while also demanding new labelling systems and air controls.
2000	Global Compact- a value based platform designed to promote institutional learning	It addresses three main issues - human rights, the environment and labour rights -in 9 principles. Each issue draws on specific UN legislation. In 2004, anti-corruption became the 10 <sup>th</sup> Global Compact principle.
1998	ILO Declaration on Fundamental Principles and Rights at Work	It constitutes a set of principles that are based on social needs and not to be neglected in the workplace. They include:

<i>Year</i>	<i>Title</i>	<i>Coverage</i>
2003	International Standards of Accounting and Reporting (ISAR)	<p>freedom of association, right to collective bargaining, abolition of forced labour, minimum working age, worst forms of child labour, equal remuneration and discrimination in the workplace.</p> <p>In 1998, ISAR published a position paper on 'Accounting and Financial Reporting for Environment Costs and Liabilities'.</p> <p>Following this, UNCTAD released a set of new guidelines in the form of a manual. In 2003, ISAR considered societal impacts of corporations and indicators of corporate social responsibility as well as the quality of social reporting.</p>
2001	International Treaty on Plant Genetic Resources for Food and Agriculture	The Treaty supports the saving, continual usage, exchange and selling of farm-saved seeds among farmers.
1994	North American Agreement on Labour Cooperation	The US, Canadian and Mexican governments agree to enforce their own labour laws and promote 11 worker rights principles.
1997	OECD Convention on Fighting Bribery of Foreign Officials in International Business Transactions	The convention monitors and prevents transnational bribery.
2000	OECD Guidelines on Multinational Enterprises	In 2000, human rights considerations were added to nine pre-existing areas of business conduct since 1977 that include - employment and industrial relations, the environment, combating bribery, consumer interests, science and technology, competition and taxation.
1999	OECD Principles of Corporate Governance	The principles advocate for an accurate and transparent disclosure system that would provide information on all material matters concerning the corporation; respect for host communities and promotion of ethical and environmental standards.
1998	Rotterdam Convention on Prior Informed Consent	The convention stipulates that export of chemicals can only take place with the prior informed consent of the importing party. It entered into force in Feb 2004
1980	Un Conference on Equitable Principles and Rules for the Control of Restrictive Business Practices	It aims at eliminating the disadvantages which may result from the restrictive business practices of TNCs and other enterprises and to protect and promote social welfare and the interest of consumers in both developed and developing countries.
1999	UN Guideline for Consumer Protection 1985 and amended in 1999	It considers the importance of ethical and sustainable consumption and addresses the negative interplay between patterns of over-consumption in the industrialized countries and the developing world's high-level of poverty and inequality.
1948	UN Declaration of Human Rights	The Business Enterprises are covered under 'every individual and organ of society' of UN Declaration of Human Rights.

