

Study to understand functioning of companies' response systems vis-à-vis key Human Rights violations available in Public Domain

(A Joint Study by Partners in Change and National Human Rights Commission)

April, 2021

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Entrusted by
National Human Rights Commission

Entrusted to
Partners in Change

Study based on Public disclosure by companies on cases regarding human rights violations in their operation

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Abbreviations

APPL - Amalgamated Plantations Private Limited

CSO – Civil Society Organisation

EIA- Environmental Impact Assessment

EMP - Environmental Management Plan

FCTC – Framework Convention on Tobacco Control

FSSAI - Food Safety and Standards Authority of India

IFC - International Finance Corporation

MNC – Multi-National Corporation

MSG – Mono-Sodium Glutamate

RTI – Right to Information

UNCRC – United Nations Convention on Rights of Child

UNGP – United Nations Guiding Principles on Business and Human Rights

UNCED - United Nations Conference on Environment and Development

USFDA – United States Food and Drug Administration

Disclaimer

All cases have been reviewed from a UNGP framework perspective, using publically available data and information, and not from a legal framework. In this study we are attempting to find out how the companies have responded to human rights violations and whether they have faltered in engaging with the HR violations that have been detected. These violations and the response of the companies have been analysed using the UNGP framework. These guidelines have not yet been the law and therefore not mandatory from mandatory. The study recommends that to address this, Human Rights Due diligence and grievance redressal systems, be mandatory from a legal point.

Foreword

Individuals, workers and communities impacted by corporate operations are becoming more vocal and raising issues, about human rights violations, to ensure grievances are addressed. While some of these are being raised through lawsuits in judicial arena, many are also trying to leverage the platforms provided by civil society organisations and non-state based mechanisms to raise their grievances. One of such mechanism is the operational mechanism at the company level that provides a channel for affected stakeholders to raise and address their issues.

Elaborating on grievance redressal systems UNGP define its as “any routinised, State-based or non-State-based, judicial or non-judicial process through which grievances concerning business-related human rights abuse can be raised and remedy can be sought.” While stressing on the need for both state and non-state level mechanisms, UNGPs stress on the presence of operational or business level grievance redressal mechanisms, as foundational system for identifying and addressing violations in business operations.

The National Guidelines on Responsible Business Conduct (NGRBCs) in recognition of the foundational role of businesses in addressing violations accruing out of decisions, policies and operations stressed that ‘Businesses should develop systems, processes and mechanisms to identify its stakeholders, understand their expectations and concerns, define the purpose and scope of the engagement, consult with them in developing policies and processes that impact them, and commit to resolving any differences and redressing grievances in a just, fair and constructive manner’ (Principle 4 Core element 2). Talking about these systems the NGRBCs stresses on its definitional characteristics as is in the UNGPs – transparent and clear, accessible, equitable, predictable and based on dialogue.

The reality, however, is a far cry from what has been recommended. In analysing the Company Business Responsibility Reports, India Responsible Business Index, in its report in 2018, revealed many such instances where companies show laxity in addressing human rights violations arising out of operations. As Coal India chased an expansion target of 1.5 billion tonnes per annum, in 2014, villages, comprising mainly of *Adivasi* and *Dalit* communities, disappeared in less than three years. Mandatory employment of local people displaced have not been realised with rapid expansion due to increasing mechanisation and privatisation of labour. In early June 2017, Coal India’s Lingaraj and Bhubaneswari mines were shut-down for two days due to protest by villagers over lack of employment opportunities¹. Its annual report, however, includes no disclosure about the human rights violations, in spite of increasing protests and agitations. Essar Steel, also, offers a classic case of how a company, just to meet the basic legal requirement, offers rehabilitation plans and does not sustain it. In June 2017, Essar Steel plant in Paradip, Odisha, faced huge protests as the company sacked 195, in a phased manner, of the 240-local people, who had lost land to

¹ Chandrasekhar, Aruna Chandrasekhar (June, 2017), ‘India is moving away from coal, but what is it doing about communities displaced in mining areas?’ Available on Scroll.in <https://scroll.in/article/841698/india-is-moving-away-from-coal-but-what-is-it-doing-about-communities-displacedin-mining-areas>

the project and were employed as a part of its resettlement and rehabilitation programmes².

These cases are just the tip of the iceberg. Many such cases exist in India, where companies have contributed to human rights violations and, once such violations surfaced, they have failed to address them through appropriate procedure and processes. The study to “Understand functioning of companies’ response systems vis-à-vis key Human Rights violations available in Public Domain”, analysis 5 such cases, where the company grievance redressal systems have failed to address complaints violations. It analyses the cases and the violations therein, using the UNGP framework, and tries to understand the role of the company in remediation process. Using publically available information the study examined the role of companies vis-a-vis the violation from the lens 3 pillars of the UNGP.

Informed through a series of consultations with Human Rights Defenders, CSO, lawyers, academician and thought leaders, the study very lucidly tried to establish the responsibility of the companies. We are thankful to these experts for their inputs as it enabled us create a comprehensive report on company grievance redressal systems.

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Director
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² Telegraph (June, 2017), ‘Essar sackings revive protest’, Available on <https://www.telegraphindia.com/states/odisha/essar-sackings> reviveprotest-188092

Executive Summary

The issue of human rights is central to the concept and practice of good corporate citizenship and sustainability. Businesses are increasingly focused on the impact they have on individuals, communities and the environment. It is clear that one of the central measures of a company's social responsibility is its respect for human rights. And while most companies recognize the moral imperative to operate within the principles of human rights, recognition is also growing that respect for human rights also can be a tool for improving business performance. Companies which are able to proactively address human rights risks within operations, most often than not have been able to generate and garner positive image. And Companies, which have failed to do so, have suffered the consequences of this through negative publicity.

This brings us to the central argument of this report, which states that human rights is a key performance indicator for corporations all over the world and redressal of violations, therefore, is a key function of business.

This, however, is a challenge. Several businesses have responded to this by beginning to incorporate concern for human rights into their daily business operations. The past decade has seen proliferations of discussions around business and human rights, globally and within India. The adoption of United Nations Guiding principles on business and rights, and the consequent recommendation to develop country wise national action plan set the stage for the deliberations on business and human rights.

In India the launch of the National Voluntary Guidelines (NVG), in 2011, which later in 2019 was renamed as the National Guidelines on Responsible Business Conduct (NGRBC), turned the focus away from just the economic responsibility of the businesses, to social and environmental responsibilities. Both the NVGs and the NGRBCs pressed on the need for integrating Human rights concerns within business operations, and in doing so stressed on the responsibility of businesses to

1. carry out human rights due diligence to identify, prevent, mitigate and account for how they address adverse human rights impacts; and
2. take corrective actions to address adverse human rights impacts.

It further “urges businesses to be especially responsive to such persons, individually or collectively, who are most vulnerable to, or at risk of, such adverse human rights impacts.” Despite these, while violations continue to happen, and lack of access to remedy exasperates the situation.

UNGPs particularly recognize that while violations will continue to happen, it the access to remedy which will provide the companies the platform to demonstrate respect for human rights. In his commentary on the 3rd Pillar of the Principles, Professor Ruggie points out that grievance mechanism may take various forms, but their aim will always be to counteract or make good any abuses. Remedy, as described in the UNGPs, falls into two, basic categories. First, judicial remedy includes any formal processes initiated in the court of law. Second,

non-judicial remedy can be state-sponsored (e.g., remedy processes established through the National Contact Points (NCPs) or claims made through ombudsperson offices or government-run complaints offices, for example). Non-judicial remedy can also be created through non-state mechanisms.

It is from this standpoint that the study titled “Understanding Company Grievance Redressal Mechanism vis-à-vis Human Rights Violations” tries to understand the effectiveness of redressal mechanism in addressing human rights violation. Using case examples the study evaluates violation of right of workers, child rights, right to livelihood, right to information, right to health and right to life and the response of stakeholders including company and others on such events. The cases were evaluated from the lens of the UNGPs, across its three pillars – Government duty to protect, Corporate responsibility to respect and Access to remedy. While the framework developed, looks primarily at the responsibility of the businesses are primary stakeholders for redressal of grievances arising out of its operations, it also evaluates the role of government bodies, the legislations and laws and the gaps therein.

The Inferences from the cases across the three pillars is as below:

The Role of the Company

Pillar II of the UNGPs very clearly state that Corporates have responsibility to address violations that occur due to their direct and indirect action and those that arise out of their business relationships. It states the need for the company, irrespective of size, nature and operations, to affirm clearly its intent vis-à-vis human rights through a publically available policy document. It also states that the businesses should integrate within its operations processes that would enable identification, assessment, redressal and communication about adverse impacts and also act in accordance to remediate.

As the study below will enumerate, in all the cases the businesses have failed to identify, assess and address these violations. Rather the businesses have denied the violations, when it was brought to the notice by an external stakeholder, which in most cases was a civil society organization working with the community.

Role of the State

Pillar I of the UNGPs stresses on the state duty to protect human rights of its citizens against any act of violation by businesses. It states the need for the governments to meet their international obligations and develop and implement laws, policies and legislations, which will ensure human rights are guarded. It should also oversee and review these laws, and when necessary address the gaps in light of evolving circumstances. And in doing so, the state should ensure that it is not in complicit with the business and rather is working on the side of the people.

The cases, however, point out the need to review the laws and address the gaps in letter and action, which allows for violations to perpetuate. In some cases it demonstrates the

need to distance the state from the business, to ensure the rights of people, especially those impacted are preserved.

Access to Remedy

From the point of view of the study, Pillar III is the most crucial element that ensures human rights are guarded against violation. It is based on the assumption that while it may be difficult to ensure human rights is not violated, remedy mechanisms would provide the much needed channels for the aggrieved to voice their concerns and seek redressal. It also provides the businesses and state authorities the opportunities to remediate when a case of violation is brought to notice. To support this, the UNGPs talk about transparent, accessible, legitimate, equitable, predictable mechanisms, state and non-state, and judicial and non-judicial mechanisms. It stresses on the need for collaboration across stakeholders.

The study, demonstrates that in most cases the aggrieved groups have taken the recourse of judicial mechanisms, as they have failed to access the businesses for remediation.

The cases analysed as part of the study demonstrates the need to strengthen redressal mechanisms, in an attempt to ensure the protection of human rights. It is even more opportune at this point, as India is embarking upon a National Action Plan on Business and Human Rights. The success of this NAP will depend, to a large extent, upon the capacity of remedy mechanism to administer justice in case of violations.

Chapter 1: Introduction

Context

Worldwide over the last few decades, concerns about the impact of powerful commercial interests on the lives of people and their environment have been growing. **The increased influence that Corporates in India wield, not only on the economy but also on how governments function and the reduced State of the role in delivery of social goods, has led to the realization of the need to ensure businesses respect human rights across its sphere of influence.**

Going back in history, the foundations of the Principles for Human Rights were set out initially by the Universal Declaration on Human Rights, and the Declaration on

Fundamental Rights and Principles at Work of the

International Labour Organization. **Over the**

last decade, the connect between Human Rights

and Businesses has been reflected internationally

in the design of the UN Guiding Principles on

Business and Human Rights (UNGPs-BHR) It

was endorsed by the UN Human Rights Council in

2011 as a framework for preventing, addressing,

The **United Nations Guiding Principles on Business and Human Rights (UNGPs)** is an instrument consisting of 31 principles implementing the United Nations 'Protect, Respect and Remedy' framework. The UNGP framework provides for implementation via three distinct yet complementary pillars: the **state duty to protect** against human rights abuses by third parties, including business, through appropriate policies, regulation, and adjudication; the **corporate responsibility to respect** human rights, which means to act with due diligence to avoid infringing on the rights of others; and **greater access by victims to effective remedy**, judicial and non-judicial.

and remediating business-related human rights abuses, and suggested for a National Action

Plan, to support its implementation. The 2030 Agenda for Sustainable Development in 2015 explicitly stated that the aim of the SDGs is to "realize the human rights of all" and that the

business sector is a key partner for the UN and governments in achieving the SDGs. **Domestically**, the Ministry of Corporate Affairs released the National Voluntary Guidelines

on Social, Environmental and Economic Responsibilities of Business in 2011, which articulated the need for companies to "respect and promote Human Rights", "support

inclusive growth and equitable development" and be responsive to the "interests of all stakeholders". As a corollary, SEBI in 2012, mandated top 100 listed companies (later

extended to top 500) to submit annual business responsibility report. The guidelines have been updated and revised in 2019 as the National Guidelines on Responsible Business

conduct.

The Purpose of the Study

While there exists an understanding that Corporates have responsibility to respect human rights, and the International and domestic guidelines and reporting frameworks are expected to support this implementation, there are gaps in terms of understanding the extent of policy commitment and actual practice by the companies. This study aims to fill this gap by identifying and reporting on case studies to generate evidence that brings to light the actual practices followed by Corporates.

Based on the case studies and the findings, a framework to assess the policies, procedures and practices deployed in Companies for preventing and responding to Human Rights Violation has also been developed, which can be used by the state, non-state actors and Businesses, themselves, for mobilising efforts to institutionalise systems to address issues that surface. This process would hopefully encourage more disclosures in the public domain and create ground for deliberations and for strengthening of diverse dialogues influencing the existing systems within the companies, as well as at the State end so that it is aligned with the guiding principles and other initiatives, and delivers for all stakeholders.

The Objective

The objective of the study, includes

1. To gain an understanding of the functioning of company based Grievances Redressal Mechanism, as a way of enhancing access to remedy in cases of business related adverse human rights impacts and the challenges and issues that emerge.
2. To trace and analyse the due-diligence mechanism established at the company level to detect, assess, respond to and address violation that may occur in course of operations.
3. To understand the role of the State and other non-State mechanisms in addressing the violation, and analyse evidences of complicity, if any.

The Methodology

This work has focused mainly on in-depth examination of six cases where companies were involved in alleged violations of human rights, including labour rights, accountability, land rights, employees' well-being, children's rights and consumer value. The cases were chosen from an initial examination of twelve cases that were available in the public domain, and selected basis the proximity of the stated issues with Human Rights framework and significance of sector in question. Indicators for analysing the cases were developed post a review of company reports, other relevant studies, media reports, court judgments etc. While community consultations were held for additional data generation, the development of the indicators was supported via dialogues with a variety of stakeholders including affected communities, regulatory bodies, civil society etc. Using the UNGP framework³ as a reference, the analysis focussed on human rights compliance across occurrence, detection,

³More information about the guidelines can be accessed here
https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

response and provision of remedy by the Businesses. Going further it also analysed the role of the State in protecting of Human Rights and ensuring access to remedy by the aggrieved parties or groups. Gap areas have been identified leading to general inferences that can be used to institutionalise and strengthen Company and State practices.

The Framework for the Assessment Tool

The assessment tool provides questions designed to assess and improve the human rights performance of companies. These have been developed and tested via the case studies, and the UNGP guidelines have been translated into the checklist covering company policies, procedures and practices. The tool consists of approximately 27 main questions (some of these have further sub questions) further divided into three sections, with each corresponding to a particular Pillar. It allows companies to assess and improve their human rights performance across their operations, as well as others actors, to monitor corporate human rights performance and engage businesses.

Measurement of Human Rights violations by Businesses as evidenced through the non-adherence to specific UNGP Principles via the assessment tool are mapped across the three pillars. It starts with mapping at the corporate end but also looks at the State role, since actions or inaction at both ends can strengthen or undermine each other, and therefore need to be considered together. It also maps the provision of effective access to justice and remedy for victims as envisaged in Pillar three of UNGP guidelines. In Pillar II, it maps the UN Guiding Principles expectations of policy commitment, governance, stakeholder engagement, risk assessment, mitigation, tracking performance and remediation under the broad heads of Presence of Systems and Policies, Detection of Human Rights Violations, Response of Company to the violations and the Remediation process provided. This follows from the first section which tracks the actual violation in terms of Company Role, the Human Right and affected stakeholder.

The tool under Pillar 1 looks at the adequacy of the State performance in terms of its role as a protector of Human Rights through the broad prisms of adequacy of laws, the monitoring and enforcement mechanisms and complicity, if any, with the Corporate in undermining the Human Rights. Under Pillar III, remedies available to victims at various levels –the judiciary, the Human Rights Commissions, the tribunals and other regulators are mapped along with their efficacy.

The Assessment Tool primarily centres on the human rights responsibility of the company, especially when human rights violations have surfaced.

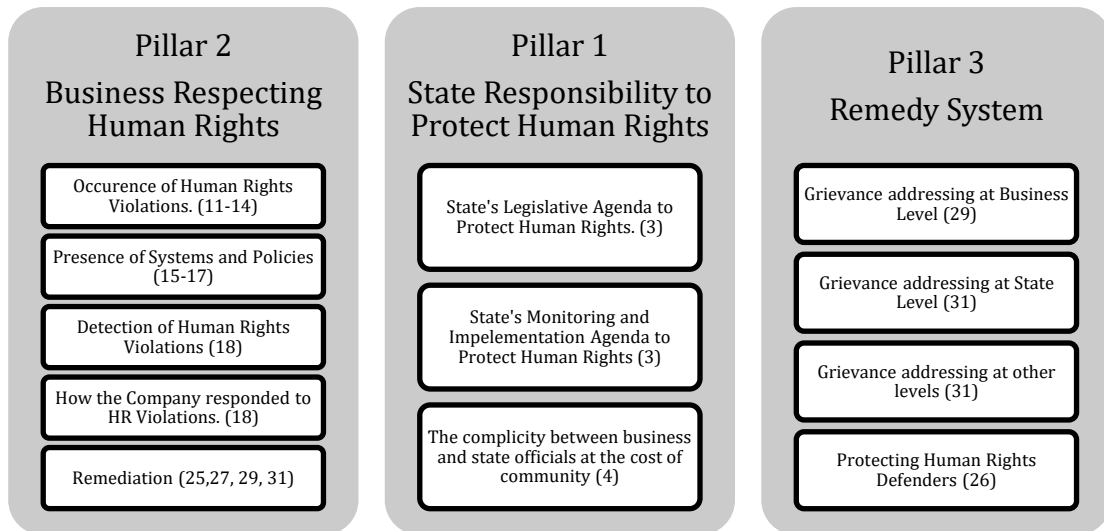


Figure 1 – Assessment Tool

Source: *United Nations Guiding Principles on Business and Human Rights*⁴

⁴ https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf

Chapter2: Selection of Six Case Studies

The finalisation and detailing of the case stories and the analysis framework involved a series of stakeholder consultations, field visits for data collection, interviews with key informants and research of secondary literature like company website, policies, annual report, publications on the issues, news articles, etc. Four consultations were organised for the project and included stakeholder from academics, legal system, human rights defenders, community members, civil society organisations and thematic experts. While the first consultation, in November 2018, was mainly organised to detail out the 12 case stories, and finalise the six selected case, the three successive consultations aimed at collating data and sharing the framework. These consultations were also used as platforms to inform case stories with inputs from ground by the community members. The interactions with the communities were an important source of information for the case stories and enabled substantiating the cases with community voices.

The 12 case studies identified for the project included:

1. Right to Health - Impact of Tobacco Industry
2. Children's right to Protection - Child Labour in informal enterprises in Jaipur
3. Right to Health- Impacts of Sterlite Plant in Tuticorin
4. Right to Livelihood - Resettlement and Rehabilitation Issues in Loktak
5. Right to Health - Silicosis in Sandstone Sector
6. Right to Health - Pesticide Production and Usage- Circumventing Safety Standards
7. Consumer Rights - Product Packaging, Maggie Case
8. Worker's Rights - Debt Bondage in Bihar and Uttar Pradesh
9. Right to Health - Asbestos Usage in Industries- Issues relating to occupation safety and health
10. Right to Community Participation - Denial of Informed Consent in Niyamgiri
11. Workers' Rights - Issues in Assam Tea Plantations
12. Workers' Rights - Issues in Garment Sector in Tirupur

Figure 2: List of cases

Process at a glance

Each of the cases was first evaluated on the basis of some key parameters and these included:

- a) Availability of information in the public domain
- b) Diversity in business sector and operations, and
- c) Diversity in conditions and nature of rights violated

Using these criteria and suggestions from our stakeholder group meetings, 5 cases⁵ were selected for analysis from the lens of the UNGPs. These included:

⁵ All the Case studies are elaborated in Annexure II

- Case 1: Prohibition on Asbestos** – While public concern and mobilization against the use of asbestos in developed countries has led to heavy regulations or complete bans of asbestos and its related materials, there has been significant growth in asbestos production and use in developing countries, including India⁶. According to the Report of the Working Group on Environmental and Occupational Health in India, there are two to three million active workers suffering from exposure to asbestos and other dangerous fibers. In towns where these industries are set up, they are engulfed in the dust and have hundreds of cases of Asbestos Related Diseases⁷. Companies have, however, argued that asbestos is 100% safe for usage, thereby shirking their responsibility-legal, moral and social to provide protective measures to the workmen and to the public or all those who are exposed to the harmful consequences of the products. Experts argue that exposing workers to Asbestos Fibers is human rights violation, and inaction on part of the companies is a complete violation in light of the UNGPs, which highlights, it is the responsibility of the Businesses to address and mitigate risks associated with its products.
- Case 2: Presence of Lead and MSG in Noodles:** – In March 2014, it was found that Maggi, a product from Nestle, contained MSG (despite its label which proclaimed no added MSG). Further investigations in April 2015, revealed the presence of the high levels of lead, which were detrimental to the health of consumers. Non-disclosure about the same also violated the right to complete and transparent information. From a UNGP perspective, the action amounting to non-disclosure about presence of lead and MSG, in food items for children, and non-acknowledgement of this by the company is a violation of human rights.
- Case 3: Rights to Livelihood of persons affected with Hydro-electric projects:** Post the commissioning of the Ithai Barrage, on Loktak Lake in Manipur, to NHPC, the project has adversely impacted economic and ecological conditions of the region. People have been forcefully evicted and their source of livelihood restricted by Loktak Development Authority, an agency **designated** to manage the Lake and its surrounding areas. The absence of MoU has been leveraged by the company to shirk its responsibility vis-a-vis the community, thereby making it difficult for the community to seek redressal against operations of the company⁸. The operation of NHPC in the region is a clear violation as it takes away the livelihood of people without compensating them adequately. The case clearly points that NHPC's 'actions' are contributing towards adverse Human Rights, loss of livelihood and habitat, and by failing to address the impact, the company is breaching its responsibility under the UNGPs.
- Case 4: Public Insurance companies investing Tobacco Companies** – While the State is trying to restrict tobacco use through dedicated legislations including COTPA, LIC, State owned insurance company, owns a total of 32 per cent stake in ITC, along with other investments in VST and DS group, through five other state-run insurance companies and

⁶<https://www.sciencedirect.com/science/article/pii/S2214999614003191>

⁷<https://scroll.in/pulse/836377/asbestos-harms-the-health-of-millions-of-indian-workers-will-the-government-finally-move-to-ban-it>

⁸<https://www.telegraphindia.com/states/north-east/review-call-for-loktak-power-project/cid/1436745>

the Unit Trust of India. This violates the FCTC and Article 21 of the Indian Constitution and contradicts the very basis of Tobacco Control policies in the country. Analysing it from the lens of the UNGP, the investment partnership between tobacco companies and LIC, support these companies to increase tobacco production in India, thereby continuing to violate rights to health. LIC, by continuing with this business relationship, is considered a party to the violation, even though they have not contributed to those impacts, directly.

- **Case 5: The deprivation of human Rights of Plantation Workers** - Entrenched labour rights violations and pathetic working conditions at plantations run by APPL, originally completely owned by, and later with significant stake by Tata Tea with significant credit support from IFC, focussing on long working hours, unpaid compensation, poor sanitation and health problems, and the lack of freedom of association were brought to light in 2011⁹. While some progress has been made via a plan '*Unnati*' by the Business, Civil Society raised issues about its inadequacy in terms of quality and timelines. The case is open with the CAO at IFC. The case in question violates a whole range of Human rights including those identified under Universal Declaration of Human Rights – Article 23, which says, everyone has the right to work in just and favourable conditions of work; ILO Convention 87 and 98, which recognises the rights of workers to Collective bargaining and Freedom of Association. According to UNGPs '*These are the benchmarks against which other social actors assess the human rights impacts of business enterprises*'.

Profile of the Cases

As summarised above, five cases were selected for studying the company response systems. The five selected cases correspond to the companies that vary in terms of nature of their ownership as well as their geographic origin and area of operations. The table below summarises these dimensions and also maps the particular Human Rights violation. This presents a complexity in terms of defining Human Rights as it can be seen that geography in case of these companies varies and so is the case with the origin as well as the area of operations. In the given context it would be apt to have an overarching definition of Human Rights as a concept.

The cases need to be seen from the Human Rights lens for having a better understanding. These case studies clearly point to the violations of various rights and these pertain to right to life, right to health, right to livelihood, right to food, right to information, right to decent work and right to safe childhood. At national level, fundamental rights define the conditions that are necessary for the overall well-being and dignity of human beings and provide underlying principles for defining the scope of human rights. Article 12 to 35 contained in Part III of the Constitution deal with Fundamental Rights. The scope of these has also been expanded by various Supreme Court judgements. Additionally, Section 2 (d) of the Protection of Human Rights Act, 1993 defines human rights as rights relating to life, liberty,

⁹https://www.business-standard.com/article/companies/labour-issues-prompt-audit-in-tatas-tea-plantation-arm-113012500071_1.html

equality and dignity of the individual, guaranteed by the Constitution, or embodied in the International Covenants and enforceable by courts in India.

Table 1: Summarising nature of ownership and rights that are being violated

Human Rights Violation Category of company	Rights to Health	Right to Livelihood	Right to Food	Right to Information	Right to safe childhood	Right to decent work	Right to Life
International MNC	A		A	A	A		
India MNC						B	
Government /Public Sector Company	C , D	D		C			D
Indian Private Company	E					E	F
Financial Agency	C			C		B	

Source: *Indian Kanoon*¹⁰; *Case Mine*¹¹; *Economic Times*¹²; *CAO Ombudsman*¹³; *Ban Asbestos India*¹⁴

As the table 1 indicates, while the Maggi case dealt with Nestle a Multinational Corporation; in Tata tea the perpetrators included a large Indian MNC, Tata and multilateral financial institution, IFC; in case of tobacco, LIC, the largest government owned Insurance Company committed violation by investing in tobacco industry; in Asbestos the case include leading private sector companies in materials industry, namely Everest Industries and Hyderabad Industries limited and in Loktak dam case, the violation was caused by a leading public Hydro-electric power generation company owned by Government of India, NHPC Limited.

A: Presence of Lead and MSG in Noodles

B: Tea Plantation Case

C: Public Insurance companies investing Tobacco Companies

D: Livelihood rights of persons affected with hydroelectric projects

E: Prohibition on asbestos

¹⁰<https://indiankanoon.org/docfragment/66718388/?formInput=maggi%20noodles>

¹¹ <https://www.casemine.com/judgement/in/5811a4ffe691cb26fc4da2a6>

¹² <https://economictimes.indiatimes.com/industry/cons-products/tobacco/should-lic-invest-in-itc-bombay-high-court-to-decide/articleshow/58173298.cms?from=mdr>

¹³ http://www.cao-ombudsman.org/cases/case_detail.aspx?id=195

¹⁴ <http://www.asbestosfreeindia.org/>

Chapter 3: Analysis

Each case is studied focussing around one kind of **Adverse Human Rights Impact (AHRI)**¹⁵. Information was collected around the said adverse impact primarily from the website of the company, court materials or other sources available in the public domain. There are two sections in this chapter.

Section 1: Role of Business in detecting and responding to AHRI, and facilitating remediation. In this respect, the AHRI is studied under the following four stages, in terms of the role of the business enterprise (BE): -



The UNGP framework, especially the principles related to ‘The Corporate Responsibility to Respect Human Rights’ (Pillar 2) recognises ‘the role of business enterprises as specialised organs of society performing specialised functions, required to comply with all applicable laws and to respect human rights. With this recognition, it has listed 14 guiding principles (principle 11-24), which provides an ideal scenario of businesses *respecting* human rights.

