Introduction

The worst abuses of human rights are likely to occur in the context of violent conflict. However, conflicts are not simple events: they are the product of underlying social, economic and political stresses, and are associated with illegitimate, repressive, dysfunctional or merely weak States. Poor governance creates an environment conducive to human rights abuses, either directly as a result of actions by the State or indirectly because the State fails to protect people for whom it is responsible from abuses by others. Ultimately high-risk countries are defined by poor governance.

Such places can offer business opportunities. For some, investment is driven by need – for example demand for rare resources. In others, the driver is opportunity, such as the presence of untapped markets. In all cases, however, investment in these contexts generates severe operational, legal and reputational risks. It is not surprising that foreign investment in high-risk countries has proved explosive: violent protests and fierce opposition locally, condemnation and campaigns internationally.

A few unscrupulous companies flourish in environments of non-existent, weak or poorly enforced legislation. However, the vast majority of companies dislike and are ill-equipped to address the numerous and extremely complex management challenges that exist in societies facing violence, social tension, poverty and corruption. These conditions will inevitably change only slowly, yet companies do not have the luxury of time. As a result, many efforts are being made, by non-governmental organisations (NGOs), States, and businesses themselves, to equip companies to operate responsibly in such societies.

A common framework …

Establishing with clarity the extent and limits of company responsibility remains a core problem. Whilst a minority may thrive on uncertainty and exploit the possibilities for profit generated by instability, most companies operate best within a clear regulatory framework. In high-risk countries, no such clarity exists, particularly in respect of human rights. Companies are confronted by problems and dilemmas that fall far outside their traditional competence and mandate.

This is beginning to change with the emergence of the ‘Protect, Respect, Remedy’ framework, developed by the UN Special Representative for Business and Human Rights, John Ruggie, and endorsed in 2008 by the UN Human Rights Council. The Special Representative has additionally elaborated Guiding Principles which recognise that businesses operating in conflict zones create and face specific problems. The work of the Special Representative has been welcomed by companies, in part because it

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1 Human Rights are understood in this report to include all the rights set out in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and ILO core conventions.
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attempts to clarify the relationship between business and human rights, balancing the profit-making rationale of the private sector with the imperative to operate in a way consistent with the letter of the law and the spirit of fundamental values. It has been welcomed by many outside the private sector because it ends a long-running debate about whether companies should respect human rights. They should – because anything less is unacceptable. The outstanding question is how.

Core elements of the corporate responsibility to respect human rights

- The responsibility to respect is a standard of expected conduct recognised by virtually every voluntary and soft law initiative.

- To “respect” implies that companies should not infringe the rights of others and should address adverse impacts of their activity.

- The scope of a company’s responsibility is determined by its actual and potential impacts, due to its activities or its relationships (with business partners, governments, customers). These vary and must be assessed in context.

- The corporate responsibility to respect applies to all internationally recognised human rights, as set out in the International Bill of Rights and the ILO Core Conventions. It is a baseline responsibility, which means it cannot be offset.

- A human rights harm that occurs must be addressed and cannot be balanced or offset against actions that have positive human rights effects elsewhere or at another time.

The ‘Protect, Respect, Remedy’ framework therefore provides a broadly agreed approach. The challenges now are:

- To understand what specific steps companies should take to ensure that their operations are consistent with their responsibilities;

- To decide whether companies that work in extreme conditions have additional responsibilities and, if so, what these might entail; and

- To explore how companies can act in a manner that ensures respect for human rights when other actors (notably States) do not fulfil their obligations.
... a common understanding

Numerous terms have been employed to describe societies that are politically and socially unstable: terms include ‘fragile’, ‘failing’, or ‘failed’, ‘weak governance’ or ‘low-income under stress’, ‘turbulent’ or ‘complex’, ‘conflict-prone’ or ‘conflict-threatened’, ‘post-conflict’ or ‘transition’.

The plethora of titles should not disguise the degree to which they share defining features (see below). This report prefers the term ‘high-risk’, because it focuses attention on four kinds of risk associated with corporate investment in these contexts:

- Risks to the profits, reputation, and staff of the company.
- Risks to individuals and communities, whose security, livelihoods and resources may be affected by company operations.
- Risks for society, through increased corruption and inequality.
- Risks for the State which is expected to manage the economic, environmental and social effects of investment, as well as political criticism.

Not all company operations generate or face such risks, of course. Numerous factors influence the nature and extent of risk, including the size and footprint of the investment, its location and industry sector, the size of the workforce and the project’s revenue, the resources it requires and its security needs. The quality of the company’s due diligence and its policies for managing risk will also be significant. In addition, the context is crucial: the presence and severity of violence, the legitimacy and authority of the government and the degree to which affected populations have serious grievances and can articulate them.

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### Characteristics of high-risk countries

#### Authority failures:
Where a State lacks the authority to protect those under its jurisdiction from violence of various kinds.

