

Framing REDD+ Platforms and Programs Using A Human Rights Lense

REDD PLUS LEARNING PROGRAM
2012 2014
A-Z, Design, and Implementation of REDD-Plus

Session Objective

- Participants are able to connect the Human Rights Framework (6 core treaties) and the UN Declaration on the Rights of Indigenous Peoples as fundamentals to climate change and forestry
- Participants are aware of the “Protect, Respect and Remedy” framework of the Special Representative of the Secretary General on Business and Human Rights

Discussion Flow

- Human Rights and Human Rights Instruments
- SRSG on Business and Human Rights
- Protect Respect Remedy Framework



Human Rights and Human Rights Instruments

Seeing beyond the Trees: People, Ecosystems, and Generations Yet Unborn

- Natural Resources
 - Public or Private Communally Owned Goods or Res Nullius
 - Res Nullius – cannot be owned
 - Imbued with a Public Purpose -- the preservation or utilization of which fulfill a Public Purpose
 - For Current and Future Generations
 - Control over the natural resource spells a huge The rate of depletion of natural resources has impacts

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- Detimental Effects of Climate Change
 - The high rate of natural resource depletion is one of the factors contributing to extreme weather changes throughout the planet
 - These extreme weather events have had serious effects on populations and landscapes
 - Affects everybody, but Differently
 - Floods / Landslides can isolate certain communities for 2 weeks – no clean water source can be fatal
 - Capacity to cope to Climatic Changes are different
 - poorer and marginalised communities have lesser resources to fully cope or bounce back from disastrous effects of climate change
 - Poor, resource dependent communities are more vulnerable to frequently changing climate patterns

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Questions are:

- Who takes care of the natural resources?
- Who ensures that detrimental effects of Climate Change are addressed?

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Human Rights

- Legal Obligations to ensure that every person lives with dignity
- Dignity is inherent in every person
- Derived from different religious, cultural, legal norms and values

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Human Rights Instruments

- International Instruments
 - Treaties/ Charters
 - Declarations, Principles, Guidelines
 - Declarations by governments
- International Customary law
- National Constitutions and Bills of Rights
- International Law – state as party
- National law – individuals/ corporations as party
- HOWEVER, since the Nuremberg trials, international law has been applied to be enforced against individuals

Treaty-based

HRC (ICCPR)
ICESCR
CERD
CEDAW
CRC
CAT
CMW
CRPD
CED

OHCHR
Tasked
with
coordinat-
ing
human
rights
througho-
ut the
U.N.
system.

Charter-based

Human Rights Council
(HRC)

Special
Procedures
• 20 Thematic
Special Rapporteurs
• 9 Country-Specific
Special Rapporteurs
• 5 Working Groups
• 6 Independent
Experts

Universal
Periodic
Report

- Universal Declaration of Human Rights, 1948
'a common standard of achievement for all peoples and nations'
- International Covenant on Economic, Social, and Cultural Rights (ICESCR) (adopted 1966, EIF 3 Jan 1976)
 - Optional Protocol to the ICESCR (adopted 2008, not yet in force – requires 10 ratifications)
- International Covenant on Civil and Political Rights (ICCPR) (adopted 1966, EIF 23 Mar 1976)
 - Optional Protocol to the ICCPR (adopted 1966, EIF 23 Mar 1976)
 - Second Optional Protocol to ICCPR on abolition of death penalty (adopted 1989, EIF 11 July 1991)

Core human rights treaties and monitoring bodies

CERD (1965)	Convention on the Elimination of All Forms of Racial Discrimination	Committee on the Elimination of Racial Discrimination
ICESCR (1976)	International Covenant on Economic, Social and Cultural Rights	Committee on Economic, Social and Cultural Rights
ICCPR (1976)	International Covenant on Civil and Political Rights	Human Rights Committee
CEDAW (1981)	Convention on the Elimination of All Forms of Discrimination against Women	Committee on the Elimination of Discrimination against Women
CAT (1987)	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	Committee Against Torture
CRC (1989)	Convention on the Rights of the Child	Committee on the Rights of the Child
MWC (2003)	Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families	Committee on Migrant Workers
CRPD (2006)	Convention on the Rights of Persons with Disabilities	Committee on the Rights of Persons with Disabilities
CED (2006)	International Convention for the Protection of All Persons from Enforced Disappearance	Committee on Enforced Disappearances

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Human Rights Instruments

- Jus Cogens – Peremptory Norms of international law
 -
 - from which NO DEROGATION is permitted
 - Usually arise out of case law

Examples of Jus Cogens

- Genocide,
- Piracy,
- Slavery/ Slave Trade,
- Torture,
- Wars of Aggression,
- Territorial Aggrandizement,
- Crimes against Humanity,
- Apartheid

