

Adapting Arctic communities to local-scale environmental resilience through involvement of local communities and stakeholders

- insights from regulatory theory and environmental planning law on impact assessments and meaningful stakeholder engagement

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Point of departure: Tension between climate change mitigation and social impacts of mitigation

Agenda 2030

SDG 7: Ensuring energy for all

SDG 13: advance climate change mitigation

SDG 17: 'Partnerships' (although all are actually gvt commitments)

Implementation provisions: references **the Guiding Principles on Business and Human Rights (UNGPs)**

- **UNGPs:** Respect, protect and remedy (states, businesses, victims)
- 'Meaningful stakeholder consultation' + involvement (= Meaningful Stakeholder Engagement (MSHE))
- 'affected stakeholders' = rights holders; victims

Paris Agreement: Preamble:

Just transition of the workforce; decent work and quality jobs

Respect and promote human rights

In practice:

Not so simple

- and implications of human rights commitments may too easily fly under the radar
- Expectations of companies too
- Unclear what tools are available to create joint solutions to shared problems

Societal context – conflicting/competing urgencies

Urgency of climate change mitigation => development of low-carbon energy as economic activity

Climate change impacts on Arctic societies

'Green' energy: Need for natural resources (minerals) + land and water as resource

Economic opportunities - jobs; energy resilience

Priority on economic and technical rolling-out => bull-dozing agenda for the rights of arctic communities, including Indigenous Peoples?

Fair transition/climate justice/energy justice:

Commitments under Paris Agreement, SDGs



The HR importance of Meaningful Stakeholder Engagement

Red thread in much international and national law on social and environmental sustainable development

Access to participate in the making of decisions affecting one's life: HR (UDHR art 21 (extended interpretation); ICCPR art 25; Vienna Declaration and Programme of Action); UN and ILO on indigenous peoples' rights, FPIC

Prerequisite for environmental rights: Rio Declaration, Aarhus Convention, national level impl; FPIC

Business and Human Rights: regime and interdisciplinary theoretical developments

Related to CSR, but different: mainly 'do no harm'; non-negotiable normative base line; ...

UN Guiding Principles on Business and Human Rights (2011): Risk-based due diligence

- Meaningful stakeholder engagement (MSHE)
- Identification of harm/risks be followed up by action:
 - Cause or contribute: cease
 - Directly involved to business relations through operations, services or products

Environmental impact assessment: consultation 'vs' involvement

- Nordic and wider Arctic environmental impact assessment legislation: formal consultation/engagement requirements; but in practice many conflicts



(Potentially) conflicting approaches in practice and theory

Public participation: possibility of those affected to have a say (legal, political, sociological perspective)

Risk-based due diligence: process developed under UN 'Respect, Protect and Remedy' Framework (2008) + UN Guiding Principles on Business and Human Rights + taken up by OECD Guidelines for MNEs, IFC, etc

includes 'meaningful engagement' with 'affected stakeholders'

OECD Due Diligence guidances: stakeholders whose human rights are affected = **rights-holders**

Stakeholder engagement: managerial/business ethics issue
at level of principle/theory

- recognises affected communities and their rights
- recognises that they must be involved

empirical studies show:

- tendency to prioritize business-centered perspective in management contexts

HRDD across the 3 pillars



Fig. 1. Human rights due diligence as part of a UN (Protect, Respect, Remedy) framework

Guiding Principles
 The Guiding Principles of Business and Human Rights were adopted by the UN Human Rights Council in 2011. The Guidelines are based on three pillars:

- The State's duty to **protect** against human rights abuses.
- Business' responsibility to **respect** human rights and avoid abuse through their activities.
- It is the State's and business' shared responsibility to manage and **remedy** via their respective channels, human rights norms established by the business sector.

