Executive summary

Context

Human rights\(^1\) are universal, but not universally protected or respected. The worst abuses occur in the midst of violent conflict but conflict is itself only a manifestation of a much deeper malaise. The source of the problem lies in illegitimate, repressive, dysfunctional or merely weak States. Poor governance provides the environment in which human rights abuses occur either through direct State abuse or through the State’s inability to provide protection against the abuses of others. Poor governance ultimately defines high-risk countries.

A country is “high-risk” when

- The State lacks the authority to protect its citizens from violence of various kinds; or
- The State fails to ensure that all citizens have access to basic services; or
- The State has only limited support among the people. Typically such States are not democratic, and their governments are often military or are supported and dominated by military interests.


Such places can offer business opportunities. For some, investment is driven by need—the resources are where they are; for others, by the prospect of untapped markets. For all, they offer severe operational, legal and reputational risks. The combination of foreign investment and high-risk countries has proved explosive: violent protests and fierce opposition locally, condemnation and campaigns internationally. Non-existent, weak or poorly enforced legislation against a backdrop of violence, social tension, poverty and corruption may prove a blessing for the unscrupulous but for the majority of companies, it offers a minefield of extremely complex management issues through which they are ill-prepared to navigate.

This is beginning to change with the emergence of the UN ‘Protect, Respect, Remedy’ framework, developed by UN Special Representative for Business and Human Rights, John Ruggie, and endorsed in 2008 by the UN Human Rights Council. The ‘Protect, Respect, Remedy’ framework and the Guiding Principles for its implementation, including the concept of human rights due diligence, provide for the first time a shared approach to the problems high-risk countries present.

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1 Human Rights are understood in this report as encompassing all rights as laid out in the Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights, and ILO core conventions.
The challenges now are to decide:
- What specific steps companies should take to ensure that their operations are consistent with their responsibility to respect human rights;
- Whether companies that work in extreme conditions have additional responsibilities and, if so, what these might entail; and
- How companies can act in a manner that ensures respect for human rights when other actors (notably States) do not fulfil their obligations.

About this report

This report is not another methodology. It strives to use knowledge that exists to provide an overview of good practice, informed by a human rights framework. It builds on significant work in this area, including the Institute’s own *State of Play Report of Human Rights Due Diligence: Anticipating the Next Five Years*, a study of due diligence practices of 23 large corporations. It is written primarily for managers and staff of companies that operate in high-risk countries, but we hope it will be relevant to all those working on business and human rights.

It is divided into two parts. The first examines challenges and specific responsibilities associated with them. The second explores more generic company responses.

Contents

**Part one: The Challenge**

*Law:* national, international and “soft” law.

*People:* government, communities, armed groups, gender, and international cooperation.

*Issues:* shadow economies, labour, security, the environment, land & water, dealing with the past.

**Part two: The Response**

*Company:* policies, structure, staff, integration, reporting.

*Process:* understanding risk, building relationships and providing remedy.

*Impacts:* distinguishing high-risk from more stable countries

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2 See the bibliography at the end of this report for a select list of resources.
Part one: The challenge

A company investing in a high-risk country operates with few certainties. The law may be weak and poorly enforced or easily circumvented. The State may not fully control its territory or may exercise control by repression. Security may not be provided or it may protect assets but not people. Water, health, transport, and education may be functionally absent or may benefit some but not others. Opportunities for employment may not exist or may be determined by ethnicity or patronage. Some groups in the society may believe that their aspirations can only be met through violence.

Critical dilemmas

How can a company respect human rights when the State does not fulfil its obligations?

How can a company avoid infringing the rights of others when some impacts are outside its control?

How does a company mitigate negative impacts when it cannot do so alone?

The challenges are not just unfamiliar; they threaten the elaborate system of checks and balances that societies have constructed to balance the profit motive of companies, the rights of people, and the needs of the State. Moreover, they differ from one country to another. They can be broken down in terms of law, relations between people, and issues:

Law

Companies are familiar with the challenges of legal compliance. They are less accustomed to contexts in which the law provides poor or contradictory guidance on a company’s duties.