### A.3 CIVIL REGULATIONS

<i>Year</i>	<i>Title</i>	<i>Coverage</i>
1999	AA 1000 by Institute of Social and Ethical Accountability	Provides guidance on how an organization can improve its accountability and establish effective stakeholder engagement.
1991	Amnesty International UK Business Group's Principles for Business	Under the Principles, companies are expected to commit to protecting human rights and security in their company policy and they should be independently monitored and audited.
1998	Clean Clothes Campaign	The code draws extensively from the core ILO labour standards that promote a living wage and decent working conditions.
1998	Ethical Trading Initiative Base Code	The Base Code is a minimum standard with which to comply. In circumstances where the national laws and Base Code vary, it is advised that the standard offering greater labour protection should be endorsed.
1996	Fair Labour Association Workplace Code of Conduct	The code sets out minimum standards related to working conditions and labour rights, particularly in apparel and footwear industries.
1993	Forest Stewardship Council Certification	It has developed a certified standard logo which guarantees that all timber and wood products have originated from sustainable forests.
1999	Global Alliance for Workers and Communities	The aim of Global Alliance is to improve the working lives and life experiences of apparel and footwear workers through education and training programs for both labour and management.
1997	Global Environmental Manufacturing Initiative	It aims to encourage high environmental, health and safety standards which are achieved by sharing of information, best practices tools and networking.
1999	Global Sullivan Principles	This initiative works in collaboration with businesses helping them to define their socially responsible agenda by drawing on their existing codes of conduct.
	International Confederation of Free Trade Unions and International Trade Secretariats Basic Code of Labour Practice	The code is based on the ILO's seven core conventions- living wage, decent working conditions, freedom of association, right to collective bargaining, and abolition of child labour.
2000	International Federation of Building and Wood Workers Model Framework Agreement	This agreement provides guidelines on how to promote and protect workers' rights in the construction, building, forestry and other allied trades.
1996	ISO 14000 series	ISO 14001 is an international benchmark for assessing the quality of environmental management systems.
2002	London Principles for Sustainable Finance	London principles were established to promote accountable sustainable development among firms in the UK's financial sector. It encourages financial institutions to adopt seven core principles based on economic prosperity, environmental protection and social development.
1997	Marine Stewardship Council Certification	It has developed a certification system that aims to assess and promote the sustainability of marine fisheries. It is based on the code of

<i>Year</i>	<i>Title</i>	<i>Coverage</i>
2000	Oxfam Community Aid Abroad Mining Ombudsman	conduct for Responsible Fisheries developed by FAO in 1995. The Mining Ombudsman established by Oxfam hear complaints from workers and local communities and relies on numerous UN human rights laws that focus on socio- economic, cultural, civil, political and Indigenous Peoples' rights.
1991	Rainforest Alliance Certification Scheme	It certifies and labels to inform consumers that a certain socio-environmental standard is met.
1991	Sustainable Agriculture Network	It certifies that a certain socio-environmental standard is met.
1995	Rugmark	Rugmark aims to achieve success through a variety of complimentary ingredients, issuing a consumer label, providing independent monitoring and introducing a rehabilitation system.
1997	Social Accountability SA-8000	It is a cross-industry standard and independent verification system that certifies good workplace conditions and observance of labour rights.
2002	Global Reporting Guidelines (GRI)	GRI, which had started as a joint venture between CERES and UNEP, became an independent organization in 2002. It engages in dialogue with companies, NGOs and other stakeholders to improve the quality of 'triple bottom line' reporting related to financial, environmental and social aspects. It provides a structure for reporting.
2012	ISO 26000	Provides Voluntary Guidelines on Corporate Social Responsibilities.

Annex A

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## A.1: Industry Self-Regulation

<i>Year</i>	<i>Title</i>	<i>Coverage</i>
1992	Dundersverband der Deutschen Industrie (BDI) Perspective 2000	Sustainable development guidelines for German Companies promoting environmental protection and responsible use of natural resources at home and abroad
1991	ICC Charter for Sustainable Development	A voluntary set of guidelines to prevent serious or irreversible environmental degradation.
1986	Caux Round Table Principles for Business	A set of seven principles that aims to be a CSR guideline for companies.
1989	CERES Principles for Corporate Environment Responsibility	A 10 point environment code which guides on what companies should do to become sustainable producers and consumers.
1995	Code of Conduct for Tea Sector	A 14 point plan asks for fundamental human rights to be adhered to by tea industry.
1993	International Council on Mining and Metals Voluntary Environmental Charter	Focused on environmental and product stewardship.
2000	ICMM Sustainable Development Charter	A broad based charter covering social and environmental sustainability.
2002	International Fertilizer Industry Association	Mission statement on Sustainable Development
2002	International Iron and Steel Institute	Policy statements on Sustainable Development
2002	International Road Transport Union charter for Sustainable Development	Sustainable development through three-I's approach which stands for Innovation, Incentives and Infrastructure.
1994	Keidanren's Guidelines for Japanese Companies Operating Abroad	Ten point guideline to improve environmental management systems.
1987	Responsible Care Ethic and Codes of Practice	Promotes generic guidelines focusing on chemical management problems to promoting social and environmental responsible management
2000	World Diamond Council Resolution on Conflict Diamonds	Resolution outlining steps for the prevention of rough diamonds from entering the market.
2000	World Federation of the Sporting Goods Industry Model Code of Conduct	A guideline on collective bargaining that reiterates the need for third party monitoring.
1997	Worldwide Responsible Apparel Production Principles (WRAP)	Twelve WRAP production principles dictate that garments and footwear should be produced under lawful, humane and ethical conditions.