The businesses are expected to operationalise the following: -

- (a) Policy commitment to Human Rights (Principle 16)
- (b) Human Rights Due diligence, including responding to allegations or acknowledged human rights violations (principle 17-21)
- (c) Remediation (principle 22)

Table 2: Snapshot of the Cases¹⁶

		Livelihood rights of people affected with Hydro-electric projects	Prohibition on asbestos	Public Insurance companies investing in Tobacco Companies	Presence of Lead and MSG in Noodles	Tea Plantation Case
1	Whether the Occurrence violate					

¹⁵ Case studies are documented in the framework as Annexure I

¹⁶ The codes are as below:

	Yes		No
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	International norms on Human Rights					
2	Presence of a detailed Human Rights Policy					
3	Whether the violation was Detected by the Company?					
4	Presence of a redressal systems					

Source: Authors contribution using data collated from official websites of Nestle India¹⁷, LIC¹⁸, Hyderabad Industries¹⁹, IFC²⁰, Tata Tea²¹, NHPC²².

According to table 2, the application of the above framework brings forth the following analysis

- a. In all cases the companies violate Internationally recognised Human Rights
- b. Only in one case, i.e. Tea Plantation, the company has reported the presence of a human rights policy, which is accessible in the public domain
- c. None of the violations were detected by the companies themselves, and was reported by other stakeholders.
- d. Only in the Tea Plantation case the companies, or entities involved, reported presence of a remediation system.

Section 2: Role of the State and grievance redressal institutions in protecting human rights and to facilitate remediation for the victims: The role of the State, as envisaged in Pillar 1 of UNGP (The State Duty to Protect Human Rights) was also critically analysed as per the following: -

¹⁷ <https://www.nestle.in/>

¹⁸ licindia.in

¹⁹ hil.in

²⁰ https://www.ifc.org/wps/wcm/connect/corp_ext_content/ifc_external_corporate_site/home

²¹ <https://www.tataconsumer.com/brands/tea/tata-tea>

²² <http://www.nhpcindia.com/>



Pillar 3 provides the guidelines related to remedy. The remedies could happen at the level of business, state, judiciary and other quasi-judicial levels. The role of these institutions in providing remedies was also mapped.



Each of the case studies were analysed in detail along all these 11 domains, although the central focus has been the Pillar 2 domains.

Section 1: Role of Business in detecting and responding to AHRI, and facilitating remediation

This section analyses information from the five case studies using the proposed analytical framework, primarily to assess and compare the role of business enterprise aligns with the guiding principles. The information is collated against four milestones of human rights violations: (a) Occurrence; (b) Detection; (c) Response and (d) Remediation.

A. Occurrence of Adverse Human Rights Impact (AHRI) linked to the Business Enterprise

Principle 11. Business enterprises should respect human rights. This means that they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.

Principle 12. The responsibility of business enterprises to respect human rights refers to internationally recognized human rights.

Principle 13. Through their own activities and seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations.

Principle 14. Applies to all enterprises

Figure 3 – UNGPs

Source: United Nations Guiding Principles on Business and Human Rights²³

A1. Whether these adverse impacts are human rights violations?

Some of prominent human rights that were violated, in the above cases, include Right to Health, Right to Information, Worker Rights, Right to Life, Right to Clean and Healthy Environment, Right to Safety, Freedom of Association and Right to Collective Bargaining, Freedom from Discrimination in employment (list all here). The description below, also states the human right instruments that have been violated.

The table 3 clearly indicates that the AHRI are related to specific Human Right instruments.

Table 3: Violations of Human Rights²⁴

Case Study	Human Rights Impacted by the Company Operations	Instrument providing legitimacy to the Human Right
A	Presence of MSG and Lead in Noodles	
	Right to Health	1. International - The 1989 UNCRC ²⁵ , the 1992 Agenda 21 adopted by the UNCED ²⁶ addressed the need to protect children from toxic chemicals. 2. National - Article 39f of the Directive Principles which states that children should be given the opportunity to develop in a healthy manner ²⁷ .
	Right to Complete and Accurate Information	1. National - Food Safety and Standards Act 2006, and Regulations 2011 2.2.1 addresses the need to prohibit misleading advertisements. 2. National - Consumer Protection Act 1986 talks about the consumer’s right to be fully informed.
B	Public sector Insurance company investing in tobacco companies	
	Right to Health and Right to	International –WHO Framework for Tobacco

²³ https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf

²⁴ More detailed information in contained in the case study in Annexure I

²⁵ <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

²⁶ <https://researchmatters.in/news/too-heavy-burden-onus-farm-labour-women-may-be-contributing-malnourishment-india-says-study>

²⁷ https://www.constitutionofindia.net/constitution_of_india/fundamental_rights/articles/Article%2039

	Information	Control 5.3 ratified by India ²⁸ .
C	Livelihood rights of persons affected with Hydroelectric projects	
	Right to Life and Livelihood	<ol style="list-style-type: none"> 1. International – Universal Declaration of Human Rights, Article 23²⁹ 2. National - Article 21 of the Constitution³⁰. 3. National - Land Acquisition, Rehabilitation and Resettlement Act 2013-Right to fair compensation and transparency in land acquisition³¹.
D	Prohibition of Asbestos	
	Right to Health, Right to Safety, Right to Clean and Healthy Environment.	<ol style="list-style-type: none"> 1. International - International Covenant on Economic, Social and Cultural Rights ratified by India³² - Article 6. 2. International- UN's Basel Convention on Trans-boundary Movement of Hazardous Wastes and Their Disposal, ratified by India³³. 3. International - Asbestos Convention C162³⁴, Non-Ratified. 4. National - The Indian Factories Act 1948³⁵, Indian Building and Other Construction Worker's Act 1996³⁶, Workmen's Compensation Act 1923³⁷.
E	Tea Plantation case	
	<p>Freedom of Association and Right to Collective Bargaining, Freedom from Discrimination in employment.</p> <p>Right to adequate health, education, housing and water.</p>	<ol style="list-style-type: none"> 1. International – ILO Convention No 87 and 98, 100 and 111 ratified by India³⁸. 2. Universal Declaration of Human Rights, Article 23 3. National – Article 19(1) (c) of the Constitution of India³⁹. 1. National – Plantation Labour Act, 1951⁴⁰

²⁸<https://www.who.int/fctc/cop/about/en/>

²⁹<https://www.un.org/en/universal-declaration-human-rights/>

³⁰https://www.constitutionofindia.net/constitution_of_india/fundamental_rights/articles/Article%2021#:~:text=Constitution%20of%20India&text=Protection%20of%20life%20and%20personal%20liberty.&text=No%20person%20shall%20be%20deprived,to%20procedure%20established%20by%20law.

³¹<https://www.prsindia.org/sites/default/files/LARR%20Act%2C%202013.pdf>

³²<https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx>

³³<http://www.basel.int/>

³⁴https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C162

³⁵<https://labour.gov.in/sites/default/files/TheFactoriesAct1948.pdf>

³⁶<https://clc.gov.in/clc/acts-rules/building-and-other-construction-workers>

³⁷[https://labour.gov.in/sites/default/files/TheWorkmenAct1923\(1\).pdf](https://labour.gov.in/sites/default/files/TheWorkmenAct1923(1).pdf)

³⁸<https://www.ilo.org/global/standards/introduction-to-international-labour-standards/conventions-and-recommendations/lang--en/index.htm>

³⁹https://www.constitutionofindia.net/constitution_of_india/fundamental_rights/articles/Article%2019

		wherein employers are responsible for welfare measures. 2. National –Article 39 of Directive Principles ⁴¹ .
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Source: Indian Kanon⁴²; Case Mine⁴³; CLPR⁴⁴; CAO Ombudsman⁴⁵; Ban Asbestos India⁴⁶ and analysis of various laws and conventions ratified by Government of India.

A2. Whether the AHRI is directly linked to Business Operations?

Principle 13 of UNGPs defines direct link as connections, which accrue due to operating in the region, producing products and services and associating with other entities in the value chain, who may contribute to human rights violations. The principle makes it clear- the violations could be directly by the company or through business partnership. Similarly, it could be because of action or omission on part of the company i.e. action contributing to violation and omission implying failing to redress grievance that may arise due to the company's operation.

For the purpose of the study, the Companies analysed included Nestle, LIC, Tata tea, NHPC, Everest Industries and Hyderabad Industries Limited. Of these listed companies, 4 areas among top 100 in terms of market capitalisation. Nestle and Tata Tea are MNCs, International and National, respectively. LIC is a Financial Institution, owned by the state, offering insurance services to individuals and groups.

The study in analysing the kind of violations, observed that violations included 'Actions and Omissions' committed by the company. In many cases these violations were aggravated due to lack of transparency in providing complete and accurate information or complicity by the State. In some cases, it was also observed that non-mitigation of the negative impacts of operations (operating a barrage leading to floods that impacted people's livelihoods, environmental pollution due to operations) led to violations.

i. Directly related, without doubt

In the Noodles production and Asbestos case, the Companies were directly engaged in the manufacture of goods or the provision of services (noodles and asbestos, responsible for workers on tea estates) that led to violation of human rights.

ii. Through Omissions

In the Hydroelectric projects case, while on one hand the Company's operation impacted the lives of the people, to the extent there was loss of livelihood and housing, and on the other hand, the company failed to develop and implement strategies, which address the losses faced by the people. In the tea plantation case,

⁴⁰<http://legislative.gov.in/sites/default/files/A1951-69.pdf>

⁴¹<https://www.mea.gov.in/Images/pdf1/Part4.pdf>

⁴²<https://indiankanon.org/docfragment/66718388/?formInput=maggi%20noodles>

⁴³<https://www.casemine.com/judgement/in/5811a4ffe691cb26fc4da2a6>

⁴⁴<https://clpr.org.in/wp-content/uploads/2017/06/PIL-Petition-2-31-65.pdf>

⁴⁵http://www.cao-ombudsman.org/cases/case_detail.aspx?id=195

⁴⁶<http://www.asbestosfreeindia.org/>

the company failed to provide better working and living conditions to the workers, thereby failing to respect right of workers.

- iii. Through Business partnership
In Public Insurance Company investing in tobacco case, the Company was providing financial support to tobacco companies to expand their operations, thereby contributing to violation of right to health. In the Tea Plantation case, Tata Global beverages due to its stakes in APPL, the primary company managing the plantation, contributed to the Human Rights Violations

Table 4: The Business Act leading to the Violation and affected community⁴⁷

Act leading to Adverse Human Rights Impact and Linkage with Business Operations	Stakeholder Affected
Nestle – Presence of MSG and Lead in Noodles	
Causing direct harm through production/usage of harmful products. Non-disclosure.	Consumers of the product especially children.
LiC – Public sector company investing in ITC and other tobacco Companies	
Investing in Products (Tobacco) that lead to Human Rights Violations.	LIC clients and Wider Society.
NHPC - Livelihood rights of persons affected with Hydroelectric projects	
Not mitigating negative impact of land acquisition.	Community living around Loktak Lake.
Hyderabad Industries Limited and Everest Industries – Prohibition on Asbestos	
Causing direct harm through production and usage of harmful products.	Workers, Community, Family members of workers.
Tata Tea, APPL and IFC: Tea Plantation Case	
Committing and investing in acts that lead to human rights violations.	Workers and their families on the tea estates owned by the Company.

Source: Indian Kanoon⁴⁸; Case Mine⁴⁹; CLPR⁵⁰; CAO Ombudsman⁵¹; Ban Asbestos India⁵²

As iterated above in table 4, the companies either through ‘Action’- leading to violation or ‘Omission’ – not mitigating impacts, have negatively impacted Human Rights. The above cases very descriptively highlight the manner in which companies have caused wide range of violations on multiple stakeholders, including communities, workers, consumers, human rights defenders and larger society. While in some cases the linkage between the violation

⁴⁷ More detailed information in contained in the case study in Annexure I

⁴⁸ <https://indiankanoon.org/docfragment/66718388/?formInput=maggi%20noodles>

⁴⁹ <https://www.casemine.com/judgement/in/5811a4ffe691cb26fc4da2a6>

⁵⁰ <https://clpr.org.in/wp-content/uploads/2017/06/PIL-Petition-2-31-65.pdf>

⁵¹ http://www.cao-ombudsman.org/cases/case_detail.aspx?id=195

⁵² <http://www.asbestosfreeindia.org/>

and company is direct, e.g. NHPC, Asbestos and Nestle, in other cases like in LIC and Tata Tea, the companies are complicit with human rights violation. In case of Tata Tea, particularly, the act of violation is directly linked to their operations, products or services by their 'business relationships', thereby making them indirect perpetrators of the violation.

Case at a Glance

Using framework discussed above, the table below descriptively presents the findings with regard to Nestle and LIC (table 5 and table 6, respectively)

Nestle – Presence of Lead and MSG in Food Product, Maggi

Table 5: Nestle Case– Action Leading to Violation

(A) Occurrence of Human Rights Violation in the Context of Business operation (Example: Nestle)			
		RESPONSE	
	State in one or two sentence the key 'adverse human rights impact' that is said to have occurred.	Nestlé’s product, Maggi, was detected with excessive prevalence of lead and MSG. The presences of both these compounds were not disclosed in the packaging.	
A1	The Human Right/s that has been violated is "internationally recognised human rights"? (p12)	(a) List the human rights involved - as specific as possible? (12)	UNCRC, child’s right to Health
		(b) Name the human rights convention, with specific clause? (12)	The 1989 UNCRC, the 1992 Agenda 21 adopted by the UNCED addressed the need to protect children from toxic chemicals.
		(c) Whether there are national laws that cover this violation? (11)	Partially. According to FSSAI guidelines, given that Nestle did not add MSG in Maggi it disclosed “No added MSG”. This is unlike the USFDA which clearly states that foods with any ingredient that naturally contains MSG cannot claim “No MSG” or “No Added MSG” on

			their packaging.
A2	Whether adverse human rights impacts are directly linked to operations of a business?	(a) Name of the Company/Companies	Nestle
		(b) Size of the Company (14)	Large scale
		(c) Ownership (14)	MNC
		(d) Through Own activity or business relationship? (13)	Own activity
		(e) Through Action or Omission (13)	Action
	Specify what exactly is the business operation that is being stated for this case (13)	Production of Maggi noodles.	

Source: Indian Kanoon⁵³

According to table 5, Maggi, a product from Nestle, a Multinational Corporation dealing with FMCG products, found to contain MSG (despite its label stating 'no added MSG') and high levels of lead were detected, which were detrimental to the health of consumers, as well as violation of the right to complete and transparent information. The presence of Lead and MSG in food, being targeted primarily at children is a direct violation of their Right to Health. It also violated the Right to Information by not disclosing the amount of Lead present, which was over 1,000 times more than what Nestle India Ltd had claimed.

While the non-disclosure violated International Conventions and National Legislations, gaps in the existing orders and laws, allowed for this violation.

Life Insurance Corporation of India –Government owned Insurance Company Investing in Tobacco

Table 6: LIC investment Case – Action Leading to Violation

(A) Occurrence of Human Rights Violation in the Context of Business operation (Example: LIC)		
		RESPONSE
	State in one or two sentence the key 'adverse human rights impact' that is said to have occurred.	Life Insurance Corporation, an Indian state-owned insurance group and investment company, along with Specified Undertaking of Unit Trust of India (SUUTI) account for 32% stake in tobacco companies including ITC, Vazir Sultan Tobacco and <i>Dharampal Satyapal</i> group.

⁵³<https://indiankanoon.org/docfragment/66718388/?formInput=maggi%20noodles>

A1	The Human Right/s that has been violated is "internationally recognised human rights"? (p12)	(a) List the human rights involved - as specific as possible? (12)	Right to Health and Right to Information
		(b) Name the human rights convention, with specific clause? (12)	Framework Convention for Tobacco Control Article 7.2 states that "Parties that do not have a State-owned tobacco industry should not invest in the tobacco industry and related ventures. Parties with a State-owned tobacco industry should ensure that any investment in the tobacco industry does not prevent them from fully implementing the WHO Framework Convention on Tobacco Control".
		(c) Whether there are national laws that cover this violation? (11)	Partially – COTPA restricts tobacco use by limiting advertising and promotion
A2	Whether adverse human rights impact is directly linked to operations of a business?	(a) Name the Company/Companies	Life Insurance Corporation of India (LIC)
		(b) Size of the Company (14)	Large scale
		(c) Ownership (14)	Indian
		(d) Through Own activity or business relationship? (13)	Own activity of investing in Tobacco Companies
		(e) Through Action or Omission (13)	Action
	Specify what exactly is the business operation that is being stated for this case	Investment of Public funds in tobacco sector and non-disclosure of the same.	

	(13)	
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Source: CLPR⁵⁴

In the LIC case, as indicated in table 6, the investment of public funds in tobacco sector can be construed as a violation, as it goes against the Tobacco Control policies of India. According to World Health Organisation (WHO), smoking tobacco is globally the second leading cause of heart diseases after high blood pressure. Nearly 12 per cent of cardiovascular deaths worldwide occur due to tobacco abuse and second-hand smoking⁵⁵. Globally the menace of Tobacco and the industry tactics of influencing legislation led to WHO’s Framework Convention for Tobacco Control in 2004. One of major Articles contained in the Convention state “protection of public health policies with respect to tobacco control from commercial and other vested interests of the tobacco industry”. However, given its high revenue generation potential, tobacco and its allied companies have inherently invited increasing investment by various entities including insurance agencies like Life Insurance Corporation of India (LIC), Unit Trust of India. LIC, along with Specified Undertaking of Unit Trust of India (SUUTI) account for 32% stake in ITC alone, with some diversified investment in *Vazir Sultan Tobacco* and *Dharampal Satyapal Group*⁵⁶. The violation arises not only due to investment of public funds, but also due to the very nature of LIC. LIC is a state-owned insurance group and investment company headquartered in Mumbai. It is the largest insurance company in India with an estimated asset value of ₹33, 13, 049 crores in 2017-2018. The investment is negation of international treaty obligations and goes against the spirit of the principles of Human Rights, including the United Nations Guiding Principles on Business and Human Rights (UNGPs).

The case violated some the basic rights contained in the Constitution and other National Laws and International Convention, which India is a part of.

Occurrence	System	Detection	Remediation
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B. Human Rights Violations in the Context of Business Operations: Systems and Policies present at the Company level

Principle15: In order to meet their responsibility to respect human rights, business enterprises should have in place policies and processes appropriate to their size and circumstances, including: (a) A policy commitment to meet their responsibility to respect human rights; (b) A human rights due diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights;

⁵⁴ <https://clpr.org.in/wp-content/uploads/2017/06/PIL-Petition-2-31-65.pdf>

⁵⁵ <https://www.timesnownews.com/health/article/passive-smoking-can-raise-kidney-disease-risk/379490>

⁵⁶ <https://thewire.in/business/lic-itc-tobacco-investment-pil>

Principles 16: As the basis for embedding their responsibility to respect human rights, business enterprises should express their commitment to meet this responsibility through a statement of policy that:

- (a) Is approved at the most senior level of the business enterprise;
- (b) Is informed by relevant internal and/or external expertise;
- (c) Stipulates the enterprise's human rights expectations of personnel, business partners and other parties directly linked to its operations, products or services;
- (d) Is publicly available and communicated internally and externally to all personnel, business partners and other relevant parties;
- (e) Is reflected in operational policies and procedures necessary to embed it throughout the business enterprise.

Principle 17: In order to identify, prevent, mitigate and account for how they address their adverse human rights impacts, business enterprises should carry out human rights due diligence. The process should include assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed. Human rights due diligence:

- (a) Should cover adverse human rights impacts that the business enterprise may cause or contribute to through its own activities, or which may be directly linked to its operations, products or services by its business relationships;
- (b) Will vary in complexity with the size of the business enterprise, the risk of severe human rights impacts, and the nature and context of its operations;
- (c) Should be on-going, recognizing that the human rights risks may change over time as the business enterprise's operations and operating context evolve.

Figure 4 – UNGPs

Source: United Nations Guiding Principles on Business and Human Rights⁵⁷

At the level of the corporate policies and systems, the UNGP seeks from the companies two commitments - Principle 16 seeks businesses to “express their commitment to meet this responsibility through a statement of policy” and Principle 17 mandates businesses to carry out human rights due diligence process.

A Company's respect for Human rights is first reflected by the presence of a policy statement which explains how the company understands its responsibility towards human rights and sets clear expectations and guidance for its implementation. This is followed by assessing how the company's operations and business relationships directly, or through its business relationships in its value chains can pose risks to human rights.

According to UNGP guidelines, Companies have the responsibility to carry out effective human rights' due diligence, which includes an objective assessment of a company's human rights risk coupled with effective steps to mitigate or avoid them. This requires them to map

⁵⁷ https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf

all of the potential negative impacts on different groups of people, and then prioritise them for action by determining the severity of the impact and the likelihood of occurrence.

Due Diligence is an important tool for companies to conduct on-going risk management process that are reasonable and prudent in order to identify, prevent, mitigate and address its adverse human rights impacts.

It involves four core components:

- (a) **Identifying and assessing** actual or potential adverse human rights impact that the businesses cause or contribute to, through its own activities, or which may be directly linked to its operations, products or services by its business relationships;
- (b) **Integrating findings** from such impact assessments across company processes and taking appropriate action according to its role in causing the said impact;
- (c) **Tracking** the effectiveness of measures and processes, to address adverse human rights impacts to assess efficacy; and
- (d) **Communicating** on how impacts are being addressed and visibilising to stakeholders, in particular the affected stakeholders – policies and processes that would enable addressing such issues.

Using this as the basis of analysis, the section looks at two areas: -

1. **Policy Commitment** to respect human rights and its institutionalization
2. **Presence of a due diligence system** that tracks human rights risks on a continuous basis, and where presence has been notified, seek to find whether the system, is able to analyse both direct and in-direct causal linkages.

Policy Commitment to Respect Human Rights and its institutionalisation

The section here analyses the presence and explicit mention of policy documents with written commitment to human rights and elaborate mention of the processes and mechanisms that operationalises the policy. Further, it tries to ascertain the participation of key stakeholders in framing of such policy, to ensure that the strategy is well informed to address the issues at ground.

The table below provides a brief account of how the five companies stand with regard to presence of detailed Human Rights Policy.

Table 7: Presence of Human Rights Policy⁵⁸

Presence of a detailed Human Rights Policy to commit itself to address adverse impact of human rights proactively	Nestle	LIC	Tata Tea	NHPC	Asbestos
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⁵⁸ More detailed information is contained in the case study in Annexure I

A	Explicitly makes the above commitment in a written policy statement	Yes	No	Yes	No	No
B	Available in public domain	Yes	No	Yes, part of Code of Conduct	No	No
C	Approved by the Board of Directors	Yes	No	No	No	No
D	Based on extensive consultation with stakeholders	No	No	No	No	No
E	Details out processes and mechanisms around operationalising the policy	No	No	No	No	No

Source: Nestle⁵⁹; Tata Code of Conduct⁶⁰

As briefed in table 7, apart from IFC, Nestle and Tata Tea, none of the other Companies have disclosed their Human Rights Policy in the public domain. In case of Tata Global Beverages while it is mentioned that the Human Rights policy is included as part of code of conduct, there is no mention of how the accepted/stated principles will be understood and adapted within the organization or evaluation mechanisms that will be deployed to see if it is being implemented by suppliers. IFC's commitment to Human Rights is captured in its Sustainability Policy and Access to Information Policy. The policy is guided by the International Bill of Human Rights and the eight core conventions of the International Labour Organization. It states that in meeting its human rights responsibility, it creates *“access to an effective grievance mechanism that can facilitate early indication of, and prompt remediation of various project-related grievances”*⁶¹.

The absence of Human Rights policy in other cases makes it difficult to understand the company's alignment with Human Rights and acknowledgement of the possibility of any negative impact that it might have in course of its operation. This makes it difficult to hold the company liable for any violation, and thereby obstructing the understanding of the forward and backward linkages with regard to the violation.

Presence of a due diligence system that tracks human rights risks on a continuous basis, and where presence has been notified, whether the system, is able to analyse both direct and in-direct causal linkages

Further analyses about the process and mechanisms, demonstrate that only Nestle, on its global website states that it has a Human Rights Due Diligence (HRDD) program which helps

⁵⁹ <https://www.nestle.com/csv/impact/respecting-human-rights/human-rights-impacts>

⁶⁰ <https://www.tataconsumer.com/investors/policies?reload>

⁶¹ https://www.ifc.org/wps/wcm/connect/7141585d-c6fa-490b-a812-2ba87245115b/SP_English_2012.pdf?MOD=AJPERES&CVID=kilrw0g

them analyse salient issues, understand impact of its operations and develop solutions to address. IFC, with shares in Tata Global Beverages, also reports presence of due-diligence mechanisms, which is captured in its sustainability policy. Its policy states that 'IFC undertakes due diligence of the level and quality of the risks and impacts identification process carried is out by its clients against the requirements of the Performance Standards, informed by country, sector, and sponsor knowledge'⁶².

Case at a Glance

Using framework, table 8, below, descriptively presents the findings with regard to Nestle:

Table 8: Nestle- Presence of Policy⁶³

B) Systems and Policies in Companies to protect and prevent Human Rights Violations (Example: Nestle)		
B	Policy Commitment on Human Rights by the Company present	Options
B1	The Company has a detailed Human Rights Policy to commit itself to address adverse impact of human rights proactively	
A	Explicitly makes the above commitment in a written policy statement	Yes
B	Available in public domain	Yes
C	Approved by the Board of Directors	Yes
D	Based on extensive consultation with stakeholders	Not sure
E	Details out processes and mechanisms around operationalising the policy	Partly
B2	The Company has a detailed human Rights Due diligence system in place- specially with respect to the case in consideration	
A	Initiated for the activity, product or services at early stage itself	Not sure
B	Focused Consideration given for such activities which are in the value chain through partnerships. Risks and Challenges listed and communicated	Not sure
C	The due diligence does explore the question of complicity- wherein the company may benefit from abuse committed by partners	Not sure
D	Due diligence is on-going process, for risks may vary over time	Not sure

Source: Nestle⁶⁴

⁶² https://www.ifc.org/wps/wcm/connect/7141585d-c6fa-490b-a812-2ba87245115b/SP_English_2012.pdf?MOD=AJPERES&CVID=kilrw0g

⁶³ More detailed information is contained in the case study in Annexure I

⁶⁴ <https://www.nestle.com/csv/impact/respecting-human-rights/human-rights-impacts>

Nestle has incorporated human rights commitment into their Corporate Business Principles and Management Principles, which states its commitment to Human rights and explicitly mentions that its supports and respects “the protection of international human rights within our sphere of influence”⁶⁵. The Principles mention that it draws from International Standards and Conventions including UN Global Compact, ILO Conventions 87, 138, 182* UN Convention of the Rights of the Child: Article 32, OECD Guidelines for Multinational Enterprises 2000 and ILO Declaration on Multinational Enterprises 2006. The Company’s Human Rights Due Diligence Programme, which set out its corporate responsibility to respect human rights, is aligned with the UN Guiding Principles on Business and Human Rights⁶⁶. It is the only company which has a policy which has been ratified by top management. However, the disclosure falls short of details on stakeholder consultation for inputting into this and operational guidelines for implementing the policy. The analysis, however, due to lack of evidence in the public domain, is unable to conclude the efficacy of the system, and whether due to Nestle controversy the company employed necessary due diligence processes to detect and redress the violation.

Occurrence	System	Detection	Remediation
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C. Human Rights Violation in the context of Business Operations: Detection

Principle 18. In order to gauge human rights risks, Companies should draw on internal and/or independent external human rights expertise; (b) Involve meaningful consultation with potentially affected groups and other relevant stakeholders.

Figure 5 – UNGPs

Source: *United Nations Guiding Principles on Business and Human Rights*⁶⁷

One of the foremost steps towards addressing Human Rights violation by businesses is detection, i.e. identifying the violation by assessing the impact of the operations. In other words, this process should include assessing Human Rights impact, identifying who may be affected, listing the relevant human rights standards and the commensurate issues and the role of the business entity vis-a-vis the violation. While doing this, UNGPs stress that particular attention needs to be paid to “human rights impacts on individuals from groups or populations that may be at heightened risk of vulnerability or marginalisation”. To better understand violation, UNGPs highlight the need for consultation “to understand the concerns of potentially affected stakeholders by consulting them directly in a manner that takes into account language and other potential barriers to effective engagement”.

