

THE HUMAN RIGHTS & BUSINESS PROJECT

Deciding Whether to do Business in States with Bad Governments

THE CONFEDERATION OF DANISH INDUSTRIES

THE DANISH CENTRE FOR HUMAN RIGHTS

THE INDUSTRIALIZATION FUND FOR DEVELOPING COUNTRIES

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“Shell halts operations in Nigeria”

“Heineken Pulls Out of Burma”

**“Levi Strauss
severs links with China”**

Why would commercially successful companies such as these give up their activities in foreign states? High production costs? An unstable economy? Inadequate local infrastructure? No: in each of these cases, the company’s decision to pull out was because of the grave human rights abuses occurring in the host state.

Companies are under an immense amount of pressure to justify their dealings with bad governments. But there is no consensus between business and human rights groups on how businesses determine where abuses occur, or when they should take action. As a result companies are left stumbling through a moral maze trying to fulfil an obscure concept of their human rights responsibilities in states with poor human rights records.

Although there are no objective criteria for determining when a company ought to avoid working in a state, two questions are consistently raised:

Can a company operate beneficially in a state with a poor record by maintaining good human rights practices, or will its very presence amount to complicity with, and tacit endorsement of, that government?

If the company withdraws its operations, will this help human rights by demonstrating the limits of tolerance, or might it be hurting the very population that it actually intends to help by causing economic deprivation?

These questions are underlaid by a fundamental principle: that is, in cases in which the political system of a state sustains or perpetrates severe human rights violations, foreign business should not be complicit in the repression of the population or contribute to propping up the oppressive regime.

The present article in this series of brochures offered by the HUMAN RIGHTS & BUSINESS PROJECT aims to help companies consider human rights issues more systematically before undertaking operations in states with poor human rights records. The intention with this, as with all the articles in this series, is first and foremost to provide the Danish business community with a consistent framework for viewing their human rights responsibilities abroad. We also hope that it provides the business and human rights communities everywhere a common point of reference for discussing the human rights aspects of business social responsibility.

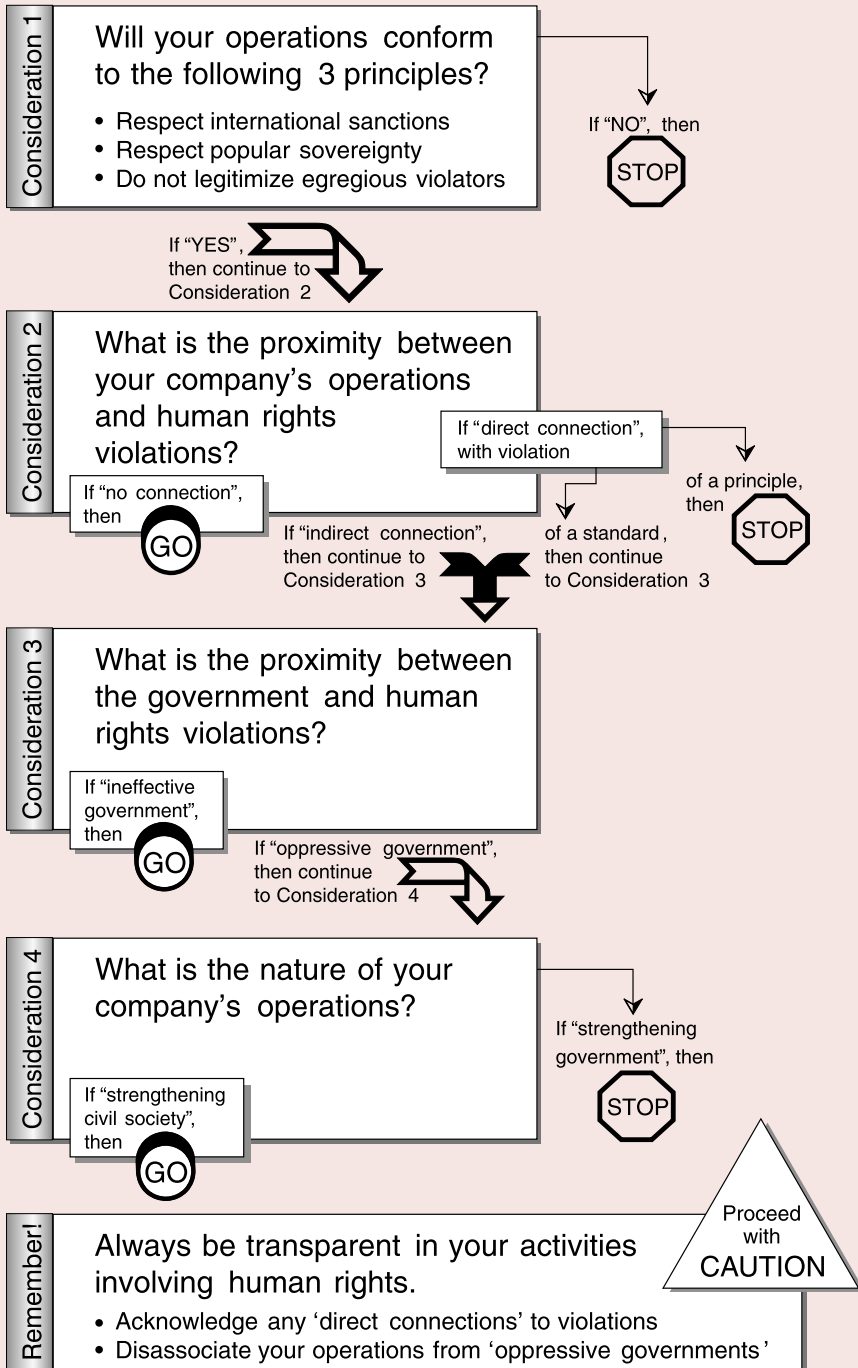
Step-by-Step Human Rights Considerations Before Working in States with Bad Governments