International law (notably human rights and humanitarian law) sanctions the worst abuses, but it does not replace sound domestic legislation. The weaknesses of domestic and international law, especially with regard to enforcement, explain the emergence of many ‘soft law’ instruments, such as corporate voluntary initiatives. These aim to compensate for deficiencies in formal (“hard”) law, but have themselves been criticised.

Do national, international and soft law collectively provide instruments that enable companies to meet their responsibilities under the ‘Respect’ framework? Probably not. Though companies should not break the law, they can (and often should) go beyond it when national governance is weak or corrupt. Where national laws positively obstruct adherence to the ‘Respect’ framework (by restricting public meetings, or formation of trades unions, for example), companies need to circumvent the law creatively.
At the same time, mere adherence to corporate voluntary initiatives will not fulfil a company’s responsibility to respect human rights. The ‘Respect’ framework focuses on impacts – on the effects of a company’s activities and relationships: voluntary initiatives are a means, not the end.

International best practice, even properly implemented, cannot fully compensate for weaknesses of the law or the State either. Companies will face difficulties because their ability to ensure respect for human rights depends partly on the actions of others. This means that their responsibility is not absolute; the quality of effort, and process, matter.

Enhanced due diligence

Companies should:

• Exceed national legislation where it falls short of best practice (on environmental or labour standards, for example).

• Advocate for reform of domestic legislation that conflicts with international standards.

• Work creatively to respect best practice, where domestic legislation is constraining (for example, representation for employees).

• Address risks of human rights abuse and issues of complicity in contracts with host governments and associates.

• Give attention to, and report on, implementation of soft law guidelines.

• Harness the potential of multi-stakeholder initiatives to lobby host governments on relevant human rights matters.

People

Government

When States fail to protect rights, they facilitate corporate malpractice. When they fail to respect or fulfil rights, they undermine corporate good practice. It is therefore critical to understand the role of States, notably:

• Legislative inconsistencies.

• Capacity gaps.

• Issues of authority and legitimacy.

• Political will.

A company may find itself in breach of its human rights responsibilities because of government action or inaction. A company’s liability in such cases has limits; but its
responsibilities are independent of those of government and remain. For this reason, where governance is weak, companies need to enhance their due diligence procedures.

State failure to fulfil its obligations increases the pressure on companies to assume additional responsibilities, to mitigate impacts or access to rights (such as health for example). Companies therefore have a responsibility and an incentive to strengthen State capacity and effectiveness.

**Enhanced due diligence**

- Assess government capacity, authority, legitimacy and will as part of due diligence.
- Consider risks associated with deficiencies of government.
- Provide technical support to increase government capacity, particularly at local level.
- Advocate for a strong state role in socio-economic development.
- Identify partnerships and alliances with international organisations to support and encourage the government.
- Be transparent when it is possible; when it is not, discuss measures confidentially.

**Communities**

The relationship between companies and communities is central to many allegations that companies abuse human rights.

International human rights frameworks may be a useful guide to a company’s responsibilities in high-risk countries, but for two reasons they need to be contextualised. First, because local communities may not articulate their ‘rights’ in terms of *international* human rights law; and second, because the responsibilities of States are central to human rights law and many communities are suspicious of government.

With regard to communities, a company’s human rights responsibilities are about *showing respect* and *meeting expectations*. The importance of the first is poorly recognised. Managers must juggle many competing priorities in high-risk countries, but sincere engagement with communities is one of the most crucial. Failure to engage, or be seen to engage, remains a frequent problem and an abiding source of community resentment.

A company has no duty to fulfil the functions of government. But communities are more interested in getting services to which they are entitled than in who provides them. A company may therefore fulfil the letter of its human rights responsibilities but still face protests at its front gates.

