

# Training Tool: Doing business in conflict-affected countries

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Human Rights and Business Dilemmas Forum



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# The relationship between business and human rights



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# The UN "Protect, Respect and Remedy" Framework

In 2011, the Human Rights Council approved the [UN "Protect, Respect and Remedy" Framework](#) which set out the boundaries of human rights responsibility for businesses globally from all industries. Under the Framework:

- ❑ Companies have a responsibility to **RESPECT** human rights – i.e. by not infringing on human rights and by addressing any negative impacts on human rights in which they are involved
  
- ❑ Both govt.'s and companies should provide **ACCESS TO REMEDIES** – incl.:
  - ❑ For govt.'s: Appropriate/effective judicial and non-judicial mechanisms
  
  - ❑ For companies: Enable access to appropriate grievance mechanisms through which stakeholders can seek redress should their rights be undermined by a company's activities



# The UN Guiding Principles

The [Guiding Principles for the Implementation of the UN "Protect, Respect and Remedy" Framework](#) give guidance on how businesses can operationalise their responsibility to respect human rights. It is based on three key elements:

- ❑ **Implement a human rights policy:** This should include embedding their responsibility to respect human rights through a corporate policy statement that is supported by guidance as to the specific actions to be taken to give this commitment meaning
- ❑ **Apply human rights due diligence:**
  - ❑ Periodic assessment of actual and potential impacts of company activities/relationships
  - ❑ Integration of the findings from impact assessments across relevant internal functions and processes, and taking of appropriate action
  - ❑ Tracking of human rights performance
  - ❑ Communication of human rights performance (formal reporting where impacts are significant)
- ❑ **Provide for remediation:** Where companies have caused or contributed to negative impacts, they should provide for or cooperate in their remediation

# About conflict-affected countries and human rights



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## What is the exposure of business to conflict?

With much of the industrialised world recovering from the global economic downturn, Multi-National Corporations (MNCs) are expanding their engagement in emerging economies. These may include conflict-affected countries – raising the risk that investors may be drawn into situations in which they risk complicity in human rights violations. The risks may be exacerbated by several factors:

- ❑ **Weak governance** (leading to the breakdown of law and order, as well as a lack of respect for human rights or appropriate remedy for violations)
- ❑ **Competition over land, water and other resources** (an often complex and intractable issue in post-conflict countries, owing to population displacement, destruction of land titles, barriers to transitional justice, etc.)
- ❑ **Repressive leadership** (companies might be accused of supporting repressive regimes, especially where governments rely heavily on a single economic sector)
- ❑ **Impunity amongst security forces** (security forces may have a mandate for forceful action, heightening the risk of companies being complicit in violations)
- ❑ **Widespread corruption** (corrupt activity often fuels societal unrest, especially where graft is perpetrated or overlooked by high-ranking officials)



# Potential for complicity in human rights abuses

For the purposes of this dilemma, the term ‘conflict’ refers to hostilities between groups of people, with or without associated violence. This includes conflict between states, conflict between groups within a single state, and post-conflict situations.

Although the incidence of inter-state conflict has declined since the 1950s, violent conflicts at the intra-state level have increased. MNCs operating in conflict-affected environments may have a positive or negative impact on the dynamics of the conflict, and – despite intentions – can rarely remain neutral.

For example, companies can have a positive impact in conflict-affected countries by:

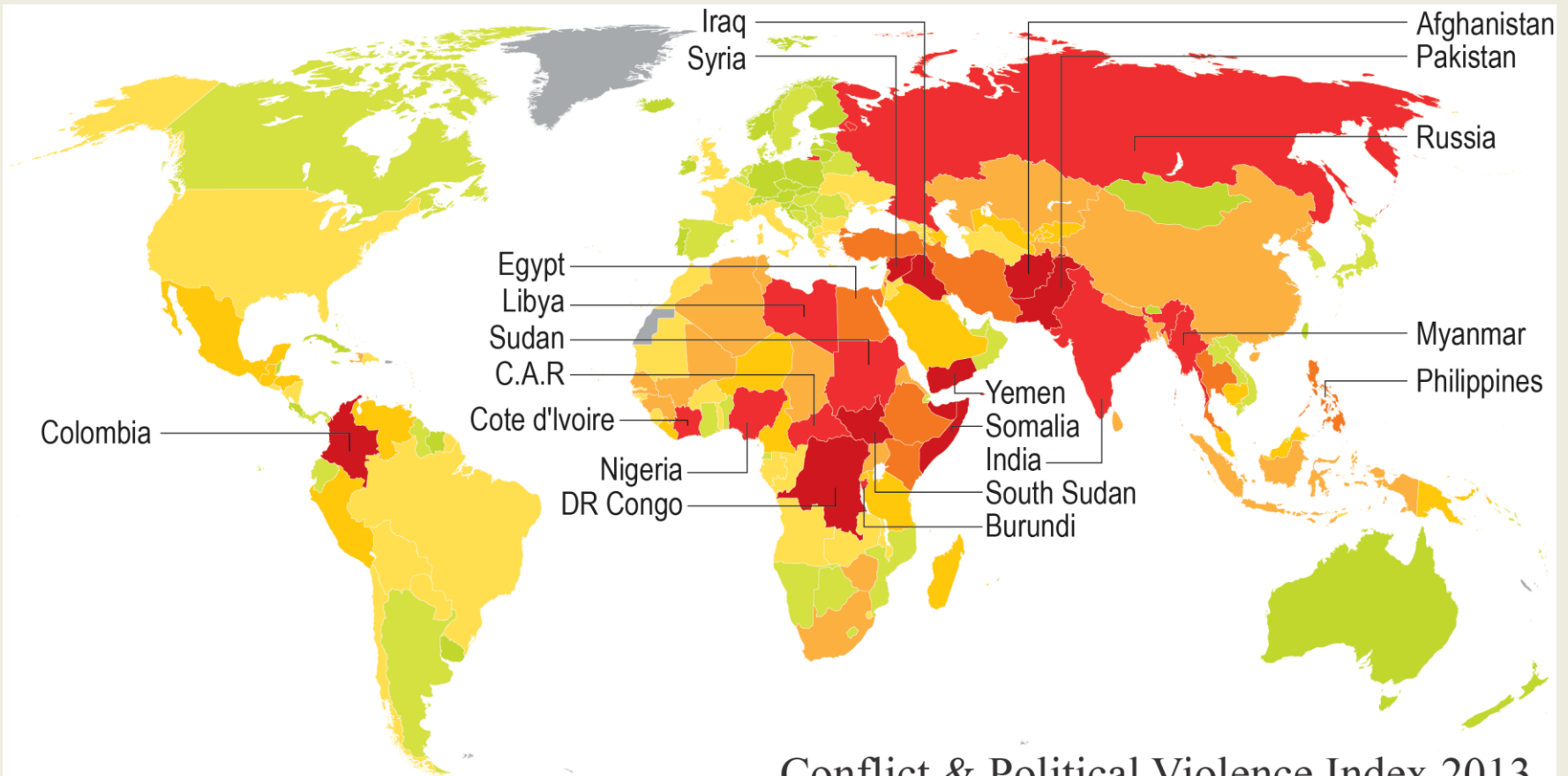
- Creating economic opportunities which enable peace-building and reconstruction
- Assisting governments in carrying out peace-building and reconstruction work
- Ensuring that business operations promote human rights

Nevertheless, there is also a risk that companies can fuel conflicts. For instance, they may extract or use resources that are at the heart of the conflict, contribute to displacement or environmental degradation in conflict-affected areas, or be perceived to benefit specific groups. They may also contribute to conflict by channelling revenues to repressive regimes, helping them remain in power.