⁶⁵ https://www.nestle.com/asset-library/documents/library/documents/corporate_social_responsibility/nestle_corporate_business_principles_u_k_english.pdf

⁶⁶ <https://www.nestle.com/csv/impact/respecting-human-rights>

⁶⁷ https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf

In line with the guidelines of the UNGP, the framework analysed detection using the following indicators:

- Acknowledgement of the presence of detection mechanisms and its ability to address issues of the most vulnerable and at-risk communities
- Identification and acknowledgement of the human rights violation by the business

Using the above-mentioned indicators, the study to understand role of companies in detecting Human Rights Violation, tried to identify (a) whether the company had been carrying out periodic assessments of actual and potential human rights impacts of company activities and relationships; (b) how the violation was detected and medium used to surface it; and c) whether the company acknowledged and owned the violation, i.e. immediate response vis-a-vis the violation.

Presence of Systematic Detection System for Human Rights Violation: -

No such system seems to exist either at LIC or APPL. In case of NHPC, traditionally, socio-economic surveys and R&R Plans are reported as being an integral part of the Environmental Impact Assessment (EIA) and Environmental Management Plan (EMP) report, prepared as per the provisions of EIA Notification 1994 and 2006. In case of Asbestos, Hyderabad Industries Limited reports that it is the only company in the industry to have Environment, Health and Safety wing to monitor health of each employee and participates in the global Chrysotile forum. Visaka Industries Limited from the same group claims that 'regular health check-ups for all of our employees confirm the absence of any asbestos-related disease over decades of service. We ensure the highest level of safety for our employees and the community. Living and working under an Everest Roof is safe'. Nestle has a global policy for detection but details of how it is applied/contextualised to the Indian context is not given.

Detection of Violation

It is telling of the environment within Companies in India that none of the violations cited in the case studies were detected by the Corporate itself. Table 9, clearly indicates that in all the cases the violations were detected by external entities. In case of Nestle, while a random check and subsequent test by a State Regulator led to the surfacing of the violation, Civil Society Organizations making a complaint to the IFC along with media coverage of the violations was the reason in the case of tea plantations workers. The voice of tobacco victims –a civil society organization filed an RTI which was later followed up by a PIL in case of LIC investment in ITC. A Special Writ petition followed by a Leave Petition in 2016, filed by the Loktak Project Areas affected Action committee brought to light the violation, and Civil society and State together brought to the fore the violation in case of Asbestos.

Table 9: Detection of violation⁶⁸

Business Involved in the Alleged Violation	Violation Surfaced by	Medium Used to surface the violation
Nestle	State	A government regulatory authority order
Life Insurance Corporation of India	Civil Society Organization along with concerned citizens.	RTI followed by Public Interest Litigation.
NHPC	Civil Society Organization	Special Writ Petition
Everest and Others	Civil Society and State	NHRC
IFC, Tata Group and APPL	Civil Society Organization	Complaint to Ombudsman of Multilateral Institution

Source: Indian Kanoon⁶⁹; Case Mine⁷⁰; CLPR⁷¹; CAO Ombudsman⁷²; Ban Asbestos India⁷³

Immediate Reaction to the Violation

Analysis of the cases demonstrates that dialogue with and participation of community is lacking. One company accepted it partially, refuting some of the violations and accepting others. It also developed an action plan as part of the remediation process subsequently; however, the quality of implementation of the plan was contested.

Nestle asserted that testing protocols had not been followed and interpreted incorrectly. According to them, the Product contained two parts i.e. the Noodle and the Tastemaker. The samples had been tested for each of the two components separately whereas procedurally it should have been tested as a combined end product, i.e. the form in which it is finally consumed. In a letter by the CEO dated 2nd June 2015, the company stated “it is a known fact that it is not possible to distinguish between naturally occurring glutamate and added glutamate in foods”. The Company’s aforesaid letter further reads “We have been declaring “No Added MSG” on Maggi Noodle Packs as we do not add MSG (flavour enhancer- E621) as an additive in the product.

Similar responses were also received from other companies involved in the other cases. In cases involving hydro-electric project and Asbestos, the companies did not acknowledge the violation. In case of NHPC, according to the company, it was already giving 12% from its profits to the government of Manipur for the development of the region. And that the welfare of the people is the responsibility of the state government. In case of Asbestos, the companies claimed that there were no issues in the product that they make and the OHS of employees⁷⁴.

⁶⁸ More detailed information is contained in the case study in Annexure I

⁶⁹ <https://indiankanoon.org/docfragment/66718388/?formInput=maggi%20noodles>

⁷⁰ <https://www.casemine.com/judgement/in/5811a4ffe691cb26fc4da2a6>

⁷¹ <https://clpr.org.in/wp-content/uploads/2017/06/PIL-Petition-2-31-65.pdf>

⁷² http://www.cao-ombudsman.org/cases/case_detail.aspx?id=195

⁷³ <http://www.asbestosfreeindia.org/>

⁷⁴ More detailed information is contained in the Asbestos Case study in Annexure I

Occurrence	System	Detection	Remediation
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D. Human Rights Violation in the context of Business Operations: Response and Remedy

Principle 25. As part of their duty to protect against business-related human rights abuse, States must take appropriate steps to ensure, through judicial, administrative, legislative or other appropriate means, that when such abuses occur within their territory and/or jurisdiction those affected have access to effective remedy.

Principle 27. States should provide effective and appropriate non-judicial grievance mechanisms, alongside judicial mechanisms, as part of a comprehensive State-based system for the remedy of business-related human rights abuse.

Principle 29: To make it possible for grievances to be addressed early and remediated directly, business enterprises should establish or participate in effective operational-level grievance mechanisms for individuals and communities who may be adversely impacted.

Principle 31: In order to ensure their effectiveness, non-judicial grievance mechanisms, both State-based and non-State-based, should be: (a) Legitimate... (b) Accessible... (c) Predictable... (d) Equitable... (e) Transparent... (f) Rights-compatible... (g) A source of continuous learning...

Figure 6 – UNGPs

Source: *United Nations Guiding Principles on Business and Human Rights*⁷⁵

Once a violation has been detected as a result of Company's action, things need to be set right. The Company's response and the process followed become critical in this connection.

The Third pillar of the UNGPs argues that even where states and business implement the Guiding Principles, in its true spirit, company operations may result in human rights violations of the communities and business stakeholders. To address these occurrences, affected people need to be able to redress their grievance through effective redressal mechanisms- judicial and non-judicial. The UNGP in acknowledging the importance of the presence of remedy mechanisms sets out to create responsibility for both businesses and state to cooperate with each other to strengthen such systems. The UNGPs stress that

- States, as part of their duty to protect, must take appropriate steps to ensure that when abuses occur, victims have access to effective judicial and non-judicial state-based grievance mechanisms;
- Non-state-based grievance mechanisms should complement state-based mechanisms. This includes mechanisms at the operational level (meaning that

⁷⁵ https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf

companies are involved in implementing them), at a national level, or as part of multi-stakeholder initiatives or international institutions;

- Key effectiveness criteria of non-judicial grievance mechanisms, include being legitimate, accessible, predictable, equitable, transparent, rights-compatible, a source of continuous learning, and (in the case of operational-level mechanisms) based on dialogue and engagement.

Post the launch of UNGPs, much of the initiatives revolved around strengthening Pillar II, which called upon businesses to respect human rights. In June 2016, the UNHRC through a resolution,⁷⁶ called upon businesses and encouraged states to improve access to remedy, in line with their respective obligations and responsibilities under the UNGP. It stressed that while States are the primary stakeholders in providing access to remedy mechanisms, Business as an indispensable stakeholder, can add value for improving access to remedy.

Company's Response to Detection of Violation

While processes to enable remediation exist in half of the case studies, and are available in the public domain, only in one case out of the five (the Tea Estate case where 3 out of ten companies studied were involved), was a task force set up to investigate and suggest remediation and action plan. Only part of the information was, however, shared publicly. The action plan involved taking remedial measures as well as strengthening grievance redressal mechanisms. In the case Nestle while the Company ceased the production of Maggi, it stated that it done because of consumer confusion⁷⁷, and not because of the alleged violation. Table 10 demonstrates the companies' response upon detection.

Table 10: Company's response to detection⁷⁸

Parameters of	Nestle	LIC	NHPC	Everest, UAL	IFC, Tata, APPL
Processes available to enable remediation shared publicly	Yes	No	Yes	No	Yes in case of IFC, and partially in case of Tata
Rapid task force set up to deal with the violation	No.	No	No	No	Yes, partially.
Treated the violation as a legal compliance issue	No	No	No	No	Yes, partially.
Transparency - Placing due diligence	No	No	No	No	Partial. Shared part

⁷⁶ <https://documents-dds-ny.un.org/doc/UNDOC/LTD/G16/135/35/PDF/G1613535.pdf?OpenElement>

⁷⁷ <https://www.nestle.in/media/pressreleases/maggi-noodles-safe-nestle-decides-to-take-products-off-shelves>

⁷⁸ More detailed information present in case study in Annexure I

report in public domain.					of the company driven audit conducted online.
Ceasing or changing operations so that violation does not continue.	Yes, stating consumer confusion as the reason.	No.	No.	No.	Partial. Got an external audit and brought a phased plan into being.
Whether the company has been engaging in activity that amounts to being complicit with regulators/ state bodies?	Nestle has opened a food safety institute with FSSAI post the violation.	LIC is a Public Sector Undertaking with 51% shares with the government, so all activities are/can be attributed to the government.	Yes. LDA, government agency set-up under the Loktak Protection Act is evacuating the Loktak especially people living on the <i>phumudis</i> , so that the lake can be exploited to its full potential	Yes. Hindustan Composites India, a company supplying to Indian Railways, is also one of the leading companies in manufacturing and marketing of products such as brake linings, clutch, brake pads etc. using asbestos products. This reveals that Indian companies continue to import asbestos and that the Indian	No

				governmen t owned companies are also failing to apply the regulations in its due diligence processes during procureme nt	
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Source: Nestle⁷⁹; Frontline⁸⁴; Livemint⁸⁰; the Wire⁸¹; Business and Human Rights Resource Centre⁸²

In case of Nestle, the Company did not accept the violation; on its website,⁸³ post the incident in its timeline of events it said Nestlé India says it will remove the "No added MSG" claim on the pack – although it is 'factually correct and does not violate regulations'. While it did not acknowledge the violation explicitly, Nestle did voluntarily recall Maggi across the country, just before the FSSAI order and destroyed 38000 tonnes of the product claiming to do its duty, however some allege it was a cover up/destruction of evidence. The information shared through media and its website is clearly incomplete showing lack of transparency. Neither the initial FSSAI order nor its initial response was shared. Post the incident, the company through media interviews and advertising tried to project Nestle as a competent organisation with state-of-the-art facilities versus the government with poor resources/inadequate capacities, and therefore questioning the validity of results of latter's testing. Many of these so-called media reports now showcase this as a PR crisis management case study^{84&85}, versus a real violation by a multi-national company, with overtones of the Company being a victim of target competition.⁸⁶

According to a CSO, in 2011, conditions of entrenched labour rights violations and pathetic working conditions, focussing on long working hours, unpaid compensation, poor sanitation and health problems and the lack of freedom of association were present in plantations

⁷⁹ <https://www.nestle.in/media/statements/statement-regarding-ncdrc>

⁸⁰ <https://www.livemint.com/Companies/c1MIHhFpMJJIHupohxMVGn/Nestle-sets-up-first-food-safety-institute-in-India-at-Manes.html>

⁸¹ <https://thewire.in/politics/families-displaced-from-loktak-lake-area-recount-ales-of-eviction-to-irom-sharmila>

⁸² <https://www.business-humanrights.org/en/latest-news/minimum-wage-violations-perpetuate-modern-day-feudalism-on-assams-tea-plantations/>

⁸³ <https://www.nestle.in/media/statements/statement-regarding-ncdrc>

⁸⁴ <https://glean.info/pr-crisis-management-lessons-from-the-nestle-maggi-noodle-controversy/>

⁸⁵ <http://www.onlinejournal.in/IJRV2110/119.pdf>

⁸⁶ <https://food.ndtv.com/food-drinks/maggi-noodles-ban-nestle-india-claims-its-being-singled-out-1224725>

owned by Tata Tea with significant investment by IFC⁸⁷. Once it was brought to light, AAPL and Tata did set up processes. IFC, which is a multilateral financial institution, and is a partner in this did not act in spite of policy commitments. It states commitment in the areas of wages, independent audit and worker satisfaction survey. APPL and Tata set up a task force to investigate and suggest remediation and action plan. The IFC ombudsman had put all the reports relating to the investigation in the public domain. Post the audit, Tata came up with an action plan for improvement in workers living and working conditions.

Further analysis, demonstrates complicity on part of the State. In all but one case, the State continued to maintain partnership or enter into new partnerships with the companies, responsible for violation of Human Rights. In some cases, like Maggi Noodles, the Company Nestle set up a testing laboratory with FSSAI, the agency that ordered probe into the case. In Loktak, the very agency set up by the government to oversee the management of the Lake, evicted people from the lake and restricted livelihood activities by them.

Remediation

THE PRINCIPLES

Principle 29. To make it possible for grievances to be addressed early and remediated directly, business enterprises should establish or participate in effective operational-level grievance mechanisms for individuals and communities who may be adversely impacted.

Principle 31. Effective Judicial Mechanisms should be legitimate, accessible, predictable, equitable, transparent, Rights-compatible, A source of continuous learning and based on engagement and dialogue.

Figure 7 – UNGPs

Source: *United Nations Guiding Principles on Business and Human Rights*⁸⁸

The UN Guiding Principles establish responsibility for the companies to provide remedy for people harmed by their decisions and actions. As per UNGP, Companies also have a responsibility to help ensure that people who suffer abuses that occur across their sphere of influence are able to access appropriate remedies. It includes both the range of existing pathways for people to raise complaints as well as processes the company has, to provide remedy where it has caused or contributed to a negative impact.

The analysis focuses on the avenues provided by a company to submit and resolve grievances through appropriate remedy mechanisms, which are transparent, available in the public domain and ensure protection of whistle blowers and human rights defenders.

The case studies show extreme laxity on part of companies to redress violations that accrue due to their operations. As elaborated in table 11, while some Companies report presence of

⁸⁷ <https://frontline.thehindu.com/the-nation/corporate-neglect/article9436089.ece>

⁸⁸ https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf

functional processes for reporting grievances, they offer little disclosure around processes followed on creating awareness and encouraging people to use them. Again, while most companies report presence of whistle blower policies, including clauses on protection of whistle-blowers (they don't include human rights defenders), protection offered in reality is not shared. The case studies, demonstrate the lack of regard for right to remedy by the companies, thereby leading to continual human rights abuse.

Table 11: Presence and Effectiveness of Grievance Redressal Mechanism⁸⁹

In the Case Involving	The Company has a functional operational -level grievance mechanism Accessible and communicated	The company provides proactively all information relating to the case to the aggrieved so that durable solutions be arrived	The company engages with affected or potentially affected communities to ensure that the stakeholder groups actually use it in practice.	The Company has ensured steps to ensure no harm to whistle blowers and human rights defenders	The Company has actually addressed the adverse impact in comprehensive way
Nestle	Yes	Not certain. It claims to do so on its website.	Not certain.	It has a whistle blower policy, but not certain about practice.	No
LIC	No	No	No	No	No
NHPC	Yes	No	No	No	No
Asbestos	No	No	No	No	No
Tata, IFC, APPL	Yes, Tata and IFC has	No	No	In case of IFC-policy in place.	No

Source: NHPC; Centralized Public Grievance Redress and Monitoring System⁹⁰; Nestle; Tata Consumer⁹¹; IFC⁹²

Cases at a Glance

⁸⁹ More detailed are contained in case study in Annexure I

⁹⁰ <https://pgportal.gov.in/>

⁹¹ <https://www.tataconsumer.com/>

⁹² https://www.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/sustainability-at-ifc/publications/publications_gpn_grievances

Using framework discussed, above table 12 descriptively presents the findings with regard to NHPC

Table 12: Grievance Redressal Mechanisms in NHPC⁹³

E	Remediation available in Companies in the Context of Human Rights Violations Example: NHPC		
E1	The Company has a functional operational-level grievance mechanism(29)		Yes, the company is under the Centralized Public Grievance Redress and Monitoring System (CPGRAMS), an online web-enabled system over NICNET developed by NIC, in association with Directorate of Public Grievances (DPG) and Department of Administrative Reforms and Public Grievances (DARPG). CPGRAMS is the platform based on web technology which primarily aims to enable submission of grievances by the aggrieved citizens from anywhere and anytime (24x7) basis to Ministries/Departments/Organisations who scrutinize and take action for speedy and favourable redress of these grievances.
		The mechanisms are accessible directly by individuals or community affected	Yes
		The complainant can have first access that is no need to have accessed other means before.	Yes
		They can engage with company directly	No
		There is no undermining of trade unions or other processes	No
		The company provides public information about the procedure	Yes

⁹³ More detailed are contained in case study in Annexure I

		it offers	
		The time frame provided are respected	No
E2	The company provides proactively all information relating to the case to the aggrieved so that durable solutions be arrived(31)		No
E3	The company engages with affected or potentially affected communities to ensure that the stakeholder groups actually use it in practice.(31)		No
E4	The Company has ensured steps to ensure no harm to whistleblowers and human rights defenders		No
E5	The Company has actually addressed the adverse impact in comprehensive way		No

Source: NHPC; Centralized Public Grievance Redress and Monitoring System⁹⁴

NHPC, at the company level, is under the Centralized Public Grievance Redress and Monitoring System (CPGRAMS), an online web-enabled system over NICNET developed by NIC, in association with Directorate of Public Grievances (DPG) and Department of Administrative Reforms and Public Grievances (DARPG). A web-based platform, CPGRAMS primarily aims to enable submission of grievances by the aggrieved citizens, located in any region, from anywhere and anytime (24x7) basis to Ministries/Departments/Organisations who scrutinize and take action for speedy and favourable redress of these grievances. The Company website directs the user to the link, however, on its own website it hasn't published the number of cases that have been registered through this.

⁹⁴ <https://pgportal.gov.in/>

Particularly with regard to Loktak, the Company has stirred away from any report on complaints being filed rather has quoted that the issues were being raised to malign its image. According to NHPC, they are already giving 12% free power, from what is produced, for the development of the state and the region, and beyond that the welfare of the people is the duty of the state.

Right to Protest of Human Rights Defenders Violated – Vedanta

A Case of Complex Linkages

As a part of the study, the team also evaluated the Tuticorin case where the right to protest of individuals against excesses of the company was violated.

Since 22 May, 2018, at least 11 people have died after the Tamil Nadu police opened fire on those protesting against the expansion of Sterlite Industries' copper smelter complex in Tuticorin.⁹⁵ The Madras High Court has stayed the construction, but the protestors continue their agitation, demanding the closure of the Vedanta subsidiary's copper unit, which they allege have violated environmental laws and caused a number of health problems due to gas leaks. The smelter, which can produce 400,000 tonnes of copper cathode a year, is run by Vedanta's Sterlite Copper unit, which is controlled by Vedanta Ltd, a majority-owned subsidiary of London-listed Vedanta. The plant has been shut since March 27, when it was closed as part of a 15-day scheduled maintenance. The company plans to double capacity at the smelter to 800,000 tonnes per year.⁹⁶

During the closure, the Tamil Nadu Pollution Control Board rejected Vedanta's licence to operate the smelter in April, saying the company had not complied with local environmental laws. Sterlite has challenged the step. The board has accused Sterlite of dumping copper slag in a river and not furnishing reports of groundwater analysis of bore wells near the plant. Moreover, sulphur-di-oxide levels had gone off the charts wherein it showed a reading of 2939.55 mg/cubic metre against the prescribed limit of 1250 mg/ cubic metre.⁹⁷

UN human rights experts have condemned the Tamil Nadu police's "disproportionate" and "excessive use of lethal force" against protesters at the now closed Sterlite copper plant. They have called for an independent investigation to ensure that those who violated human rights are brought to justice. The Government should uphold the right to freedom of expression and assembly, as they are the cornerstone of democratic societies and a critical tool to identify and protect against business-related human rights abuses. The UN expressed extreme concern over the use of force, including live ammunition, against protesters "marching to raise legitimate human rights and environmental concerns.

⁹⁵<https://www.livemint.com/Politics/XeZ4pDkDNr7rLEeJQmtmzJ/Sterlite-protest-turns-violent-in-Tamil-Nadu-11-killed-in-p.html>

⁹⁶<https://economictimes.indiatimes.com/news/politics-and-nation/whats-wrong-with-vedantas-sterlite-unit-in-tuticorin-6-things-you-should-know/articleshow/64273066.cms>

⁹⁷<https://www.financialexpress.com/india-news/protest-over-sterlite-plant-in-tamil-nadu-turns-violent-nine-killed/1177534/>

Despite local and national judicial and administrative bodies have documented water contamination, air pollution and other forms of environmental degradation linked to the copper smelting plant and related activities, the state has not taken cognizance of the matter and seems to have colluded with Vedanta group.

Leaders of the protest and others were booked for several crimes under the Indian Penal Code. These ranged from “joining an unlawful assembly armed with a deadly weapon” to “wrongful confinement” and “criminal intimidation” to the bizarre accusations of performing “obscene acts and songs” and circulating counterfeit coins. Cases were filed by the state against protest leaders and villagers. As tabulated, there were 19 cases of sedition involving 8,450 people; 19 cases of waging war against the state involving 18,350 people; 15 cases of attempt to murder against 18,143 people; and so on. In all, over 300 cases involving a staggering 120,000 people.⁹⁸

Violation of International Convention and National Legislation

The analysis of the case revealed that the excessive use of police force against the community, workers and human rights defenders, leading to violence and death, in some cases, violated the Rights of life and liberty and breached International Covenant on Civil and Political rights (Article 21) and Fundamental Right-Art 19 and 21.

Under the UN Guiding Principles on Business and Human Rights, all business enterprises have a responsibility to respect human rights, including identifying, preventing, mitigating and accounting for how they address their adverse human rights impact. It is the responsibility of the government of India to take all the necessary measures to ensure that all business enterprises respect national as well as international human rights and environmental norms, and that the Sterlite Copper’s smelting plant resumes operations only after meaningful consultation with affected communities and when fully complying with Indian environmental laws.

Linkage to the businesses

In this case the analysis reveals that while the company’s operations were leading to environmental pollution, this violating the rights to health and well-being of the community, which led to protest. The protestors were fired upon by the state apparatus – the police. It is, however, pertinent to note that that it was the company which first claimed the perceived threat on the basis of which the action of the state followed. The company, instead of seeking protection for it, if it really apprehended danger, had instead sought the banning of the democratic right of people to protest in a public space. The police complied and it led to severe consequences for the people. And this was happening, while the people of the Thoothukudi has clearly communicated that their protest was not against the industries, but against the hazardous once with scrupulous practices, affecting the people and environment. The government of Tamil Nadu had, also failed to point out before the Hon’ble Madras High Court to the huge impropriety of a private company seeking a ban of

⁹⁸<https://www.livemint.com/Opinion/GZIFqQRFhLgNGbNIW5Nk0J/Tamil-Nadu-needs-to-fix-its-human-rights-response.html>

any activity democratic in the public space, so that its private interests are safeguarded. This infringement on the rights of the community to protest peacefully was a direct attack on the fundamental rights as enshrined in the Constitution of India, to seek answers and redress issues of non-compliance by the company.

Presence of Human Rights Policy Governing Vedanta

Vedanta as reported the presence of a Human Rights Policy, which guides their engagement. On its website⁹⁹, Vedanta mentions that *“With most of our operations in developing nations, human rights are in the 'critical importance' of our materiality matrix. An integral part of Vedanta's core value of Respect, it is a crucial parameter in making key business decisions and acts as a guideline on issues pertaining to labour rights and industrial relations. Our human rights policy is aligned to the 'United Nations Guiding Principles on Business and Human Rights' and includes strict prohibition on the use of child or forced labour - either directly or through contract vendors”*.

Response or Remediation by the Company

Sterlite acknowledged that a violation had taken place, but did not see it a result of its business operations, nor owned responsibility for the violations

Figure 8- Vedanta in Tuticorin

Source: National Herald¹⁰⁰, Vedanta⁹⁶, People's Watch¹⁰¹

Section 2: Role of the State and grievance redressal institutions in protecting human rights and to facilitate remediation for the victims

Principles 3. In meeting their duty to protect, States should: (a) Enforce laws that are aimed at, or have the effect of, requiring business enterprises to respect human rights, and periodically to assess the adequacy of such laws and address any gaps

Principle 4. States should take additional steps to protect against human rights abuses by business enterprises that are owned or controlled by the State, or that receive substantial support and services from State agencies such as export credit agencies and official investment insurance or guarantee agencies, including, where appropriate, by requiring human rights due diligence.

Figure 9- UNGPs

Source: United Nations Guiding Principles on Business and Human Rights¹⁰²

⁹⁹ <https://sd.vedantaresources.com/SustainableDevelopment2018-19/HumanRights.asp>

¹⁰⁰ <https://www.nationalheraldindia.com/india/full-text-of-pucl-statement-on-sterlite-vedanta-firing-condemning-jallianwala-bagh-like-killings-in-thoothukudi-by-tamil-nadu-police-on-may-22->

¹⁰¹ <https://www.peopleswatch.org/reports/fact-finding/day-tuticorin-burned>

¹⁰² https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf

The State assumes the primary role in redressing violations that accrue due to operations of the businesses and other entities. The legislative mandate of the government empowers it with responsibility to ideate and implement necessary policies that protect human rights and where necessary, critically review the existing policies for gaps and any inadequacies that may put the rights at risk. In doing this, the UNGP specifies that the state should ensure linkages between the state and business do not adversely impact the enjoyment of rights by the individuals. In other words, human rights should not be impacted due to the creation of the nexus between State and Business, whereby the state acts in complicity with the business, ignoring the citizens.

The role of the State in creating an environment that is conducive to business respect for human rights includes: -

- Working to achieve greater **legal and policy coherence** between their human rights obligations and their actions with respect to business, including by enforcing existing laws, identifying and addressing any policy or regulatory gaps and providing effective guidance to business;
- Fostering business respect for human rights **both at home and abroad**;
- Taking particular measures where there is a close **nexus between the state and business** such as ownership or when a state conducts commercial transactions with business (such as through government procurement or the provision of trade or export credit support);

To better under this the study framework used the indicators as below.

- Role of the State – Legislative and Implementation processes of policies and proactive role as a defender and protector of human rights
- Presence of nexus between State and business which may undermine the enjoyment of human rights and redressal in case of grievances.

While Human Rights are very descriptively captured in International Conventions and Declarations, in the National scenario, the rights are not comprehensively captured in Indian Laws and Regulations. Due to this in most of the cases, the State can be seen as shirking its primary responsibility to protect human rights, by either failing to pass legislation that meets human rights, or weak enforcement of legislations that protect workers and affected communities. For example;

- In the Maggi case unlike the USFDA which clearly states that foods with any ingredient that naturally contains MSG cannot claim “No MSG”¹⁰³ or “No Added MSG” on their packaging, there is no such provision in the Indian Law¹⁰⁴. Absence of clarity and details in Indian standards lead to Corporate stating with impunity that they followed local

¹⁰³ <https://www.fda.gov/food/food-additives-petitions/questions-and-answers-monosodium-glutamate-msg>

¹⁰⁴ <https://testing-lab.com/2018/01/monosodium-glutamate-use-food-regulatory-guidelines/>

practices¹⁰⁵. There is no central statutory agency or uniform legislation regulating the advertising industry and very few policies/standards that consider Children's Rights as consumers.

- In the tobacco case, while the Government has a dedicated programme, tobacco control programmes and policies, National Tobacco Control Programme and the Comprehensive Tobacco Prevention Act (COTPA), the Insurance Regulatory Development Authority, which regulates the Insurance Companies in India, however, does not prohibit investment in tobacco sector, thereby, failing to curb tobacco production.
- Where legislation does exist, there has been laxity in enforcing it, as is in the cases of Asbestos. Asbestos production increased in volume in 2012, as compared to the previous year despite there being a ban on mining the substance.

One of major issue of concern however is the apparent complicity between the State and Corporate exhibited in various ways – waiving requirements, actively perpetuating a culture of corporate immunity, privileging the pursuit of profit over human rights, or making minimal or no effort to address violations once they have occurred. And even when they are captured the policy gaps are leveraged by the company to not report on the violation. For example, in the Tobacco case while Right to Information was used to access data about investment in tobacco companies, the company on further enquiry about records of applications of insurance seekers it rejected based on smoking, quoted article 7(9)106 of the RTI Act to seek omission from giving out the information¹⁰⁷.