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3 This section draws on *Community Perspectives on the Business Responsibility to Respect Human Rights in High-Risk Countries*, CDA Collaborative Learning Projects and IHRB, 2011.
From Red to Green Flags: The corporate responsibility to respect human rights in high-risk countries

This highlights the importance of delivering the benefits that companies are competent to provide. Broadly, this means long-term jobs for local people and evidence that some of the company’s revenue, paid to government, returns to improve services and infrastructure. If a company delivers the first and shows that it works for the second, it is likely to earn the community’s respect.

Enhanced due diligence

- Understand differences in perception of rights.
- Clarify expectations, including the limits of company responsibility.
- Form genuine relationships with communities (see Building relationships in Part two).
- Maximise core benefits (jobs and broader economic development).

Armed groups

Non-state armed groups vary enormously in terms of their size, reach, motivation, support base, and sources of revenue. These factors condition the risks they pose to a company and to its ability to operate responsibly. Equally, a company’s characteristics – its size, location, function, workforce, community relations, even nationality – will influence those risks too.

A company’s role with regard to armed groups is dictated by the extent to which its impacts increase their desire and capacity to harm the company or adjacent communities.

Human Rights due diligence procedures help to predict harmful impacts and also identify ways to reduce and mitigate threats and harm. Faced by the risks posed by armed groups, companies need to think laterally.

Security is clearly one priority. A company achieves security by reducing an armed group’s capacity and/or motivation to do harm. State (or private) security forces that are repressive or violate rights may reduce an armed group’s capacity but at the cost of increasing its motive to harm. Companies therefore need to consider all the ways in which they can insist, encourage, prompt, and assist governments and their security forces to fulfil their human rights obligations.

Ignorance, or disregard of the motives of armed groups, will also fuel resentment, heighten risk, and compromise a company’s ability to respect human rights. It is important to understand and acknowledge grievances, though this does not imply giving way to demands. The intersection between the responsibilities companies have, and the concerns of local populations, needs to be explored, just as it does in other contexts.
Enhanced due diligence

- Analyse the company’s impacts.
- Understand the agenda of armed groups.
- Suspend or postpone investment if its impacts might credibly lead to grave human rights abuses.
- Avoid paying off or otherwise benefiting armed groups (as far as possible).
- Enhance company security measures to include protection of local communities (as necessary and as far as possible).
- Support the capacity of state forces in line with best practice guidance (and with an understanding of potential risks).
- Develop joint approaches with other companies.
- Address grievances related to company impacts and in so far as they intersect with local community concerns.
- Partner and support organisations working to address grievances.
- Advocate confidentially, with host or home governments or international organisations.
- Discuss risks and mitigation measures with trusted international bodies.

Gender

The term ‘gender’ takes account of the social, economic, and political differences, not just the physical ones, between men and women. Gender matters because men and women experience the impact of a company’s activity differently, and a company cannot meet its responsibilities to respect human rights if it does not properly understand this. (It needs to be similarly sensitive to the impact of its activities on all individuals and groups who are likely to suffer discrimination.)

Differences of experience notably occur in the area of: livelihood, resources, services, security, and health.

Companies are not agents of social change: it is not their mandate to address deep-rooted societal injustices, nor do they possess the required expertise. Companies do bring social change, however, and they have responsibility for its impact. The claim that companies should not involve themselves in socio-cultural questions, such as the position of women, is sustainable only to the extent that their presence neither sustains nor worsens discrimination on grounds of gender.
**Enhanced due diligence**

- Include gender analysis in risk assessment processes.
- Ensure that women (and other disadvantaged groups) are properly included.
- Assess how company impacts will affect groups differently.
- Develop tailored strategies for mitigating negative impacts.

**International cooperation**

Cooperation between governments, multi-lateral organisations, civil society and business has increased enormously in recent years. The contribution businesses can make to reducing poverty through trade and investment has been recognised — and in parallel the risks of corporate abuse in developing countries have also attracted growing attention.

