

ESG, Legal Framework, and Incentives in Cambodia

Dr. SAO Socheata

Deputy Director of the ELBML
Programme, RULE

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- Concepts Surrounding Business
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Business impacts on human rights, society, and the planet could be positive and negative.

- Positive impacts include job creation, income generation, technology advancement, etc.
- Negative impacts may include adverse environmental and human rights impacts.



Covid Used as Cover for Union Busting in Cambodia: Human Rights Watch



Cambodia's garment workers needled by low wages and poor conditions

Growing discontent among workers generating huge profits for scant return threatens to derail Cambodia's garment industry



Stitched up ... a garment factory in Phnom Penh. Many workers in Cambodia are dissatisfied with working conditions. Photograph: Tang Chhin Sothy/AFP/Getty Images

Cambodians evicted in 'land grab'

Residents lose homes around Phnom Penh lake to make way for real estate development



A woman walks through polluted water in Boueng Kak Lake, Phnom Penh, Cambodia. Residents living around the lake fear they will be forcibly evicted by developers. Photograph: Tang Chhin Sothy/AFP



Adverse Business Impacts in Cambodia

- Since late the 90s, adverse business impacts have included:
 - labour rights violations, particularly in the garment sector.
 - land grabbing, particularly in timber, agribusiness, and real estate development sectors.
 - environmental damages, e.g., water pollution, poor waste management, deforestation for large-scale land-related investments, etc.

BUSINESS

Alleged Scammed Borey Investors Continue Fight

Investors in Borey Brilliant City are rejecting a settlement from tycoon Leng Channa, claiming the plots of land offered in exchange for their hefty investment in the borey is inadequate



Siem Reap Authorities intervened in investor protests against Borey Brilliant City. Kiripost/supplied



Coalition of Cambodian Apparel Workers' Democratic Union president Ath Thom speaks at a gathering of construction workers on World Day for Safety and Health at Work on Sunday. CambodiaN Labour Confederation

Microfinance Rights Abuse Probe Steps Up a Gear



A screenshot of Oikocredit's website taken on 18 September 2023.

- Indeed, things have been improved, with strengthened laws and legal implementation in some areas.
- At the same time, new adverse business impacts have emerged across different sectors, namely:
 - Real estate development
 - Construction
 - Hospitality
 - Microfinance
 - Securities market
 - ITC
 - Consumer products
 - Etc.

Home buyers call on PM to resolve impasse with real estate developer

Seth Kamranian / Khmer Times



Borey buyers a protest against the New World Company real estate company. Theony Thony

Giant Ibis Union's Fight Remains as the Company Goes Back on Promise

20 October 2023 4:01 PM / Long Teo



Borey employees of Giant Ibis Thengyong stop a bus carrying the passengers during their protest in Phnom Penh on Aug 1, 2022. Facebook, @Giant Ibis

Cambodia: Concerns over loss of land and livelihoods grow as sand mining industry booms in Roka Koang



WFP/MSRF/International Food Policy Research Institute/2022

Related Concepts Surrounding Business



Corporate Philanthropy refers to the practice of voluntarily giving and contributing resources, e.g., time, money, or expertise, for the betterment of others and the common good.



Corporate Social Responsibility (CSR) is about the integration of societal (including environmental) considerations in business decision-making.



Corporate Citizenship, which is closely related to CSR, is about businesses identifying more closely with their role in democratic societies, i.e., having rights and responsibilities like ordinary citizens.



Business Ethics is the application of moral and ethical values to business behaviours and decision-making. It applies to both to the conduct of individuals and the conduct of the entity as a whole.