Such lacunas in the national regulations put marginalised communities at risk. Table 13 descriptively mentions the gaps in legislations and the laxity on part of the government, which puts vulnerable communities and groups at risks. Here the Marginalised communities include consumers, communities near the company's operations, workers and other wider members of the society. Their position vis-à-vis the company puts them at a vulnerable position, thereby leading to violations and abuse of power and influence by the companies. The analysis of the cases lists a wide range of actors, who are being marginalised due to their relationship with the company and these include consumers, especially children, workers, people living in the vicinity of the company's operation, insurance seekers, among others. In many cases the existing socio-economic positions of the stakeholders and communities, further makes them vulnerable to exploitation.

¹⁰⁵<https://www.ndtv.com/india-news/full-statement-by-nestl-india-no-order-to-recall-maggi-noodles-being-sold-765030>

¹⁰⁶Article 7(9) of the RTI Act says that the information should be provided in the form in which it is sought unless it would disproportionately divert the resources of the public authority or would be detrimental to the safety or preservation of the record in question.

¹⁰⁷<https://www.downtoearth.org.in/news/lics-unhealthy-choice--34221>

Table 13: Role of State in Protecting Human Rights¹⁰⁸

Role of State in the Case of Company	Adequacy of legislation	Strong monitoring mechanisms in place	State Regulator proactive in upholding human rights	Evidence of complicity between State and Business leading to non addressal of adverse human rights impact
Nestle	Partial. While laws exist, there is lack of clarity and details.	Gaps exist in implementation. Despite the recall order, the FSSAI exhibits inadequate capacities of testing labs, cumbersome/delayed approval processes and weak enforcement mechanisms.	Partial. The FSSAI order regarding the recall is one example.	Yes. Post the violation, there is a clear shift in the company's Corporate Responsibility Programme. Many of its programmes are now being implemented in partnership with Government associated programmes, a clear indication of indirect corporate lobbying. This is also evidenced in its work in trying to set up a food safety institute in Manesar along with FSSAI.
Life Insurance Corporation of India	Not present. LIC is governed by IRDA and LIC Act, none of which provides for sectoral exclusion in	N.A.	No.	IRDA was approached by LIC during the same time when PIL was file in 2017 to increase LIC's

¹⁰⁸ More details are contained in case study in Annexure I

	case of investments.			exposure to ITC. IRDA only restricted the exposure to 15% and did not ban it.
NHPC	Yes, The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 provides adequate protection.		No.	Yes, NHPC is a state-owned enterprise. Also, near the project area the state is proactively working to evacuate people near the lake.
Everest, UAL	Partial protection. There are judgements and laws which recognised asbestos as hazardous requires for compensating the victims of asbestos and has banned mining of asbestos in India however there is a need of a stronger law to impose ban on usage and manufacture of	Gaps exist at the implementation level, and laws are not implemented. Despite mining being banned, the production quantity has increased in years pursuant to the ban.	Partial. Some of the states have identified the hazardous impact of asbestos and banned usage of asbestos roofs in public places such Kerala ¹⁰⁹ . Similarly, the Bihar government has recently declared about its willingness to impose a ban on asbestos ¹¹⁰ .	Yes. There is continuous usage and demand of asbestos products by the Indian railways. Despite the fact that asbestos is recognised as hazardous internationally, NIOH in its report in 2014 did not recognise asbestos as hazardous.

¹⁰⁹<https://www.thehindu.com/news/cities/Thiruvananthapuram/govt-bans-asbestos-roofs-in-schools/article29678751.ece>

¹¹⁰<https://www.counterview.net/2019/07/campaign-victory-bihar-considers-to-ban.html>

	asbestos.			
IFC, Tata Tea and APPL	Not present. Old Plantation Labour Act which transfers responsibility of welfare to Plantation Owners.	Very little monitoring by the state of how plantations are run or the violations of human rights.	No. Most of the complaints have been directed to, and action taken by the IFC ombudsman.	N.A.

Source: ZEEBiz¹¹¹; Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation, and Resettlement Act, 2013¹¹²; Scroll¹¹³; Food safety and standards (packaging and labelling) regulations, 2011¹¹⁴; The Plantation Labour Act, 1951¹¹⁵

Case at a Glance

Using framework discussed, above table 14 descriptively presents the findings with regard to Asbestos industry

Table 14: Role of the State with regard to asbestos industries¹¹⁶

S. No	Role of State		
1	Whether the State has been able to protect the human rights through formulating strong laws?(3)		No
		Strong legislation in place?	There are judgements and laws which recognised asbestos as hazardous, requires for compensating the victims of asbestos and has banned mining of asbestos in India, however there is a need of a stronger law to impose ban on usage and manufacture of asbestos.
		Has created strong implementation machinery in place?	No

¹¹¹ <https://www.zeebiz.com/companies/news-lic-must-pare-itc-lt-stakes-to-below-15-by-dec-2018-irdai-20440>

¹¹² <https://www.prsindia.org/sites/default/files/LARR%20Act%2C%202013.pdf>

¹¹³ <https://scroll.in/pulse/836377/asbestos-harms-the-health-of-millions-of-indian-workers-will-the-government-finally-move-to-ban-it>

¹¹⁴ https://www.fssai.gov.in/upload/uploadfiles/files/Packaging_Labelling_Regulations.pdf

¹¹⁵ <http://legislative.gov.in/sites/default/files/A1951-69.pdf>

¹¹⁶ More details are contained in cases study in Annexure I

		The State regulator has played proactive role in upholding human rights	Partially yes, some of the states have identified the hazardous impact of asbestos and banned usage of asbestos.
2	State "periodically assesses the adequacy of such laws and address any gaps"(3)		No
3	Are there any indication of the complicity between business and state which has relevant to non-addressing of adverse human rights impact?		Continuous usage and demand of asbestos products by the Indian railways. Despite of being asbestos recognised as hazardous internationally, contradictory findings of NIOH which did not recognise asbestos as hazardous in the year 2014.

Source: *Asbestos Free India*¹¹⁷

In case of Asbestos, while the state has various laws in place to regulate usage and disposal of asbestos, it does not have adequate mechanisms in place to protect human rights of individuals. Asbestos has been banned by 66 countries across the world. In 2013, India opposed listing chrysotile asbestos as a hazardous substance. India has also resisted the inclusion of asbestos in the Prior Informed Consent list, citing lack of data¹¹⁸. No data is available to establish the prevalence of Asbestos disease in small and medium scale enterprises using Chrysotile asbestos. Lack of such data has been an issue of greater concerns for the stakeholders and the Government for making a policy decision for inclusion of chrysotile asbestos under the Annex-3 of the Rotterdam convention to which India is a signatory¹¹⁹.

It is only few of the ministries that have raised their concern publicly. Indian Government has chosen to remain silent on this¹²⁰. In fact the study done by NIOH which concluded with asbestos not being harmful was supported by the Ministry of Chemicals and Fertilizers. These activities indicate the complicity between states and the company.

¹¹⁷ <http://www.asbestosfreeindia.org>

¹¹⁸ <https://scroll.in/pulse/836377/asbestos-harms-the-health-of-millions-of-indian-workers-will-the-government-finally-move-to-ban-it>

¹¹⁹ *ibid*

¹²⁰ <http://www.asbestosfreeindia.org/2019/06/indian-govt-maintains-studied-silence.html>

In 1998 NHRC ordered “Replace the asbestos sheets roofing with roofing made up of some other material that would not be harmful to inmates.”¹²¹In 2019, The Drug Controller General of India issued show cause notice to Johnson’s and Johnson’s after finding asbestos particles in its talcum powder.¹²²

In 2019, the Bihar government has raised their concern over the recent deaths of children in Muzzafarpur where studies have revealed asbestos to be harmful to health and is likely to be one of the reasons for the increasing children death toll. The government has also expressed their interest in introducing policies thus attempting to introduce immediate ban on usage of asbestos¹²³.

Ministry of Health and Family Welfare issued notification supporting the findings of ICMR and DGFASLI which identifies asbestos related diseases in few of the factories of Maharashtra and Gujarat¹²⁴. The concerned ministry on their website mentions the carcinogenic nature of asbestos and lists down the findings of the study conducted by NIOH which provides data on asbestos related diseases and victims¹²⁵. Ministry of Labour and Employment has intimated the data of workers suffering from asbestos related diseases. Ministry of Mines has banned on granting of fresh license for mining of asbestos.

Access to Remedy – Mechanisms, Systems and Human Rights Defenders

While, the right to remedy is a core tenet of the international human rights system, and the need for victims to have access to an effective remedy is internationally recognized. Evidence in India and other countries suggests that where businesses are involved in human rights violation, victims often struggle to access remedy. To address these issues UNGPs explicitly state the need to remove barriers in access to justice during an event of Human rights violation by the businesses. It calls for State to prevent legal barriers and limit procedural and practical barriers that may prevent a victim from bringing up claims against the business. It suggests multifarious mechanism, including State, Non-State and Non-Judicial Mechanisms that enable right to justice.

To provide effective remedy, UNGPs and UNHRC also emphasise on the important role of human rights defenders in the context of business-related impacts, especially human rights due diligence and enabling companies, to understand concerns of affected stakeholders.

- To assess their human rights impacts accurately, business should consult human rights defenders as an important expert resource. They play a key role as watchdogs, advocates and voice for affected stakeholders.

¹²¹<https://nhrc.nic.in/dalitcases>

¹²²https://www.business-standard.com/article/pti-stories/drug-regulator-slaps-notice-to-johnson-and-johnson-for-violating-legal-provisions-in-product-ad-119030600001_1.html

¹²³ Available at: <https://www.counterview.net/2019/07/campaign-victory-bihar-considers-to-ban.html>

¹²⁴ <http://www.asbestosfreeindia.org/>

¹²⁵ <https://www.nhp.gov.in/disease/non-communicable-disease/asbestos-related-diseases>

- States should ensure that the legitimate activities of human rights defenders are not obstructed.

Drawing from these new trends, the study analyses the remedy mechanisms using various parameters, including:

- Presence of a coherent system of effective grievance mechanism that enables access to remedy
- Pro-activeness of various agencies in addressing human rights violations emanating from business operations.
- Role of various agencies helping to protect human rights defenders and civic space.

Table 15: Remedy Mechanisms

	Company	Which Remedy institution was approached?
1	Asbestos	<p>In the year 2004, a writ petition was filed at the Supreme Court by an NGO Kalyaneshwari, majorly seeking ban of asbestos in India, providing treatment to the victims of asbestos and initiate criminal proceedings against all those including owners of the factories, organizations and associations involved in infringing the rights of asbestos victims.¹²⁶</p> <p>In 2011 NHRC issued a notice to four central government ministries on its contradictory stand on white asbestos (Chrysotile): The National Human Rights Commission has issued a notice to four central government ministries – Environment, Chemical and Fertilizers, Commerce and Labour Ministries on white asbestos’s impact on was health and a claim that fifty thousand people die in India every year due to asbestos related cancer.¹²⁷</p> <p>In 2015, the National Green Tribunal directed the states in which asbestos mining occurs to survey the mines and report impact of mines and pits in existence, steps to taken to restore the affected area.¹²⁸</p>
2	LIC	<p>PIL was filed in Mumbai High Court by Sumitra Hooda Pednekar, widow of Maharashtra’s former home and labour minister, Satish Pednekar.¹²⁹ Satish Pednekar died of throat cancer due to his tobacco addiction. The others include Dr Pankaj Chaturvedi who is a cancer surgeon at Tata Memorial Hospital, R. Venkataramanan who is the managing trustee of</p>

¹²⁶<https://indiankanoon.org/doc/113669889/>

¹²⁷<https://www.hindustantimes.com/delhi/nhrc-issues-notice-on-white-asbestos-to-govt-ministries/story-6Mhi3oSnWYi1ZQL5uLDfZK.html>

¹²⁸<https://economictimes.indiatimes.com/news/politics-and-nation/sonia-rahul-say-bhardwajs-service-to-congress-will-always-be-remembered/articleshow/74547739.cms>

¹²⁹<https://www.bloombergquint.com/business/petition-seeks-to-bar-state-run-insurers-from-investing-in-itc-other-cigarette-makers>

		Tata Trusts, Ashish Deshmukh who is an MLA in Maharashtra and Dr Prakash C. Gupta, who is the director of Healix-Sekharia Institute of Public Health
3	NHPC	Writ petition was filed Imphal Bench of the Guwahati High court in 1994, followed by a special leave petition in 2016 in Manipur high Court ¹³⁰
4	Nestle	Mumbai High Court was approached by Nestle which stayed the ban on Maggi. Later the Supreme Court revived the class action suit in January 2019.
5	Tata Tea	The case is with the IFC ombudsman

Source: Indian Kanoon¹²²; NHRC¹²³; NGT order¹²⁴; Indian Kanoon¹³¹; Case Mine¹³²; CLPR¹³³; CAO Ombudsman¹³⁴;

The analysis in Table 15 demonstrates that in most cases the petitioners approached Courts to highlight the violation or challenge the directions of the government, while other mechanisms were leveraged, but the occasions for such remained few.

In case of Tata Tea, the case was filed with the IFC Ombudsman in February 2013, by three local NGOs on behalf of tea workers working and living on Tata company's tea plantations. The complaint highlighted labour rights violations and pathetic working conditions at three different plantations, focussing on long working hours, unpaid compensation, poor sanitation and health problems, and the lack of freedom of association. The implementation of the worker-shareholder programme was also questioned, with complainants contending that workers had been pressured into buying shares, often without proper information about the associated risks.

¹³⁰ <http://base.d-p-h.info/fr/fiches/dph/fiche-dph-8886.html>

¹³¹ <https://indiankanoon.org/docfragment/66718388/?formInput=maggi%20noodles>

¹³² <https://www.casemine.com/judgement/in/5811a4ffe691cb26fc4da2a6>

¹³³ <https://clpr.org.in/wp-content/uploads/2017/06/PIL-Petition-2-31-65.pdf>

¹³⁴ http://www.cao-ombudsman.org/cases/case_detail.aspx?id=195

Chapter 4: Findings and Conclusion

The study, very evidently brought out the ineffectiveness of Company based grievance mechanism and due diligence process to detect report, assess and address risks and grievances. In all cases under the study, evidences point towards failure of all forms of remedy mechanisms to address and mitigate violations rising during the company operation. The ensuing narrative below presents the findings of the study, against the three pillars of UNGPs.

Company's Responsibility to Respect Human Rights

In all cases under study, the companies violated the responsibility spelled under the UNGPs. According to the UNGPs "Business enterprises need to know and show that they respect human rights. They cannot do so unless they have certain policies and processes in place". It stresses on the need for businesses to integrate within their operations such processes that goes beyond simply identifying and managing material risks to the company itself, to include risks to rights-holders.

The cases studied as part of the research demonstrate that these processes are found lacking and where it is present, i.e. Nestle and Tata Tea, ineffective implementation cripples grievance redressal mechanisms. The insufficiency of the due diligence practices in the companies is reflected in its inability to detect these violations. In other words in all cases the issues were brought up by external stakeholders, including Civil Society organization, groups of concerned citizens and Government officials. Even post detection, only in one case, we find the company acknowledging the violations and stating there is a need to rectify the situation, but this remained only until the level of acknowledgement with no action being taken to rectify the situation. In other cases, the companies did not acknowledge the violation rather stated they were functioning under the scope of the prevailing laws. The absence of this primary grievance redressal mechanism renders early-stage recourse and possible resolution difficult, thereby undermining the 'Corporate Responsibility to respect Human Rights'.

State Duty to Protect Human Rights

The UNGPs place the primary role of protection of Human Rights on the State. According to UNGPs, the state should review whether the laws currently enforced are adequate to address issues, if required revise them, to provide the necessary coverage in light of evolving circumstances. It calls for state to offer as much clarity as maybe needed to provide sufficient guidance to enable enterprises to respect human rights.

The study as part of Pillar I, tries to analyse the state's Legislative Agenda, Monitoring and Implementation Agenda and evidences of complicity. In most cases, while legislations are there but gaps within them enables Corporate to state with impunity that they followed local practices and are therefore not violating the human rights. In cases where we have comprehensive laws like the Land Acquisition Act 2013, ineffective implementations and monitoring by the government, lead to perpetuation of violation. In most cases evidences of

complicity between business and state officials lead to continuation of human rights violation, as the state itself collaborate with the company committing the violation, like in case of NESTLE, FSSAI, which had issued an order against Nestle – presence of lead and MSG in Maggi- collaborated with the company to set up a testing laboratory in Manesar. Similarly, in the Hydropower Project case in Manipur, the government set up the Loktak Development authority for the management of the lake was found evicting people, so that the lake could be used to its full potential.

Access to Remedy

Access to effective remedy is a core component of the UN Guiding Principles on the Business and Human Rights (UNGPs). Guiding Principle 1 requires States to take "appropriate steps to prevent, investigate, punish and redress" business-related human rights abuses within their territory and/or jurisdiction.

The cases under the study showcase that in most cases the complaints access courts or judicial authorities to redress their grievance. Public Interest Litigations, Writ Petitions, Special leave petitions remained some of the important tools for highlights issues faced by the aggrieved communities. In one case that is Tata Tea IFC ombudsmen was approached, however, it did not render effective in addressing the issue. The analysis demonstrates that in India, judicial mechanism weighs in higher than other mechanism in filing complaints against companies and their human rights violating operations.

The above findings and detailed analysis of the cases demonstrate that Human Rights violations are perpetuated due to lack of effective grievance redressal mechanisms. Presence of effective and adequate grievance mechanism ensure that when violations occur there are avenues to bring up the issue and seek remedy. UNGPs stress on the need to develop and strengthen Operational-level grievance mechanisms as they provide important information about the effectiveness of the business enterprise's human rights due diligence from those directly affected. These systems offer businesses the opportunity to actively engage in remediation, in situations which are identified as those violating human rights. In all the above cases, the absence of such systems and its ineffectiveness, in cases where it is present, leads to continuation of human rights violation, with companies continuing to ignore the same. This issue is further exasperated due to absence of clear legislations that offer businesses the clarity around obligations that can mitigate such occurrences.

Chapter 5: Recommendations

Some of the recommendations are

Strengthening Grievance Redressal Systems and Mandatory Human Rights Due Diligence

The Companies should review their existing grievance procedures to ensure they are fair, transparent, understandable, well-publicised and accessible by all, and provide for grievances to be resolved effectively without fear of victimisation. The same should also be extended to the supply chain, to identify and mitigate any human rights risks that may arise in course of the Company's operations. The presence of mandatory Human Rights due diligence systems would enable companies to identify, assess and mitigate the risks that come to light due to the mechanism. In this the MCA can play a supportive role by prescribing uniform mandatory guidelines on the grievance redressing system for companies. Further to support redressal mechanism, Companies should have effective whistle-blower protection mechanisms as well as provision of legal aid to support human rights victims.

Increased Disclosure

The current reporting template needs to be strengthened and revised to ensure it is able to capture in details the human rights violation. The number of complaints, nature of the same and the response by companies on the same should be disclosed mandatorily, including creating a live online portal that provides the status of each complaint made in the system. This will enable in assessing the effectiveness of grievance redressal and due diligence process, and provide information for further revision and strengthening. These disclosures should be analysed by appropriate agency and the disclosures should be made for creating awareness among people.

Monitoring of the HR Due Diligence process

Monitoring would be key to ensure effective functioning of the due diligence processes in companies. While the MCA, within the government should assume the primary role, it could be further shared with other bodies, which can jointly hold the company liable for due diligence processes. On one hand this would increase effectiveness the processes in addressing a range of violations and make companies more diligent in addressing violation, on the other hand, the involvement of a spectrum of stakeholders would ensure the process is able to mitigate risks to whole bouquet of human rights that can be impacted by company operations.

Making Brands Responsible for Human Rights Due Diligence and disclosure of violations in supply chain, with appropriate liabilities

It is important that the task of ensuring a clean supply chain, be placed on bigger brands, as they are more in a position to bear, any cost which may arise in the process. All companies should be made to disclose the entire supply chain with specific details and self-certify to what level they have done due diligence and have ensured that there is no violation. Many of the Indian multi-national companies are already reporting the same under legislation in

the UK, Australia, California and France (with other countries following suit). The Indian Government may leverage these to ensure the same degree of compliance by the companies in India.

Addressing issues through Public Procurement

Just like a foreign buyer enforces social compliance and reporting against it through dedicated mechanisms, the government procuring products works and services should verify compliances. For that, it should create a division within the Department of Expenditure, Ministry of Finance to prescribe systems and mechanisms for the same. Given that most companies compete to receive government tenders, social norms and compliances in procurement would while on one hand, it will oblige companies to track the supply chain and address issues within in, on the other hand, it will offer incentives to companies who demonstrate compliance.

Enacting Legislations for Protection of Human Rights Defenders

In most cases analysed as part of the study, the complaints have been filed by Civil Society Organisations, Concerned Citizens, Human Rights Defenders and other stakeholders external to the company. This is true in most cases involving human rights violation by companies. Given this it is important that legislation be drafted which respond to the cases of HRDs being harassed, threatened, false cases registered against them and in severe cases killed or disappeared. This law should also recognize defenders working towards business and human rights and should include workers and their unions, non-governmental organisations, academics, researchers, journalists, lawyers etc. It should also mandate special courts and experienced special public prosecutors for trial of offences against HRDs arising as a result of their human rights work. Defenders are the watchdogs of democracy and human rights and hence, it is important to ensure them protection.

Strengthening other avenue for grievance redressal

As has been observed in the cases analysed, complainants have approach courts for registering their grievance against company inaction and transgression on their human rights. This demonstrates courts and judicial mechanisms as the primary avenues which are approached on event of violation. Given this, it is important that these institutions and the Authorities are trained and capacitated on aspects of business and human rights enabling them to provide legal services in cases of human rights violations by national and transnational corporations. And for this the component on Business and Human Rights, including but not limited to the UNGP and NAP on BHR, to be included in the curriculum of judicial academies, the LBSNAA at Mussorie, all Business & Law Schools.

Legislation against Nexus

In all cases, analysis demonstrates complicity by the State. This weakens grievance redressal systems and thereby rendering it difficult to hold the companies liable for action. It is therefore recommended that a mandatory guideline against nexus and complicity between State and Business be developed, especially during the grievance redressal process in accordance with Principle 7 of NGRBC. In some cases, the government is bound by global

conventions such as FCTC, wherein the Government is mandated to insulate its policy making from the lobbying by tobacco industry, asbestos, etc.

Annexure I – The Framework

A. Occurrence

A	Occurrence of Human Rights Violation in the Context of Business operation		Maggi	LIC	NHPC	Asbestos	Tata Tea
	State in one or two sentence the key 'adverse human rights impact' that is being discussed in this template		Nestle had marketed product, Maggi Noodles, that had excessive presence of lead and MSG; and this occurred despite disclosures to the contrary	While on one hand the FCTC was ratified by India, on the other the government's own insurance company, LIC owns stake in tobacco companies including ITC, VST and Dharampal & Satyapal Group	Ever since the commission on the Loktak dam, people's livelihood has been impacted. Since 2011 people have been forcefully evicted and their source livelihood restricted by Loktak Development Authority, an agency to manage the Lake and its surrounding areas.	Despite of being banned in 66 countries across the world, Asbestos is still being imported in India, in different industries and is also being disposed of without taking any measures thus causing immense harm to human health and environment.	Entrenched labour rights violations and pathetic working conditions at plantations owned by Tata Tea with a significant investment by IFC, focusing on long working hours, unpaid compensation, poor sanitation and health problems, and the lack of freedom of association were

							brought to light in 2011.
1	The Human Right/s that has been violated is "internationally recognised human rights"?		Yes	Yes	Yes	Yes	Yes
		If Yes, List the human rights involved - as specific as possible?	UNCRC, child's right to Health	Rights to Health and Information	Rights to Life and Livelihood	Right to life - Right to Health, Right to safety, Right to clean and healthy Environment.	Freedom of Association and Right to Collective Bargaining, Freedom from Discrimination in employment.
		If Yes, name the human rights convention, with specific clause?	The 1989 UNCRC, the 1992 Agenda 21 adopted by the UNCED addressed the need to protect children from toxic chemicals	FCTC Convention	Article 23 - Universal Declaration of Human Rights	Annex VIII, List A of UN's Basel Convention on Trans-boundary Movement of Hazardous Wastes and Their Disposal	International – ILO Convention No 87 and 98, 100 and 111 ratified by India.

2	Whether there are national laws that partially or comprehensively define this violation?		Yes, Partially	Yes, partially COTPA	Yes Comprehensively, (Indian Constitutions Article 21, Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013)	Yes, comprehensively (The Constitution of India recognises Right to health, right to environment as fundamental rights, The Indian Factories Act (1948) recognises asbestos as hazardous in nature and asbestosis as occupational diseases, The Environment Protection Act recognises asbestos as hazardous in nature and mandates environment clearance prior to	Yes, Partially through National – Article 19(1) (c) of the Constitution of India. 1. National – Plantation Labour Act, 1951 wherein employers are responsible for welfare measures. 2. National – Article 39 of Directive Principles.
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						the establishment of such manufacturing units.)	
3	Whether adverse human rights impacts are directly linked to operations of a business?		Yes		Yes	Yes	Yes
		If Yes,		Yes			
		Name the Company	Nestle	LIC	NHPC	Everest Industries Limited, Vishaka Industries Limited, UAL Industries Limited, HIL Limited.	APPL, Tata Global Beverages, IFC

		Size of the Company	Large	Large	Medium		
		Ownership	MNC	Public Sector	Public Sector	Public Company	Private Sector Listed for APPL and Tata, International for IFC
		Through Own activity or business relationship?	Own activity	Own Activity	Own Activity	Own Activity	Own activity
		Through Action or Omission	Action	Action	Action	Action	Action for APPL and Tata, Omission for IFC
		Specify what exactly is the business operation that is being stated for this case	Production of Maggi noodles.	LIC is an insurance company, dealing with life insurance products and is investing	The construction and operation of the project have adversely impacted economic and ecological conditions of the region. People have been forcefully evicted and their source	These industries are involved in manufacturing of various products using asbestos. In their annual reports and other documents available in public domain they claim these products to be completely	The APPL and Tata company runs the tea estates and are responsible for the adequate wages, housing, sanitation and health and education services provided to the workers

					<p>livelihood restricted by Loktak Development Authority, an agency to manage the Lake and its surrounding areas. The absence of the MoU has been leveraged by the company to shirk its responsibility vis-a-vis the community, thereby making it difficult of the community to seek redressal for being negatively impacted by the company's operations.</p>	<p>safe and affordable especially targeting the financially weak section. This product also has high negative impact on the workers as mentioned in the National Health Portal, there have been studies from NIOH which has provided with the actual number of employees affected by asbestos in the different factories in Gujarat however these companies claim their workers to be healthy as per</p>	<p>living on the estates.</p>
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						the health check-ups conducted by them.	
4	Who are the victims or potential victims of HR violation?			LIC clients	People living near and on the Loktak Lake	Workers, Family members of the workers, Community living in the vicinity of the manufacturing units as well as places which are used for dumping the asbestos waste.	employees/contractual workers and their families

B. System

B	Policy Commitment on Human Rights by the Company present			Options	Principles	Maggi	LIC	NHPC	Asbestos	Tata Tea
1	The Company has a detailed Human Rights Policy to commit itself to address adverse impact of human rights proactively									
		a	Explicitly makes the above commitment in a written policy statement	Yes/Partly/No		Yes	No	No	No	IFC has a sustainability policy while Tata has a Code of Conduct where human rights find a mention
		b	Available in public domain	Yes/Partly/No	16	Yes	No	No	No	Yes, for IFC and Tata
		c	Approved by the Board of Directors	Yes/No	16	Yes	No	No	No	Yes, for IFC and Tata

		d	Based on extensive consultation with stakeholders	Yes/Partly/No	16	Not sure	No	No	No	Yes, for IFC
		e	Details out processes and mechanisms around operationalising the policy	Yes/Partly/No	16	Partly	No	No	No	Yes, for IFC
2	The Company has a detailed human Rights Due diligence system in place- specially with respect to the case in consideration									

		a	Initiated for the activity, product or services at early stage itself	Yes/No	17	Not sure	No	No, while according to the R&R Initiative, in places where ethnic tribes dominate, a separate Ethnographic Survey is also conducted to understand the socio-cultural characteristics of the tribes and likely impacts of the proposed project on their social	No	functional in case of IFC
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							and cultural characteristics.		
	b	Focused Consideration given for such activities which are in the value chain through partnership	Yes/No	17	Not sure	No	No	No	Yes, for IFC

		s. Risks and Challenges listed and communicated							
	c	The due diligence does explore the question of complicity- wherein the company may benefit from abuse committed by partners	Yes/No	17	Not sure	No	No	No	Not certain
		Due diligence is ongoing process for risks may	Yes/No	17	Not sure	No	No	(Hyderabad Industries Limited) Health surveillance	Yes, for IFC

			vary over time						of employees as per national regulations and ILO recommendations is an on-going process. From the environmental standpoint, the company creates a systematic approach for waste management, compliance with environment
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										<p>al regulations and reduction in its carbon footprint. Stack emissions and work place dust levels are evaluated to assess the fiber concentration in the work environment . The safety department of the company ensures availability and utilization of Personal</p>	
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									Protective Equipment (PPE). It also conducts multi-cause analysis of any incident occurred with the premises of the organization
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C. Detection

C	Detection of Adverse Human Rights Impact				Maggi	LIC	NHPC	Asbestos	Tata Tea
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1	Whether the Company has claimed that it has a systematic detection process?			Yes/ No	Yes	No	Yes, Traditionally, Socio-economic surveys and R&R Plans have been an integral part of the Environmental Impact Assessment (EIA) and Environmental Management Plan (EMP) report, prepared as per the provisions of EIA Notification 1994 and 2006.	Yes, the company states - HIL is the only company in the industry to have Environment, Health and Safety wing to monitor health of each employee and participating in the global Chrysotile forum. Visaka Industries Limited, Regular health check-ups for all of our	For APPL and Tata there were no indications that it had its own HR DD system. As part of certifications, some due diligence was carried out which was not placed in the public domain. IFC relied on these certifications and did not carry out its own independent process.
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								employees confirm the absence of any asbestos-related disease over decades of service. We ensure the highest level of safety for our employees and the community. Living and working under an Everest Roof is safe.	
		If Yes,							

	Does it Organise periodic consultation with potentially affected groups and other relevant stakeholders to gauge risk on regular basis?	18	It claims to do so as per BRR, but details have not been shared.	No	Yes, As a matter of fact, community engagement is now integral and the most important part of all green clearances/ other clearances such as Environment Clearance, Forest Clearance, SIA as per RTFCTLARR 2013, etc. and their implementation. Some of the examples of community engagement by NHPC are as under: The collection of preliminary data on land, socio-economic etc. during Survey & Investigation stage for preparation of Pre-Feasibility Report / Detail Project	No	IFC does it
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						<p>Report (DPR).During the Environmental & Social Impact Assessment studies for preparation of EIA/EMP report and Public Consultation including Public hearing as a part of Environmental clearance process.During Social Impact Assessment (SIA) process including public hearing, preparation of R&R Plan and valuation/verification of land and assets records as a part of RFCTLARR ACT, 2013.During Post Construction Environmental & Social Impact Assessment</p>	
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						studies.During Forest Rights Act, 2006 compliance process.During implementation of R&R plan.During implementation of CSR and other Community Development works.During implementation of specific restoration & rehabilitation plan.	
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		Does it have Special focus on such communities who are at the heightened risk of vulnerability of marginalisation?	18		No disclosure	No	Yes, In places where ethnic tribes dominate, a separate Ethnographic Survey is also conducted to understand the socio-cultural characteristics of the tribes and likely impacts of the proposed project on their social and cultural characteristics.		
		Does it have periodic system of checking AHRI of its product/services?			No disclosure	No	No	No	With IFC

2	Whether the Company identified the current adverse HR impact through its system?	15	No/Yes	No	No	No	No	No
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		If not, who detected the violation?		Community/CSO/Media/Government regulator/Others	Government Regulator	CSO - Voice of Tobacco victims, through RTI	CSO	CSOs, Courts, Tribunals, Government bodies	Civil Society Organization
3	Whether the Company has acknowledged its knowledge about allegation of the violation?			No/Yes	Yes	No	No	No	Partly - accepting some while refuting others.