Multi-stakeholder cooperation suffers from incoherence, nevertheless. Governments, business and civil society each need one another if they are to achieve their goals. For companies, benefits of cooperation include:

- **Protection.** Because of their sensitivity, companies find it difficult (or inadvisable) to raise certain issues with host governments. This can often be done more easily through their home governments, multi-lateral agencies or in multi-stakeholder forums.

- **Advice.** When companies face the very complex dilemmas that arise in high-risk societies, governments or other actors may be able to suggest alternative solutions, and work with companies to implement them.

- **Knowledge.** Companies cannot, and should not be expected, to know everything. Even comprehensive due diligence will leave gaps. Companies need other institutions, with different forms of experience, to supplement their own analysis and capacity.

- **Support.** Companies often need support to address negative impacts.

- **Level playing field.** Bad practice in a company undermines the work and reputation of other companies. This is not simply a matter of competitive advantage or guilt by association. Companies that ignore human rights increase risk for others. Cooperation, between companies and with other institutions, helps to raise standards.

- **Transparency.** Companies need to show they are doing what they can to protect rights and behave responsibly. This is their main defence against a range of risks. Transparency takes many forms and is not necessarily about public declaration. Cooperation with other institutions, including governments and civil society organisations, can assist companies to build public and private trust.
Issues

Shadow economies

Though criminality exists everywhere, State-controlled or State-sanctioned criminality is largely specific to high-risk countries, some of which are also characterised by ‘uncontrolled’ criminality, in which States are unable (for lack of control) or unwilling (from political expediency) to prevent, investigate or prosecute large-scale criminal activities.

Shadow economies present three important challenges for companies:

- **Resource curse.** Mismanagement of national revenues is beyond company responsibility, but local impact is relevant. Companies need to ensure the benefit of their presence is felt locally. There is no better risk mitigation strategy.

- **Corruption.** Corruption is incompatible with the corporate responsibility to respect, but is unlikely to disappear. A company’s responsibilities need to be framed in terms of the impact of corruption (its gravity) and the company’s efforts to avoid and mitigate it. In countries where corruption is unavoidable, it is not enough to institute a strictly enforced policy; companies need to support initiatives that combat bribery.

- **Partners and Suppliers.** Many companies invest in partnership with State-owned enterprises. Many, though not all such enterprises will be engaged in corruption. The same will be true of private enterprises. A similarly acute problem confronts companies that source their products from high-risk countries, particularly from areas of conflict. Companies need to work with other businesses, home and host governments, and civil society organisations, to develop a collective response and strategy.

Enhanced due diligence

- Argue that resources should be allocated fairly to and within the company’s operating region.

- Support efforts to strengthen local government institutions.

- Partner with local government on service provision and infrastructure.

- Communicate and disseminate information about tax and royalty payments locally.

- Support media and civil society efforts to hold local government accountable.

- Support anti-bribery initiatives, particularly at local level.

- Participate in multi-stakeholder initiatives to monitor products sourced from high-risk countries.

- Develop a shared strategy to address sourcing problems; in extreme cases, change source.
Labour

Companies are responsible for the treatment and recruitment of their employees. In principle, they are wholly responsible but in high-risk countries their authority is conditioned by the legal framework and wider socio-economic and political context.

Jobs are valuable commodities in countries where unemployment is high. Their allocation can be a source of tension and competition. To meet its responsibilities and mitigate risks, a company needs to ensure:

- Its recruitment criteria are non-discriminatory and based on merit.
- It employs local people in a representative manner.
- Its workforce is religiously, ethnically, linguistically representative.
- The local economy is vibrant (the company is not the sole employer).

Enhanced due diligence

- Alternative mechanisms of staff representation.
- Affirmative action for disadvantaged groups (women, ethnic and religious minorities).
- Allocation of local jobs on the basis of impacts.
- Targets for local recruitment.
- Educational support (schools, scholarships).
- Long-term training to raise skills.
- Maximise use of local suppliers, including support to build local business capacity.
- Advocate and support improvements in the business environment.