# Global risks 2013



### Conflict & Political Violence Index 2013

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Legend	Extreme Risk	High Risk	Medium Risk	Low Risk
	0.00 - 1.25	>1.25 - 2.50	>2.50 - 3.75	>3.75 - 5.00
			>5.00 - 6.25	>6.25 - 7.50
				>7.50 - 8.75
				>8.75 - 10.00



# Rights that firms may undermine in conflict-affected countries

Right	Reference	Description	Examples
<b>Right to life</b>	<b>ICCPR, Article 6</b>	Commercial activities may contribute to conflict (where groups compete for access to resources) or facilitate conflict through providing funding	Purchase of mineral resources extracted by violent armed groups – or by those under their control (i.e. ‘conflict minerals’)
<b>Right not to be subject to torture, cruel, inhuman and/or degrading treatment or punishment</b>	<b>ICCPR, Article 7</b>	A particular risk where companies are utilising or benefiting from the services of public or private security providers in conflict-affected countries	The sexual abuse of local people by public security providers, as a result of ill-discipline and abuse of position
<b>Right not to be subjected to slavery, servitude or forced labour</b>	<b>ICCPR Article 8</b>	Companies may benefit from local forced labour utilised by third-parties	The use of forced labour by government to clear land for oil/gas pipeline routes and project footprints



# Rights that firms may undermine in conflict-affected countries

Right	Reference	Description	Examples
<b>Right to freedom of opinion and expression</b>	<b>ICCPR, Article 19</b>	Repressive governments facing internal conflict may misappropriate commercial technology to target certain individuals and groups	Govt. abuse of commercial telecoms technology to illegitimately target suspected political dissidents
<b>Right to freedom of association and to join a trade union</b>	<b>ICCPR, Article 22</b>	Governments in conflict situations are likely to repress potential sources of opposition, including trade unions	State repression of an opposition-affiliated union (where the company has members in its workforce)
<b>Right to equality before the law, equal protection of the law and non-discrimination</b>	<b>ICCPR, Article 26</b>	The erosion of the rule of law and the increase in impunity amongst powerful interests that attends conflict is likely to result in higher levels of corruption	Organisations seeking to protect their interest in high risk situations with little prospect of legitimate legal recourse may be under pressure to partake in corrupt relationships



## Risks posed to business

Aside from the moral imperative to avoid exacerbating existing conflict, ineffective management of human rights issues when operating in a conflict-affected country can result in a number of additional risks to companies. These include:

- Legal liability**, including under local law and extraterritorial legislation (such as the Dodd-Frank Act, US Foreign Corrupt Practices Act, UK Bribery Act)
- Loss of social licence** as a result of community animosity
- Escalating insecurity** due to the potential for abuses to fuel further conflict
- Consumer boycotts**, resulting in reduced sales for the company
- Divestment** by ethical and/or mainstream investors
- Brand erosion** due to negative publicity and activist campaigns
- Violation of external obligations**, including relevant financing conditions (e.g. the IFC Performance Standards) and political risk insurance



## Case study boxes

### **Mining project fuels anti-government activities in Letpadaung (Myanmar)**

Operations at the Chinese-financed Letpadaung copper mine have been suspended since November 2012 as a result of ongoing protests by local residents, including Buddhist monks. Protesters claim that the mine has resulted in major environmental degradation and enforced land acquisition. The more recent participation of anti-government organisations, including the Kachin Independence Organisation, has also led to a series of violent crackdowns in the area by state security forces. Meanwhile, the project has created social divisions as some villagers have accepted compensation deals, while others have refused.

### **Flores v. BP Exploration company (Colombia)**

In 2005, Colombian farmers launched proceedings in the High Court in London, alleging that the construction of an oil pipeline by the BP-led Ocesa consortium had resulted in severe environmental damage to their lands. In addition, the claimants argued that paramilitaries guarding the pipeline had threatened local communities, suppressed legitimate protests and obstructed access to farmland. The claims relate to the northwest province of Antioquia, one of the areas most devastated by Colombia's long-running armed conflict. BP agreed to settle out of court, although the terms of the deal (including possible damages awarded) were not disclosed. Another case against BP was launched in 2008, with the litigation ongoing.