		If Yes, Whether the company has acknowledged that its operations have contributed to the adverse human rights impact?			No	NA			Partially.
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D. Response and Remediation

Response

D	Responding once allegation has got known to the company?				Maggi	LIC	NHPC	Asbestos	Tata Tea
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1	Whether Company has communicated "Processes to enable remediation of any adverse human rights impacts they cause or which they contribute" in Public domain?		no/ yes	15 c	Yes	No	No	No	
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2	Whether the company has set a rapid task force with appropriate authority and budget to deal with addressing the violation?		no/ yes			No	No	APPL and Tata set up task force to investigate and suggest remediation and action plan. Disclose part of the information in the public domain. IFC makes commitment in the areas of wages, independent audit and worker satisfaction survey but don't follow through adequately.
		Has power and authority	no/ yes		No	No	No	derived from the corporate mandate

		Draws expertise from external domain as well	no/ yes			No	No	No	not disclosed
		Has adequate financial support, budget	no/ yes			No	No	No	provided by the Corporate
3	Whether the Company has taken the necessary steps to cease or prevent the impact?		no/ yes but less than necessary / yes	19	Yes. It got rid of all the existing stock of Maggi, stopped using the no added MSG claim, and subsequent tests show the lead level to be within permissible limits.	No	No	No	Post the audit, Tata came up with an action plan for improvement in workers living and working conditions.

4	Whether the company has taken immediate measures with respect to "business relationships" if the activity has not been done directly by the company?		no/ yes	19	NA	No	No	No	IFC is working with the others and has made commitments.
5	Whether the company has communicated transparently all information that it has on the alleged human rights violation in the public domain, so as to provide a measure of transparency and accountability to impacted groups?		no/ yes	21	They have shared the legal proceedings but omitted some crucial information (like the CEO letter in response to FSSAI online)	No	No	No, the companies states asbestos to be safe so they do not acknowledge it to be hazardous in nature.	Part of the information is available online. The IFC ombudsman has put all the reports relating to the investigation in the public domain.

		Human rights due diligence report	no/ yes		Partially. They have shared that their own tests are lead free.	No	No	No	
		Nature of HR violation, Adverse Impact and its response to regulators and other agencies	no/ yes		Communication from the PR point of view.	No	No	No	

6	Whether the Company has treated the detected violation as the risk of causing or contributing to gross abuses as a legal compliance issue wherever they operate and taken efforts?		no/yes	23 c	No	No	No	No	
7	Whether the company has been engaging in activity that amounts to being complicit with regulators/ state bodies?		no/ yes	23	Post the violation is collaborating with FSSAI to set up a food safety institute in Manesar.	LIC is a Public Sector Undertaking with 51% shares with the government	Yes LDA, government agency set-up under the Loktak Protection Act is evacuating the Loktak especially people living on the phumudis, so that the lake can be exploited to its full	Hindustan Composites India, a company supplying to Indian Railways, is also one of the leading company in manufacturing and marketing of products such as brake linings, clutch,	

							potential	and brake pads etc. using asbestos products. This reveals that Indian companies continue to import asbestos and that the Indian government owned companies are also failing to apply the regulations in its due diligence processes during procurement.	
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E. Remediation

E	Remediation by Company		21		Maggi	LIC	NHPC	Asbestos	Tata Tea
1	The Company has a functional operational-level grievance mechanism		29	yes/no	Yes	No	Yes, the company is under the Centralized Public Grievance Redress and Monitoring System (CPGRAMS), an online web-enabled system over NICNET developed by NIC, in association with Directorate of Public Grievances (DPG) and Department of Administrative Reforms and Public Grievances (DARPG). CPGRAMS is the platform based on web technology which primarily aims to enable submission of grievances by the aggrieved citizens from anywhere and anytime (24x7) basis to Ministries/Departments/Organisations who scrutinize and take action for speedy and favorable redress of these grievances.	No	available in case of IFC and Tata Tea
		The mechanisms are accessible directly by individuals or community affected	29	yes/no	Yes, so claimed.	No	Yes	No	Yes

	The complainant can have first access that is no need to have accessed other means before.	29	yes/no	Yes	No	Yes	No	Yes
	They can engage with company directly	29	yes/no	Yes	No	No	No	Yes
	There is no undermining of trade unions or other processes	29	yes/no	Not certain	No	No	No	not certain in case of Tata
	The company provides public information about the procedure it offers	29	yes/no	yes	No	Yes	No	Yes, for IFC, and Tata (the latter post the violation)

		The time frame provided are respected	31	yes/no	not certain	No	No	No	not certain
2	The company provides proactively all information relating to the case to the aggrieved so that durable solutions be arrived		31	yes/no	Claims to do so, but details not shared.	No	No	No	claims to do so in case of IFC
3	The company engages with affected or potentially affected communities to ensure that the stakeholder groups actually use it in practice.		31	yes/no	Not certain	No	No	No	Not certain

4	The Company has ensured steps to ensure no harm to whistleblowers and human rights defenders			yes/No		No	No	Yes	In case of IFC, a policy exists.
5	The Company has actually addressed the adverse impact in comprehensive way			Yes/No		No	No	No	No

F. Role of the State

D	Role of State				LIC		NHPC	Asbestos	Tata Tea
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1	Whether the State has been able to protect the human rights through formulating strong laws?		3a	Partial. While laws exist, there is lack of clarity and details.	LIC is governed by IRDA and LIC Act, none of which provides for sectoral exclusion in case of investments	No.	No	
		Strong legislation in place?		Partial. While laws exist, there is lack of clarity and details.	No	Yes, The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013	There are judgments and laws which recognised asbestos as hazardous requires for compensating the victims of asbestos and has banned mining of asbestos in India however there is a need of a stronger law to impose ban on usage and manufacture of asbestos.	Not present. Old Plantation Labour Act which transfers responsibility of welfare to Plantation Owners.

	Has created strong implementation machinery in place?	Gaps exist in implementation. Despite the recall order, the FSSAI has handicaps of lack of capacity in terms of adequate testing labs, cumbersome/delayed approval processes and weak enforcement mechanisms	No		The Act has set up the Land Acquisition, Rehabilitation and Resettlement Authority	No	Very little monitoring by the state in how plantations are run or the violations of human rights
	The State regulator has played proactive role in upholding human rights	Partial. The FSSAI order regarding the recall is one example.	No		No, the State is complicit with Human Rights Violation	Partially yes, some of the states have identified the hazardous impact of asbestos and banned usage of asbestos roofs in public places such as in Kolkata and Kerala. Similarly, the Bihar government has recently declared	No. Most of the complaints have been directed to, and action taken by the IFC ombudsman

							about its willingness to impose a ban on asbestos.	
2	State "periodically assesses the adequacy of such laws and address any gaps"		3a		No	No	No	No

3	Are there Any indication of the complicity between business and state which has relevant to non-addressing of adverse human rights impact?	4	Yes. Post the violation, there is a clear shift in its Corporate Responsibility Programme which is now Government associated programmes and a clear indication of indirect corporate lobbying, also evidenced in its work in trying to set up a food safety institute in Manesar along with FSSAI.	IRDA was approached by LIC during the same time when PIL was file in 2017 to increase LIC's exposure to ITC. IRDA only restricted the exposure to 15%	NHPC is a state-owned enterprise. Also, near the project area the state is proactively working to evacuate people near the lake	Continuous usage and demand of asbestos products by the Indian railways. Despite of being asbestos recognised as hazardous internationally, contradictory findings of NIOH which did not recognise asbestos as hazardous in the year 2014.	No
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G. Pillar 3

		Maggi				LIC			
		Courts	State Tribunals or Regulators	NHRC	Business Associations	Courts	State Tribunals or Regulators	NHRC	Business associations

1	Whether the Remedy institution was approached?	Yes. Mumbai High Court was approached by Nestle which stayed the ban on Maggi. Later the Supreme Court revived the class action suit in January 2019.		No	No	PIL was filed in Mumbai High Court	No	No	No
2	Whether the institution took suo-moto cognizance?	No		No	No	No	No	No	No
3	Whether any step taken to protect whistleblower or human rights defenders?	No		No	No	No	No	No	No

		NHPC				Asbestos			
		Courts	State Tribunals or Regulators	NHRC	Business associations	Courts	State Tribunals or Regulators	NHRC	Business associations

1	Whether the Remedy institution was approached?	Imphal Bench of the Guwahati High court	No	No	No	PIL was filed in the Supreme court	In 2015, the National Green Tribunal directed the states in which asbestos mining occurs to survey the mines and report impact of mines and pits in existence, steps to taken to restore the affected area	Yes	No
2	Whether the institution took suo-moto cognizance?	No	No	No	No	No	No	No	No
3	Whether any step taken to protect whistleblower or human rights defenders?	No	No	No	No	No	No	No	No

		Tea
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		Courts	State Tribunals or Regulators	NHRC	Business Associations			
1	Whether the Remedy institution was approached?	No. The case is with the IFC ombudsman	No	No	No			
2	Whether the institution took suo-moto cognizance?	No	No	No	No			
3	Whether any step taken to protect whistleblower or human rights defenders?	No	No	No	No	Yes	No	No

Production of Asbestos by Companies – Everest Industries and Hyderabad Industries Limited

The Background

Asbestos is a group of naturally occurring fibrous silicate minerals. It was once used widely in the production of many industrial and household products because of its useful properties, including fire retardation, electrical and thermal insulation, chemical and thermal stability, and high tensile strength. Today, however, asbestos is recognized as a cause of various diseases and cancers and is considered a health hazard if inhaled.¹³⁵ The ILO estimates that over the last several decades 100,000 deaths globally have been due to asbestos exposure,¹³⁶ and the WHO states that 90,000 people die a year globally because of occupational asbestos exposure.¹³⁷

Over 90% of asbestos¹³⁸ fiber produced today is chrysotile, which is used in asbestos-cement (A-C) construction materials: A-C flat and corrugated sheet, A-C pipe, and A-C water storage tanks. Other products still being manufactured with asbestos content include vehicle brake and clutch pads, roofing, and gaskets. Though today asbestos is hardly used in construction materials other than asbestos-cement products, it is still found in older buildings in the form of friable surfacing materials, thermal system insulation, non-friable flooring materials, and other applications. The maintenance and removal of these materials warrant special attention.

Because the health risks associated with exposure to asbestos are now widely recognized, global health and worker organizations, research institutes, and some governments have enacted bans on the commercial use of asbestos, and they urge the enforcement of national standards to protect the health of workers, their families, and communities exposed to asbestos through an International Convention.¹³⁹

Health Concerns Linked to Asbestos-Containing Products

Health hazards from breathing asbestos dust include asbestosis, a lung scarring disease, and various forms of cancer (including lung cancer and mesothelioma of the pleura and peritoneum).¹⁴⁰ These diseases usually arise decades after the onset of asbestos exposure.

Mesothelioma, a signal tumour for asbestos exposure, occurs among workers' family members from dust on the workers' clothes and among neighbours of asbestos air pollution point sources.¹⁴¹ Some experimental animal studies show that high inhalation exposures to

¹³⁵ http://www.who.int/occupational_health/publications/draft.WHO.policy.paper.on.asbestos.related.diseases.pdf. See also Stayner L, et al., "Exposure-Response Analysis of Risk of Respiratory Disease Associated with Occupational Exposure to Chrysotile Asbestos." *Occupational Environmental Medicine*. 54: 646-652 (1997).

¹³⁶ http://www.ilo.org/wow/Articles/lang--en/WCMS_081341

¹³⁷ http://www.who.int/occupational_health/publications/asbestosrelateddiseases.pdf

¹³⁸ Asbestos defined in Castleman, B. *Asbestos: Medical and Legal Aspects* 5th Ed. New York: Aspen, 2005, 894 pp.

¹³⁹ ILO Asbestos Convention No. 162, (see <http://www.ilo.org/ilolex> or http://www.itcilo.it/actrav/osh_es/m%F3dulos/legis/c162.htm)

¹⁴⁰ <http://origin.searo.who.int/entity/emergencies/documents/abestos.pdf>

¹⁴¹ "Asbestos." *World Health Organization IARC Monographs on the Evaluation of Carcinogenic Risks to Humans/ Overall Evaluations of Carcinogenicity: An Updating of IARC Monographs 1 to 42, Suppl. 7*. Lyon: International Agency for Research on Cancer, 1987, pp. 106-116.

all forms of asbestos for only hours can cause cancer.¹⁴² Very high levels of airborne asbestos have been recorded where power tools are used to cut A-C products and grind brake shoes. For chrysotile asbestos, the most common variety, there is no threshold (non-zero) of exposure that has been shown to be free from carcinogenic risks. Construction materials are of particular concern, because of the large number of workers in construction trades, the difficulty of instituting control measures, and the continuing threat posed by in-place materials that eventually require alterations, repair, and disposal.¹⁴³ Renovations and repairs in buildings containing A-C materials can also endanger building occupants. In addition to the problems from products made with commercial asbestos, asbestos also occurs as a contaminant in some deposits of stone, talc, vermiculite, iron ore, and other minerals. This can create health hazards for workers and residents at the site of excavation and in some cases in the manufacture and use of consumer products the materials are used to make. While asbestos is a known carcinogen when inhaled, it is not known to be carcinogenic when ingested, through drinking water,¹⁴⁴ although pipe standards have been issued for asbestos-cement pipes conducting “aggressive” water.¹⁴⁵

From the industrial hygiene viewpoint, asbestos creates a chain of exposure from the time it is mined until it returns to the earth at landfill or unauthorized disposal site. At each link in the chain, occupational and community exposures coexist. Workers in the mines are exposed to the fibers while extracting the ore; their families breathe fibers brought home on work clothes; workers in the mills and factories process the fiber and manufacture products with it; and their families are also secondarily exposed. Communities around the mines, mills, and factories are contaminated with their wastes; children play on tailings piles and in contaminated schoolyards; transportation of fiber and products contaminates roads and rights-of-way.¹⁴⁶ Tradesmen who install, repair and remove ACM are exposed in the course of their work, as are bystanders in the absence of proper controls. Disposal of asbestos wastes from any step in this sequence not only exposes the workers handling the wastes but also local residents when fibers become airborne because of insufficient covering and erosion control. Finally, in the absence of measures to remove ACM from the waste stream and dispose of them properly, the cycle is often repeated when discarded material is scavenged and reused.¹⁴⁷

Import and Consumption of Asbestos in India

¹⁴² Wagner JC, Berry G, Skidmore JW, Timbrell V. “The Effects of the Inhalation of Asbestos in Rats.” *Br. J. Cancer* 29: 252-269 (1974).

¹⁴³ International Program on Chemical Safety, “Conclusions and Recommendations for Protection of Human Health,” *Chrysotile Asbestos*, Environmental Health Criteria 203. Geneva: World Health Organization, 1998, p. 144.

¹⁴⁴ https://www.who.int/water_sanitation_health/dwq/asbestos.pdf?ua=1

¹⁴⁵ https://www.who.int/water_sanitation_health/dwq/asbestos.pdf?ua=1

¹⁴⁶ Jones, Robert “Living in the Shadow of the Asbestos Hills (The Need for Risk Based Cleanup Strategies for Environmental Asbestos Contamination in South Africa).” Environmental Exposure, Crisis Preparedness and Risk Communication, Global Asbestos Congress, Tokyo, Japan, November 19 - 21, 2004. http://park3.wakwak.com/~gac2004/en/index_abstract_e.html. See also Oberta, AF “Case Study: An Asbestos Cement Plant in Israel -- Contamination, Clean-up and Dismantling.” Hellenic Asbestos Conference, Athens, Greece, October 29 - 31, 2002. http://www.ibas.btinternet.co.uk/Frames/f_lka_hellen_asb_conf_rep.htm

¹⁴⁷ Boer, A.M., L.A. Daal, J.L.A. de Groot, J.G. Cuperus “The Combination of the Mechanical Separator and the Extraction Cleaner Can Process the Complete Asbestos-containing Waste-stream and Make it Suitable for Reuse.” European Conference on Asbestos Risks and Management, Rome, Italy, December 4 -6, 2006. <http://venus.unive.it/fall/menu/Boer.pdf>

While public concern and mobilization against the use of asbestos in developed countries has led to heavy regulations or complete bans of asbestos and its related materials, there has been significant growth in asbestos production and use in developing countries, including India.

India is one of the world's largest importers of asbestos. In 2015, it imported over 370,000 tonnes of asbestos, with the trade value totalling over \$239 million. This represents over 57% of the share of total imports of asbestos worldwide. Chrysotile asbestos fibers make up a majority of imports. 60% of India's imports of asbestos come from Russia. India's share of global consumption of asbestos has been steadily rising since 1960. While worldwide consumption peaked in 1980 and has been declining since, Indian consumption shows the opposite trend. From 1960 to 2003, India's consumption increased steadily from approximately 23,600 tonnes to 192,000 tonnes. In 1960, India accounted for a little over 1% of global consumption of asbestos, but by 2003 its share had risen to 9.11%. Since 2003, India's consumption has continued to grow. In 2013-2014, India consumed 286,001 tonnes of asbestos. Today, it is Asia's second largest consumer of asbestos after China.¹⁴⁸

According to the Report of the Working Group on Environmental and Occupational Health in India¹⁴⁹, there are two to three million active workers suffering from exposure to asbestos and other dangerous fibers.

Everest Industries Limited

The Company was incorporated in the name and style Asbestos Cement Ltd., as a private limited company under the Indian company's Act, VII of 1913 with two corporate shareholders viz., C.P. Cement Co. Ltd. and Turner & Newall Ltd., U.K. The manufacturing business was expanded progressively by establishing a second sheeting factory at Mulund (Mumbai) in 1937, a third factory at Calcutta in October 1938 and a fourth factory at Podanur near Coimbatore in Tamil Nadu in November 1953.¹⁵⁰

Kymore Plant

Established in 1934, in Kymore, Katni district of Madhya Pradesh, this is the first plant in India that was set up to manufacture Fiber-Cement Roofing Sheets & Accessories. The town is engulfed in the dust and have hundreds of cases of Asbestos Related Diseases¹⁵¹.

In Kymore the level of exposure is dangerous. A previous study has been done in 2016 by the Canadian group - ECOH, and many evidences were found around Kymore for surficial soil contamination in contradictory to what State Pollution Control Board says.¹⁵²

A recent study by Prof. Tianhui Chen, MD, PhD,¹⁵³ States that "Considerable evidence has indicated that all forms of asbestos are carcinogenic to humans. Long-term exposure to

¹⁴⁸ *National Asbestos Profile: India***, prepared by People's Training and Research Centre (PTRC), Vadodara, for Occupational and Environmental Health Network India (OEHNI), <https://counterview.org/2017/05/01/though-listed-as-hazardous-waste-there-has-been-significant-growth-in-use-of-asbestos-in-india>

¹⁴⁹ <https://scroll.in/pulse/836377/asbestos-harms-the-health-of-millions-of-indian-workers-will-the-government-finally-move-to-ban-it>

¹⁵⁰ <https://economictimes.indiatimes.com/everest-industries-ltd/infocompanyhistory/companyid-13797.cms>

¹⁵¹ <http://environsindia.in/2018/11/15/the-untold-story-of-secondary-victims-of-asbestos-exposure-in-kymore-madhya-pradesh/>

¹⁵² <http://ibasecretariat.org/asbestos-investigation-and-remedial-options-analysis-kymore-and-kalhara-villages-madhya-pradesh.pdf>

asbestos is associated with the incidence of malignant pleural mesothelioma, which is a rare but highly aggressive cancer with a poor prognosis. Most mesotheliomas occur in the pleura and peritoneum. Because the latency period can be 20 to 50 years, the incidence of mesothelioma dramatically increases after asbestos exposure, even if the usage is completely prohibited. In addition, thousands of deaths are attributed to asbestos exposure in homes.”

Table 16: Illustrating the disclosure of Everest Industries Limited

Indicators	Policies	Reports	Website
Safety and Health Check up	Not available	Regular health check-ups for all of our employees confirm the absence of any asbestos-related disease over decades of service. We ensure the highest level of safety for our employees and the community. Living and working under an Everest Roof is safe. (Source: Annual Report)	Not mentioned
Human Rights Due diligence	Not available	Not mentioned	Not mentioned
Acknowledgement of impacts of chrysotile	Not available	Not mentioned anything on consumer awareness in the annual report On the contrary mentions <i>“Everest Super is India's first coloured and waterproof fiber cement roofing sheet, created by our in-house R&D team, to address the aspiring needs of the rural consumers.”</i> (Source: Annual Report)	Not mentioned

Source: Everest Industries Annual Report

Hyderabad Industries Limited

The Hyderabad Industries Limited is one of the largest entities in building materials industry, established in the year 1949. This industry has manufacturing units in 22 states of India. The company has been expanding over the recent years, HIL in 2017 disclosed that the company

is setting up a green field plant for pipes and fittings near Surat and expanding its Faridabad facility at an investment of ₹130 crore.¹⁵⁴

Table 17: Illustrating the disclosure of Hyderabad Industries Limited

Indicators	Policies	Reports	Website
Safety and Health Check up	Not available	Regular medical examinations of employees and health care schemes are an integral part of the Company's policy. (Source: Annual Report Year)	The website mentions ¹⁵⁵ about safety and health being one of their top priorities. <i>We give highest priority to safety, employee wellness and environmental protection. We also place special emphasis on promoting green building products in and around the work place.</i>
Human Rights Due diligence	Not available	Not mentioned	Not mentioned
Acknowledgement of impacts of chrysotile	Not available	Mentions about "Green Roofing" not on asbestos sheets. <i>"The green roofing offering, Charminar Fortune continued to grow since its launch last year, gaining market presence steadily with an increasing acceptance among the consumers".</i> (Source: Annual Report)	Does not mention about the harmful impacts of asbestos sheets. <i>The website mentions about its features and where it can be used such as Educational institutions, Public Utility Sheds, Food storage etc.</i>

Source: Hyderabad Industries Annual Report

Violations - Laws, Conventions, Rules and Standards:

1. The Laws

- **The Indian Factories Act (1948):**

¹⁵⁴ HIL to spend Rs. 130 crores on new plant at Surat, Faridbad Unit , N. Ravikumar, Available at: <https://www.thehindu.com/business/hil-to-spend-130-cr-on-new-plant-at-surat-faridabad-unit/article19764150.ece>

¹⁵⁵ <https://hil.in/about-us/quality-policy/>

Schedule I of the Factory Act lists the asbestos industry—specifically activities involving the manufacturing, handling, and processing of asbestos—as a hazardous industry.

Schedule II lists the permissible level of chemical substances in the work environment; including asbestos (which is listed as a confirmed human carcinogen).

Schedule III of the Factories Act lists notifiable occupational diseases, including asbestosis.

Section 89 of the Act requires medical practitioners to report any occupational disease listed in Schedule III of the Act to the Chief Factories Inspector or other relevant authorities.

- **Indian Building and other Construction Workers Act (1996):** Schedule II of the Building and Construction Workers Act lists asbestosis as a notifiable occupational Disease
- **The Environment (Protection) Act (1986):** Any establishment for the manufacture of asbestos or asbestos related products requires prior environmental clearance regardless of the size of the investment and plant. An Environmental Impact Assessment Report must be provided by the company. Section 6, 8 and 25 lists asbestos as hazardous waste.
- Asbestos is also regulated by **the Hazardous and Other Wastes (Management and Trans-boundary Movement) Rules (2015)**. Under the **Employees State Insurance Act of 1948** (ESI Act), ESI Corporation is responsible for paying compensation to insured workers for scheduled occupational diseases such as asbestosis and lung cancer, including mesothelioma. However, there is no provision to compensate environmental asbestos victims or those who have had secondary exposure.
- **Workmen Compensation Act 1923** asbestosis is included in Part C of Schedule III of the ESI Act and Workmen Compensation Act 1923.
- **National Green Tribunal Act, 1986** also lists asbestos as Hazardous substance as it upholds the list provided under The Environment Protection Act, 1986.