Security

High-risk countries present many forms of security risk. Beyond the standard threats of theft, vandalism and sabotage, companies may have to contend with armed groups, unreliable State security forces, inadequate justice systems, high expectations in the local community, and a host of endemic social, economic and political tensions. These can create explosive combinations. Companies need to ensure that the risks do not include the security providers themselves (private and public).

Company engagement with public or private security is increasingly shaped by guidelines set out in The Voluntary Principles on Security and Human Rights (VPs). The VPs offer excellent guidance, but a company needs to remember that its impact, rather than adherence to principles, determines its human rights responsibilities.

Prevention and accountability are the two key elements of a company’s responsibilities. With regard to their private security employees, companies should enforce appropriate
standards and ensure strong local representation (including women) and the right kind of training. With regard to public security forces, wherever possible a company should avoid situations requiring their intervention, should ensure that any intervention is appropriate (non-offensive), and should exercise influence to promote responsible and accountable behaviour by State security forces.

**Enhanced due diligence**

- Contracts with host government addresses risks.
- Local representation, including women.
- Training in people and crisis management skills.
- Good links between Security and Community Relations.
- Avoid using public security forces if possible.
- Assistance to public security should be conditional.
- Training for public security.

**Environment**

For many people their environment is at the heart of their quality of life. Environmental impacts are therefore a frequent cause of conflict with local communities, certainly for large-scale projects.

Companies cannot avoid or wholly mitigate their environmental impact. Their responsibilities are therefore defined by what they do to reduce and compensate for adverse impacts.

This requires companies to step beyond technical standards to a more holistic assessment of their impact on individuals.

**Enhanced due diligence**

- Disclose actual or expected environmental impacts.
- Minimise impacts during operations and, as far as possible, restore or improve pre-investment environment following closure.
- Ensure independent monitoring of impacts (air and water quality, land contamination, etc.).
- Understand people’s perceptions and experience of impact from a human rights perspective.
- Negotiate and agree compensation having regard to impacts rather than standards.
Land and water

Land and water raise fundamental issues:

- **Survival.** Access to land and water is essential to existence. Degrade or expropriate either and survival is at risk.

- **Scarcity.** Scarcity increases the value and competition for land and water, which is heightened by alternative uses.

- **Sanctity.** Land in particular is not an economic asset. It represents history, place, culture, religion and identity.

Companies should:

- **Minimise disruption.** To the extent that it can do so, a company should work around existing communities.

- **Maximise benefits.** When assessing benefits, a company should consider all the issues that shape an individual’s quality of life: housing, services, livelihoods and community.

- **Manage government.** A company should avoid state intervention in areas such as land clearance but promote involvement in service provision, land registry, health etc.

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**Enhanced due diligence**

- Clarify government responsibilities.
- Disclose and discuss impacts, whether they are single or iterative.
- Determine direct and indirect impacts on quality of life.
- Minimise impacts.
- Take time to design compensation measures.
- Give communities a stake in the project.
- Lobby and support government to meet its responsibilities.
- Ensure land clearance is legal and independently monitored.
Dealing with the past

High-risk countries have a history of conflict, neglect, inequality and poverty which bequeaths a complex legacy of suspicion and self-sufficiency.

How are companies to respect human rights where rights have never been respected or protected in the past? This question is even harder to answer when the company itself has a controversial history.

Company responsibilities centre on understanding these legacies and promoting consensual solutions. In many cases, this will be necessary even when a company is new to a country.

Enhanced due diligence

- Prior to operations, conduct a baseline assessment to determine the existing condition of impacted communities.
- Negotiate a division of responsibilities with local and national government.
- Consider historical inequality and discrimination in employment and social investment strategies.
- Focus on impacts, not just law, when dealing with past grievances.
- Identify non-judicial forms of remedy and resolution.
- Recognise and as necessary address the legacy of other companies.
Part two: The response

Faced by the challenges explored in Part One, companies have sometimes chosen to stay away or to disinvest. When they invest, they have three options. They can adapt downwards, by exploiting the advantages that weak regulation and poor governance can offer; they can adapt upwards (and thereby potentially differentiate themselves from their peers) by introducing policies and approaches that deal with the challenges; or they can try a bit of both. The first is risky, the second difficult, the third risky and difficult.