UNGPs, **Pillar 1**

GP 3, comm: State guidance for business enterprises on respecting human rights should advise on appropriate methods, including **human rights due diligence**

GP 4: States to take extra steps to protect against HR abuse by export credit agencies, state owned enterprises etc **including, where appropriate, by requiring human rights due diligence.**

Pillar 2: GP 15, (16), 17-22: companies to exercise **risk-based due diligence**, including through **meaningful stakeholder engagement**

Pillar 3: GP 29: Operational-level grievance mechanisms **'support the identification of adverse human rights impacts as a part of an enterprise's on-going human rights due diligence'**

MSHE

Element in HRDD

HRDD elaborated in UNGPs (2011); proposed in UN 'Protect, Respect and Remedy' Framework (2008)

Framework academic-like report; based on studies involving law, business ethics, management, politics, **impact assessment**

Principled pragmatism:

- no new HR, but explains implications of existing
- solution-orientated
- saliency-orientated: recognises that priorities may be made as not all problems can be solved at once

Language and solutions reach out across disciplines

Affected stakeholders (!) = rights holders, actual or potential victims



Adequacy of current practices for insolving stakeholders?

Examples

Wind-farm projects across Sápmi:

Court cases

Complaints to OECD NCPs

Protests

Kvalsund, Norway – Nussir copper mine

Sameting rejection of proposal

Starting (parliament) approval

Greenland – Kuannersuit/Kvanefjeld mine project
(REEs, 10 % uranium byproduct)

Formal inclusion through consultation

In practice very varied experience of real inclusion and participation

Canada – hydro-power projects

Protests by First Nations and local communities

Effects of contestation:

Lack of popular support for transition (beyond the affected stakeholders: pension fund beneficiaries; energy customers; innovation, potentially affecting policy ...)

Lack of trust in legal process – consultations and remedy (and perhaps rule of law) => potential surge in other forms of protests

Delay in implementation => climate risks beyond those affected by the projects

Ethical issue: moral obligation to consider wider interests of larger society?



HUGE EXPLORATION POTENTIAL

New multi-element targets offer huge resource upside

Normative guidance around 'meaningful engagement' with 'affected stakeholders'

UN Guiding Principles on business and human rights: risk-based due diligence (including MSHE)

For communities: Connect to existing obligations of states; but explicates implications for potential and actual affected stakeholders and organisations involved in risks/abuse

For governments, including local governments: connects to existing obligations

Soft law (for companies) with hard law basis (for states)

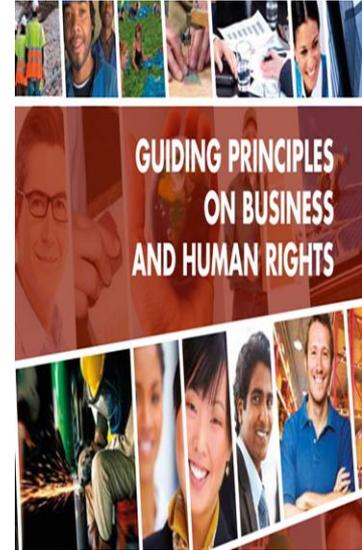
Apply to all companies, and in all states, for all 'affected stakeholders'

OECD Guidelines for Multinational Enterprises: 1976, rev. regularly, most recently 2011:
adoption of UNGP risk-based approach (across issue areas)

Monitoring and enforcement: NCPs (statements not legally enforceable, but may affect SLO); extraterritorial

Extraterritorial applicability: apply to economic actors **working in or out of adhering state** (48, currently – Russia currently exploring)

Arctic states: OECD Guidelines apply in OECD members, and to all companies operating in Arctic area if they operate out of adhering state, for all 'affected stakeholders'



Stopping the bull-dozer: Solutions through MSHE – ‘joint solutions to shared problems’

Solutions:

May be contested in terms of principle – but currently risk is that climate change becomes politically prioritized to overrule Indigenous rights and FPIC (effective bull-dozer)

Current IA processes inadequate => inadequate use of local and traditional knowledge?

So:

Could better inclusion of such knowledge be the key to acceptable compromises on the part of rights-holders, e.g. Sámi?

=> Decisions much better informed by the knowledge, needs and suggestions of affected stakeholders

Knowledge needs:

Re-thinking ‘consultation’ in IA processes:

- Involvement
- Bottom-up
- Integrated throughout
- Continuous feedback loops
- Ensuring ‘representative representativeness’

⇒ Interdisciplinary insights needed:

- Law+: sociology; anthropology, IA theory, management (stakeholder management; EIA; business ethics)
- Flexibility required
- Law holds the potential to establish the formal procedurea once the substantive elements of process have been identified
- But stronger anchoring in bottom-up needs, knowledge and approaches in place

Thank you

Comments welcome: kbu.msc@cbs.dk