2. The Conventions:

- The International Labour Organization (ILO) established an **Asbestos Convention (C162)** in 1986 to promote national laws and regulations for the “prevention and control of, and protection of workers against, health hazards due to occupational exposure to asbestos.” As of 2017, the convention has been ratified by 35 states from all continents. A Resolution concerning asbestos was adopted by the International Labour Conference at its 95th Session in 2006. Noting that all forms of asbestos, including chrysotile, are classified as human carcinogens by the International Agency for Research on Cancer (IARC), and expressing its concern that workers continue to face serious risks from asbestos exposure, particularly in asbestos removal, demolition, building maintenance, ship breaking and waste handling activities, it calls for the elimination of the future use of asbestos.
- **UN’s Basel Convention on Trans-boundary Movement of Hazardous Wastes and Their Disposal – In 1990**, India became a signatory to UN’s Basel Convention on Trans-boundary Movement of Hazardous Wastes and their Disposal Waste. India

ratified the convention in the year 1992.¹⁵⁶ The convention in Annex VIII, List A has listed down wastes that are hazardous in nature.¹⁵⁷

1. **The Rules/ Standards:** Units may comply with the Bureau of Indian Standards (BIS) on occupational health and safety standards for the use and handling of asbestos products (BIS: 11451-1986 (re-affirmed 2010)). BIS standards include guidelines for the safe usage of asbestos cement products, asbestos friction products and asbestos sealing and insulation products. ISO 8672: Air quality -- Determination of the number concentration of airborne inorganic fibers by phase contrast optical microscopy -- Membrane filter method (1993).
2. **UNGP Principles:** According to the Principles Companies should avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts whenever they occur.

1. STATE'S DUTY TO PROTECT INADEQUATE

The State Labour Department is the body responsible for carrying out occupational health and safety inspections in factories registered in their respective states. In many states Factory Inspectorate (now renamed as Director Industrial Safety and Health - DISH) offices have an Industrial Hygiene Laboratory which has the responsibility to enforce exposure limits. Mostly without qualified industrial hygienists, existing staff does not have adequate training, and they do not have proper and modern equipment. **Form 37 of the Factory Rules** deals with the work environment. Private Service providers are invited once in a while to measure the environment and based on the report, Form 37 is submitted to the DISH (Director Industrial Safety and Health) officer. The rule is not clear at what interval the workplace air is to be measured and the form is to be submitted.

CORPORATE RESPONSIBILITY TO RESPECT –ABSYMAL

In the company's Annual report under the Health section there has been a mention of conducting health campaigns especially focusing on tobacco free movement. The concerned company nowhere in its Annual report mentions about any programs or initiatives seeking to curb the impacts of asbestos on health¹⁵⁸.

In the company's risk and challenges section it clearly mentions "There are concerns that exposure to Chrysotile fiber leads to health risks and as such its usage is banned in certain countries. Chrysotile or White Asbestos Fiber is a naturally occurring mineral. It constitutes roughly 10% of Asbestos Cement Roofing sheets. Our roofing sheets are absolutely safe for the users and Fiber cement roofing sheets are the most economical and long-lasting roofing solution available to the population."⁸⁵

¹⁵⁶ Parties to the Basel Convention on the control of the Trans-boundary movements of Hazardous wastes and their disposal , UNEP Basel Convention
<http://www.basel.int/Countries/StatusofRatifications/PartiesSignatories/tabid/4499/Default.aspx>

¹⁵⁷ <https://www.ifrc.org/Docs/idrl/I294EN.pdf>

¹⁵⁸ <https://hil.in/wp-content/uploads/2018/07/HIL-AR-2017-18-FINAL-SINGLE-PAGE-VERSION.pdf>

On the contrary, their Annual Report mentions “There are many misconceptions about one of our raw materials – asbestos. We use white asbestos (Chrysotile) fiber bound in a cement matrix while manufacturing AC Roofing. Regular health check-ups for all of our employees confirm the absence of any asbestos-related disease over decades of service. We ensure the highest level of safety for our employees and the community. Living and working under an Everest Roof is safe.”⁸⁵

ACCESS TO REMEDY- PARTIAL

In 1998 NHRC ordered “Replace the asbestos sheets roofing with roofing made up of some other material that would not be harmful to inmates.”¹⁵⁹ It is evident from it that the NHRC considered asbestos sheets as harmful but it allowed itself to be misled by NIOH’s study¹⁶⁰. White chrysotile asbestos fibers used for making asbestos based products like asbestos cement roofs cause preventable but incurable diseases and deaths. Asbestos is a carcinogenic mineral fiber banned in some 60 countries.

In **2004**, Calcutta High Court refused to impose a ban on manufacture on use of asbestos.

In the year 2004, a writ petition was filed at the Supreme Court by an NGO Kalyaneshwari⁴⁶, majorly seeking:

- i. For ban of asbestos in India,
- ii. Providing treatment to the victims of asbestos,
- iii. Initiate criminal proceedings against all those including owners of the factories, organizations and associations involved in infringing the rights of asbestos victims.

The claims of asbestos being harmful to health of people and negligent behaviour of the companies involved in manufacturing and use of asbestos was refuted by the “Asbestos Cement Products Manufacturers Association” in the same case.

In **2006**, ILO passed a resolution imposing ban on mining, manufacture, recycling and use of all forms of asbestos.

In **2011 NHRC issued a notice**⁴⁷ to four central government ministries on its contradictory stand on white asbestos (Chrysotile): The National Human Rights Commission has issued a notice to four central government ministries – **Environment, Chemical and Fertilizers, Commerce and Labour Ministries** on white asbestos’s impact on was health and a claim that fifty thousand people die in India every year due to asbestos related cancer. The notice was circulated after India attended an International Meeting under the Rotterdam Convention in Geneva that white asbestos was hazardous to human health.¹⁶¹ To this notice the Ministry of Commerce and Industry replied in 2015 stating that there is no worldwide ban on manufacture and usage of asbestos further it was also stated that though India is a signatory to the “Rotterdam Convention” regulating the international trade in Hazardous Chemicals

¹⁵⁹<https://nhrc.nic.in/dalitcases>

¹⁶⁰<https://counterview.org/2018/12/13/chrysotile-asbestos-violation-of-ethics-by-nioh-and-nhrc-has-caused-public-health-hazard/>

¹⁶¹ Available at: <https://www.hindustantimes.com/delhi-news/nhrc-issues-notice-on-white-asbestos-to-govt-ministries/story-6Mhi3oSnWYi1ZQL5uLDfZK.html>

and Pesticides which regulates the import of other five varieties of asbestos except Chrysotile which has not been mentioned in Annex III.¹⁶²

In **2015**, Kolkata High Court directed to ban the use of asbestos sheet in the court roofing, PWD or any other body entrusted with renovation.

In **2015**, the National Green Tribunal directed the states in which asbestos mining occurs to survey the mines and report impact of mines and pits in existence, steps to taken to restore the affected area.

NHRC 2016: *On 27.8.2014, a meeting was held under the Chairmanship of Minister (Chemicals & Fertilizer) to consider the NIOH report. It was decided in the meeting that the NIOH report does not indicate any significant health/environment hazards resulting from the use of Chrysotile asbestos under proper conditions, coupled with the fact that asbestos products are quite cost effective for use by the masses, India may not support the inclusion of Chrysotile in Annexure-III at the COP Meeting in 2015. In the light of the above report, no further action was taken by the Commission and the case was closed.*¹⁶³

In **2019**, The Drug Controller General of India issued show cause notice to Johnson's and Johnson's after finding asbestos particles in its talcum powder.

In **2019**, the Bihar government has raised their concern over the recent deaths of children in Muzzafarpur where studies have revealed asbestos to be harmful to health and is likely to be one of the reasons for the increasing children death toll. The government has also expressed their interest in introducing policies thus attempting to introduce immediate ban on usage of asbestos.¹⁶⁴

Role of Corporates:

Workers Union from the leading asbestos companies of India in the year 2012, shared with the National/Central Trade Unions about the absence of asbestos related diseases in the industries where these workers have been working for decades. Further, some of them also mentioned about equipment that are in place to take care of the work zone, atmosphere, and risks hazard to health of employee. In the case of "*Kalyaneshwari V Union of India and Others*" one of the respondents – Electro Steel Castings Limited (ESCL) denied the allegations rose against them by the petitioners, it was further pointed out by them that "*the petition has been filed out of business rivalry by one person who is an employee of the petitioner group*". Another company Hyderabad Industries Limited, world's largest seller and manufacturer of fiber cement roofing. The company in their website also discloses about the varieties of materials they produce which also includes – asbestos sheets to coloured sheets as well as non-asbestos roofing sheets¹⁶⁵ however it is interesting to note here that in their annual report they mention about the asbestos sheet once in terms of how cost effective it is especially focusing on GST¹⁶⁶, nowhere else in the report they discuss about the risk associated with the usage of asbestos, impact on the safety and health aspect of employees, any preventive measures taken to curb the situation. UAL one of the company manufacturing construction materials has mentioned some of the **facts and myths related**

¹⁶² Ibid

¹⁶³ Available at: <https://counterview.org/2018/12/13/chrysotile-asbestos-violation-of-ethics-by-nioh-and-nhrc-has-caused-public-health-hazard/>

¹⁶⁴ Available at: <https://www.counterview.net/2019/07/campaign-victory-bihar-considers-to-ban.html>

¹⁶⁵ Available at: <https://hil.in/charminar/>

¹⁶⁶ Available at: Pg – 40, <http://hil.in/wp-content/uploads/2018/07/HIL-AR-2017-18-FINAL-SINGLE-PAGE-VERSION.pdf>

to asbestos where they have discussed few of the facts explaining negative reporting on asbestos. Facts such as: adverse western media coverage relating to asbestos, usage by people with limited scientific knowledge, usage under uncontrolled circumstances.¹⁶⁷ Asbestos cement is dangerous, inhalation of even one fiber of asbestos is dangerous have been mentioned as myths.¹⁶⁸

As reported by The Sunday Times “Import data reveals that in February, 2,128 tons of ‘chrysotile raw asbestos’, worth \$1.21m was shipped from Russia by or on behalf of CJ Petrow& Co (Pty) Ltd to the Indian ports of Nhava Sheva, near Mumbai, and Mundra.”¹⁶⁹ The company CJ Petrow& Co (Pty) Ltd distributes and markets chemical products to its clients located in different countries amongst which Sealant and Gasket India and Hindustan Composites Limited are their two clients from India.¹⁷⁰ Sealant and Gasket India is reported to be one of the top suppliers of asbestos products in India¹⁷¹. Similarly, Hindustan Composites India¹⁷², a company supplying to Indian Railways¹⁷³, is also one of the leading Company in manufacturing and marketing of products such as brake linings, clutch, brake pads etc. using asbestos products. The findings of this data reveal that Indian companies continue to import asbestos, in large quantity, for usage in manufacturing and marketing of various products. It can therefore be concluded that while International Conventions and National regulation around asbestos is being violated by companies in India, Indian government owned companies are also failing to apply the regulations in its due diligence processes during procurement.

Public Sector Insurance Company investing in Tobacco Industry: Case of LIC Investment in Tobacco Industry

Brief Background of the Case

A large proportion of Indian economy is agriculture based, in which tobacco is one of the principal cash crops. India is the second largest tobacco market in the world in terms of tobacco consumption as well as production. Economically, according to Tobacco Institute of India, tobacco & tobacco products are one of the largest contributors to the Government’s Tax Revenue. The tobacco industry with an estimated annual production of around 800 million kg, contributes more than Rs. 34,000 crores annually as taxes to the government¹⁷⁴. As the second largest producer of tobacco, Indian tobacco has a huge foreign market and exports unmanufactured tobacco primarily to Belgium, Korea, Nigeria, Egypt and Nepal. Western Europe is the key market for Indian tobacco exports. According to the Tobacco

¹⁶⁷ Available at : UAL Website, <http://ualind.com/products/facts-myth/>

¹⁶⁸ Ibid

¹⁶⁹ Available at: <https://www.counterview.net/2019/07/british-companies-export-deadly.html>

¹⁷⁰ Available at: <https://panjiva.com/C-J-Petrow-Co-Pty-Ltd/42889695>

¹⁷¹ Available at: <https://www.tradeindia.com/Seller-2263490-SEALANT-AND-GASKET-INDIA-PVT-LTD-/>

¹⁷² Available at: <https://www.hindcompo.com/aboutus/default.htm>

¹⁷³ Hindustan Composites Limited ..., has been catering to the diversified needs of core sector industries, such as Automotive, Railways, Engineering, Mining, Aerospace, Steel, Chemical, Oil Exploration etc.

<https://www.hindcompo.com/index.htm>

¹⁷⁴ <https://www.tiionline.org/wp-content/uploads/Sustainable-Tobacco-Farming-and-Livelihood-Challenges-in-India-1.pdf>

Board total exports of manufactured and unmanufactured tobacco stood at US\$ 934.23 million in 2017-18 and US\$ 564.28 million between Apr-Oct 2018, respectively.¹⁷⁵

The total cost of tobacco is incomplete, without taking into account the health cost associated with the use and consumption of tobacco. According to a 2014 study commissioned by the government on tobacco, titled Economic Burden of Tobacco Related Diseases in India, said the estimated economic costs attributable to diseases from tobacco use in India in 2011 was 1.16% of the GDP.¹⁷⁶ This was 12% more than the combined health expenditures of the state and central government in that year.

The high health cost has not acted as a deterrent to investors from investing in the tobacco companies. Given its high revenue generation potential, tobacco and its allied companies have inherently invited increasing investment in tobacco companies by various entities including insurance agencies like Life Insurance Corporation of India (LIC), Unit Trust of India, The five insurance companies (LIC, New India Assurance Co. Ltd, General Insurance Company of India, Oriental Insurance Company Ltd and National Insurance Company Limited), along with Specified Undertaking of Unit Trust of India (SUUTI) account for 32% stake in ITC alone, with some diversified investment in Vazir Sultan Tobacco and Dharampal Satyapal group.

The investment by LIC and other state-owned is negation of international treaty obligations and goes against the spirit of the principles of Human Rights, including the United Nations Guiding Principles on Business and Human Rights (UNGPs). According to the UNGPs, *“A range of agencies linked formally or informally to the State may provide support and services to business activities. These include export credit agencies, official investment insurance or guarantee agencies, development agencies and development finance institutions. Where these agencies do not explicitly consider the actual and potential adverse impacts on human rights of beneficiary enterprises, they put themselves at risk – in reputational, financial, political and potentially legal terms – for supporting any such harm, and they may add to the human rights challenges faced by the recipient State.”* The investment by LIC, a state-owned insurance agency, is a clear negation of this understanding of UNGP, vis-a-vis the State’s duty to protect human rights violation. Additionally, this scenario also flouts the spirit of Framework Convention for Tobacco Control 2004, which India ratified in 2004. The FCTC, very explicitly state the fear of Tobacco Control policies being hijacked and restrained by the tobacco lobby and therefore guide the State Governments through Article 5.3 to “protect these policies from commercial and other vested interests of the tobacco industry in accordance with national law”. Analysed together UNGP and FCTC, it can be concluded that given that tobacco has tremendous health impact and is therefore against the Right to Healthy Life and Well-being of the people, it is the duty of the state to draft and formulate legislations that restricts operations of tobacco companies. And in doing so, State should ensure that it’s Ministries, Departments and Agencies do not provide financial and non-financial support to the tobacco industry.

¹⁷⁵ <https://www.ibef.org/exports/tobacco-industry-india.aspx>

¹⁷⁶ <https://www.newindianexpress.com/nation/2017/aug/01/rs-1045000000000---what-govt-spends-on-tobacco-related-diseases-in-a-year-report-1636656.html>

About LIC and its investment in Tobacco

LIC was founded in 1956 after the merger of 245 insurance companies and provident societies; LIC is the only public sector insurance company in India. With over 2000 branches and over 14 lakh agents, LIC provides a wide array of life insurance plan for both rural and urban areas. According to Economic Times Brand Equity Survey 2012, LIC has been rated at the sixth most trusted service brand in India. Over the years, LIC has bagged several numbers of awards including the MEIF Institutional Excellence Award 2012, Golden Peacock Innovative Product/Services Award 2011 for its health insurance product – *Jeevan Arigya*, and ET brand equity most trusted brand award. LIC has been continuously winning the Readers Digest Trusted Brand award since 2006.¹⁷⁷ The major objective of LIC is to ensure maximum insurance coverage for people across India and in this regard, has established an extensive network of offices and field agents.

LIC, to ensure returns to its clients on events under its various schemes including pension plan, financial protection, education and children, en related loans, etc. invests money, earned through premiums, in various investment instruments including primary equity markets, secondary markets, corporate bonds, debentures, govt bonds and in some cases buys up ownership in companies e.g. LIC holds an amount of share percentage in India's largest conglomerate ITC. LIC is also investing 1.5 L crore in the Indian Railways Bonds over a period of next 5 yrs.¹⁷⁸

LIC's stakes in ITC has a cause of great concern among tobacco control activist, as the investment and collaboration are a direct contradiction with human rights based International conventions on Health and well-being. According to an RTI filed in 2015, the number of shares held by LIC in ITC jumped from about 522.09 million on March 31, 2010, to 995.89 million on March 31, 2011. It had invested Rs 3,561 crore till April 2011. Also, it invested about Rs 15 lakh in VST Industries and Rs. 50 crores in Dharampal Satyapal. In 2014, LIC had invested more than Rs 3,500 crore last year in the tobacco industry¹⁷⁹. This investment directly challenges the tobacco control policy of the government and is a clear diversion from its from its stand on tobacco related disease, for whose treatment the government spends an estimated Rs 30,000 crore, about a fourth of all health spending in the country, every year¹⁸⁰.

While on one hand the company invests hugely in tobacco, it also fails to limit tobacco consumption through higher premium for tobacco users. According to an RTI filed in 2011¹⁸¹, with regard to policy on higher premium for tobacco, the company responded that "The adverse health effects of tobacco consumption are dependent on quantity, type of tobacco consumed, duration of consumption and any other associated health condition of the

¹⁷⁷<https://www.policybazaar.com/insurance-companies/lic-of-india/>

¹⁷⁸<https://economictimes.indiatimes.com/industry/transportation/railways/lic-to-invest-rs-1-5-lakh-crore-in-indian-railways-over-next-5-years/articleshow/46525515.cms>

¹⁷⁹<https://www.downtoearth.org.in/news/lics-unhealthy-choice--34221>

¹⁸⁰<https://economictimes.indiatimes.com/blogs/Myth-n-Reality/increase-in-taxes-on-tobacco-products-to-raise-revenue-curb-consumption/>

¹⁸¹<https://www.downtoearth.org.in/news/lics-unhealthy-choice--34221>

insurance applicant. Depending on these factors, while large numbers of consumers are accepted without any extra premium, some of the applicants may be charged higher premium.” Also, the company did not have a list of cases it rejected due to tobacco usage and replied that it is available in the form of individual case file and to get that information the company would need to “deploy its resources disproportionately”. “Hence the information is exempt under section 7(9) of the RTI Act, 2005”.

Analysing the two scenarios in totality it can be concluded that LIC, while being controlled and supervised by the government does not espouse by the Government’s policy on tobacco control.

Sequence of Events

In 2011, an RTI was filed by Voice for Voices of Tobacco Victims¹⁸², which brought to fore the large share of investments made by the Life Insurance Corporation of India in tobacco companies such as Indian Tobacco Company. The RTI very clearly demonstrated the policy divergence of LIC- a state owned entity from the programme and activities of government of India. The origin of PIL in 2017 can be traced back to this RTI and the findings revealed by it.

In first quarter of 2014, LIC bought stocks in ITC, which accounted for a major chunk of the purchases in that quarter, thereby increasing its stake to 14.42%, buying 4.39 crore shares, worth almost Rs 1,498 crore, in the three months ending June 2014¹⁸³. According to market reports, LIC has been holding ITC on behalf of government since UTI’s dismantling in year decades of 2000, through Suuti or Specified Undertaking of Unit Trust of India, along with stakes in Axis Bank. Suuti, which is managed by an administrator appointed by the Centre, lowered its stake in ITC from 11.12% to 9.10% in February 2017, with LIC picking up the stake for around Rs 6,700 crore via block deals¹⁸⁴.

In April 2017 PIL was filed in the Bombay high court against the shareholding of public sector insurance companies in tobacco companies like ITC. The petitioners included, Sumitra Hooda Pednekar, widow of Maharashtra’s former home and labour minister, Satish Pednekar. Satish Pednekar died of throat cancer due to his tobacco addiction. The others include Dr Pankaj Chaturvedi who is a cancer surgeon at Tata Memorial Hospital¹⁸⁵, R. Venkataramanan who is the managing trustee of Tata Trusts, Ashish Deshmukh who is an MLA in Maharashtra and Dr Prakash C. Gupta, who is the director of Healis-Sekhsaria Institute of Public Health. The PIL sought to gain clarity on State policy on tobacco, especially because the Government of India which is almost like a co-owner in a tobacco company like ITC is also a signatory to the WHO convention which discourages investment of state in tobacco companies. It also highlighted the divergence of the government from public interest given that considerable expenditure from the state exchequer is incurred on improving healthcare and awareness related to cancer caused by tobacco.

¹⁸² <https://vovindia.org/2012/06/07/tobacco-cigarette-gutka-pan-masala-bidi-industry-targeting-children/>

¹⁸³ <https://economictimes.indiatimes.com/lic-increases-stake-in-itc-to-14-42-despite-slowdown-in-the-fmcg-sector/articleshow/39323689.cms>

¹⁸⁴ <https://www.zeebiz.com/companies/news-lic-must-pare-itc-its-stakes-to-below-15-by-dec-2018-irdai-20440>

¹⁸⁵ <https://thewire.in/business/lic-itc-tobacco-investment-pil>

The PIL was informed and evidenced by the increasing tobacco epidemic in India. India has 275 million tobacco users. Tobacco kills every third user prematurely through cancer, heart attack, lung diseases and stroke. Tobacco is responsible for nearly 50% cancers in India and 90% of mouth cancer patients die within 12 months of diagnosis. The Parliament Standing Committee on Science and Technology, Environment and Forests, Rajya Sabha, in its 285th report on effect of use of tobacco ¹⁸⁶ also states "*The committee that financial benefits that accrue in various forms on account of tobacco are negligible compared to losses suffered in terms of death of people and the expenditure borne by the government to treat tobacco related problems of people*". The PIL referenced two cases, Murli S Deora vs Union of India and Ors 2001 and Health for Million vs Unions of India & Ors 2013, which stressed on the adverse impact of tobacco consumption and how it burdens the state expenditure of health.

To address this situation, the government has devised targeted intervention programmes including the National Tobacco control Programme (NTCP), which including implementing Training and Capacity Building activities and IEC activities to address the issue of tobacco. On 2016 it hosted the seventh session of the conference of the parties or CoP, which globally demonstrated the stand of the government on tobacco. While on one hand the efforts of the government showcase its serious position on tobacco, on the other support to ITC and other tobacco companies through investment made by Public Sector undertaking projects a rather confusing stance.

The petition states that "The Insurance Companies, along with SUUTI (specified Undertaking of Unit Trust of India) holds a 32% stake in ITC Ltd. which is primarily a tobacco company, though it projects itself as a diversified conglomerate. The 383 crore shares that are held by Respondent Insurance Companies and SUUTI accounting for a majority of stakes in ITC, translates into a humongous amount considering the price at which the stock is currently trading at Rs. 280 per share, the total value of stake held by these government owned institutions in ITC comes to a staggering Rs. 1, 07, 000 crores. Out of this figure a huge sum of Rs. 76,505 crores is invested by public sector insurance companies¹⁸⁷". The petitioners argued that by supporting the tobacco companies through financial investments, the state is allowing for the companies to make abnormal profits, while risking the lives of its citizens and expanding up avenues for tobacco addiction

While the PIL was being filed LIC filed a request with Insurance Regulatory and Development Authority (IRDA) seeking permission raised its stake in cigarette maker ITC by 2 per cent to 16.3 per cent. Following this and the PIL the IRDA asked LIC to limit its exposure to tobacco manufacturers, particularly ITC, to 15%.

¹⁸⁶

<http://www.indiaenvironmentportal.org.in/files/file/EFFECTS%20OF%20TOBACCO%20CURING%20ON%20ENVIRONMENT%20AND%20HEALTH.pdf>

¹⁸⁷ <https://clpr.org.in/wp-content/uploads/2017/06/PIL-Petition-1-1-30.pdf>

The Business and Human Rights Dilemma – The Violation

Unlike governments, private businesses including the tobacco industry are not formal parties to the human rights treaties, as result of which they do not carry direct legal obligations under these documents. However, over the past decade this discourse has undergone changes. Given, the power companies, including tobacco companies assume over well-being and health and individuals, the UNGPs a comprehensive Business and Human Rights principles assert the human rights responsibility of State and Non-State actors. It is now broadly accepted that private actors, by virtue of the powers and influence they carry, have responsibilities to ‘respect’ human rights. This responsibility is stipulated in Guiding Principles on Business and Human Rights, which states that companies’ responsibility to respect human rights means ensuring that human rights and their underlying values are not brought any harm.

The observance of the UNGPs as an important measure to enhance global efforts to end the production, marketing and consumption of tobacco is in line with the FCTC and its articles that stress on tobacco production and manufacturing as violation of Human Rights. The Convention is a key instrument discouraging the production, marketing and consumption of tobacco, and for preventing the use of corporate social responsibility strategies to legitimise tobacco companies. It guides the wide variety of actors are working towards improving rights to health, while focusing on limited and ending production, marketing and consumption of tobacco.

*“The United Nations Human Rights Council has endorsed the UN Guiding Principles on Business and Human Rights (UNGPs) that apply to all companies including tobacco companies. The Human Rights Council has expressed its authoritative expectation that all companies exercise due diligence in the efforts to respect human rights. According to the UNGPs companies should avoid causing or contributing to adverse impacts on human rights. Where such impacts occur, companies should immediately cease the actions that cause or contribute to the impacts. Tobacco is deeply harmful to human health, and there can be no doubt that the production and marketing of tobacco is irreconcilable with the human right to health. For the tobacco industry, the UNGPs therefore require the cessation of the production and marketing of tobacco”.*¹⁸⁸

Analysing this discourse against tobacco as a product, it can be inferred that these businesses and their processes, including manufacturing, production and sale of tobacco products, is a violation of human rights. The flawed application of Human Rights principles and use of terminologies like ethical and responsible business, which is limited to Rights of Workers and its internal operations, is used by the industry to legitimise the product, while undermining the effectiveness of the FCTC and other national legislation aimed at limited tobacco companies. Based on this, many stakeholders have insisted on the incompatibility of the tobacco business with human rights and find it unacceptable that these businesses are governed by human rights considerations. In recognition of this understanding, in 2017 UN

¹⁸⁸ <https://www.humanrights.dk/news/human-rights-assessment-philip-morris-international>

Global Compact decided to officially exclude tobacco companies from participating in the initiative⁸.

Given this investment by insurance companies in tobacco companies, while being the primary agency with the responsibility to secure lives of people, is an anti-thesis. The Oxford Dictionary defines 'insurance' as "arrange for compensation in the event of damage to or loss of (property), or injury to or the death of (someone), in exchange for regular payments to a company". These companies by virtue of this definition are mandated to deal with welfare of their clients and citizens. While many may conclude that companies by investing in tobacco companies is self-defeating as the company is investing the same sector that effects profitability, According to a report by Harvard Gazette in 2009, which was analysing the investments by insurance companies in tobacco sector *"Although investing in tobacco while selling life or health insurance may seem self-defeating,... insurance firms have figured out ways to profit from both. Insurers exclude smokers from coverage or, more commonly, charge them higher premiums. Insurers profit – and smokers lose – twice over."*¹⁸⁹

The above petition was filed in view of the international conventions that India has ratified and the Indian constitutional provisions. LIC's investment in the tobacco sector is in direct contraction with some of important treaties and also flouts constitutional provisions. The petitioners argued that the investment by LIC, primarily a government insurance agency, violates Article 21 of the Indian Constitution, which guarantees the right to life, as well as Article 47, which directs states to take steps to prohibit the use of intoxicants and to improve health. It is also in direct contradiction with the National Tobacco Programme (NTCP) of the government, which was launched to contain and reduce the use of tobacco in India.

While nationally, the investment contradicts important rights and government initiatives, internationally the investment challenges the very notion of Framework Convention on Tobacco Control (FCTC), which India ratified in 2004. The Government of India played a prominent role in the negotiations and drafting of the FCTC, which culminated into the world Health Assembly of the world Health organization (WHO) adopting the Framework convention on Tobacco control (FCTC) at its 56th session on 21st May 2003. The FCTC is an evidenced treaty, which reaffirms the right of all people to the highest standard of health. The investment made is direct negation of Article 7.2 of the FCTC, which states that "Parties that do not have a State-owned tobacco industry should not invest in the tobacco industry and related ventures. Parties with a State-owned tobacco industry should ensure that any investment in the tobacco industry does not prevent them from fully implementing the WHO Framework Convention on Tobacco Control". Further such investments also lead to proximity of the industry with the government, thereby undermining Article 5.3 of the convention, which states the "need to be alert to any efforts by the tobacco industry to undermine or subvert tobacco control efforts and the need to be informed of activities of the tobacco industry that have a negative impact on tobacco control efforts". Ward of such potential threats FCTC suggests that "in setting and implementing their public health policies

¹⁸⁹ <https://news.harvard.edu/gazette/story/2009/06/health-life-insurers-hold-billions-in-tobacco-stocks/>

with respect to tobacco control, Parties shall act to protect these policies from commercial and other vested interests of the tobacco industry in accordance with national law”¹⁹⁰.