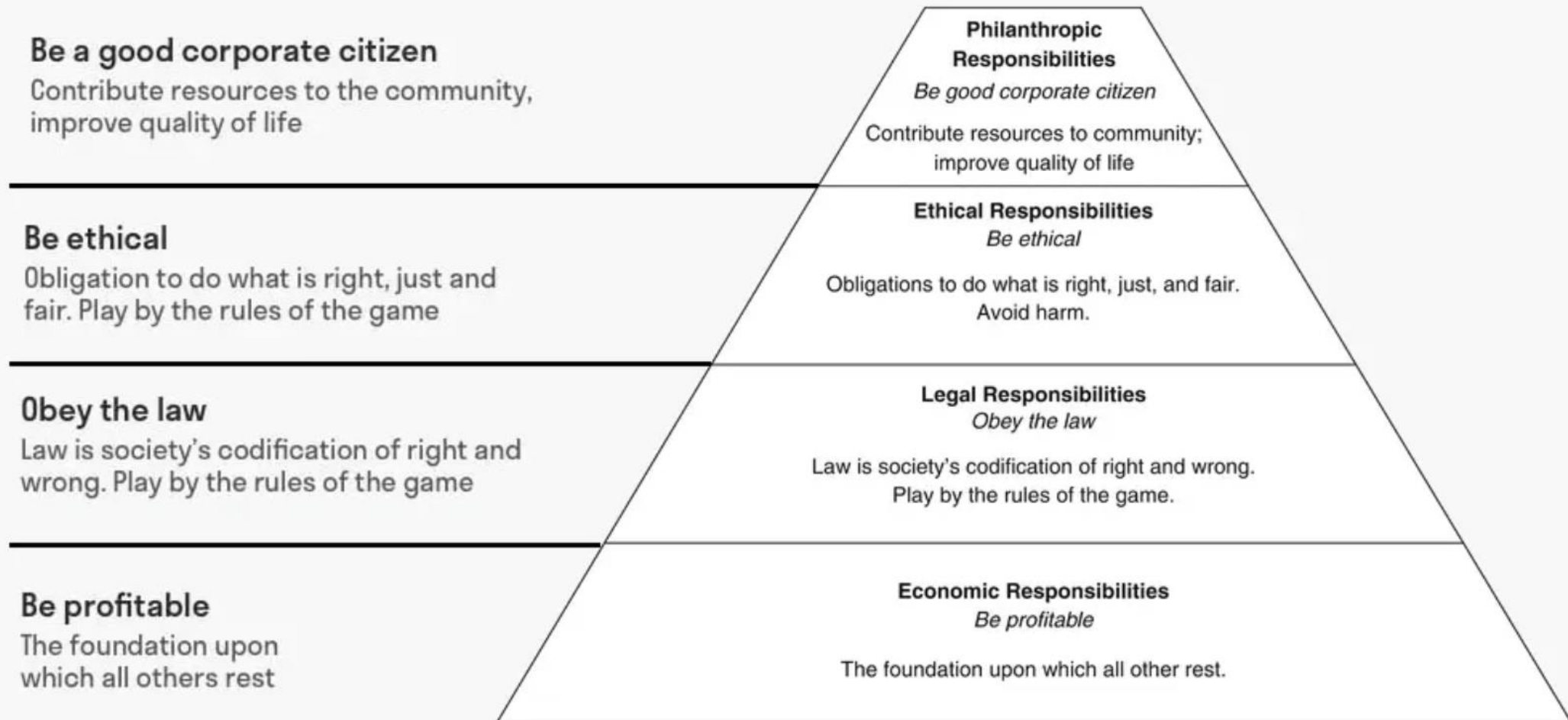


Corporate Sustainability is an element of the **Sustainable Development Goals (SDGs)** adopted in the UN, which emphasise the contribution of the private sector in meeting the development goals.



Shared Value is the concept used in strategic management circles and business schools to explain win-win situations, i.e., businesses become more successful by contributing to society and the public good.

Carroll's CSR pyramid





Source: <https://sdgs.un.org/goals>

Related Concepts Surrounding Business

Responsible Business Conduct (RBC) is a broad concept that refers to the practices and behaviours of businesses that integrate ethical, social, and environmental considerations.