Indigenous Peoples

- Right to Free, Prior and Informed Consent enshrined in both international and national laws
- UN Declaration on the Rights of Indigenous Peoples (UNDRIP)
- Constitutions and National Laws
- In the case of East Timor (Portugal vs. Australia) in 1995, the International Court of Justice ruled that the right to self determination is *jus cogens* – cannot be derogated upon
- Trend towards recognition of “Native Title” and “ancestral domains”

UNDRIP

- Article 10. “Indigenous peoples shall not be forcibly relocated from their lands and territories...without the free, prior and informed consent of the indigenous peoples concerned...” [emphasis added];
- Article 11. “Indigenous peoples have the right to...maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites...[and] States shall provide redress...with respect to their cultural...property taken without their free, prior and informed consent...” [emphasis added];

UNDRIP

- Article 19. “States shall consult and cooperate in good faith with the indigenous peoples concerned...in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.” [emphasis added];
- Article 29. “Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources...[including] no storage or disposal of hazardous materials...in the lands or territories of indigenous peoples without their free, prior and informed consent.” [emphasis added];

UNDRIP

Article 30. “Military activities shall not take place in the lands or territories of indigenous peoples, unless justified by a relevant public interest or otherwise freely agreed with...by the indigenous peoples concerned.” [emphasis added]; and

- Article 32. “States shall consult and cooperate in good faith with the indigenous peoples concerned...in order to obtain their free, prior and informed consent prior to the approval of any project affecting their land or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.” [emphasis added].

Trend towards the Recognition of Native Title

- “Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired...[and] have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.”

FREE PRIOR AND INFORMED CONSENT

Right to say NO and the Right to say YES

Free from force, intimidation, manipulation, coercion or pressure by any government or company.

Prior to government allocating land for particular land uses and prior to approval of specific projects. You must be given enough time to consider all the information and make a decision.

FREE PRIOR AND INFORMED CONSENT

Informed, you must be given all the relevant information to make your decision about whether to agree to the project or not in a language that you can easily understand. You must have access to independent information, not just information from the project developers or your government. You must also have access to experts on law and technical issues, if requested, to help make your decision.

Consent requires that the people involved in the project allow indigenous communities to say “Yes” or “No” to the project and at each stage of the project, according to the decision-making process of the community’s choice.

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Using a Human Rights Lense:

- Who's duty is it to take care of the natural resources or regulate its use?
- Who's duty is it to ensure that detrimental effects of Climate Change are addressed?
- Who's duty is it to ensure that future generations get to enjoy the earth?
- If there are violations of the regulations regarding natural resources, how are the regulations enforced?
- Who has the right to exploit and use the natural resource?
- What are the rights of indigenous peoples
- Who has the right to receive assistance to cope with climate change?
- Do future generations have any right at all to enjoy the earth?
- Do generations yet unborn have a right to life with dignity in the future?



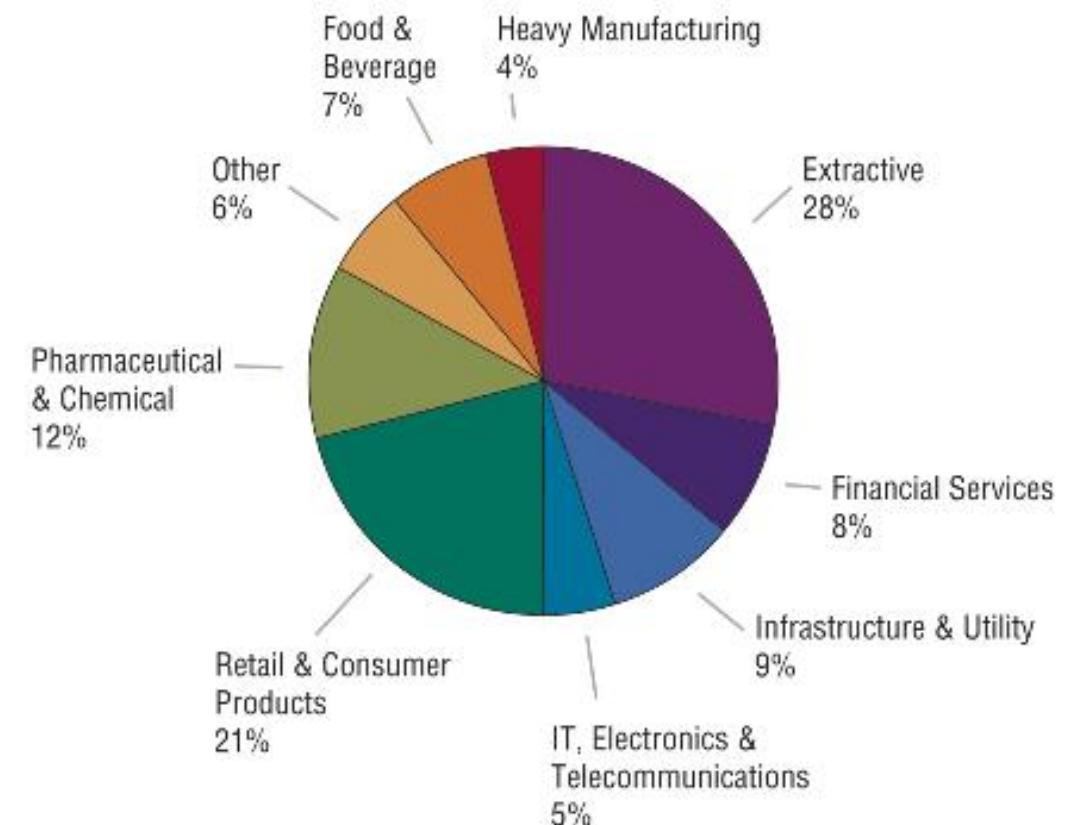
Does Human Rights have
any business meddling in
Business?