Given that tobacco manufacturing is a violation of human rights, investments by state owned entities in this case the LIC is a violation. The violation is particularly significant as LIC is state owned entity, with objectives aimed at securing the well-being of the community at large. One of objectives explicitly state that *“Bear in mind, in the investment of funds, the primary obligation to its policyholders, whose money it holds in trust, without losing sight of the interest of the community as a whole; the funds to be deployed to the best advantage of the investors as well as the community as a whole, keeping in view national priorities and obligations of attractive return”*.

Also, being one of the premier and largest Life Insurance Company in India, the company is also mandated to manage Social Security Schemes of the Central Government’s including ‘Pradhan Mantri Jeevan Bima Yojana’ and ‘Pradhan Mantri Suraksha Bima Yojana’, which enables increasing the penetration and density of the Insurance Industry. Together the central government scheme and other products of the company including *Jeevan Arogya* and LIC’s Cancer Cover Online Plan, aim at securing the lives of the people against any unwarranted situation. Therefore this investment while being in direct conflict with concept of life insurance, is also in conflict with principle 4 of UNGP, which stated *“States should take additional steps to protect against human rights abuses by business enterprises that are owned or controlled by the State, or that receive substantial support and services from State agencies such as export credit agencies and official investment insurance or guarantee agencies, including, where appropriate, by requiring human rights due diligence.”* Violation vis-a-vis this principle is particularly founded here, as LIC is a state-owned enterprise the company and its management reports to State agencies, given which the associated government departments have greater scope for scrutiny and oversight, including ensuring that effective human rights due diligence is implemented.

Highlighting this, the petitioners based their argument on violation, on the “inherent, undeniable and irreconcilable contradiction between the nature and object of life insurance companies and the tobacco industry”¹⁹¹. The petitioners argued that the government’s investments, especially through LIC and other Specified United under Unit Trust of India, challenges it stand on tobacco and the huge expenditure on anti-tobacco activities and health services for tobacco diseases futile. They also argued that the government’s shareholding in tobacco companies make the companies immune to any policy disincentive.

With regard to UNGP, the PIL raises violation with respect to both Pillar 1 that is ‘State Duty to protect’ and Pillar 2 ‘Corporate Responsibility to Respect’. While on one hand, LIC being a State-owned enterprise has the increasing influencing and power to ensure that relevant policies, legislation and regulations regarding respect for human rights are implemented. On

¹⁹⁰ <https://www.fctc.org/guidelines-for-implementation-of-the-who-fctc/>

¹⁹¹ <https://s/clpr.org.in/wp-content/uploads/2017/06/PIL-Petition-1-1-30.pdf>

the other, being a company operating with profit motive is also required to respect human rights, as per their corporate responsibility.

Stakeholder Mapping as per UNGP

Table 18: Illustrating the role of the various stakeholders vis-a-vis UNGP pillar

STATE DUTY TO PROTECT	BUSINESS RESPONSIBILITY TO RESPECT	ACCESS TO REMEDY
<p>Did the provisions in the State laws provide adequate protection? Is there provision for a monitoring agency?</p> <p>The State does not prohibit its agencies, those primarily operating as a company, to invest in Tobacco Sector.</p> <p>The IRDA, the regulatory authority of insurance companies, do not provide any guidelines with regard to investments in tobacco companies. For the agencies, its primary responsibility is to ensure interests of the policyholders are well guarded.</p> <p>2018 post the PIL, directed LIC to limits its exposure to tobacco companies to 15%.</p> <p>While the government has ratified the FCTC, it hasn't yet operationalised the various articles.</p> <p>The COTPA prohibits advertising and public smoking and consumption of tobacco. It is still a draft of comprehensive legislations governing all aspects of the industry and its partners.</p> <p>The Investment violated Article 21 of the Indian</p>	<p>Did the Corporate ensure an absence of human rights violation/ and where it did take place, address them?</p> <p>LIC did not accept the investment as violation of Human Rights. It is governed by the Insurance Act 2015, LIC act 1956 and IRDA Act, which does not prohibit the investment.</p> <p>One of the primary objectives that LIC is to protect and maximise the returns of its shareholders. ITC and other tobacco companies where LIC has a stake in are companies that provide high return in investment, thereby leading to the investment.</p>	<p>What systems were in place to ensure redressal of grievances?</p> <p>Lack of mechanisms to address this as no rule or regulations exists with regard to prohibition in investment; LIC is government by IRDA Act and LIC Act, which does not prohibit investment in any sector or company.</p> <p>National Guidelines of Responsible Business Conduct- Principle 5 Article 3 - The Governance Structure should ensure that their business, where it is causing, contributing or otherwise linked to adverse human rights impacts, takes corrective actions to address such impacts.</p>

Constitution, which guarantees the right to life, as well as Article 47, which directs states to take steps to prohibit the use of intoxicants and to improve health.		
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Source: IRDA, COTPA¹⁹², FCTC¹⁹³, NGRBCs¹⁹⁴

Response of the Companies

Following the PIL, the Bombay High Court directed the petitioners to include more related parties including SEBI, Ministry of Finance, Ministry of Trade and Commerce and ITC in the case.

LIC's response both during RTI and Petition is a matter of concern.

In 2011, LIC¹⁹⁵ in defending its investment stated that "ITC Ltd can no longer be considered a tobacco company. It has diversified into FMCG, hotels, books, etc. and it also has social responsibility programmes such as *Choupal* for rural India. We have had its stocks for long and they carry a lot of weight in the stock exchange".¹⁹⁶ Further in 2017, in stating that the investment does not violate Human Rights, LIC in response to the PIL highlighted the lack of policy that prohibits investment in Tobacco sector, either for public sector companies or for private companies. They also drew attention to the Indian laws such as Cigarettes and Other Tobacco Products Act (COTPA), which only regulate the production, sale, distribution and consumption of tobacco. It argued that while being under the direct control and supervision of the central government's laws and rules, and therefore cannot be against the policies of the government, as the petitioners allege. Speaking about the choice of company to invest in LIC responded that they look at companies with "good governance and good track record, ITC being one such company." LIC also says that ITC Ltd is a well-regarded share and an outperforming stock which is profit-making. With regard to its investment in the secondary market, LIC responded states it follows a conservative strategy, which aims at protecting the investment made by the policy holders. Their aim and primary obligation is to see that returns are maximised, with minimum risk. None of this is "contrary to its aims and objectives, corporate social responsibility policy or the LIC Act," they told the court.

Response of the company is in direct conflict with the National health priorities, and thereby demonstrates the complete disregard for the government's policy directives.

¹⁹² <https://www.tobaccocontrollaws.org/files/live/India/India%20-%20COTPA%20-%20national.pdf>

¹⁹³ <https://www.who.int/fctc/en/>

¹⁹⁴ https://www.mca.gov.in/Ministry/pdf/NationalGuideline_15032019.pdf

¹⁹⁵ Given that the case is still pending, the response documents are not available for reference. Media reports therefore have been used for analysing the same.

¹⁹⁶ <https://vovindia.org/2011/10/14/lic-itc-vst-psu-investment-public-money-tobacco-companies-life-insurance-corporation/>

Presence of Lead and MSG in Noodle: The Case of Nestle Maggi

The Case: -

Would a brand of noodles supposedly convenient, instant (2 minutes), healthy (*taste bhi, health bhi*) promoted as an alternate/ supplement to home cooking, advertised through a combination of beaming satisfaction of moms and children alike, and big celebrity endorsement, pass the criteria of not causing harm, especially to children?

Not if its Maggi, a product from Nestle, the international FMCG which was found to contain MSG and high levels of lead, with a label that misrepresents the facts through the 'no added MSG' claim on its packet; clearly violating Consumer Rights especially the Rights of children through provision of inaccurate information that does not lead to making informed choices, and has a larger bearing on children's Right to Health.

Sequence of Events: -

A food inspector in UP picked up a sample of a packet of Maggi and sent it for routine testing. The results of the sample sent to the Central Food Laboratory in Kolkata in 2014 that came back in April 2015 read: "MSG: Present, and Lead: 17.2ppm (parts per million)". The amount of lead found was over 1,000 times more than what Nestle India Ltd had claimed. On 29th May 2015, Govt. asked FSSAI to do an enquiry of quality issue of Maggi noodles. FSSAI collected more samples.

On June 5, 2015, Food Safety and Standards Authority of India (FSSAI) directed Nestle to withdraw all variants of the noodles, citing the presence of excessive lead terming them "unsafe and hazardous" for human consumption. The regulatory board had found three major violations: impermissible levels of lead, misleading 'No added MSG' labels on the packaging, and the release of Maggi Oats *Masala* Noodles¹⁹⁷ without conducting risk assessment or product safety analysis. But, immediately before this order, Nestle issued a public notice that it had decided to withdraw all variants of Maggi noodles across India and initiated the recall process.

Meanwhile on 2nd June, 2015 a court in Bihar's Muzaffarpur had directed police to register an FIR against two Nestle officials and Bollywood stars, Amitabh Bachchan, Madhuri Dixit, and Preity Zinta for their commercial association with the brand.

The Consumer Affairs Ministry filed a class action suit under section 12-1-D of the Consumer Protection Act in August 2015 in the NCDRC against Nestle India seeking, Rs 640 crore in damages for alleged unfair trade practices, false labelling and misleading advertisements.

Nestle appealed the FSSAI order of 5th June in court, and the Bombay High Court lifted the recall order in August 2015, and said the popular snacks can go on sale again after fresh tests on its safety. Maggi cleared the first set of tests, which allowed Nestlé India to start manufacturing the product in October 2015, and the noodles brand was back in the market in November 2015.

However, between 5 June and 1 September 2015, Nestle's team collected approximately 38,000 tonnes of Maggi noodles from retail stores, and destroyed them by first crushing the noodles and then mixing them with fuel and burning in incinerators at 11 cement plants across the country.

¹⁹⁷<https://economictimes.indiatimes.com/industry/cons-products/food/fssai-nine-variants-of-maggi-noodles-unsafe-hazardous-maggi-oats-masala-noodles-launched-without-approval/articleshow/47552005.cms>

Nestle also approached the Supreme Court which in December 2015 stayed the proceedings before the consumer court of the class action suit.

In September 2017, [Nestle partnered with FSSAI to open the first food safety institute in Manesar](#). In January 2019, the Supreme Court lifted a Stay on the proceedings of the class action suit for Rs 640 crores against Nestle India. It said that the report from the Central Food Technological Research Institute (CTRI), Mysuru, where the testing of the Maggi noodle samples was conducted then, will form the basis for the proceedings.

Possible Impact: -

“Short-term exposure to high levels of lead can cause brain damage, paralysis, (lead palsy), anaemia and gastrointestinal symptoms. Long term exposure can cause damage to the kidneys, reproductive and immune systems in addition to effects on the nervous system. The most critical effect of low-level lead exposure is on intellectual development in young children and like mercury, lead crosses the placental barrier and accumulates in the foetus. Infants and young children are more vulnerable than adults to the toxic effects of Lead, and they also absorb lead more easily. Even short-term low-level exposure of young children to lead is considered to have an effect on neuro behavioural development. Consumption of food containing lead is the major source of exposure for the general population.”

Food Safety Authority of Ireland on “Mercury, Lead, Cadmium, Tin and Arsenic in Food” (Issue No.1, May 2009 in its Toxicology Factsheet Series)

Quoted in the FSSAI order of 5th June 2015

The Violation

Table 19: Illustrating Violation of Law, Conventions and Rule/Standard

Law	Convention	Rule/Standard
<p>Indian Constitution: - Article 39f -children should be given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity.</p> <p>Food Safety and Standards Act 2006, and Regulations 2011- 2.2.1:1, which states: Pre-packaged food shall not be described or presented on any label or in any labelling manner that is false, misleading or deceptive or is likely to</p>	<p>Convention on the Rights of the Child -Article 36 affirms that children should be protected from any activities that could harm their development.</p> <p>Article17 states that children have the right to reliable information from mass media. Television, radio, and newspapers should provide information that children can understand, and should not promote materials that could harm children.</p>	<p>Code of the Advertising Standards Council of India, states that advertisements addressed to minors shall not contain anything, whether in illustration or otherwise, which might result in their physical, mental, or moral harm or which exploits their vulnerability.</p> <p>National Voluntary Guidelines on Social, Environmental and Economic Responsibilities of Business,</p>

<p>create an erroneous impression regarding its character in any respect;” Consumer Protection Act, 1986 which speaks of the consumer rights: the right to safety and protection against hazardous goods; the right to choice; the right to be fully informed and the right to seek redressal.</p>		<p>Principle 9 states that Businesses should communicate transparently and assure access to information about their decisions that impact relevant stakeholders.</p> <p>Nestle's statement in its Annual Report of 2013¹⁹⁸, “The Company complies with appropriate product packaging and labelling requirements including declaration of appropriate method of preparation of products for safe and proper consumption. Its business code states that “We are committed to responsible, reliable communication that empowers consumers”. To exercise their right to informed choice and promotes healthier diets. We respect consumer privacy.</p>
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Source: Consumer Protection Act 1986¹⁹⁹; FSSAI²⁰⁰, NGRBC²⁰¹, Nestle Annual Report 2013¹⁹⁸

STAKEHOLDER MAPPING AS PER UNGP AND THEIR RESPONSE:

Table 20: Illustration of role of stakeholders vis-a-vis UNGPs

State Duty to Protect	Business Responsibility to Respect-	Business Responsibility to Respect
<p>Did the provisions in the State laws provide adequate protection? Is there provision for a monitoring agency? Absence of clarity and details in Indian standards: Unlike the USFDA which clearly</p>	<p>Did the Corporate ensure an absence of human rights violation/ and where it did take place, address them? Lack of Accurate Information: -Deliberate attempt to mislead consumers via its 'no added</p>	<p>What systems were in place to ensure redressal of grievances? National Consumer Disputes Redressal Commission filed a class action suit under Consumer Protection Act in 2015 revived in 2019 seeking</p>

¹⁹⁸ https://www.nestle.com/sites/default/files/asset-library/documents/library/documents/annual_reports/2013-annual-report-en.pdf

¹⁹⁹ <http://egazette.nic.in/WriteReadData/2019/210422.pdf>

²⁰⁰ https://www.fssai.gov.in/upload/uploadfiles/files/Packaging_Labelling_Regulations.pdf

²⁰¹ https://www.mca.gov.in/Ministry/pdf/NationalGuideline_15032019.pdf

<p>states that foods with any ingredient that naturally contains MSG cannot claim “No MSG” or “No Added MSG” on their packaging, there is no such provision in the Indian law.</p> <p>No central statutory agency or uniform legislation regulating the advertising industry.</p> <p>Very few policies/standards that consider Children’s Rights as consumers leading to limited protection in this case</p> <p>FSSAI: Ordered nationwide testing of samples, and a temporary ban of the noodles post the initial test which showed high lead and presence of MSG. However, have handicaps of lack of capacity in terms of adequate testing labs, cumbersome/delayed approval processes and weak enforcement mechanisms.</p> <p>The structure and process of the food recall system was first drafted by the Food Safety and Standards Authority of India or FSSAI in 2011 but is yet to be implemented.</p>	<p>MSG label’.</p> <p>Lack of adequate enforcement of standards for safety of products: - Lead beyond permissible levels in many of the tested samples exhibiting disregard for consumer health.</p> <p>Absence of due diligence mechanisms in this case to detect human rights violation.</p> <p>Withdrawal of noodles shown as a proactive responsible act without owning up to the violation, however seen as destruction of evidence by rights advocates.</p>	<p>a compensation of INR 6.4 billion.</p> <p>Various State Health Ministries were proactive in ordering testing and ban of the noodles.</p> <p>While the Mumbai High Court stayed the ban on procedural grounds, Supreme Court revived the case along with the class action suit</p>
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Source: Authors Own analysis using variety of sources and report

Role of the Company: -

Tests conducted in Delhi, Gujarat, and Tamil Nadu all found the lead content to be above the prescribed norm. In response, the Company asserted that the testing protocols had not been followed and interpreted correctly. According to them, the Product contained two parts i.e. the Noodle and the Tastemaker. The samples had been tested for each of the two components separately whereas it should have been tested as a combined end product, i.e. the form in which it is finally consumed. It further asserted that the “No added MSG” on the

label was on account of lack of clarity in the regulation and that the Company had followed the practice generally followed by the industry in this behalf. Its letter of 2nd June 2015 stated “it is a known fact that it is not possible to distinguish between naturally occurring glutamate and added glutamate in foods”. The Company’s aforesaid letter further reads “We have been declaring “No Added MSG” on Maggi Noodle Packs as we do not add MSG (flavour enhancer- E621) as an additive in the product. FSSAI rejected both these assertions on the grounds that the final process of preparation has no linkage with the manufactured product as placed in the market and the compliance of standards has to be tested for each of two items; and its’ no added MSG a contravention with 2.2.1:1, which states:

Pre-packaged food shall not be described or presented on any label or in any labelling manner that is false, misleading or deceptive or is likely to create an erroneous impression regarding its character in any respect;”

From the Corporate Point of view, the UNGP clearly lays down certain principles of which specifically, Guiding Principle 13: (a) Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur; [Guiding Principle 15](#) -n order to meet their responsibility to respect human rights, business enterprises should have in place policies and processes appropriate to their size and circumstances, including: (a) A policy commitment to meet their responsibility to respect human rights; (b) A human rights due diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights; (c) Processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute. [Guiding Principle 18](#) GUIDING PRINCIPLE 18 In order to gauge human rights risks, business enterprises should identify and assess any actual or potential adverse human rights impacts with which they may be involved either through their own activities or as a result of their business relationships. This process should: (a) Draw on internal and/or independent external human rights expertise; (b) Involve meaningful consultation with potentially affected groups and other relevant stakeholders, as appropriate to the size of the business enterprise and the nature and context of the operation.

The assertion of ‘No added MSG’ was clearly intended to create a false impression of the character of the product in the minds of the consumers.

Nestle did not accept the violation; on its website, post the incident in its timeline of events it said Nestlé India says it will remove the "No added MSG" claim on the pack – although 'factually correct and not in violation of regulations'.²⁰²

However, while it did not acknowledge the violation explicitly, it did voluntarily recall Maggi across the country, just before the FSSAI order and destroyed 38000 tonnes of the product claiming to do its duty, however some allege as a cover up/destruction of the evidence.

The information shared through media and its website is clearly incomplete showing a lack of transparency. Neither the initial FSSAI order nor its initial responses are shared. It also has through interviews to the media tried to project Nestle being a competent organization with state-of-the-art facilities versus the government with poor resources/inadequate capacities and therefore the results of latter’s testing being suspect.²⁰³

²⁰² <https://www.nestle.in/aboutus/trending-now/answers/maggi-noodles-india-overview-timeline>

²⁰³ <http://fortune.com/nestle-maggi-noodle-crisis/>

Many of these so-called media reports now showcase this as a PR crisis management case study, versus a real violation by a multi-national company, with overtones of the Company being a victim of target competition.

Nestle India Ltd (FY15 revenue Rs 8175 crore or \$1.25 billion) is the Indian arm of Nestle, the \$92 million food giant ranked 66 in the Fortune Global 500 list. Nestle has been in India since 1912 and its brands, Cerelac, Nescafe, Kit Kat, EveryDay, and Maggi, among others, are household names.

[Right to Livelihood of people affected due to hydro-electric project – Case of NHPC in Loktak Manipur](#)

Background

The Loktak Lake, located in Bishnupur district in the Imphal Valley, is one of the largest natural freshwater lakes in the North-Eastern region of India and is well known for its charming natural beauty. The vast expanse of the Loktak Wetland Complex (including parts of Loktak lake, Pumlun pat, Ikop pat, Kharung pat and Khoidum pat) play an important role in the ecological, social, cultural and economic to the catchment areas as well being of the State of Manipur. Spread over 469 sq. km, ecological and livelihood security of the communities, overall, 45 villages and 29 towns are located in and around these wetlands, are inextricably linked with the ecosystem of the wetland system. While on one hand the wetlands are the largest source of fisheries, edible plants and freshwater for the state, on the other the staple food of Manipur is directly linked to Loktak Lake and surrounding parts. The lake is rich in biodiversity and has been designated as a wetland of international importance under Ramsar Convention in 1990. The Keibullamjao National Park, in the southern part of the lake, is home to the endangered Manipur Brow Antlered Deer, locally called Sangai. The lake has been also the breeding ground of a number of indigenous fishes and continues to be a vital fisheries resource. It supports a significant population of migratory birds and resting place of numerous fauna and flora. Phumdi, floating heterogeneous masses of soil, vegetation and organic matter at various stages of decomposition are a characteristic feature of the lake.

In 1971, the Ministry of Irrigation and Power, Government of India took up the construction of the Loktak Multipurpose Hydro Electric Project, which was then commissioned in 1983 to the National Hydro Electric Power Corporation (NHPC) for execution. The project envisaged generating 105 MW of electricity and irrigating 24,000 hectares of land in the oval shape Imphal Valley. Since 1983, NHPC has been operating the project along with Ithai barrage which was also constructed as a part of the project over the Manipur River. While, the project was commissioned with the objective of bettering the lives of the people living in the periphery of the wetland, in reality the construction and operation of the project have adversely impacted economic and ecological conditions of the region. According to research studies regarding the impact of the project, Manipur continues to lose around 300 crore rupees annually, due to loss of crop yield, fishing and other seasonal vegetable harvest from

the land destroyed by Loktak Project in and around Loktak wetlands. The construction of Ithai barrage and decrease in absorption capacity of the lake due to siltation and phumdi (floating masses) has resulted in inundation of the peripheral agricultural and settlement areas. It is estimated that the inundation of cultivable and habitation land is about 50,000-80,000 hectare (WWF India 1994). The losses incurred by the state post the operation of the project in 1983, is estimated to be more than Rs. 10,000 crores.

Sequence of Events

Timeline



The commissioning of Ithai Barrage in 1983, has led to disastrous flash floods in and around Loktak, which has severely affected the socio-economic life of the people of Manipur. Due to this the projects, since the initiation of its operations in 1983 has invited many Civil Organizations, NGOs and recently the Government of Manipur has been demanding and protest against the construction of the Ithai Barrage because of its sever affected in and around the Loktak Lake and surrounding pats where extensive productive agricultural fields and fish firms are submerged under water.

In 1986, Government of Manipur constituted Loktak Development Authority (LDA) to ensure overall improvement and management of Loktak Lake. The Authority was empowered to keep a check on the deteriorating condition of Loktak Lake and to bring about improvement of the lake ecosystem along with development in the field of fisheries, agriculture, and tourism while conserving the catchment area involving concerned Departments of the State Government. In April 2006, the government of Manipur, notified the 'The Manipur Loktak Lake (Protection) Act, 2006 (Manipur Act 3 of 2006) in the Manipur Gazette, Imphal, which to provide for administration, control, protection, improvement, conservation and development of the natural environment of the Loktak Lake and for matters related to it. The Act laid down the basis for lake zonation, regulation of detrimental activities and coordinate developmental works. Post the enactment of the Act, the Loktak Development Authority (LDA) became a body constituted by the Government of Manipur under the Act. The Authority was headed by the Chief Minister, and included as members Ministers of relevant Departments, MLAs of Assembly Constituencies falling under Loktak catchment, Chief Secretary, Manipur, and Secretaries/Commissioners of relevant Departments, VC (CAU), DCs of Imphal West and Bishnupur Districts, HoDs of relevant Line Departments and NHPC, are members²⁰⁴.

In 1994, the affected people formed the Petitioners association and filed a writ petition²⁰⁵ seeking compensation at Imphal Bench of the Gauhati High Court. In response NHPC stated that it was only involved in 1977 and that the welfare of people is direct responsibility of the government of Manipur. To better under the case and collect factual information and Expert Committee was form in 1999, which in its report in 2006 stated that for generation of electricity from Loktak Lake, water was being maintained at pre-determined level for NHPC, leading to floods and submersion of the land. Therefore, given that people due to this had suffered losses they 'deserved compensation'. NHPC however rejected this on grounds that it was a mere licensee of the Government of Manipur and was already providing the Government 12% of the total electricity for the development of the region and the state.

LDA, the government agency for development of the Loktak lake had been an issue of concern ever since its establishment. Post the enactment of the law; fishermen were being evicted from the lake by the Loktak Development Authority (LDA), as it claimed that detrimental fishing practices and proliferation of phumdis had led to the degradation of the

²⁰⁴ <https://manipur.gov.in/wp-content/uploads/2012/10/annual-report-2011-12-16-3-12-loktak-development-authority.pdf>

²⁰⁵ <https://www.casemine.com/judgement/in/5811a4ffe691cb26fc4da2a6>

lake. In November 2011, the Loktak Development Authority began arsoning and dredging the phumdis consequently evicting the indigenous people that inhabited them. Over 700 families who lived on phumdis were evicted from their homes during the clean-up²⁰⁶. Since then the fishermen, who depended upon the lake for their livelihood were no longer allowed to fish in the core area of the lake. In 2011, Citizens' Concern for Dams and Development (CCDD) had issued an urgent appeal concerning a brutal assault on a group of eleven Meitei women who were protesting against the ongoing forced evictions at Loktak Lake in Manipur. According to the appeal, the Manipur police charged at the women with batons during a protest and fired tear gas in an attempt to disperse the protesting women at the Thangalthing Village in Chingjin in the Bishenpur District on December 19²⁰⁷. The protestors were also protesting the absence of free, prior and informed consent of indigenous communities depending on Loktak wetlands in the management and protection measures of the Lake and the numerous restrictions imposed on the communities over the use and dependence on Loktak Lake. A vital aspect of this division is the ban on building huts or houses on phumdis inside the lake, planting athaphum, or engaging in athaphum-fishing in the core area, which will adversely affect over 10,000 people living in phumdi huts, as well as others dependent on Loktak Lake especially under Article 19 and 20 of the Act which divides the Lake into two zones – a core zone comprising 70.30 sq km, which is a 'no development zone', or 'totally protected zone', and a buffer zone of other areas of the lake excluding the core zone.²⁰⁸

In 2014, All Loktak Lake Areas Fishermen's Union, Manipur (ALLAFUM) has submitted a memorandum to the Prime Minister, the Union Home Minister, the Union Law Minister, the Union Minister of Agriculture and the Union Minister of state for Environment urging them to repeal the Manipur Loktak Lake (Protection) Act, 2006. The memorandum contended that, under the garb of the Act the State government along with the LDA has been curbing the rights of fishermen and people who are dependent on wetland²⁰⁹.

In the wake of continuous ecological crisis causes due to the barrage and activities to preserve it, in August 2017, the state Chief Minister Biren Singh formally urged Prime Minister Narendra Modi to consider the decommissioning of the Ithai Dam as a permanent solution to the ecological disaster.

Violations

The Government of Manipur, though Loktak Development Authority blamed the indigenous peoples dwelling in Loktak lake for polluting and causing contamination of the Lake. However, the impact of Ithai Barrage of the Loktak Multipurpose Hydroelectric Project, commissioned in 1984, which led to huge scale devastation of Loktak wetland wetlands ecosystem, loss of indigenous plant and faunal species, disturbance of the wetlands natural balance and cleansing system leading to pollutions, increasing siltation from the rivers etc.

²⁰⁶ <https://pulitzercenter.org/reporting/manipur-ithai-dam-threatens-loktak-wetland>

²⁰⁷ <https://intercontinentalcry.org/urgent-appeal-manipur-police-assault-indigenous-women-at-loktak-lake/>

²⁰⁸ <https://incomindios.ch/en/urgent-appeal-physical-assault-and-torture-of-ten-meitei-women/>

²⁰⁹ <http://e-pao.net/GP.asp?src=24..131014.oct14>

has not been considered and completely ignored. And the ensuing activities by the authority violated basic fundamental rights and obligations to National Law and International Convention.

