

UNITED STATES COUNCIL FOR  
INTERNATIONAL BUSINESS

# 10<sup>th</sup> OECD Roundtable on Corporate Responsibility Workshop on Human Rights

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## Business & Human Rights

- **The UN Framework: “Protect, Respect, Remedy”**
  - State duty to Protect: Need to close the gap between national laws and actual practice.
  - Corporate responsibility to Respect: Legal compliance and proactive actions beyond compliance.
  - Access to remedies: Judicial remedies must be available; non-judicial processes cannot substitute

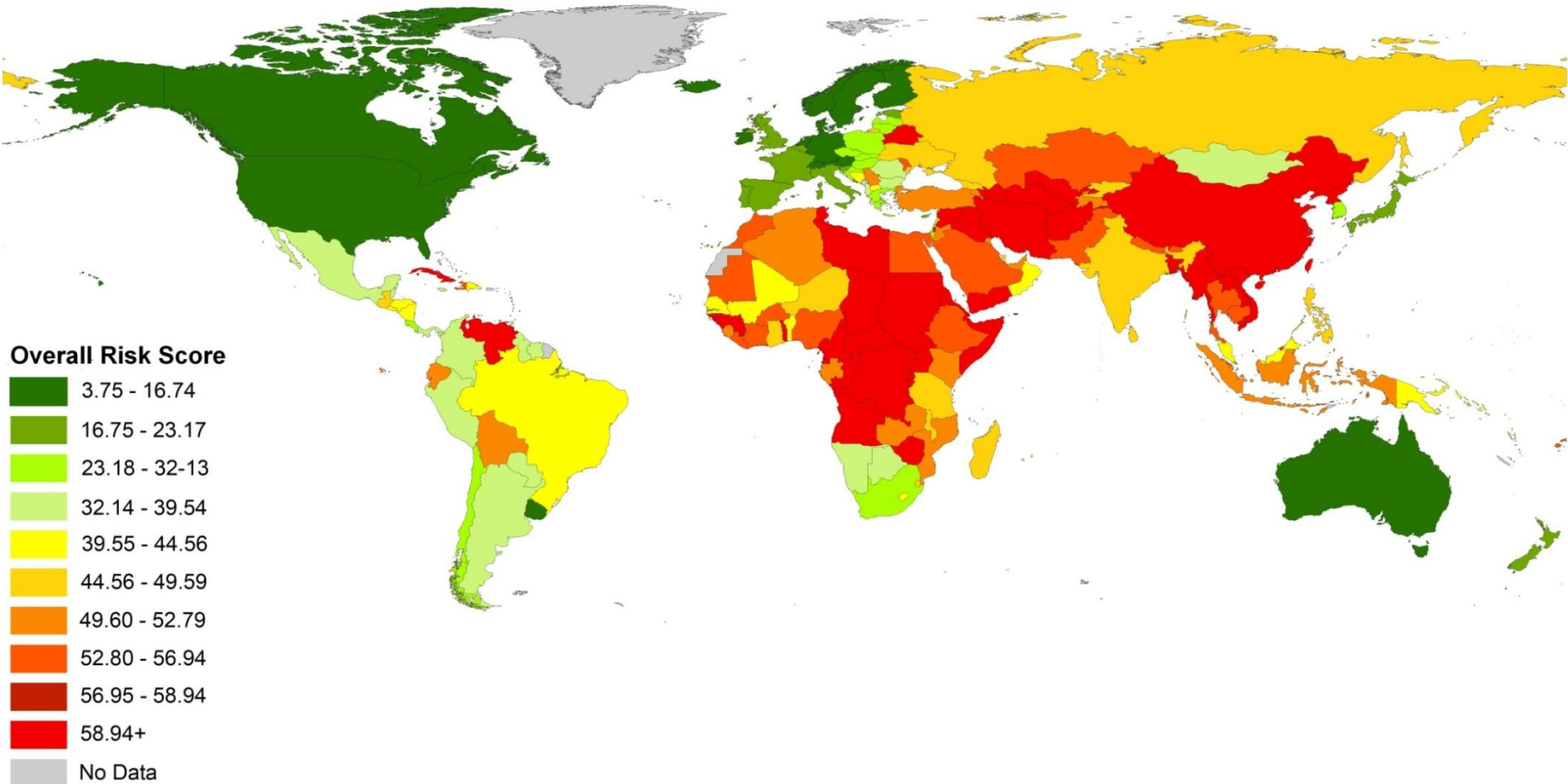
*“It is generally believed that economic development, coupled with the rule of law, is the best guarantor of the entire spectrum of human rights: from civil and political to economic, social and cultural rights.”*