Because undertaking or withdrawing operations from states with bad governments is an issue which can directly affect a company's reputation and therefore its long-term economic prospects, it is likely that companies perceive the normative and commercial aspects of the decision as inseparable. However, they should be separated if the human right aspects are to be given their due consideration.

The chart on the next page attempts to identify and focus exclusively on the human rights issues that a company should take into account. After each step, the company will be advised to take one of three courses of action:

- 'Go' the company can operate in the area without substantial negative impact on human rights
- 'Continue' the company should continue to the next consideration in the chart
- 'Stop' the company should consider refraining from operating in the area

Each of the five human rights considerations in the chart is addressed in more detail in the following pages, with some examples and general indicators provided in relation to each, marked with a box [■]. However, as the old adage warns 'the devil is in the detail': these basic considerations are based on even more detailed underlying questions - questions which, if not taken into account, could easily undermine the quality of the eventual decision. Therefore, companies are encouraged to work with local human rights non-governmental organisations (NGOs). They will have more expertise and insight into the detailed human rights issues in the specific state, and many are willing to enter into confidentiality agreements to accommodate companies concerned with protecting sensitive information and avoiding negative publicity.





Consideration 1: The Minimum Bottom Line

Blanket prohibitions against any company operating in a certain state with a less-than-ideal human rights record are at best unhelpful and can even be damaging. Businesses do not always undermine human rights by operating in states with bad governments. In fact, by adhering to high human rights standards themselves, foreign-run businesses can spread their concept of rights and raise demands for good practices in states where more straightforward human rights efforts are prohibited.

However there are some situations in which blanket prohibitions are necessary. A bottom line - a minimum standard which a state must meet before a company undertake operations there - should be based on three criteria.

Respect international sanctions

Companies operating in states adopting sanctions, whether unilaterally, or as members of a regional organisation or the United Nations (UN), should not, as responsible members of their political community, undermine those sanctions by instituting commercial relations with the isolated government.

Economic sanctions are a tool used to pressure states to change their behaviours, including to compel compliance with international human rights and humanitarian law. Sanctions can be imposed by single states, by groups of states or regional organisations, and by the United Nations. Currently unilateral and regional sanctions have been imposed against states like Burma (Myanmar), Sudan and Afghanistan for their poor human rights records, and the United Nations has also imposed mandatory item-specific sanctions against warring parties in Sierra Leone and Angola, amongst others.