From a company perspective, reacting to events has proved to be just as time-consuming and resource intensive over the long-term, and has compartmentalised standards and policies, which are added on rather than properly integrated and consolidated. From the perspective of communities and the wider society, a reactive approach conveys the impression that companies are dragging their feet, are not genuinely concerned by their impacts on people, and can only be influenced by protest and criticism. For governments, it sends mixed signals about a company’s intent and the seriousness of its commitment to respecting human rights throughout its operations.

The challenges may be complex but, in broad terms, they are predictable; companies do not need to act blindly and hope for the best. They can put in place the fundamental elements of good practice that will enable them to anticipate and address problems before they become critical. Over time, doing so will save money, strengthen reputation, and support a more stable business environment. Policies should:

• Configure internal company systems, structures and attitudes.
• Design effective processes for understanding risk, building relationships and providing remedy.
• Provide mechanisms and resources for preventing and mitigating negative impacts.

Company

A cross-section of businesses has broadly accepted the ‘Protect, Respect, Remedy’ framework, answering the question as to whether companies have a responsibility to respect human rights. The challenge now is how to implement the framework, especially in high-risk countries where human rights risks are more acute, more complex and less familiar.

A company cannot respect human rights, least of all in high-risk countries, if it does not address its own structures and systems. Five aspects need to be considered: policies, structures, staff, integration, and reporting.

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4 For example, some oil companies chose not to invest in Sudan and some have divested in view of the ongoing conflict.

5 This section draws on Edward Bickham, Human Rights: the internal management challenges, IHRB, 2011.
Company: key considerations

Ensure policies are aligned with international human rights standards.
Consolidate individual policies into an overarching human rights statement.
Refine corporate-wide policies to meet the needs of specific country operations.
Create structures at headquarters and site levels that promote a ‘whole of company’ approach to anticipating and addressing human rights issues.
Recruit and train staff in the policies and their implementation.
Provide incentives via bonus and promotion schemes that reward excellent social and human rights performance.
Integrate social reporting within a human rights framework.
Focus external reporting and accountability on those impacted by the project.

Process

As with any activity that requires the efforts of many, business is essentially about cooperation: with staff, customers, partners, suppliers, and with governments and local communities. Cooperation makes business possible but introduces an element of risk. Cooperation is therefore about risk management, and risks can only be managed if they are understood properly. Understanding risk is a process.

Cooperation implies a relationship, the nature of which will depend on the form of cooperation – in brief, on what each party wants from the other. Building relationships is also a process.

Cooperation further presumes mutual satisfaction. If this is not achieved, mechanisms are required to address disagreements between the parties. Resolving these and providing remedy is a process too.

Managing relationships is complex everywhere, but particularly in high-risk societies, where business relationships may be influenced by compelling personal or political factors and the law is open to manipulation.

The 3 ‘Rs’

1. Understand Risk.
2. Build Relationships.
3. Provide Remedy.
Understanding risk
Risk assessment is standard practice for most companies. The ‘Respect’ framework simply expands its scope. Risk assessments need to encompass human rights risks to others and human rights risks posed by others, specifically those with whom companies have a relationship.

Human rights risk and impact assessments: key considerations

Continuous. Assessment should continue through the life of a project. Fixed-point assessments are important milestones but should not replace continuous monitoring.

Integrated. Human rights considerations should be a core feature of assessment processes, not a separate process.

Devolved. Individual departments (security, human resources, contracts, external relations, etc.) should have responsibility for assessing human rights risks in their domain.

Harmonised. Their separate analyses should be brought together and integrated (for example through a Risk Task Force).

Baseline. To properly identify their impact, companies should establish a baseline description of conditions. This will also help to define and communicate responsibilities (of the company, of government, etc.).

Process-orientated. Include intangible outcomes. Values like trust and respect are important; risk assessments should reflect this in their design and implementation.