*SRSB Interim Report, 2006*

## State Duty to Protect

- The State's **legal obligation** to protect their citizens against human rights abuses is **absolutely critical**
- SRSG survey of 65 abuses cases found that human rights abuses are associated with:
  - Low levels of development
  - Conflict situations
  - Weak governance
  - High levels of corruption
  - Lack of basic freedoms
- Only the State can effectively address these issues

## Human Rights Country Risks



## Corporate Responsibility to Respect

- Not infringe on the human rights of others: **be neutral**
- Starts with legal compliance: ICC, IOE and BIAC policy explicitly states that:
  - Compliance is mandatory and is the **minimum obligation** for all actors in society.
  - Legal compliance with national law is required **even where it is not enforced**.
  - Where national laws are silent or inadequate, companies should be guided by **international standards**.

## Corporate Responsibility: Due Diligence Process

- **Scope:**

- Country risks, company impacts, relationships

- **Context:**

- Human rights issues covered (more on that later)

- **Components:**

- Company policies, internal code of conduct
- Impact assessments
- Internal integration
- Tracking and communicating performance

## Corporate Responsibility: Stakeholder Engagement

- An extremely important aspect
- Should be part of a Due Diligence process by both parties
- Is more effective if a relationship exists BEFORE a complaint
- Dialog should be the first step in addressing complaints



## Access to Remedies

- **Judicial remedies:**
  - Fundamental element of the rule of law
  - Need to address issues of access, corruption, efficiency
- **Non-Judicial processes:**
  - Can not substitute for legal remedies
  - Key process is direct stakeholder engagement
  - Head off disputes before they occur
  - Goal is to minimize number of disputes
- Remedies need to work bottom up, not top down

## Current State of Play

- UN Framework widely accepted
- Most engagement has been with a few, very big MNEs
  - Testing aspects of due diligence, impact assessments, etc.
- Many issues are not new:
  - Companies have been working on a range of related issues for decades, some for centuries
- Multi-stakeholder initiatives to address particular issues:
  - Security, corruption, child labor, trafficking, etc.

## Current Challenges

- De-mystifying “human rights”
  - International instruments written by States for States
  - Confuse the role of States and companies
  - Need to explain human rights in clear terms
  
- Terminology
  - Many companies address human rights issues without ever using the words “human rights” (non-discrimination)

## Current Challenges

- Scaling down
  - Make human rights relevant for all kinds of companies
  - Expectations based on “influence”
- Conflicts with National Laws vs. International Norms
  - Parallel means
  - Encouraging changes in Laws and Regulations

## Which Rights?

- International Bill of Human Rights:
  - Universal Declaration
  - Covenant on Civil & Political Rights
  - Covenant on Economic, Cultural & Social Rights
- ILO Core Conventions
- But what about emerging rights?
  - E.g. non-discrimination based on sexual orientation, gender identity & expression

## BLIHR Essential Steps

- ES 1: Non-discrimination
- ES 2: Right to life
- ES 3: Torture, cruel, inhuman or degrading treatment
- ES 4: Slave, forced or compulsory labor
- ES 5: Liberty and security of person
- ES 6: Liberty of movement
- ES 7: Privacy
- ES 8: Thought, conscience and religion
- ES 9: Opinion and freedom of expression
- ES 10: Incitement to hatred
- ES 11: Peaceful assembly
- ES 12: Freedom of association, including TUs and the right to strike
- ES 13: Take part in public affairs
- ES 14: Culture, religious practice and language
- ES 15: Just and favorable conditions of work
- ES 16: Fair wage and decent living
- ES 17: Safe and healthy working conditions
- ES 18: Rest, leisure and holidays
- ES 19: Social security
- ES 20: Family life
- ES 21: Child labor
- ES 22: Adequate standard of living
- ES 23: Health
- ES 24: Education
- ES 25: Cultural life
- ES 26: Scientific progress
- ES 27: Benefits from productions
- ES 28: Avoiding Complicity

## Implications for OECD Guidelines

- Focus on the UN Framework process approach
  - Allows companies to identify the relevant rights in any particular situation
  - Accommodates different ways to respect rights
- Assume that all rights and all groups are covered:
  - Do not try to predict every possible situation (security, conflict, tyranny, corruption, poverty) or affected groups
- Adopt the due diligence approach
  - Due diligence is objective and universally applicable, “sphere of influence” is not

Thank You