## A.2 Multilateral Regulation

<i>Year</i>	<i>Title</i>	<i>Coverage</i>
1992	Agenda 21 of Rio de Janeiro UN Conference on Environment and Development specifically applicable to TNCs	TNCs and other industrial actors should report annually on their environmental record as well as on their use of energy and natural resources. Rio Forest Principles was also a non-binding agreement with

<i>Year</i>	<i>Title</i>	<i>Coverage</i>
1995	Code of Conduct for Responsible Fisheries	implications for business. The voluntary code aims to promote responsible fishing by addressing the social, environmental, economic, commercial, biological and technological aspects associated with fishing.
1963	Codex Alimentarius Commission developed by FAO and WHO	Develop and formulate universal food standards for protecting consumer health and fair trade practices.
1987	UN Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment	Inhuman treatment of workers in sweatshops, factories and other places of work and provides a strong legal argument opposing any form of physical and mental harm to people.
1972	UNESCO Convention for the Protection of the World's Cultural and Natural Heritage	It protects natural and cultural heritage sites (including those belonged to Indigenous Peoples) and commercial exploitation of traditional wisdoms and customary usages.
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2003	The Framework Convention on Tobacco Control	It imposes restrictions on advertising, promotional activities and sponsorship, while also demanding new labelling systems and air controls.
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<i>Year</i>	<i>Title</i>	<i>Coverage</i>
1998	ILO Declaration on Fundamental Principles and Rights at Work	Compact principle. It constitutes a set of principles that are based on social needs of the society and not to be neglected in workplace. They include: freedom of association, right to collective bargaining, abolition of forced labour, minimum age at work, worst forms of child labour, equal remuneration and discrimination at workplace.
2003	International Standards of Accounting and Reporting (ISAR)	ISAR in 1998 had published a position paper on 'Accounting and Financial Reporting for Environment Costs and Liabilities'. Following this, UNCTAD released a set of new guidelines in the form of a manual. In 2003 ISAR considered societal impacts of corporations and indicators of corporate social responsibility as well as the quality of social reporting.
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1994	North American Agreement on Labour Cooperation	The US, Canadian and Mexican governments agree to enforce their own labour laws and promote 11 worker rights principles.
1997	OECD Convention on Fighting Bribery of Foreign Officials in International Business Transactions	The convention monitors and prevents transnational bribery.
2000	OECD Guidelines on Multinational Enterprises	In 2000, human rights considerations were added to nine pre-existing areas of business conduct since 1977 that include - employment and industrial relations, the environment, combating bribery, consumer interests, science and technology, competition and taxation.
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1998	Rotterdam Convention on Prior Informed Consent	The convention stipulates that export of chemicals can only take place with the prior informed consent of the importing party. It entered into force in Feb 2004
1980	Un Conference on Equitable Principles and Rules for the Control of Restrictive Business Practices	It aims at eliminating the disadvantages which may result from the restrictive business practices of TNCs and other enterprises and to protect and promote social welfare and the interest of consumers in both developed and developing countries.
1999	UN Guideline for Consumer Protection 1985 and amended in 1999	It considers importance of ethical and sustainable consumption and addresses the negative interplay between patterns of over-consumption in the industrialized countries and the developing world's high level of poverty and inequality.