Accessible. Those implementing an assessment and those who are consulted should be at ease with its framework and language. If formal human rights language is unhelpful, do not use it. What matters is identifying the problems, not how they are described.

Inclusive. Speak to all relevant constituencies. Where this is genuinely not possible (women in some situations, critics of government in others) identify third parties who can access them or representatives who can speak for them.

Comprehensive. Examine all issues and relationships; include external parties.

Focus on impacts. Understanding impacts is the main purpose of assessments. Make sure the terms of reference are appropriate.

Validate. Be transparent whenever possible, respect confidentiality where necessary. Reflect back the findings of assessment to those who were consulted and have an interest.
Building relationships

Strong relationships are not a requirement under the ‘Respect’ framework. It is not necessary to get along with an institution, group or individual in order to respect rights. Positive relationships do nevertheless make many things easier, and negative ones can have damaging consequences.

Companies need no advice on managing their business relationships. No company will last long without proven strategies for working with its partners, contractors and suppliers, and clients and customers. Companies also recognise the importance of political relationships in high-risk countries. Social relationships are more problematic, however. Companies are driven by economic imperatives and this is at the heart of their often contentious relationship with local communities. Many companies find it hard to conceive of their relationships except in terms of mutual economic advantage, and do not easily make the leap from contract to rights.

Yet companies need to understand the nature of their relationship with communities. It is not just another negotiated contract; communities are not a non-profit form of business partner. This is partly due to the character and culture of each community but primarily to the fact that large projects have a profound impact on the lives of communities they affect, and these impacts are not only economic but cultural. They bear on relationships, personal security, livelihoods and status.

Companies need to approach communities with the respect due to those whose lives they are fundamentally changing. This is relevant also to social investment strategies, which can help to mitigate harmful impacts.

Building relationships: key considerations

**Recognise** the social character of a company’s relationship with surrounding communities. Respecting human rights is as much about ‘how’ as ‘what’.

**Commit** to an open-ended process. Relationships need to last as long as the project, not just until ‘consent’ is obtained.

**Recruit** staff with appropriate skills, attitudes and ethnic, religious, linguistic balance.

**Design** a process that is *inclusive* (all impacted groups), *fair* in terms of benefits (judged by impact), culturally *appropriate*, and *open* (regular and transparent communication).

**Focus** on winning trust.

**Align** social investment strategies with impact mitigation responsibilities.
Providing remedy

Rigorous risk assessment and strong local relationships will do much to limit grievances, but will not eliminate them. Legitimate grievances need to be resolved and even unsubstantiated grievances can benefit from being expressed. Ensuring that people both inside and outside a company have proper access to remedy for harm done to them is an increasingly understood to be part of a company’s responsibility to respect human rights.

The main focus in this respect has been on the development of grievance mechanisms. These are useful but bring complications as well. In high-risk countries many people do not have access to justice and a company grievance mechanism may be the only means of remedy available. In so far as a complaint is against the company, this is straightforward; it is less so when the complaint is not against the company but a third party with whom the company has an association. In such circumstances, companies may find themselves drawn into disputes from which they have no clear exit.

Providing remedy: key considerations

Establish a grievance mechanism according to best practice principles.

Encourage staff and local communities to raise concerns through the grievance mechanism.

Resolve genuine complaints against the company through negotiation, apology or compensation (as appropriate).

Pressure partners and suppliers to investigate and address complaints directed at them and keep informed of progress and resolution.

Take appropriate action against partners and suppliers (including possible termination of contract) according to severity of allegation, balance of evidence and weight of cumulative allegations.

Assess the integrity and effectiveness of judicial mechanisms.

Monitor the progress and outcome of complaints addressed through judicial mechanisms.