The subject of economic sanctions is controversial, particularly when they are imposed on humanitarian grounds. A company may think that economic isolation is an ineffective tactic, or it may question whether the sanctions are justified, or it may be uncomfortable with the effect of the sanctions on the country's population. These concerns, while indisputably important, are not a matter either for the boardroom or for unilateral action by individual companies. They should instead be addressed at the appropriate political level, where companies are encouraged to contribute their knowledge and concerns to the debate, but refrain from making their own separate political decisions.

■ Companies can check with their state's foreign office for national or regionally imposed sanctions. Denmark does not apply sanctions unilaterally, but instead works in conjunction with the European Union. Danish companies are therefore advised to contact the EU External Relations Directorate General Office in Brussels, or go to website www.efs.dk/eksport/handelsp/9/. To check whether there are mandatory United Nations Security Council sanctions against a state, companies are advised to contact the Office of the Legal Counsel of the Secretary-General, or go directly to the relevant section of the UN web-site www.un.org/News/ossg/sanction.html.

Respect popular sovereignty

Companies should not undertake operations in a state in which there is a clear expression of popular sentiment against foreign commercial activities.

The Universal Declaration of Human Rights maintains that 'the will of the people shall be the basis of the authority of government'. The prevailing presumption upon which international relations are conducted is that governments represent and speak on behalf of their populations. International law is structured accordingly; it is based on 'governmental sovereignty', and is designed to support and enforce government decrees. As a legal corollary, companies operating in foreign states must act in accordance with their host-government's wishes.

Unfortunately, sometimes the reality does not correspond to the theory, and popular sovereignty - the will of the people - is not represented by the government. In such cases it can be difficult to determine what exactly is the 'will of the people', particularly if the government represses all opposition. *But sometimes another group will be able to clearly represent and convey popular will. In such cases, the company has an obligation to respect it, as much as if it were a legally-binding government directive.*

For example in Burma (Myanmar) the National League for Democracy (NLD), headed by the famous Nobel laureate Aung San Suu Kyi, won a landslide victory in the 1990 elections. NLD was prevented from taking power by the military regime, the State Law and Order Restoration Council (now renamed the State Peace and Development Council), which had forcibly installed itself in government in a coup in 1988. Whereas the regime itself invites foreign companies in, the NLD continues to call for economic sanctions against the state until the government recognises the election and works towards democracy. Companies have an obligation to respect the NLD's request.

■ Elections, although not 100% foolproof, are the most widely established method for ensuring that governments are representative of popular sovereignty. If the party that was favoured by the populace in free and fair elections was not installed in power, a company should check whether that group has expressly called for a halt on the activities of foreign businesses in the state.

A few of the groups (both non-governmental and inter-governmental) which monitor elections and can be contacted for information are the National Democratic Institute (www.ndi.org),

the International Republican Institute (www.iri.org), and within the more limited area of Europe, the Organisation for Security and Cooperation in Europe (www.osce.org).

Do not legitimize egregious violators

Companies should not undertake operations in a state in which there is a clear record of severe violations of human rights, or they may give the offending regime legitimacy by association.

This category contains only a handful of governments, where the potential for the company to act for the good of the population is outweighed by an overwhelming need to de-legitimize the regime. Such cases include Germany under the Nazi regime, Cambodia under the Khmer Rouge, or Rwanda in 1994 under the interim government of Théodore Sindikubwabo.

It can be difficult to see immediately which regimes ought to be avoided, when labels such as 'gross' or 'massive' atrocities are imposed arbitrarily by groups with, perhaps, their own motives. So how can a company identify these extreme cases without getting embroiled in political debate? There are three indicators a company might use:

■ Evidence of genocide

Many governments at one time or another will be condemned for causing the deaths of some of their population, perhaps as a result of police brutality against detained suspects, or of absent social welfare programmes. However there is a difference, both in degree and kind, between these deaths, and situations where a government is actively and directly responsible for the deaths of a significant proportion of its population. Where there is such active and direct responsibility and where the mortalities are numbered in the thousands and hundreds of thousands, there is generally universal and undisputed condemnation by all human rights organisations as well as the international press, and such widespread condemnation might serve as the point of departure for companies looking to identify egregious violators.

