Chapter six: Impacts

Every company’s activities have an impact on human rights. Companies have responsibilities to those whose rights are harmed by those impacts, and responsibilities with regard to impacts caused by external actors with whom they have an association (contractors, suppliers, business partners, governments, communities). Impacts can therefore be divided into impacts on others and impacts by others. In the terminology of the Special Representative, the first is a matter of company activities, the second of company relationships.

A company’s activities will cause some harmful impacts that it cannot avoid. Appropriation of land is likely to involve resettlement and some destruction of property, for example. A company can provide compensation in such cases, or build replacement infrastructure, or support alternative livelihoods. It can also spend as little time and effort on mitigation as possible. The choices a company makes will determine whether it respects human rights. Under the ‘Respect’ approach, its responsibilities will be assessed against outcomes.

With respect to relationships, a company’s responsibilities are not absolute. It cannot oblige others to respect human rights, though it should make efforts to persuade them to do so. It can avoid entering into agreements with those it suspects of dubious practices; ensure its own standards are reflected in contracts; investigate and monitor behaviour; avoid provoking infringements (by setting realistic delivery schedules, for example); assist others to raise their standards; and threaten sanctions if business partners consistently abuse rights. It can expect government agencies to ensure legal compliance by its suppliers.

A company’s responsibilities are therefore outcome- and process-oriented. They are determined by the steps it takes, not only the results it achieves. This inevitably introduces uncertainty, which needs to be addressed transparently. If a company can show it has adopted the right measures, it can reasonably claim to be working to fulfil its responsibilities.

In relation to both categories of impacts, responsibilities are relatively straightforward in principle, but not necessarily in practice. Assessment of a company’s record of implementing rights depends firstly on legal compliance (which, if achieved, may be sufficient), then on the application of international best practice guidelines, and finally on mitigation measures should negative impacts prove unavoidable.
In theory, the same logic applies everywhere. In practice, weaknesses in the rule of law create exceptional conditions in high-risk countries. If a company cannot depend on the law to impose standards, or cannot trust those with whom it associates to be subject to law, including those responsible for protecting and administering the law, this will affect the integrity of all its relationships.

Lack of control is characteristic of high-risk countries. Companies cannot impose their standards and may be obstructed from respecting standards by domestic law or pressure from government. They are not in control of all their impacts, which are shaped by the actions of others – associates, communities, officials, other external actors. They do not even control their mitigation efforts, many of which will not be effective in the absence of official or community cooperation. Finally, companies cannot control their relationships.
The extent of the problem varies considerably, even within high-risk countries, and none of this absolves companies of their responsibilities; it complicates them. A company should still be judged on its behaviour, but the nature of the external environment both compounds its responsibilities and reduces the degree to which its performance can be assessed in absolute or simple terms. In parallel, how a company manages the risks associated with its weak control (both effort and judgement) will determine whether or not it meets its responsibilities adequately. Addressing harmful impacts will often require – over and above compliance with domestic legislation (essential) and adherence to best practice (expected) – substantial efforts to mitigate the risks posed by those who do neither (enhanced). This means that a company should undertake activities which promote conditions under which it can (begin to) meet its responsibilities.
Addressing impacts: key considerations

Comply. Establish whether the application of domestic and international law and best practice guidelines will be adequate to address actual or potential impacts.

Promote an enabling environment. If the context is problematic, work to change it. The company has responsibilities whether or not other actors are irresponsible. A company needs to do what it can to promote an enabling environment.

Be iterative and incremental. Over the life of a project, a company can control many (but not all) of its impacts.

Sequence. Based on severity, probability and capacity, companies will need to prioritise some impacts compared with others.

Collaborate. Collaborate with other companies, with host and other governments, and with NGOs. This is partly about meeting responsibilities, but also because a company cannot engineer changes in the larger environment without cooperation with other actors.

Be transparent. A company should discuss dilemmas openly and show what it is doing to meet its responsibilities. A transparent approach is not always declaratory, but silence and secretiveness breed suspicion.

Address perceptions. Attitudes are based on what people feel is being done. Companies must consider what they will do and how they will do it. Bad process can destroy a company’s credibility and its claim to respect human rights.