

Blogpost

The ‘High-Risk Countries’ fallacy

Challenges arising from ranking states according to their human rights performance

For a long time, a tendency has grown within the field of ESG/Corporate Sustainability/CSR to list and rank countries according to their human rights risks. It stems from a need for defining high-risk countries in business and human rights practices largely in relation to investments and responsibility in business relationships, with the aim to focus responsibility efforts on specific locations.

This blog post presents some of the main challenges and methodological fallacies of *ranking* countries in relation to their human rights risks.

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A most prevalent approach that companies, for their responsible supply chain efforts¹ and investors, for their responsible investment practices, apply today, is one that attempts to rank countries according to their human rights ‘standing’ for such buyers or investors to *better focus their* initiatives and efforts vis á vis companies from various geographies.

Historically, buyers and investors would engage in rigorous follow-up schemes that related to some human rights/labour rights (including setting demands, sharing questionnaires, active ownership, and even audits) with suppliers or investments from or in such countries only. This practice would be perceived as necessary to focus the work on perceived ‘high-risk’ countries because the interventions performed required quite a lot of resources. The vast majority of such interventions, however, were not designed in alignment with the UN Guiding Principles on Business and Human Rights (the UNGPs). Moreover, proper application of the UNGPs would have rendered such interventions superfluous.

The ranking of countries from human rights risks presents three fundamental and methodological challenges:

1. **The fruit fallacy:** Historically, the UN and other multilateral institutions have purposely decided to NOT rank countries based on their human rights performance. It is deemed impossible to establish somewhat meaningful indicators for ranking states’ abilities to meet their obligations to respect, protect, and fulfil human rights. For example, how would we compare widespread, and even statutory, discrimination (on a variety of discrimination grounds incl. asylum seekers), and the challenge of being pressured into joining certain unions in Denmark, with the human rights situation of migrant workers and other types of discrimination for LGBTQI+ persons in Qatar? How would we compare the situation on the ‘right to health’ in the US with the situation on the ‘right to participate in public affairs’ in China? (Please, do not attempt to come up with an answer). In other words, comparing the performance of states in respecting, protecting, and fulfilling different human rights, is like comparing apples with pears.
2. **The challenge of transparency:** Any risk ranking would require transparency about choices and argumentation for including/excluding a country to the list of ‘high risk’. Mainly because any country representative/diplomat from ‘high risk’ countries that will see such a list would immediately question or criticize your choice and ask for good arguments. When the Danish Institute for Human

¹ Seldom full value chain

Rights from 2010 attempted to create ‘country risks’ reports for businesses, the project was closed following the publishing of a report for a larger country that did not agree to the conclusions and initiated a diplomatic crisis. Traditional CSR, before the UNGPs, was not devoid of imperialist residue. The country risk ranking fallacy seems to hold on to some of that legacy: Hierarchical organising of the moral standing of countries, too often from a western perspective. It is especially this residue that may lead to reactions.

3. **The discrimination impact:** The individual businesses that receive more attention, and heavier burdens of ‘increased due diligence’, questionnaire responding, audits, etc., may also react. A legal person (i.e., a business entity) from a certain ‘high-risk’ country, that is subject to increased scrutiny, compared to legal persons from a range of other nationalities, could – rightfully – claim, that such a legal person is subject to discrimination based on nationality – i.e., a practice that in and of itself represents adverse impacts on the human right to non-discrimination. Moreover, it undermines the ambition of the UNGPs: To create a global level playing field².

Next to the more fundamental and methodological challenges of ranking countries, we also advise against country risk rankings, as we perceive it is *bad for business*. Entities that find it necessary to rank countries on human rights most likely have in place approaches to implement human rights due diligence that:

- i. **Require too many resources.** If a company finds it necessary to prioritise engagements with business relationships based on country risks, they are most likely not resource efficient – e.g., over engaging.
- ii. **Are based on biased mistrust.** Country risk ranking is disregarded by the international community as it signals biases. Biases simply get in the way of good business decisions. Moreover, it does not align with the UNGPs that explicitly state that operating in conflict areas is the only geographical reason that affects expectations of increased due diligence³.
- iii. **Can well be seen as both discriminatory and intrusive.** Increased scrutiny reflects mistrust of a relationship based on nationality, which leads to bad relationships – and adverse impacts on the right to non-discrimination.

We suggest that you carefully consider the need to create yet another administrative level to your work on responsible business conduct. A level that, in our opinion, would be difficult to both construe and defend.

² The UNGPs require regular operational-level impact assessments on human rights no matter, where you operate or what you do. UNGPs Principle 18 (commentary) states:

“While processes for assessing human rights impacts can be incorporated within other processes such as risk assessments or environmental and social impact assessments, they should include all internationally recognized human rights as a reference point, since enterprises may potentially impact virtually any of these rights.” and; John Ruggie: in *“Just Business – Multinational Corporations and Human Rights”* 2013, states: *“A company operating in the far eastern region of the Democratic Republic of Congo is far more likely to be involved in range of adverse impacts on human rights than one operating in Denmark. But because no such impacts can be ruled out ex ante by any business anywhere, all rights should be considered.”*

³ The UNGPs do not apply ‘high risk countries’ as a distinction. Had Prof. Ruggie done that, he could have closed his mandate (2005-2011). The only distinction the UNGPs apply is, whether the company operates in ‘conflict areas’ or ‘non-conflict areas’, and the only difference in performance that will occur from this distinction is, that the entity operating in a conflict-affected area needs to undertake more rigorous due diligence. Consequently, apart from considering any UN, EU or national sanctions, companies and investors can, and should, ask for heightened due diligence in geographical areas, where we experience conflicts. One list that may be applied, that should have authority, i.e., not self-invented or politically charged, could be the World Bank list:

<https://www.worldbank.org/en/topic/fragilityconflictviolence/brief/harmonized-list-of-fragile-situations>

and the list for 2023:

<https://thedocs.worldbank.org/en/doc/69b1d088e3c48ebe2cdf451e30284f04-0090082022/original/FCSList-FY23.pdf>

Remain informed about the human rights situation, where you operate – no matter where you operate

All states in the world have challenges in meeting their obligations to respect, protect, and fulfil human rights.

Although corporate human rights due diligence according to the UNGPs is distinct from legal compliance and defined as independent from the human rights performance of the state, knowledge of the human rights situation in a certain country can always inform and improve the quality of the regular local corporate human rights impact assessments, that make up human rights due diligence⁴.

The most authoritative source for such information is provided by the Office of the High Commissioner for Human Rights (OHCHR) and the recently published Universal Human Rights Index⁵ makes the information readily available, but does not attempt to 'rank' states. Wherever the state experiences sustained criticism for its human rights performance on one or more human rights, the companies operating in that state would be wise to identify risks of adverse human rights impacts in relation to such rights; e.g., a Danish company that does not identify the risk of discrimination based on skin colour could be criticized for not involving human rights expertise in its due diligence as required by the UNGPs.

⁴ This is one of the reasons for the UNGPs requirement that human rights experts are involved in human rights due diligence, confer UNGPs operational principle 18 (a).

⁵ <https://uhri.ohchr.org/en/>