Table 21: Illustrating violation of Law, Convention, Rule/Standard

National Law	Convention	Rule/ Standard
<p>Did the Corporate ensure an absence of human rights violation/ and where it did take place, address them?</p>	<p>The Ramsar Convention urges and encourages the contracting parties to consult the community and indigenous people in the formulation of national wetland policies and legislation, facilitate indigenous people's and local communities' direct involvement in national and local decision-making for the sustainable use of wetlands, involve local and indigenous people to work together in the planning and management of wetlands to ensure that the best available science and local knowledge are taken into consideration in making decisions.</p>	<p>The absence of an MoU that defines the terms and conditions of the operation of the Loktak project, made it difficult to respond to social and environmental impacts and the grievances of the communities</p> <p>NHPC R&R Policy which states 'The Policy aims to meaningfully consult, involve and inform the project affected persons at all Project stages. The affected families will be fully informed and their participation will be sought in selection, planning and implementation of viable R &R initiatives.'</p> <p>Principles 8 of National Guidelines on Responsible Business Conduct, where core element 5 stresses on efforts by businesses to minimize the negative impacts of displacement on people through their operations and where displacement is unavoidable, it must be undertaken with informed consent of people.</p>

Source: Case Mine²¹⁰, Ramsar Convention²¹¹, NHPC²¹²

²¹⁰ <https://www.casemine.com/judgement/in/5811a4ffe691cb26fc4da2a6>

²¹¹ <https://www.ramsar.org/about/the-convention-on-wetlands-and-its-mission>

²¹² <http://www.nhpcindia.com/home.aspx>

The very origin of the project is marred with violation. In May 2017 in response to an RTI by Mr. Joy Haobijam of Thanga, Manipur, NHPC confirmed the non-existence of an MoU. The absence of an MoU, that should be defining the terms and conditions of the operation of the Loktak project, led to non-regulation of the operation of the 105 MW Loktak Multipurpose Hydroelectric Project concerning its project duration, response to social and environmental impacts, the decommissioning period, and the rights and role of the State Government and mechanisms to address the grievances of the communities. In the absence of this, it seems the Government of Manipur is divesting its responsibility to regulate a project marred with wide social and environment impacts on its land and resources, which provides a critical livelihood source for several indigenous communities of Manipur. The NHPC seems to be conferred with a free hand to just plunder and expropriate the wetlands and other natural resources of Manipur without any monitoring, regulation and accountability mechanism. The failure to enforce this is a shortfall on part of the government to protect human rights of the community.

The LDA, entrusted with the responsibility to manage the Wetland, soon after being established, issued a public notification for eviction of the phumhuts in the Loktak Lake under section 19 and 20 of the Manipur Loktak Lake (Protection) Act, 2006. The Act termed the people living in these huts as occupiers and later as encroachers, thereby taking away from them to right to stay in a place they have lived for generations. Thereby enabling the authority to evict the people, while no section in the entire Act that empowers the LDA for such eviction²¹³. Also, the Loktak Lake is already designated as a Ramsar Protected Site under the Ramsar Convention and one of the key obligations of the Government is to ensure that communities depending on Loktak Wetlands are fully involved in all management process of the Lake as also endorsed by the resolution VII.8 and VIII.19 of Ramsar Convention's Conference of contracting parties held at Costa Rica in May 1999 and at Spain in November 2002²¹⁴. The LDA, however, which was entrusted with the management of the lake, did not include any community representation, rather comprised members from the state government, local government and its agencies and NHPC.

The LDA to evacuate the community from the phumudis burnt their huts, fishing gears and nets of the communities; the only survival means to catch fish from the Loktak wetlands, thus leaving the people in dire situation, which further impacted the community's daily livelihood activities. And in many cases, the police also forced the displaced family members to burn their own huts. These activities of the LDA were a direct violation of the Constitution especially Article 21 'Rights to Life and Livelihood' contained in the Part III- the fundamental Rights. It also violated the State's duty to protect Human Rights under the UNGC, which explicitly states that '*In meeting their duty to protect, States should Encourage, and where appropriate require, business enterprises to communicate how they address their human rights impacts*'. Moreover, in direction violation of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013, there is no

²¹³<http://e-pao.net/GP.asp?src=24..131014.oct14>

²¹⁴http://e-pao.net/epSubPageExtractor.asp?src=news_section.opinions.Loktak_Project_and_corporate_unaccountability_in_Manipur_By_Jiten_Yumnam

process to rehabilitate the affected villagers and their right to free, prior and informed consent has not been sought. The displaced people were offered a meagre sum of 40,000 Indian Rupees (approx. 900 USD) per household as compensation by the Government before burning down their huts. However, most of the villagers rejected this payment as the amount as it was too meagre to compensate for the loss livelihood and survival means.

The act of LDA, demonstrates the complicity of the state with the Human Rights violations. It violates the duty of the States to “ensure that governmental departments, agencies and other State-based institutions that shape business practices are aware of and observe the State’s human rights obligations when fulfilling their respective mandates, including by providing them with relevant information, training and support”.

While NHPC has highlighted absence of MoU as an argument to evade responsibility from the consequences of operating the Loktak Dam operation, the Loktak Dam Hydro Project is listed as one of the projects under NHPC both in Government²¹⁵ and well as Company document²¹⁶. There the eviction of the people from the phumudis on the Loktak Lake is also against NHPCs own Resettlement and Rehabilitation Policy, based on Ministry of Rural Development, Government of India’s National Rehabilitation and Resettlement Policy-2007²¹⁷, which gives primary importance to Free Prior Informed Consent (FPIC) of the affected people. This contradiction and defiance of own policy is an issue of violation. The policy gives special emphasis to protect the rights of Indigenous population, Scheduled Tribes (ST), Scheduled Castes (SC), and various other persons falling under the vulnerable category and works towards resolving the issues of income generation, finding alternative sources of income and improving the overall quality of life of the affected families. Analysing this against the National Guidelines National Voluntary Guidelines on Social, Environmental and Economic Responsibilities of Business, updated recently as National Guidelines of Responsible Business Conduct, also demonstrates the conflict between the standards of ethical business and human rights and activities of NHPC, as a part of LDA. The guidelines, very explicitly lays down the obligation of the businesses to ethically conduct itself, taking into account the aspirations of the larger community. In doing so, the guidelines state that businesses should minimise negative impacts of operations, such as displacement, but where displacement is unavoidable, businesses in their conduct should take into account the consent of the people and where possible make provision for adequate compensation (Principle 8 Core Element 5)²¹⁸.

Sufficient evidences and the observations of the expert committee set up the High Court in 1999 prove that in order to ensure the full potential pre-determined level of water needs to be maintained. And this level of water leads to flooding of the areas around the lake. Thereby creating onus on the company, which is operating and earning profits from the region for the well-being of the people. To object against this, while NHPC has stated that it is already providing 12% to the government, research shows that NHPC have paid similar royalty to other states, including Jammu and Kashmir for use of water resources in the

²¹⁵ http://cea.nic.in/reports/monthly/generation/2019/May/actual/opm_08.pdf

²¹⁶ http://www.nhpcindia.com/writereaddata/images/pdf/Annual_Report_2017-18_eng.pdf

²¹⁷ <http://www.nhpcindia.com/r-and-r-initiative.htm>

²¹⁸ http://www.mca.gov.in/Ministry/pdf/NationalGuideline_15032019.pdf

region²¹⁹. Therefore the 12% cannot be attributed as the fulfilment of responsibility towards the community.

The case, however, was later dismissed by the court in the light of need for more evidence to prove the linkage of the project with the company. This violated the basic principles of UNGPs and its emphasis on the responsibility of the company to respect human rights and *“Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur”* and where such rights have been violated business enterprises *identify ... adverse impacts, ... provide for or cooperate in their remediation through legitimate processes.”*

Stakeholder Mapping

Table 22: Illustrating role of stakeholders vis-a-vis UNGPs

State Duty to Protect	Business Responsibility to Respect	Access to Remedy
<p>The absence of an MoU that defines the terms and conditions of the operation of the Loktak project, made it difficult to respond to social and environmental impacts and the grievances of the communities</p> <p>NHPC R&R Policy which states ‘The Policy aims to meaningfully consult, involve and inform the project affected persons at all Project stages. The affected families will be fully informed and their participation will be sought in selection, planning and implementation of viable R &R initiatives.’</p> <p>Principles 8 of National Guidelines on Responsible Business Conduct, where core element 5 stresses on efforts by businesses to minimize the negative</p>	<p>Did the Corporate ensure an absence of human rights violation/ and where it did take place, address them?</p> <p>Inadequate</p> <p>Lack of MoU between the Government and Company has made it legally difficult to create a case against the company.</p> <p>While the Company has an R&R policy, the same policy hasn’t been applied to the situation in Loktak Lake.</p> <p>NHPC has absolved itself from the responsibility stating it is paying an annual 12% of royalty to the Government of Manipur from the total amount of profit generated from the hydel project. What is, however, not stated that NHPC for using resources available in a state is paying a royalty to the state as</p>	<p>What systems were in place to ensure redressal of grievances?</p> <p>Partial</p> <p>The Imphal bench of the Gauhati High Court set up an Expert Committee to inquire about the factual position of the case. While the Expert committee came up with the recommendations of compensations for the affected people, the Court dismissed the case in 2016 after hearing the parties involved in detailed dismissed the case on grounds of lack of factual information and evidences.</p>

²¹⁹<https://economictimes.indiatimes.com/industry/energy/power/jk-government-gets-rs-480-61-crore-royalty-from-nhpc/articleshow/12249238.cms>

impacts of displacement on people through their operations and where displacement is unavoidable, it must be undertaken with informed consent of people.	usage charges. Environmental Impact Assessment (EIA) study is an integral part of planning of the projects was not carried out during Loktak project.	
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Source: Case Mine²²⁰, E-pao²²¹, Kangla Online²²², NHPC website

Response of Company

The Company does not accept the situation in Loktak as a Human Rights violation.

The deprivation of human Rights of Plantation Workers: The case of Tata Tea Plantations in Assam

The Context: -

Assam houses nearly 800 plantations and more than 100,000 smaller tea gardens which together produce 52% of all tea in India and almost 1/6th of the world's tea²²³. These plantations are typically populated by workers who are descendants of tribal communities from other Indian states who were brought to the tea estates as bonded or forced labour during India's colonial period and continue to hold a distinct socioeconomic identity. Jobs on the tea plantations are traditionally passed from one generation to the next. Having limited access to opportunity outside the tea plantations, tea workers are highly dependent on their employers. The Adivasi tea workers are further marginalised in Assam as they do not have Scheduled Tribe status, which deprives them of educational and employment benefits, even though such status is granted to *Adivasis* in neighbouring West Bengal. Thus, colonial-era labour structures, a cracked trade union, and a power imbalance that favours management, enable unjust wages and other violations that not only go against labour laws, but against basic human rights themselves. While the following case study is of the Amalgamated Plantations Private Limited (APPL), the second largest producer and supplier of tea in India employing over 30,000 people on its 25 tea estates in Assam and West Bengal, originally completely owned by, and currently having as the largest shareholder, The Tata Group, the issues are endemic to the sector as a whole.

Sequence of Events: -

In the mid-2000s, Tata reached out to the International Finance Corporation (IFC), with a plan that would create a separate company to operate its plantation operations in the states of Assam and West Bengal. The plan for the new company, Amalgamated Plantations Private

²²⁰ <https://www.casemine.com/judgement/in/5811a4ffe691cb26fc4da2a6>

²²¹ <http://e->

[pao.net/epSubPageExtractor.asp?src=news_section.opinions.Loktak_Project_and_corporate_unaccountability_in_Manipur_By_Jiten_Yumnam](http://e-pao.net/epSubPageExtractor.asp?src=news_section.opinions.Loktak_Project_and_corporate_unaccountability_in_Manipur_By_Jiten_Yumnam)

²²² <http://kanglaonline.com/2017/07/loktak-lake-and-manipur-in-ecological-disaster/>

²²³ <https://www.business-humanrights.org/en/minimum-wage-violations-perpetuate-modern-day-feudalism-on-assams-tea-plantations>

Ltd. (APPL), included employee share ownership. Tata would continue to support APPL for a period until it could be spun off into a publicly traded company, allowing Tata to focus on marketing its existing retail brands. In 2009, (IFC) – invested \$7.8 million in the setting up of this project.

In 2011, the International Union of Food Workers (IUF) made a complaint to IFC which related to two incidents – one which took place in August 2009, when a pregnant tea worker at the APPL's Nowera Nuddy estate in West Bengal collapsed²²⁴, allegedly after making a request for maternity leave. This incident led to a labour dispute which resulted in two lockouts lasting a total of three months. In a separate public report, IUF detailed another incident which occurred in May 2010 at the APPL Powai estate in Assam. In this case, a worker collapsed and died, allegedly due to exposure to pesticides²²⁵. The event led to protests and a clash with police which resulted in two protesters being killed and 16 others injured.

In February 2013, three local NGOs filed a complaint on behalf of tea workers working and living on Tata company's tea plantations. The complaint highlighted labour rights violations and pathetic working conditions at three different plantations, focussing on long working hours, unpaid compensation, poor sanitation and health problems, and the lack of freedom of association. The implementation of the worker-shareholder programme was also questioned, with complainants contending that workers had been pressured into buying shares, often without proper information about the associated risks²²⁶.

The World Bank's accountability wing, the Compliance Advisory Ombudsman (CAO), deemed the complaint eligible for assessment in February 2013.²²⁷ An assessment of the issues raised in the complaint was initiated. When the stakeholders failed to arrive at an agreement on a dispute resolution process, the case was transferred to the CAO compliance function in November 2013. In February 2014, the CAO's appraisal determined that a compliance investigation of IFC's investment in APPL was in order.

In 2014, Tata Global Beverages Limited requested Solidaridad to conduct an independent assessment of the living and working conditions in the tea gardens of APPL.

The CAO's investigation report was released in November 2016²²⁸ and identified a number of non-compliances in IFC's assessment and management of environmental and social (E&S) risks involved in the investment. IFC had failed to ensure that APPL complied with key performance standards. Specifically, The CAO investigation found that the IFC had failed "to respond systematically to issues regarding housing and living conditions". It had also failed to respond to serious lapses in the use of banned pesticides - "with the result that workers

²²⁴ <https://documents.in/document/the-world-bank-tata-and-enduring-abuses-on-indias-tea-weblaw-world-bank.html>

²²⁵ <https://counterview.org/2016/11/08/world-bank-auditors-concern-over-workers-living-conditions-wages-and-child-labour-in-tea-gardens/>

²²⁶ http://www.cao-ombudsman.org/cases/case_detail.aspx?id=195

²²⁷ http://www.cao-ombudsman.org/languages/french/documents/CAO_10Year_AR_web.pdf

²²⁸ <http://cao-ar17.org/compliance/index.html>

have been exposed to extremely hazardous chemicals." Workers' right to freedom of association had been severely curtailed, grievances had not been addressed, and there had been a lapse in checking child labour.²²⁹ Moreover, the fact that workers were being forced into the shareholding scheme had not been addressed. More broadly, the CAO investigation noted that it was not clear if the plantation jobs were adequate in meeting workers' basic needs.

The IFC accepted some of the CAO's findings, but disputed others on human rights abuses and non-compliance with Indian laws. It said that a third-party audit had been commissioned²³⁰. Tata Global Beverages (TGB) also issued a statement that a Draft Action Plan has been presented to the APPL board for approval, and that along with the IFC, it will be engaging a third-party auditor for an annual audit and worker perception survey, among other improvement measures. The CAO decided to monitor the IFC's actions in response to the investigation findings.

On 27 April 2018, two local groups, Promotion and Advancement of Justice, Harmony and Rights of *Adivasis* (PAJHRA) and People's Action for Development (PAD), from Assam, India sent a letter to the Compliance Advisor Ombudsman (CAO), highlighting that the Bank's neglect^{231&232} over the last nine years had contributed to deaths and injuries on tea plantations of tea workers who died following work-related accidents, prolonged exposure to hazardous pesticides and lack of adequate medical care.

In January 2019, CAO released a compliance monitoring report which stated that since the release of CAO's investigation report, APPL has reported progress in implementing some of the Action Plan commitments,²³³ however the complainants assert that workers were not consulted on the Action Plan and raised concern with the progress and quality of Action Plan implementation. CAO's monitoring report concluded that IFC has completed limited supervision of the project and has not satisfactorily addressed CAO's non-compliance findings. As a result, CAO concluded that IFC does not have assurance that their client is on track to achieve compliance with the Performance Standards. The case remains open.

The Violation: -

Table 23: Illustrating violations of Law, Convention and Rule/Standard

Law	Convention	Rule/Standard
Under the Indian Plantations Labour Act ²³⁴ , 1951, employers are	ILO's 8 conventions which give the following standards: -	Tata Global Beverages Sustainability Policy states that it is committed to"

²²⁹<https://amrc.org.hk/sites/default/files/Cases%20of%20human%20rights%20violations%20in%20India.pdf>

²³⁰https://www.huffingtonpost.in/2016/11/07/world-bank-finds-evidence-of-labour-abuse-on-assam-tea-plantatio_a_21600044/

²³¹<https://www.devex.com/news/ifc-fails-to-ensure-proper-work-protection-for-tea-workers-in-india-95874>

²³²<https://indianexpress.com/article/north-east-india/assam/tea-garden-deaths-on-the-rise-in-world-bank-funded-plantations-claim-local-ngos-5162999/>

²³³<https://www.accountabilitycounsel.org/2019/01/press-release-world-bank-and-tata-group-must-take-urgent-action-to-address-long-standing-health-and-safety-concerns-on-their-tea-plantations-in-india/>

²³⁴ The Plantation Labour Act 1951,

http://www.teaboard.gov.in/pdf/policy/Plantations%20Labour%20Act_amended.pdf

<p>responsible for the provision of welfare measures to workers such as housing, adequate health care, education and water.</p> <p>Article 39 of Directive Principles of Constitution of India states that the health and strength of workers, men and women and the tender age of children are not to be abused.</p>	<p>Freedom of association and the effective recognition of the right to collective bargaining (Convention No. 87 & No. 98)</p> <p>The elimination of all forms of forced and compulsory labour (Convention No. 29 & No. 105)</p> <p>The effective abolition of child labour (Convention No. 138 & No. 182)</p> <p>The elimination of discrimination in respect of employment and occupation (Convention No. 100 & 111 No. 111) **</p> <p>Article 25 - Universal Declaration of Human Rights asserts that everyone has the right to a standard of living adequate for the health and well-being of himself and of his family.</p>	<p>provide employees and business associates with working conditions that are clean, safe, healthy and fair.”</p> <p>The Sustainability Policy of IFC (2006) talks of ensuring that the “projects it finances are operated in accordance with the requirements of the Performance Standards.” It also notes that IFC’s efforts to carry out its investment operations in a manner that “do no harm to people and the environment” are central to its development mission. The Sustainability Policy affirms IFC’s expectation for its clients “to manage the social and environmental risks and impacts of their projects. An important component of the client’s management of its environmental and social performance is the client’s engagement with the affected communities through disclosure of relevant project information, consultation, and informed participation as stated in Performance Standard 1.”</p>
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Source: *The Plantation Labour Act 1951*²³⁴; *ILO Convention*²³⁵; *Universal declaration of Human rights*²³⁶; *IFC Sustainability Policy*²³⁷; *Tata Global Beverages Sustainability Policy*²³⁸

²³⁵ <https://www.ilo.org/global/standards/introduction-to-international-labour-standards/conventions-and-recommendations/lang-en/index.htm>

²³⁶ <https://www.un.org/en/universal-declaration-human-rights/>

²³⁷ https://www.ifc.org/wps/wcm/connect/Topics_Ext_Content/IFC_External_Corporate_Site/Sustainability-At-IFC/Policies-Standards/Sustainability-Policy/

²³⁸ <https://www.tataconsumer.com/sustainability>

THE VIOLATION:

Table 9: Illustrating violations

LAW	CONVENTION	RULES/STANDARD
<p>The Columbia Law School, Human Rights Institute Study of 2014 found workers living crowded together in cramped quarters with cracked walls and broken roofs, a failure to maintain latrines, inadequate health care, and higher work quotas and salary deductions offsetting any small increase in wages. Workers reported an inadequate standard of education provided to children. In 2013, in some instances, the teacher-student ratio ranged from 1:200 to 1:300, with instruction provided for one hour to each class level per day violating children’s rights</p>	<p>The complaint of February 13 by three NGO’s on behalf of the workers clearly indicates the poor quality medical care and protective gear available for sprayers, the dominant trade union ACMS being in league with management and not representing worker interests, and a fear that a raising of issues will lead to lockouts and consequent starvation in the absence of salaries. Wages were said to be far below the subsistence level and poor working conditions have led to wide spread malnutrition not only here, but across tea estates in the state leading to a denial of Right to Health.</p>	<p>CAO's report of 2016 found that IFC’s pre-investment E&S review was not “appropriate to the nature and scale of the project” or “commensurate with the level of social and environmental risks and impacts,” as required by the Sustainability Policy. CAO found that IFC did not ensure client compliance with Performance Standards related to workers’ living conditions, compensation, freedom of association and grievance handling, child labour, use of pesticides, security, economic displacement, project impacts on Indigenous Peoples, and consultation around the employee share purchase. It did not apply its Indigenous Peoples policy to this investment despite the fact that tea workers identify as Adivasi. Instead of conducting the required review based on a client E&S assessment in accordance with Performance Standard 1, CAO found that IFC’s review relied significantly on the client’s good Reputation and its</p>

		commitment to participate in external certification schemes.
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Source: CAO Ombudsman²³⁹; Columbia Law School Report²⁴⁰

Stakeholder Mapping as per UNGP

Table 24: Illustrating role of stakeholders vis-a-vis UNGPs

STATE DUTY TO PROTECT	CORPORATE RESPONSIBILITY TO RESPECT	ACCESS TO REMEDY
Inadequate	Inadequate	Partial
<p>Did the State take any action with regard to the wages, discrimination and living conditions of workers?</p> <p>As in the colonial period, the plantations to date function as a parallel governance structure, with little active involvement by the state, whether in setting wages or in monitoring how the plantations are run, or the kind of violations taking place.</p> <p>The State has not done anything to counter the discriminations and barriers faced by Adivasi tea workers. Wages in the Assam tea sector are set through “collective bargaining” between employer associations and only one union. The said union is believed to be in collusion with tea plantation management and has consistently undermined worker interests in collective bargaining agreements. The State has not been proactive</p>	<p>Did the Corporate show commitment to respect human rights? Was this commitment integrated into its internal control and oversight systems?</p> <p>Tata Global Beverages through APPI; and IFC indirectly, clearly violated basic human rights of workers through inadequate wages, limited freedom of association, inadequate housing, poor sanitation and exposure to hazardous chemicals without adequate protection.</p> <p>Tata and APPI’s due diligence systems to track human rights violations were ineffective, the claimed third party external audits did not bring to the fore the real issues. In case of IFC, it relied on these audits instead of carrying out an independent monitoring and in fact, agreed for commissioning of the same agency to carry out the annual progress audit which</p>	<p>What systems were in place at the Corporate and State level to address grievances in case of violations?</p> <p>The Columbia report led to Tata /APPI investing in a third party audit by Solidaridad and developing an action plan (Unnati) for improvement in worker health and safety, housing and sanitation infrastructure. The quality and progress of the action plan, however, was brought into question via complaints by workers captured in the letter of 2018 by PAD and others .</p> <p>The CAO (IFC’s independent accountability mechanism – compliance advisor ombudsman) did take up the initial complaint and in its Report of 2016, confirmed violations of bank’s standards in workers living and working conditions which led to IFC making commitments in terms of an annual audit by a third party</p>

²³⁹ http://www.cao-ombudsman.org/cases/case_detail.aspx?id=195

²⁴⁰ https://web.law.columbia.edu/sites/default/files/microsites/human-rights-institute/files/tea_report_final_draft-smallpdf.pdf

<p>in formulating policies that protect workers through decent wages, nor does an effective monitoring to ensure that the laws are being implemented effectively.</p>	<p>had carried out the initial flawed audit in 2014. In addition, the various certifications /standards to which Tata/APPI claimed affiliations to, lacked objectivity and relied on self-certifying requirements .</p>	<p>and updating of its legal opinion on compliance with national minimum wages. In its compliance monitoring report of 2019,it noted that IFC had limited supervision and had not satisfactorily addressed its non-compliance findings. On 15 September 2017, the Government of Assam constituted a Minimum Wages Advisory Board to re-fix the minimum wage for tea plantation workers. Assam government in August 2018 decided to notify an interim enhancement of wages of tea plantation workers by a minimum amount of Rs 30 per day with retrospective effect from March 1, 2018.</p>
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Source: CAO Ombudsman²⁴¹; Columbia Law School Report²⁴²

Role of Corporate: -Post the release of the Columbia Report, Tata Global Beverages tried to distance itself from the issues that had surfaced. It confirmed that it had a stake in APPL but said it was a “separate corporate entity”²⁴³. This, from one of the founder members of Ethical Tea Partnership which is” a non-commercial partnership of tea companies committed to improving the lives of tea workers and their environment, to create a thriving tea industry that is socially just and environmentally sustainable “All the findings mentioned in the Columbia Report were contradictory to what is claims to have set out to do as a founding member of ETP and which it failed to acknowledge.²⁴⁴

APPL on the other hand denied the allegations claiming that the Columbia report was “incorrect and misleading in some parts, which are injurious to our interests and defamatory”. The company operated within all laws on pay and conditions and “believes in

²⁴¹ http://www.cao-ombudsman.org/cases/case_detail.aspx?id=195

²⁴² https://web.law.columbia.edu/sites/default/files/microsites/human-rights-institute/files/tea_report_final_draft-smallpdf.pdf

²⁴³ <https://www.downtoearth.org.in/news/tata-tea-under-scanner-for-poor-living-condition-and-coercion-of-workers-43489>

²⁴⁴ https://web.law.columbia.edu/sites/default/files/microsites/human-rights-institute/files/tea_report_final_draft-smallpdf.pdf

continuous up-gradation of standards of working and operations”.²⁴⁵ It said it had not sought to restrict workers’ movement or rights to free association but said because of continuing militancy in Assam “estate managers are under obligation to keep a strict watch on unknown visitors”.

In case of IFC, it did not carry out a proper due diligence before the investment²⁴⁶ &²⁴⁷, and instead of addressing the non-compliance findings reached by the CAO, it chose to disagree with many of its findings²⁴⁸. Relying upon an audit commissioned by Tata Global Beverages Limited (TGBL) in 2014, the IFC stated in its response²⁴⁹, that it “has no reason to doubt the integrity of the third party audit carried out by Solidaridad, which did not cite any non-compliances with Indian law in respect to workers’ organizations, wages, avoidance of child labour, and disclosure/consultation” which were in direct contrast to the findings of the Columbia study.

The other thing that comes to the fore is the apparent lack of objectivity and the nexus between the certifying agency and the Corporate in certification/standards programmes, which largely call for a) compliances that are self –certified, b) lack effective monitoring mechanism and c) are paid for by the very organizations who is supposed to be certified, leads to a ‘white washing’ approach with many critical issues not surfacing at all²⁵⁰. In case of Solidaridad Audit of Tata, the entire report was never made public, and the executive summary was contrary to the findings reached by Columbia and CAO. In addition, most of these certification networks are not representative of all stakeholders –especially workers’ representatives are normally excluded. Key Voices when deciding on standards and ensuring implementation of the same get excluded.

There is also an opaqueness in supply chains of large retailers, which makes it difficult to hold companies selling irresponsibly sourced tea accountable.

²⁴⁵<https://www.telegraph.co.uk/news/worldnews/asia/india/10634065/Abused-workers-toil-for-Tetley-tea.html>

²⁴⁶<https://accountabilitycounsel1.app.box.com/s/aboc01sa3xf57taiozc82x6ji7ebrcgu/file/37836992142>

²⁴⁷<https://economictimes.indiatimes.com/news/company/corporate-trends/ifc-tata-global-beverages-face-world-bank-heat-over-rule-breach/articleshow/55376044.cms>

²⁴⁸<https://www.hrw.org/news/2017/11/06/world-bank-few-improvements-indias-tea-plantations>

²⁴⁹<https://www.accountabilitycounsel.org/wp-content/uploads/2018/04/4-27-18-pajhra-and-pad-letter-to-cao-monitoring-phase.pdf>

²⁵⁰<https://www.downtoearth.org.in/news/tata-tea-under-scanner-for-poor-living-condition-and-coercion-of-workers-43489>

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