Special Representative of the Secretary General on Business and Human Rights

- Formed in 2005 to do a mapping on trends, evolving standards, practices and gaps in business and human rights
- Framework of mapping used the UN Declaration on Human Rights, Covenants and ILO
- Showed that the most number of allegations were lodged against the Extractive sector
- Violations of security forces, large scale corruption, violation of labour rights, abuse against local communities including indigenous peoples

Figure 1.

Allegations by Sector

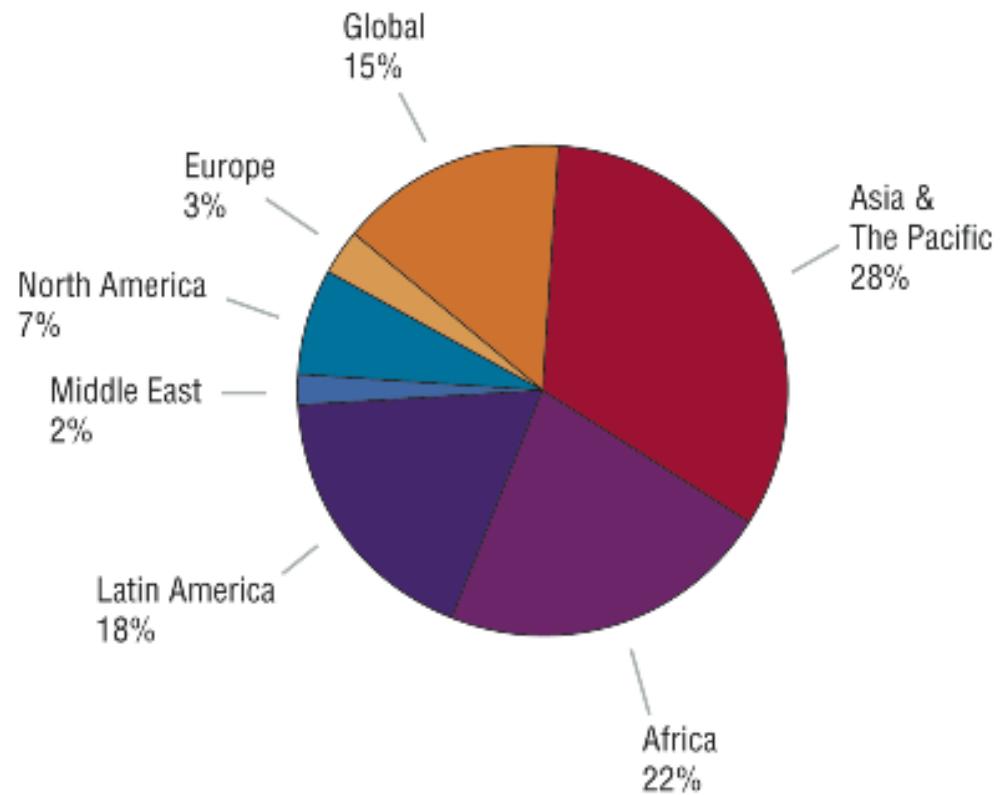


Special Representative of the Secretary General on Business and Human Rights

- Same study mapped out that the most number of human rights violations reported are in the Asia Pacific region

Figure 2.