If the UN Security Council has condemned states for 'genocidal' or similar policies, this is another indication that foreign businesses should stay away. For while the word 'genocide' can be mis-used for sensational effect in newspapers, this will never be the case with the Security Council. The Council must use the word in its most conservative form, because in situations where the term is employed, the UN and its member states come under an obligation to prevent and suppress acts of genocide, including the use of military force if necessary. If anything, the Council's record can be criticised for being too conservative in this respect since in its 56 year history its resolutions have only explicitly identified one contemporary case of genocide: Rwanda 1994.

A few other Security Council resolutions have, however, used similar wording to condemn egregious violations, and companies might be watchful in these cases as well: Indonesian troops were described in a 1999 resolution as perpetrating 'systematic, widespread, and flagrant violations of international humanitarian and human rights law' in East Timor. 'The magnitude of the human tragedy' was conveyed in a resolution on Somalia in 1992.

The full text of UN Security Council resolutions can be found on the UN website at www.un.org/documents/scres.htm.

■ Identification of egregious violators by the home state

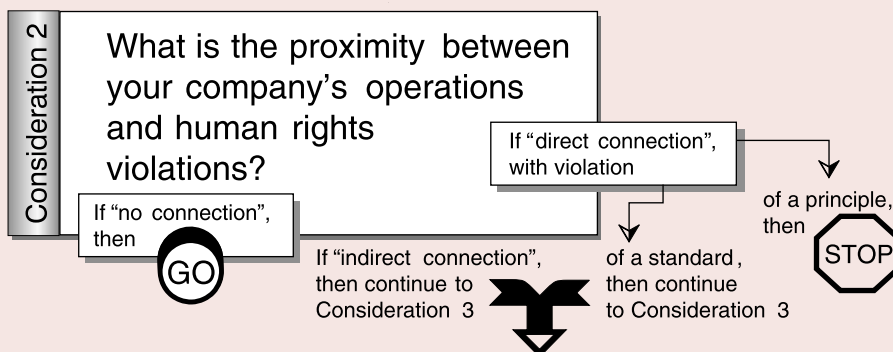
Another way a company might distinguish the most egregious violators is to follow its own government's identification of states falling within this category. Many governments, like the United States, will identify states which exhibit 'a consistent pattern of gross violations of internationally recognised human rights' so that they can impose special measures; e.g. withholding recognition of the regime, or prohibiting arms sales to the country. The Government of Denmark does not identify offending states in this manner, so this option is not available to Danish companies. Other companies can contact their national foreign office to find out more about their state's policy.

■ Access refused to the International Committee of the Red Cross

A third indicator that a company might use to distinguish egregious violators is territories to which the International Committee of the Red Cross (ICRC) has been refused access. In contrast to linking indicators to the findings of the Security Council or the company's home state, as suggested above, this indicator has the distinct advantage of being connected with a body that is not inherently political. The ICRC is a neutral and impartial organisation. Its mandate is to provide protection and relief to victims of war and intra-state conflict, regardless of which side they are on. A central and highly respected component of the Organisation's working method is confidentiality. Because the ICRC is apolitical and confidential, it can be reasoned that a government would have few legitimate reasons to refuse an ICRC request to operate in the state. Rather, by refusing such a request a government should automatically be called into question and its record more closely scrutinized for serious breaches of humanitarian and human rights law.

For reasons of discretion and the security of its own personnel, the ICRC does not release in a list form information concerning states to which it is denied access. So companies wishing to use this as an indicator will have to contact the ICRC public information centre in Geneva (www.icrc.org). Alternatively, a company could contact a national based ICRC delegation or Red Cross/Red Crescent branch. For Danish companies, enquiries can be directed to Dansk Røde Kors (www.redcross.dk).

If company operations will involve states under economic sanction, states where popular will is clearly against foreign commercial activities, or states which are egregious violators of human rights, our advice is that the company avoid operating there, regardless of whether it could do so without perpetrating or engaging in any human rights abuses itself. If the state does not fall into any of the three categories, then the company may proceed to the next consideration.



Consideration 2: The Proximity between the Company's Operations and The Human Rights Violations

The vast majority of cases meet the conditions of the minimum bottom line, and require a more sophisticated assessment, beginning with a consideration of the proximity between the company's operations and the human rights violations occurring in the state. There are three basic connections.