Avoid using judicial mechanisms (if possible) where there is a credible risk of official abuse.
**Impacts**

A company’s responsibility for harm caused by its activities is 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 high-risk countries, the situation is complicated by weaknesses in the rule of law. If a company cannot depend on the law to impose standards, it is dependent on its own standards, themselves vulnerable because the integrity of law affects all its relationships. If a company cannot trust those with whom it associates to be subject to law, including those responsible for protecting and administering the law, it is exposed to risk from many directions.

This lack of control is characteristic of high-risk countries. Companies cannot always impose their own standards, which may be obstructed by domestic law or government pressure. They are not in control of all their impacts, which are shaped by the actions of others – associates, communities, officials, and 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.

None of this absolves companies of their responsibilities; but it complicates them. A company should still be judged on its behaviour but the nature of the external environment both compounds a company’s responsibilities and reduces the degree to which its performance can be assessed in absolute or simple terms, without regard for surrounding conditions.
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 the responsibility to respect human rights whether or not other actors act responsibly. 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 part 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 responsibility to respect human rights. 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.
Conclusion

For the majority of companies operating around the world, respecting human rights is a question of will. Companies have access to the resources, the instruments, the tools and the external support to enable them to meet their responsibilities – if they decide to use them. In high-risk countries, it is not so simple. Companies may adhere to the law and follow best practice and still find themselves struggling to meet their commitments.

Companies are dependent on the environment in which they operate. The corporate responsibility to respect human rights may exist independently of the state’s duty to protect, respect and fulfil but a company’s ability to meet that responsibility will be heavily influenced by state behaviour. If government cannot or will not meet its human rights responsibilities, then nor can a company at least not with any certainty and across the full range of its impacts. This is firstly because the State is among any company’s core relationships, and under the ‘Protect, Respect, Remedy’ framework this confers some responsibility on companies for the impacts of certain government actions. Secondly, State failure to regulate and control the activities of third parties means that even the most diligent companies will inevitably find themselves working with or alongside businesses and other institutions that are breaching human rights responsibilities. Finally, government neglect (or worse) of its citizens’ civil and political and social, economic and cultural rights will exacerbate any harmful impacts of a company’s activities and simultaneously prevent the company concerned from acting effectively to mitigate them.

For all these reasons, high-risk countries are defined by the nature of the State. A predatory or ineffective government will pose risks to a company but, equally importantly, will increase the risks posed by a company. Some will interpret this to mean that companies have an escape clause. Others will conclude that companies should withdraw from such societies.

Neither is true. High-risk countries demand from companies a higher level of rigour, creativity and sensitivity than elsewhere. At the same time, high-risk countries need responsible investment more than elsewhere. The economic, social and political benefits companies can bring to such societies should not obscure, or be obscured by, the economic, social and political harms that companies can inflict – and in some cases have inflicted.

Companies operating in a high-risk environment have a particular responsibility to influence that environment, within the bounds of their own impacts. This is the additional requirement which the decision to invest in such countries places upon companies. Drawing upon the UN Special Representative’s analysis, this supplementary requirement includes the duty to know, do and show. A company needs to fully understand the direct and indirect risks that arise from poor governance, and needs to act on that understanding by managing and supporting appropriate state interventions as necessary.
Finally, it needs to be transparent (in so far as this is possible) by explaining the dilemmas it faces and discussing the measures it is taking to address them. Together, these three forms of response will reduce risks and enable a company to meet its responsibility to respect human rights in high-risk countries.

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*From Red to Green Flags: The corporate responsibility to respect human rights in high-risk countries* explores precisely how a company’s responsibility translates into specific actions across some of the key challenges it faces in such contexts. The ideas presented are neither definitive nor exhaustive. However, by building on the platform provided by the ‘Protect, Respect, Remedy’ framework, this report suggests how a stronger consensus might develop around the framework’s application in high-risk countries.

Without this kind of consensus, many of the important advances captured by the framework may be lost. If agreement can be achieved, by contrast, companies, NGOs, governments and other parties can refine and put to use a set of tools that can not only guide company actions but enable objective assessments to be made of the progress companies make in meeting their responsibilities. As work on corporate responsibility goes forward, this must surely be a priority.