- Organised political violence is significant (e.g. Iraq, Afghanistan, Colombia).
- State authority does not extend to all parts of the country (e.g. Côte d’Ivoire, Somalia, Afghanistan).
- Political or communal violence periodically causes deaths and destruction (e.g. Nigeria).
- High levels of criminality are not controlled either by the State or the justice system (e.g. Haiti).

#### Service failures:
Where a State fails to ensure that those under its jurisdiction have access to basic services.

Inadequate delivery of:
- Health services.
- Basic education.
- Water and sanitation.
- Poor transport and energy infrastructure.
- Failure to reduce income poverty.

#### Legitimacy failures:
Where a 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.

- No democracy (i.e. no free, fair and regular elections).
- Military influence in government.
- Acquisition of power by force.
- Suppression of opposition.
- Government controls the media.
- Significant sections of the people excluded from power.
- Denial of civil and political liberties, arbitrary arrest, denial of free speech, etc.

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... and a common approach

Companies do not suffer from lack of advice. A huge amount of literature describes every aspect of corporate operations – from management systems to stakeholder reporting via human rights, revenue transparency, security provision, conflict prevention, community engagement, government relations, and environmental impact.6

Prompted both by criticism and the emergence of numerous voluntary initiatives (see Section One below), many companies seek to position themselves as, or transform themselves into, socially responsible actors. Efforts to cast the private sector as an agent of poverty reduction as well as economic growth add yet another layer to this.7

In short, companies become all things to all people. To human rights organisations, they are sometime abusers but also potential human rights defenders; to development specialists, they are resource curse culprits but also Millennium Development Goal champions; to conflict experts, they drive violence but can also create conditions for peace.

Companies do of course exercise many kinds of influence. For policy-making, the problem is rather that a dizzying variety of issues, terminologies, methodologies, principles and guidelines are all in play, each pertinent but reflecting the interests of a specific group.

The result is more management – management of management tools, of stakeholder groups, of networks and associations, of reporting requirements. Solutions tend to divide, box and categorise when the more important need is to consolidate good practice.

About this report

This report attempts to address that challenge. It is not another methodology, and does not offer ground-breaking insights. Much of what needs to be known is already described.8 It strives instead to use the knowledge that exists to provide an overview of good practice, informed by human rights principles. 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.

Conceptually, the report builds on earlier work that was undertaken when developing the ‘Red Flags’ guidelines.9 Where ‘Red Flags’ established a list of things that companies should not do when investing in high-risk areas, this report attempts to establish a clearer sense of what companies should do. It draws primarily on existing literature supplemented by five commissioned background papers. Its analysis has also benefited

6 The Business and Human Rights Resource Centre provides an extensive listing. At: www.business-humanrights.org/ Categories/Links/LinksPublications
7 See, for example, the work of Global Witness (www.globalwitness.org).
8 See the bibliography at the end of this report for a select list of resources.
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from two round tables (held in Bogota, Colombia and Johannesburg, South Africa) and comments and feedback from company, NGO and government representatives.

The Institute is grateful to all those who have contributed their time and expertise: to Dost Bardouille-Crema, Edward Bickham, Nicky Black, Kathryn Dovey and Heloise Dumont for the preparation of background papers and for their insightful comments throughout the process; to Seema Joshi, Angela Rivas and Claude Voillat for their feedback on an early draft; and those who participated in the Roundtable meetings: Odunola Ajayi, Steve Ouma Akoth, Luis Fernando de Angulo, Steven Botts, Stephen Bullock, Paola Cubides, Aidan Davy, Ana Maria Duque, Alan Fine, Bennett Freeman, Angela Rivas Gamboa, Alexandra Guaqueta, Lauren Gula, Radhika Hettiarachchi, Cameron Jacobs, Christine Jesseman, Tshepo Kgasago, Wambui Kimathi, Beatriz Duque Montoya, Austin Onuoha, Abiola Okpechi, Pablo Largacha, Carmen Lara Loaiza, Tam Nguyen, Gerald Pachoud, Andres Penate, Luz Marina Preciado, Usha Ramanathan, Anita Ramasastry, Yuri Ramkissoon, Jorge Salcedo, Desislava Stoitchkova, Daniel Suarez, Juan Carlos Ucros, and Egbert Wesselink.

Particular thanks are due to the Swiss Federal Department of Foreign Affairs for its financial support to this project, and especially to Nils Rosemann of the Human Security and Business Desk, who pressed for the report and tirelessly championed the issue it discusses.

The report has been prepared by the Institute for Human Rights and Business, with no external editorial control or influence. The Institute takes responsibility for its content. It was written by Nick Killick with the help and support of the Institute’s staff.

The report is divided into two main parts. The first examines the challenges and specific responsibilities that are associated with them. The second explores more generic company responses.