# Suggestions for responsible business



Photo: Flickr / Julien Harneis



# Suggestions for responsible business

## I. Develop specific company policy provisions

Companies can develop a tailored policy to govern their activities in conflict-affected countries which commits them to:

- ❑ **Best practice:** Following best practices in the protection of company personnel and assets, and of local communities and their resources
- ❑ **Risk/impact assessments:** Carrying out risk assessments to fully understand the operating context – and impact assessments to ensure that company activities do not exacerbate existing and potential conflict dynamics
- ❑ **Sustainable practice:** Ensuring that all investments in conflict-affected countries are socioeconomically and environmentally sustainable
- ❑ **Compliance:** Complying with applicable national laws (incl. those related to corruption, money laundering, human rights and trade sanctions) – and to international legal requirements where national laws are of a lower standard



# Suggestions for responsible business (continued)

## I. Develop specific company policy provisions (continued)

- Stakeholders:** Ensuring that the company's policies are informed by the views of a broad-base of relevant stakeholders (e.g. community members/leaders, civil society, NGOs, local businesses, peer companies and the host government)
- Due diligence of partner:** Carrying out due diligence on local business partners to a level commensurate with local human rights risks
- Termination provision:** Ensuring that company policies include provisions enabling the termination of business relationships with partners/customers deemed to have violated human rights

Policies should be supported by relevant management systems to ensure they are fully implemented in practice. This includes, for example, detailed implementation guidance, appropriate resourcing and accountabilities, monitoring mechanisms and internal/external reporting frameworks





# Suggestions for responsible business (continued)

## II. Assess the operating context

Companies should consider carrying out due diligence before deciding on doing business in conflict-affected countries, to ensure they understand how their operations might impact on conflict dynamics. Issues to be considered include:

- Country context:** This includes the manifestation and causal factors of conflict; stakeholders and their drivers, impacts of conflict, content and implementation of local laws; the nature of the ruling regime, and other factors
- Impact of a company's products, services and operations:** This includes the potential impact of products on human rights (whether used as intended or misused), the social/political impacts of land use, impacts on local natural resources, the exacerbation of existing inequalities/disputes, and other factors
- Company relations:** This relates to the potential human rights/conflict impacts of company partners (such as JV partners, contractors, suppliers, customers and others). It includes potential impacts associated with product misuse, corrupt practices, abusive security practices, and other factors



## III. Assess conflict and human rights risks

Together with Environmental and Social Impact Assessments (ESIAs), responsible companies may also commission specific Human Rights Impact Assessments (HRIAs). Relevant risks to assess in the context of conflict include:

- Corruption and money laundering** (e.g. triggering of societal unrest)
- Land acquisition/y relocation** (e.g. fuelling of tensions over resources)
- Conflict minerals** (e.g. financing of rebel groups)
- Poor security arrangements** (e.g. impunity where governance is weak)
- Environmental degradation/access to contested natural resources**, especially land and water (e.g. triggering of conflict over resources)
- Abuse of minority rights** (e.g. fuelling of pre-existing ethnic tensions)
- Product misuse** (e.g. facilitation of violations by rebels or security forces)
- State partnerships** (e.g. bank-rolling of repressive regimes)



# Suggestions for responsible business (continued)

## III. Assess conflict and human rights risks (continued)

Ideally any HRIA would supplement desk-research with in-country fieldwork, including engagement with affected stakeholders. These activities should be aligned with the UN Guiding Principles on Business and Human Rights, including relevant provisions around the assessment of the *actual* and *potential* human rights impacts of business operations (of both the company and of business partners).

To ensure the maximum degree of protection from allegations of complicity, companies might wish to establish an internal team tasked with carrying out HRIAs, on both new and existing projects. This is particularly salient where companies regularly operate or invest in conflict-affected countries.