No connection

When considering international operations, one tends to think of big multinationals, but in fact it is the smaller companies that can more easily maintain their operations without any connection to the violations occurring in a state - for example, a small company operating in the north of a state where violations are occurring as the result of a conflict between two rival clans in the south. The company can be said to have a negligible effect on the human rights situation in the country. Such a situation is given a 'go' in the diagram.

Indirect connection

This is a case in which a company may contribute to the violations but does not directly initiate or perpetrate the violations itself. Most larger companies establish an extensive network of connections in their host state, leading to many possibilities for an indirect connection to human rights violations. Typically, a company should look for an indirect connection in three areas:

■ in relation to its main area of operations: a company might be indirectly connected to violations through dealing in strategic commodities like oil and other natural resources which tend to be subject to power conflicts in many states. Or a company might unwittingly undertake an operation for the offending government, such as providing public utilities which the regime will only make available to members of a dominant ethnic group.

■ in relation to its wider business activities: a company should be wary of possible indirect connections when purchasing land, hiring security forces, or in any of the numerous other secondary activities that it must undertake in the course of doing business. In particular, in states in which large commercial sectors are state owned and operated, the company must be vigilant in its relations with the national based suppliers and contractors.

■ in relation to its own products: a company could become indirectly connected to human rights violations through intentional misuse, such as when a purchasing government uses a product in an illegal military application, or unintentional wrongful use, such as pesticides disposed of incorrectly seeping into water supplies and poisoning people.

There are two important caveats to these general definitions. First, each case is different and should be considered in its own specific context. The diamond industry, for example, can be innocuous in Canada but not in Sierra Leone. So a company should be thorough when looking for any activities, operations, and products which might indirectly connect it to the violations occurring in the state. Next, some activities which appear to come within the definition of 'indirect connection' should not be treated as such because the link itself, although indirect, seriously

exacerbates the human rights situation. For example, companies supplying arms to an oppressive government or dealing in products which are themselves the source of much of the conflict, such as mining operations in the region of Angola and the Democratic Republic of Congo. In these cases the contribution the activity makes to the violations will override the fact that the company has an apparently indirect connection only.

If an indirect connection can be established, then the company should move on to consideration 3 as directed in the chart's 'continue' sign, to assess the state's human rights record in more detail.

Direct connection

This is a case in which the company directly initiates or carries out the violation of human rights itself. Sometimes in cases in which a company is working in an oppressive state, it is forced into a direct connection with violations because of the government's laws or policies. For example, a company might initiate violations through purchasing land from a government which then uses force to move the population currently residing on the land. Or, a company might be forced to carry out violations itself by preventing its workers from unionising, because the government has outlawed unions. In such cases where the company finds itself directly connected to a human rights violation, it should consider the nature of the violation. The first question to ask is whether its activities violate the *principle* of a right, or the *standard* associated with a right.

The distinction between principles and standards is a complex one. Simply put, the principles are the fundamentals upon which the details of human rights law are based. Standards are the way in which such principles are expressed and implemented in individual situations.

For example, the forcible transfer of a population from company land - the first example given above - might entail the violation of several fundamental principles: arbitrary deprivation of property, deprivation of means of subsistence, and violations of the right to life and security of the person. In contrast, the second example above, in which the company cannot allow its workers to unionize, involves the violation of

a standard - the right to form a union - which has emerged from the principle that workers should be able to organise and bargain collectively, to obtain representation and to influence the production in which they have a part.

While all houses need foundations, the dwelling that results can take many forms. In the same way, while principles generally have near-universal acceptance, standards do not, being subject to various cultural, as well as pragmatic considerations. For example, few governments would deny the principle that workers should have the right to collective representation in the means of production. However, the traditional standard associated with that principle, that workers should be allowed to form unions within companies, is not universally accepted. Some governments, for example, set up official state bodies to facilitate and organise the negotiation process between employees and employers, rather than allow unions affiliated with individual companies and industrial sectors.