<i>Year</i>	<i>Title</i>	<i>Coverage</i>
1948	UN Declaration of Human Rights	The Business Enterprises are covered under 'every individual and organ of society' of UN Declaration of Human Rights.

### A.3

#### Civil Regulations

<i>Year</i>	<i>Title</i>	<i>Coverage</i>
1999	AA 1000 by Institute of Social and Ethical Accountability	Provides guidance on how an organization can improve its accountability and establish effective stakeholder engagement.
1991	Amnesty International UK Business Group's Principles for Business	Under the Principles, companies are expected to commit to protecting human rights and security in their company policy and they should be independently monitored and audited.
1998	Clean Clothes Campaign	The code draws extensively from the core ILO labour standards that promote a living wage and decent working conditions.
1998	Ethical Trading Initiative Base Code	The Base Code is a minimum standard to be complied and in circumstances where the national laws and Base Code vary, it is advised that the standard offering greater labour protection should be endorsed.
1996	Fair Labour Association Workplace Code of Conduct	The code sets out minimum standards related to working conditions and labour rights, particularly in apparel and footwear industries.
1993	Forest Stewardship Council Certification	It has developed a certified standard logo which guarantees that all timber and wood products have originated from sustainable forests.
1999	Global Alliance for Workers and Communities	The aim of Global Alliance is to improve the working lives and life experiences of apparel and footwear workers through education and training programs for both labour and management.
1997	Global Environmental Manufacturing Initiative	It aims to encourage high environmental and health and safety standards which are achieved by sharing of information, best practices tools and networking.
1999	Global Sullivan Principles	This initiative works in collaboration with businesses helping them to define their socially responsible agenda by drawing on their existing codes of conduct.
	International Confederation of Free Trade Unions and International Trade Secretariats Basic Code of Labour Practice	The code is based on the ILO's seven core conventions- living wage, decent working conditions, freedom of association, right to collective bargaining, and abolition of child labour.
2000	International Federation of Building and Wood Workers Model Framework Agreement	This agreement provides guidelines on how to promote and protect workers' rights in the construction, building, forestry and other allied trades.
1996	ISO 14000 series	ISO 14001 is an international benchmark for assessing the quality of environmental management systems.
2002	London Principles for Sustainable Finance	London principles were established to promote accountable sustainable development among firms in the UK's financial sector. It encourages financial institutions to adopt seven core principles based on economic prosperity,

<i>Year</i>	<i>Title</i>	<i>Coverage</i>
1997	Marine Stewardship Council Certification	environmental protection and social development. It has developed a certification system that aims to assess and promote the sustainability of marine fisheries. It is based on code of conduct for Responsible Fisheries developed by FAO in 1995.
2000	Oxfam Community Aid Abroad Mining Ombudsman	The Mining Ombudsman established by Oxfam hear complaints from workers and local communities and relies on numerous UN human rights laws that focus on socio-economic, cultural, civil, political and indigenous peoples' rights.
1991	Rainforest Alliance Certification Scheme	It certifies and label to inform consumers that a certain socio-environmental standard had been met.
1991	Sustainable Agriculture Network	It certifies that a certain socio-environmental standard is met.
1995	Rugmark	Rugmark aims to achieve success through a variety of complimentary ingredients, issuing a consumer label, providing independent monitoring and introducing a rehabilitation system.
1997	Social Accountability SA-8000	It is a cross-industry standard and independent verification system that certifies good workplace conditions and observance of labour rights.
2002	Global Reporting Guidelines (GRI)	GRI became an independent organization in 2002 which had started as a joint venture between CERES and UNEP. It engages in dialogue with companies, NGOs and other stakeholders to improve the quality of 'triple bottom line' reporting related to financial environment and social aspects. It provides a structure for reporting.
2012	ISO 26000	Provides Voluntary Guidelines on Corporate Social Responsibilities.

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