## IV. Facilitate conflict resolution

Responsible companies operating in conflict-affected countries can facilitate peace-building by proactively addressing conflicts in their local working environment – where they might have a degree of influence. By doing so, they could help prevent local conflicts from escalating. This might include, for example:

- ❑ **Encouraging dialogue between relevant stakeholders**, especially where these are company employees or are directly affected by company operations
- ❑ **Supporting local business leaders** to find common ground with previous or existing adversaries – incl. by helping them undertake joint business projects
- ❑ **Backing state-led efforts to improve human rights**, for instance by leveraging existing relations with the host government or other conflict participants (both at the local and national level) to encourage conflict resolution efforts

Nevertheless, companies must ensure they avoid being drawn into the dynamics of the conflict. They should also only deploy personnel with the appropriate level of expertise to deal with the inherent challenges involved in conflict resolution.



## V. Support peace-building research and initiatives

Companies might cooperate with international and domestic NGOs by developing programmes aimed at facilitating long-term and sustainable peace. These projects could include the following:

- Providing technical assistance** that could facilitate reconstruction efforts, thereby creating a more favourable environment for conflict resolution
- Working with affected stakeholders** to develop an understanding of the root causes of conflicts
- Funding and contributing to research on the role of businesses** in fuelling conflicts and peace-building
- Funding and contributing to research** focused on improving legal accountability in conflict-affected areas
- Providing assistance to those displaced during conflict**, which might unite families and help them to integrate back into society



## VI. Establish formal grievance mechanisms

Companies can establish and publicise an independent, rights-compatible grievance mechanism that enables stakeholders negatively affected by business operations to lodge complaints (whether anonymous or not). This will:

- Assist with the company's **monitoring of its own performance**
- Allow the company to seek **remediation for affected individuals**
- Enable the **termination of business activities** – including product sales and contracts with partners – that are deemed to have violated human rights
- Provide credible evidence of 'non-performance' by **public security providers**, where they have been made subject to relevant human rights requirements
- Identify potential **causes of conflict** between stakeholders and the company – diffusing any potential future conflict

# Scenario exercise: Reacting to government demands to cut off communications



Photo: Flickr / Julien Harneis



# The situation

## Reacting to government demands to cut off communications to an opposition group in a post-conflict situation

- **Location:** Central/East Africa
- **Context:** You are a country manager of a multi-national telecoms company, which has entered the country of Kuban following a recent civil war. Although fighting has subsided, the country remains characterised by an autocratic govt., weak institutions, religious and ethnic tensions and abuses against minority groups. Nevertheless – due to rapid middle-class growth, favourable demographic trends, secure urban areas and a lack of market competition – the market offers major commercial opportunities. Indeed, it is considered to be a long-term, strategic growth opportunity for your company. Furthermore, the expansion of mobile and internet communications could improve the quality of life of large numbers of people – and support post-conflict reconstruction. Nonetheless, the operating environment is not easy; one of your peer companies recently withdrew from Kuban, having had its licence revoked by the government for undisclosed reasons.
- **Demand to cut off services:** Security officials have arrived at your in-country office and have demanded in very strong terms that you cut off mobile and internet access to the region inhabited by the Bandika minority ethnic group. They claim that this is for security reasons following (undisclosed) intelligence that the Bandika Liberation Movement (BLM; former military adversaries of the government) is using mobile technology to mobilise against state forces. However, advice from NGOs and your home government suggests that this may be a cover for the government to disenfranchise the Bandika, manifested by the seizure of land/resources and military oppression – to ensure they do not become a future source of political opposition. In the event that your company refuses to comply with the government, there is a high risk that it could be ejected from the country.





## Initial issues to consider

Before any action is taken, you should consider some immediate questions with respect to what can guide you in this situation and who you should inform. Questions to consider include the following:

- What are my immediate priorities in this situation?
- What internal guidance should I apply in this situation?
- Who are the internal stakeholders that I should contact?
- Who are the external stakeholders that I should consider contacting?

Human Rights

Note: Suggestions on next slide



# Initial steps to consider (continued)

## Potential immediate priorities

- ❑ Ensuring the safety and liberty of your personnel – whether stationed in the region where BLM rebels operate or as a result of government action in other areas of the country
- ❑ Maintaining operational continuity of your broader network
- ❑ Avoiding serious reputational damage – or possible legal liability – associated with the cutting off of communications to the Bandika

## Potential internal guidance

- ❑ Principles/values
- ❑ Policies/procedures (Security Policy, Human Rights Policy, Business Ethics Policy, Stakeholder Engagement Policy, etc.)

