Part one: The challenge

When a company invests in a developed economy, it is guided by regulations that dictate what it can and cannot do. By and large, these regulations are monitored and enforced by State agencies (health and safety, environment, tax collection) and independent bodies (trades unions, the media, NGOs, etc). When disputes arise, formal and informal procedures and processes are applied, supported by an accountable justice system, ensuring their resolution. Beyond the boundaries of company property, the State provides security, delivers basic services, and assumes primary responsibility for meeting the socio-economic and political aspirations of the society. No doubt the system does not function perfectly in any developed society; it nevertheless provides a business environment in which rules are clear, and in which entrepreneurialism is generally rewarded and abuses are often punished. The traditional business model has evolved within and been shaped by this culture. Adapting to a new country is relatively straightforward.

A company investing in a high-risk country can rely on few of these certainties. Some of the elements mentioned above may be in place but institutions may be weak and procedures poorly enforced or easily circumvented. Other elements may be absent or very different in form. 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.

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<th>Critical dilemmas</th>
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<td>• How can a company respect human rights when the state does not fulfil its obligations?</td>
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<td>• How can a company avoid infringing the rights of others when some impacts are outside its control?</td>
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<td>• How does a company mitigate negative impacts when it cannot do so alone?</td>
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These challenges are not simply unfamiliar to companies. They threaten the elaborate system of checks and balances that promote equilibrium between the profit motive of companies, the rights of people, and the needs of the State. In addition, the challenges differ from one country to another. The traditional business model was not designed for this.

The problem can be put simply (even if the answer cannot). If a company can operate responsibly in Australia, why should it struggle to maintain similar standards in the Democratic Republic of Congo? Are differences of context responsible, or do companies change their behaviour? Or is the interaction between context and company responsible for differences of performance? Evidently, changes of context do allow companies to take advantage of administrative or legal loopholes, corruption or maladministration. Yet even those committed to responsible behaviour struggle to maintain their standards in high risk environments.

High-risk countries differ from more stable environments in three key areas:

1. **Law**: in terms of national, international and “soft” law.

2. **People**: in terms of the institutions of government but also community organisation, armed groups, gender relations and international cooperation.

3. **Issues**: in terms of the formal and informal economy, employment practices, security, management of the environment, allocation of land and access to water, and justice and dealing with the past.
Going in and getting out

Companies have traditionally made ‘go’ or ‘no go’ decisions based on rates of return, and their calculation of technical and political risks to the company and its assets. Human rights risks were not necessarily considered because they were unfamiliar, unrecognised, or held to be a government responsibility or one that local executives should manage. (Edward Bickham, *Human Rights; the internal management challenges*. IHRB, 2011.)

The Corporate Responsibility to Respect positions human rights at the core of company operations. The ability to ensure that rights will be respected becomes an explicit consideration in company decision-making. In reality today, human rights risks are likely to determine decisions in rather few circumstances. Where international sanctions are in place, investment is likely to be illegal anyway; this may also be so in cases of credible risk of complicity in grave human rights abuses (see www.redflags.info). In many other cases, however, human rights considerations should be prominent:

- Where the state is unable to provide security for the local population or the company, or where it is undesirable to allow the state to provide security.
- Where a company’s presence attracts or is likely to attract armed groups.
- Where local opposition to an investment is strong.
- Where an investment will have an impact on others (e.g. major resettlement).
- Where a company clearly cannot operate in line with business principles (e.g. it has to pay bribes to operate, or domestic legislation or official practices make it impossible to apply best practice standards).

If an investment proceeds, the companies involved need to plan mitigation strategies. Contracts should take account of identified risks; groups that will be affected should be consulted. Human rights risks merit at least as much attention as other forms of risk, and the more serious the risks are, the more attention they require.