Human Rights



Environment



Employment and Industrial Relations



Combating Bribery, Bribe Solicitation and Extortion

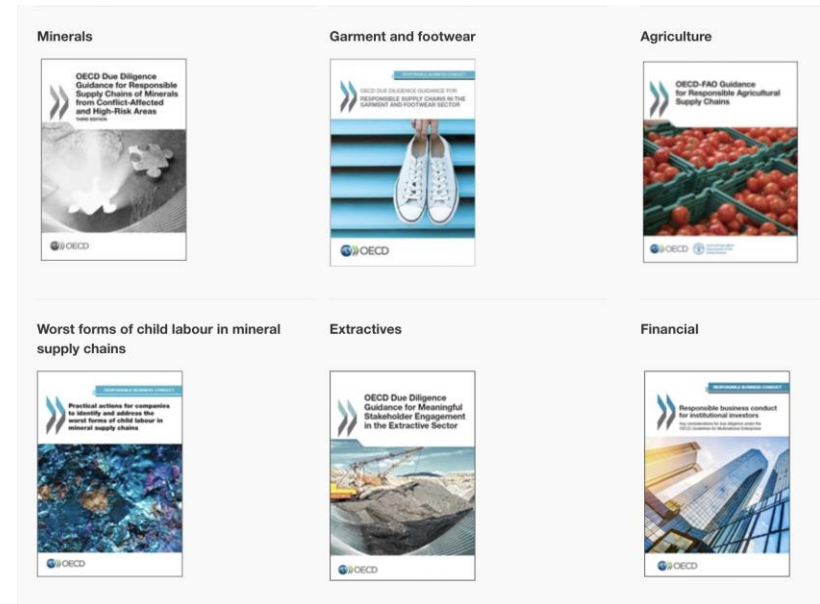


Consumer Interests



Disclosure

DUE DILIGENCE PROCESS & SUPPORTING MEASURES



Related Concepts

THREE PILLARS of the UN GUIDING PRINCIPLES



Graphic courtesy of Shift Project (learn more at shiftproject.org)

- Business and Human Rights (BHR) is a concept that clarifies the relationship between businesses and their impact on human rights.
- According to the UNGPs, businesses should respect all internationally recognised human rights by avoid infringing on human rights and should address adverse human rights impacts with which they are involved.
- The business responsibility to respect human rights
 - applies all businesses regardless of their size, sector, operational context, ownership and structure. However, the scale and complexity of a company's measures and processes to meet this responsibility may vary depending on the above factors and the severity of the adverse human rights impacts.
 - is independent and complementary of State duty to protect; and
 - exists over and above the mere compliance with domestic laws.
- To meet their responsibility, businesses should:
 - (a) have a statement of policy commitment to respect human rights;
 - (b) conduct on-going human rights due diligence to identify, prevent, mitigate and account for how they address their adverse human rights impacts;
 - (c) enable the remediation of adverse human rights impacts they cause or contribute to.

What is ESG?

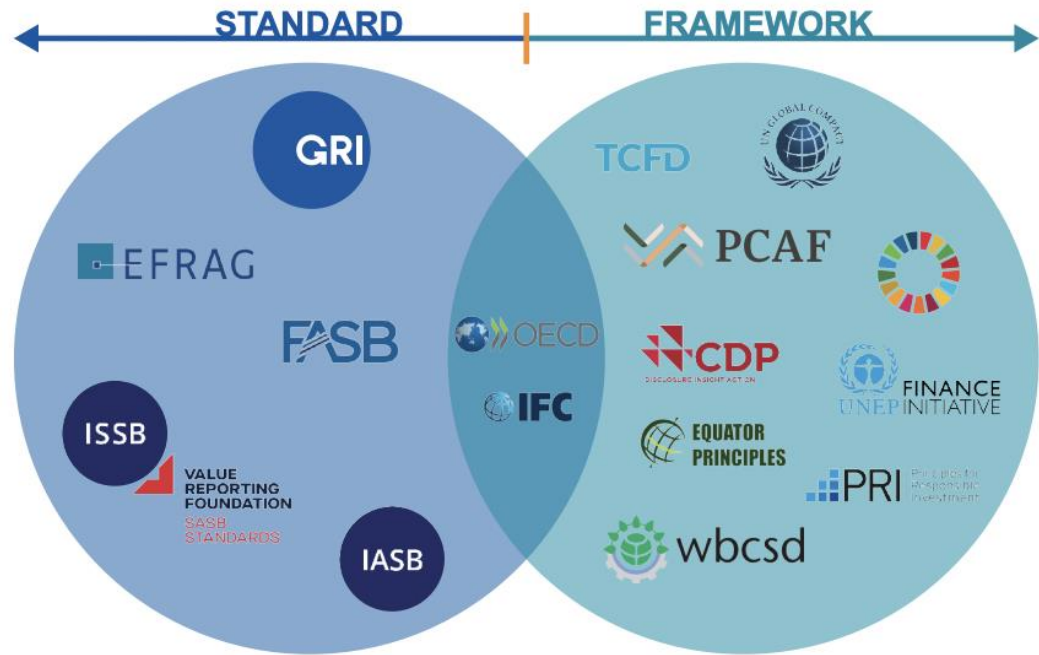
ESG is a framework for evaluating a company's overall performance regarding sustainability.



ESG Reporting Standards and Frameworks

See also:

- UNGPs
- Paris Agreement
- ISO 26000, which provides guidance on social responsibility;
- **EU Taxonomy**, which classifies economic activities based on their environmental sustainability;
- **Corporate Sustainability Reporting Directive (2022)**, which enforces comprehensive reporting within the EU, with emphasis on the 'double materiality' concept.
- **EU Corporate Sustainability Due Diligence Directive (2024)**, which if passed would require EU-based companies to conduct human rights and environmental due diligence in their supply chains.