**Anyone other  
priorities?**

**Any other  
guidance?**



# Initial steps to consider (continued)

## Potential internal stakeholders to contact

- In-country government relations manager
- In-country legal counsel
- In-country technical manager
- Group legal counsel
- Group external relations manager

## Potential external stakeholders to contact

- Peer companies that have experienced similar situations, esp. those in same market
- The local ministry responsible for telecoms (and indep. telecoms regulator, if it exists)
- Local civil society representatives
- International NGOs and conflict experts
- Home government representatives in Kuban (e.g. diplomats)
- Home government security and foreign affairs experts
- Int.'l telecom bodies that help uphold human rights, for instance the Global Network Initiative, Electronic Industry Citizenship Coalition and Global e-Sustainability Initiative

**Anyone else to  
contact internally?**

**Anyone else to  
contact externally?**



## Potential stakeholders

In addition, when framing your decision-making you need to take into account the different stakeholders in the situation. Questions to consider include the following:

- Who are the key stakeholders in this situation?
  
- What are the priorities of each of these stakeholders in this situation?
  
- What risks do each of these stakeholders pose in this situation?

Note: Suggestions on next slide



# Potential stakeholders (continued)

Stakeholders	Stakeholder priorities	Associated risks
<p><b>Local Bandika community and BLM rebels</b></p>	<ul style="list-style-type: none"> <li>❑ Fulfilment of human rights after years of state repression</li> <li>❑ A small minority of the Bandika (i.e. the BLM) is open to achieving this through armed struggle</li> </ul>	<ul style="list-style-type: none"> <li>❑ Potential association with – or complicity in – the violation of the human rights of the Bandika</li> <li>❑ The govt. may have legitimate cause to cut off the BLM’s communications</li> <li>❑ Potential for retributive actions by BLM rebels – targeting company assets and personnel based in the region</li> </ul>
<p><b>Group management and in-country management</b></p>	<ul style="list-style-type: none"> <li>❑ Protecting personnel and assets</li> <li>❑ Maintaining company’s operating licence</li> <li>❑ Complying with the law</li> <li>❑ Avoiding allegations of complicity</li> <li>❑ Brand protection</li> </ul>	<ul style="list-style-type: none"> <li>❑ Refusal to comply with govt. demands may seriously undermine the company’s commercial interests – and put its employees at risk</li> <li>❑ The cutting off of telecom services is likely to result in public accusations of complicity with the govt. – and reputational damage</li> <li>❑ Compliance with the govt. may breach the company’s own policies, or even expose it to legal liability</li> </ul>



# Potential stakeholders (continued)

Stakeholders	Stakeholder priorities	Associated risks
<b>The Kuban government</b>	<ul style="list-style-type: none"> <li>❑ Preventing the BLM from mobilising against govt. forces</li> <li>❑ Long-term marginalisation of the Bandika to prevent this community emerging as a future source of political opposition</li> </ul>	<ul style="list-style-type: none"> <li>❑ If the company refuses to comply, it may be undermining the govt.'s legitimate security concerns</li> <li>❑ Risk that the govt.'s motivation is not just driven by security motivations, but is deliberately aimed at targeting the Bandika as a whole</li> <li>❑ Non-compliance – or public criticism of the regime – could lead to a loss of licence / ejection from the country</li> </ul>
<b>Investors</b>	<ul style="list-style-type: none"> <li>❑ Continuity of profitable and responsible operations in Kuban</li> <li>❑ Non-complicity in human rights abuses</li> </ul>	<ul style="list-style-type: none"> <li>❑ Divestment by shareholders if the wrong decision is taken. The decision must be perceived to maintain commercial viability (both in Kuban and elsewhere), whilst avoiding complicity in human rights abuses</li> </ul>