Regions of Alleged Incidents



State Duty to Protect

- General understanding is that it is the State's Duty to Protect the rights of the citizens from violations
- However, when countries where governance is weak or enforcement of laws are weak, then these internationally accepted norms of human rights are most likely violated
- These governance gaps are made even wider in an era of globalization
 - 2,500 bilateral trade agreements which exist – these treaties while providing legitimate protection to foreign investments also increases a country's vulnerability to being taken to international trade arbitration

Big Business, Small Countries Unlevel Playing Field

Sometimes the net worth of a single company can be larger than the entire economy of a country or its national budget

GDP & NATIONAL BUDGET REVENUE 2011 Estimates

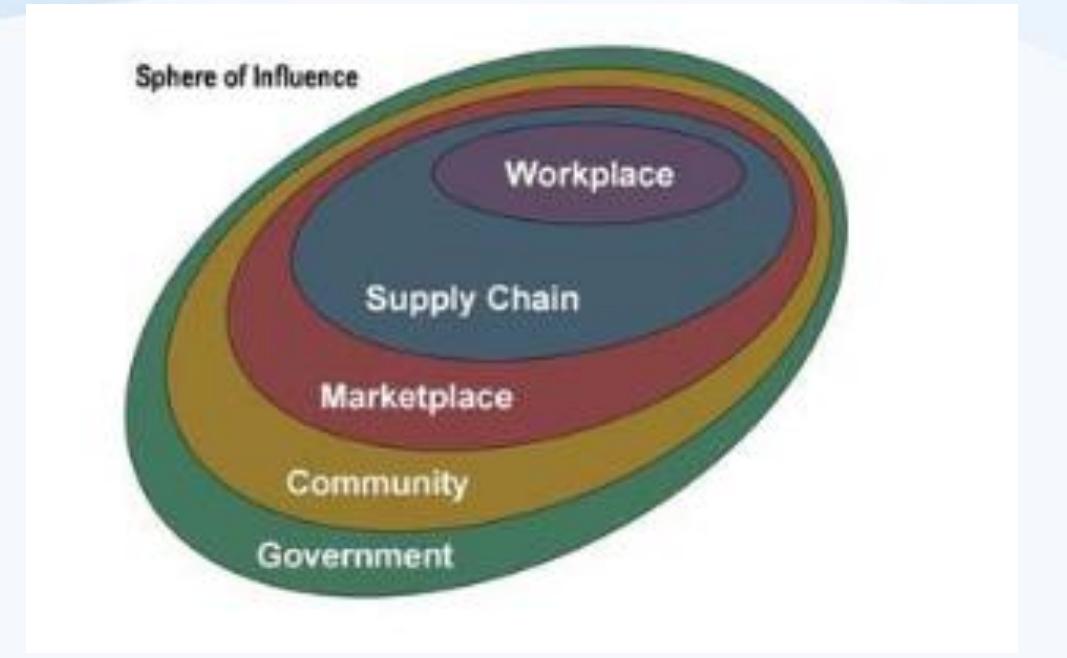
- Cambodia - \$33.89B GDP \$ 2.01B
- Philippines - \$395.4B GDP \$ 31.4 B
- Indonesia - \$1.139T GDP \$134.2B
- Vietnam - \$303.8B GDP \$ 32.8B
- Burma - \$83.74B GDP \$ 2.01B

COMPANY NET WORTH

- Xstrata - \$54.82 Billion capitalization, \$32.69 Billion sales
- BHP Billiton - \$187.53Billion capitalization, \$71.74 Billion sales

“Sphere of Influence”

- United Nations Global Compact introduced this concept into the corporate social responsibility discourse
- Corporations exert influence in different degrees, with influence comes responsibility
- The sphere of influence tends to include the individuals to whom it has certain political, contractual, economic, geographic proximity
- Due Diligence – reasonable steps by companies to become aware of, prevent, and address adverse impacts of their activities and relationships



Complicity

- First, knowingly providing a substantial contribution to human rights abuses could result in a company being held accountable in both legal and non-legal settings.
- Second, being seen to benefit from abuse may attract the attention of social actors even if it does not lead to legal liability.
- Third, and similarly, mere presence in contexts where abuses are taking place may attract attention from other social actors but is unlikely, by itself, to lead to legal liability.
- In short, both operating in contexts where abuses occur and the appearance of benefiting from such abuses should serve as red flags for companies to ensure that they exercise due diligence, adapted for the specific context of their operations.



Protect
Respect
Remedy

SRSG Framework to address the situation

- Human Rights Council adopted the “Protect Respect Remedy” in 2008
- State has the duty to Protect the Rights Human Rights
- Corporations and Non State Actors have a duty to Respect Human Rights
- There must be Access to Remedies whenever there are violations – avoid situation of impunity

SRSG Framework to address the situation

- While this framework has been adopted by the Human Rights Council, there is still a need to ensure follow through activities
- Monitoring and ensuring that gross human rights violations are addressed
- What entity enforces?

Comments

- Contesting dubious carbon cowboy contracts
- Rights of nature
- Carbon cowboys acts as intrusion