(Source: GRI)

Reporting standards

TotalEnergies refers to international reporting standards and publishes dedicated index tables.



► [Learn more](#)

ESG Reporting Standards – TotalEnergies

(Source: TotalEnergies)

ESG in Cambodia

- ESG remains a new concept in Cambodia, so are RBC and BHR.
- At present, most businesses and state authorities are yet familiar with this concept.
- However, there is an increased interest and uptakes of ESG strategies, implementation, and reporting to enhance more responsible business practices in the country.

SUSTAINABILITY
REPORT
2023
RESPONSIBLE
TROPICAL
AGRICULTURE



Relevant Domestic Laws & Regulations

- In Cambodia, there is no specific law on ESG performance standards and reporting.
- However, some domestic laws cover ESG considerations and have already been implemented.
- Some of these laws, as well as the civil and criminal codes, provide for corporate legal liability for the business entity or its corporate officers for non-compliance.



Relevant Domestic Laws & Regulations on 'E'

- Constitution (1993)
 - Law on Mineral Resource Management and Exploitation (2001)
 - Forestry Law (2002)
 - Law on Fisheries (2006)
 - Law on Water Resource Management (2007)
 - Law on Disaster Management (2015)
 - **Natural Resources and Environmental Code (2023)**
- Sub-Decree on Management of Solid Waste” (1999),
- Sub-Decree on the Water Pollution Control” (1999)
 - Sub-Decree on the Implementation of the Environmental Impact Assessment (EIA) Process (1999)
 - Sub-Decree Forest Concessions Management (2000)
 - Sub-Decree on the Control of Air Pollution and Noise Disturbance” (2000)
 - Sub-Decree on Community Forestry Management (2003)
 - Sub-Decree on Procedure Establishment Classification and Registration of Permanent Forest Estate (2005)
 - Sub-Decree on Economic Land Concession (2005)
 - Prakas No. 021 on Classification of Environmental Impact Assessment for Development Project (2020)
- Cambodia Climate Change Strategic Plan 2014–2023
 - National Environment Strategy and Action Plan 2016–2023

Relevant Domestic Laws & Regulations on 'E'



- The new **Environmental Code** requires all owners of proposed, existing and ongoing investment projects, either public or private, to **assess their adverse impacts on the environment, natural resources and heritage in Cambodia and, where applicable, outside of Cambodia.** (Art. 649, 650 & 651)
- Investment projects may require a full Environmental Impact Assessment (EIA), an Initial Environmental Impact Assessment (IEIA) or an environmental protection contract depends on their impact level, i.e., serious, medium or minor. (Art. 657)
- The Environmental Code **requires public participation** in the impact assessment processes and to some extent incorporates the principle of free, prior, and informed consent (FPIC) of affected people.
- The Code also **lays out obligations of project owners to prevent, mitigate, and address adverse impacts.** (e.g., Art. 718, 719, 722-725)
 - Among others, project owners must ensure the livelihoods and appropriate resettlement-related compensation of impacted people. (Art. 691(2))
- The Code **imposes monetary and/or criminal sanctions** on infringing project owners, either natural or legal persons. See, Book 10 of Environmental Code.

- In 2021, the Ministry of Environment issued five Prakas to require project owners in five sectors, e.g., livestock and aquaculture, tourism, construction, petrol and gas station and SMEs, to prepare **initial environmental and social impact assessment (IESIA) reports of their projects, in which consultation with potentially affected people** is mandatory.
 - The expressed addition of the **social impact assessment is novel** in Cambodia. Previously, only investment projects financed by international financial institutions (e.g., the IFC and the ADB) needed to conduct ESIA under their loan conditions.
- **Socioeconomic impacts are considered in the IEIA or full EIA and the IESIA processes.** They cover matters regarding ‘demography and settlement, employment and income, land use, water use, energy use, infrastructure, education, public health and wellbeing, cultural heritages, ethnic minorities or indigenous peoples and tourism’. Prakas on General Guidelines for Developing Initial and Full Environmental Impact Assessment Report (2009), p. 9.
- The socioeconomic aspects **address some human rights**, namely right to adequate standard of living, right to a healthy environment, right to water, right to education, right to health and indigenous peoples’ rights to their lands and cultural practices.