**Anyone else?**

**What are their priorities and what risks do they represent?**



# Analysis of potential reactions

Next, you need to consider the various risks and opportunities with respect to each of the following courses of action:

- ❑ **Option 1:** Comply – while articulating strong concerns over the potential for state-sponsored abuse with the relevant national (and home) authorities
- ❑ **Option 2:** Comply – on condition that the suspension is temporary, that assurances are given to safeguard Bandika rights and that NGOs will help monitor the suspension
- ❑ **Option 3:** Comply to *some* of the demands – but negotiate over what services might still be provided to the Bandika (e.g. cutting of mobile access during periods of unrest, placing of restrictions on specific, unlawful websites, etc.)
- ❑ **Option 4:** Refuse to comply – and threaten to instigate a full market exit with a public statement on the reasons for the decision



# Analysis of potential reactions (continued)

Option	Implications
<b>1: Comply – while articulating strong concerns</b>	<p><b>Opp.:</b> Means you are likely to be able to maintain your political and legal licence to operate – whilst publicly articulating your concerns</p> <p><b>Risk:</b> Will worsen the human rights situation for the Bandika – and offer only limited protection with regards to allegations of complicity. Rebels might target staff/assets.</p>
<b>2: Comply – on condition that suspension is temporary and is monitored</b>	<p><b>Opp.:</b> May offer an acceptable compromise between local political/legal compliance – whilst limiting the impact on the Bandika. Will also allow the company to remain in the market whilst demonstrating their positive leverage over the government.</p> <p><b>Risk:</b> No guarantee the government will ultimately honour such limits. This may result in the company having to partake in future brinksmanship over the issue – possibly resulting in their exit. In the meantime, the full potential for complicity in abuse remains (if only for the limited time period) – and relations with the government are likely to suffer.</p>





# Analysis of potential reactions (continued)

Option	Implications
<b>3: Comply to some of the demands only</b>	<p><b>Opp.:</b> Has the potential to limit the human rights impact of the govt. policy – and for the company to demonstrate its positive impact</p> <p><b>Risk:</b> Still likely to be the govt. that plays the lead role in defining the remaining restrictions – with no guarantees that there will not be subsequent (albeit more limited) human rights abuses that occur as a result – and in which the company will still be perceived to be complicit. Also likely to alienate the govt.</p>
<b>4: Refuse and instigate a full market exit</b>	<p><b>Opp.:</b> Demonstrates a strong stance on human rights and offers the maximum degree of protection from allegations of complicity</p> <p><b>Risk:</b> Potential risk to personnel/assets if the govt. reacts aggressively. Would also mean losing a major commercial opportunity – whilst hindering broader socioeconomic development in the country (especially as other telecom providers may avoid the country having witnessed your experience).</p>

**Any other options?**

**What are the risks/opportunities?**



# Prevention of the situation

- What precautions could have been taken before this situation arose to ensure that you were not placed in this dilemma in the first place?

Human Rights



## Suggestions for responsible business (continued)

### Potential retrospective good practice might include:

- Thorough human rights impact assessment prior to market entry (e.g. potential and actual human rights impacts of the company and its partners)
  - For:** Enhanced insight into the potential for complicity – giving the opportunity for the company to negotiate relevant guarantees/protections with the govt. before getting involved in the country
  - Against:** Time and expense – and no guarantee that negotiations with the govt. to obtain guarantees/protections will be successful
  
- Establishment of a multi-stakeholder advisory committee (including NGOs, country experts, peer representatives, home country officials, etc.) to help advise/guide you as you negotiate post-conflict environments of this nature
  - For:** Will help you navigate human rights dilemmas of this nature with a degree of assurance from respected third parties who are interested in the net outcome of your business impacts
  - Against:** The advice you receive may not be practical to implement from a commercial and/or political point of view – potentially even worsening reputational harm where you are forced to go against their guidance

**Any other options?**

**What are their respective strengths and weaknesses?**

Continue the discussion at:

<http://human-rights.unglobalcompact.org>