Relevant Laws & Regulations on 'S'

- **Labor Law (2001)** protects workers' rights, including wages, working conditions, and occupational safety.
- **Law on Social Security Schemes (2019)** provides social protection for workers to ensure equity and social solidarity and promote the welfare and livelihood of all.
- Some relevant **sector- or industry specific laws** also protect the various stakeholders of a business, depending on the sector.
 - Construction projects must ensure occupational safety and health of workers on construction sites. See, Articles 7-9, 39 of **Law on Construction (2019)**
 - **Consumer Protection Law (2019)** imposes specific labelling, storage and technical requirements on household chemical products to ensure health safety for consumers. See, Chapter 6 of Consumer Protection Law.
 - **Law on Food Safety (2022)** specifies legal requirements and procedures on food safety, quality and sanitation for all food production and food businesses, excluding street food businesses, to prevent and mitigate harms related to food consumption. See, Art. 1 and 2 of Law on Food Safety.

Non-compliance with these laws give rise to criminal and/or civil penalties.

Relevant Laws & Regulations on 'G'



- Law on Commercial Enterprises (2005) and related corporate laws regulates the legal structure of a company, its classification, shares ownership, legal rights and obligations of the company and its corporate officers.
- Law on Securities (2007) regulate the securities market.
- Law on Anti-Corruption (2010) addresses corruption and bribery issues.

See also, e.g.,

- Law on the General Stature of Public Enterprises (1996)
- Law on commercial rules and Register and its amendments (1999)
- Law on Accounting and Auditing (2016)

...

- Prakas on Annual Audit of Financial Statement of Banks and Financial Institutions (2004)
- Prakas on the Implementation of Financial Reporting Standards (2009)
- Prakas on Corporate Governance for Listed Enterprises (2009)
- Prakas on Corporate Governance for Listed Public Enterprises (2010)
- Prakas on Code of Conduct of Securities Firms and Securities Representatives (2011)
- Listing Rules of the Cambodia Securities Exchange (2015)
- **Non-compliance with these laws give rise to criminal and/or civil penalties.**

ESG-Related Policies and Soft-Law Instruments Cambodia

- In general, Cambodia still **lacks domestic soft-law instruments on ESG**.
 - Relatively, there are more soft-law tools for the **garment, footwear, and textile sector** given the prevalent labour rights issue in this sector.
 - In the **financial and banking sector**, the Association of Banks in Cambodia (ABC) issued the Cambodian Sustainable Finance Principles in 2019 which require banks and financial institutions to adopt and implement of ESG risk management and compliance.
 - There are some good practices in the mining sector.
- **Also relevant,**
 - Cambodian Sustainable Development Goals (CSDGs) Framework (2016-2030)
 - Sector or industry-specific strategies
 - Private or industry-based codes of conduct
- Companies can refer to **international soft-law instruments** for guidance.

Gaps and Challenges

- Overall, there **remains a lack of comprehensive legal requirements or guidance on ESG** performance, reporting, assessment, and rating.
- It is difficult for companies to integrate and implement ESG in their activities and business relationships. The required actions and processes vary depending on the company's size, form, structure, ownership, sector, and operation environment as well as the scale, severity and irremediability of their risks.
 - Difficulties in choosing the appropriate framework or combination of frameworks.
 - Challenges pertaining to human and financial resources for developing, implementing, assessing, and reporting ESG performance.
 - Meeting the expectations of the various stakeholders.
- **Other challenges include:**
 - Continued focus on CSR and philanthropic activities.
 - Getting internal buy-in.
 - The ESG regulatory environment is dynamic and fast-evolving.

Incentives and Trends

- The rise of due diligence laws globally, particularly in Europe, will require covered companies operating or having a business relationship in Cambodia to avoid violating human rights and harming the environment. This requirement will raise more awareness and promote the adoption of ESG considerations among Cambodian companies.
- There will be increased interest in ESG, and more broadly RBC, by different stakeholders, including the private sector. E.g., consumers and financiers.
- There will be increased political wills by the government to introduce new laws, policies, guidelines, etc. that promote ESG and RBC in the country. E.g., the new Environmental Code, Labour Law revision, etc.



Conclusion

- ESG, likewise related concepts such RBC and BHR, remains new in Cambodia.
- While there is no clear legal requirement or guidelines, Cambodian laws and regulations cover different aspects of ESG. E.g., the Environmental Code.
- The rise of BHR-related laws and heightened expectation for more responsible business practices globally by both consumers and investors will demand increased uptakes of ESG and RBC in Cambodia.
- Both the government and the private sector will have increased interest in ensuring more responsible business practices in the country. ESG is a useful means to that end.



**Thank You for Your
Attention**