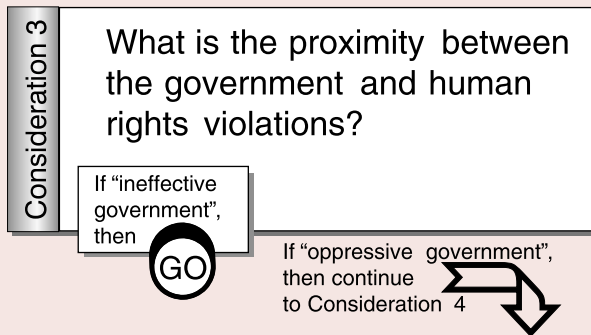
When operating in other cultures a degree of flexibility is necessary and acceptable if the area of concern relates to a standard and not the underlying principle of a right. However, though the company may not be able to achieve a standard which mirrors that of Denmark's, it should still strive to ensure respect for the principle. If, for example, a company was operating in China, a state in which unions are outlawed, we would ask that it explore other means of protecting the right of its workers to representation within the company, such as by instituting a consultative management style and an anonymous complaints procedure.

The difference between fundamental principles and standards of rights is the subject of intense debate in the human rights field, and has led to the creation of a hierarchy of human rights, itself used to justify breaches of those rights which are deemed lower down on the scale. We do not support the creation of such a hierarchy or advocate the violation of any right. However, we do recognise that when operating in an international environment, companies will inevitably encounter different human rights practices and some concessions will be made.

In the end this is a question of finding the balance between what the company can achieve in human rights terms in that area against the

violations themselves. When principles are violated, it is unlikely that anything beneficial will be achieved, whereas when a standard is compromised, this harm can generally be outweighed by the beneficial effect of the company's operations on the area. A company should assess the violations that it will be directly complicit in, in the context of this idea of balance.

If a company sees that it will be involved directly in a violation of a basic principle underpinning human rights, then the 'stop' sign in the diagram indicates that it should avoid operating in the state. If the company would be involved directly in a violation of a standard associated with a right, then it should strive to the extent possible to protect the principle of the right, and then continue to consideration 3.



Consideration 3: The Proximity between the Government and the Human Rights Violations

Businesses operate within the confines of the governing system in a state, and should accordingly be concerned with their connection with, and possible tacit endorsement of, the government's human rights record. However, many countries have bad human rights records more because of the activities of rebel groups or traditional societal practices, than because of the activities of their government. It is therefore necessary to consider another distinction, between 'oppressive' governments, which endorse and perpetrate human rights violations through their laws and practices, and 'ineffective' governments, where the government acknowledges and respects human rights but is too weak and ineffective to secure them. For example, women will encounter discrimination in Malawi and in Kuwait: in Malawi, that discrimination is endemic to the culture, and the government has taken legal steps to secure and uphold women's equality; in Kuwait, the cultural discrimination is sanctioned by the state, and reinforced in its laws and practices.

While there is unfortunately no centralised body which can be relied upon to assess in a wholly apolitical manner the level and severity of human rights violations perpetrated by a government, there are nonetheless a number of sources which can be used to build a general picture of whether the government of a state is oppressive or ineffective.

■ *The UN as a source of human rights information*

Despite its shortcomings as a quintessentially political body, the United Nations is the best starting point when seeking human rights information. It is the central international institution with a human rights mandate, amongst its many other roles. Several bodies within the UN system hold the job of investigating, reporting and monitoring states' human rights records.

Treaty-based bodies are created pursuant to specific treaties and will review the records of the signatory states in relation to the specific provisions contained in the treaty. The Committee on the Elimination of Discrimination Against Women, for example, was established to monitor states' adherence to the Convention on the Elimination of All Forms of Discrimination Against Women (1979). If a company is interested in the status and rights of women in an area in which it plans to operate, it can check the reports and communications between any one of the 166 State Parties and the Committee. Other treaty-bodies relate to the rights of the child, economic, social and cultural rights, freedom from torture and other cruel, inhuman or degrading treatment or punishment, freedom from racial discrimination, and more broadly under the Human Rights Committee, civil and political rights.

Charter-based bodies have a wider remit to address the full range of human rights issues. The principle charter-based body dealing with human rights is the Commission on Human Rights. The Commission meets on an annual basis to draft human rights standards and to review the human rights performance of individual states. If it finds cause for concern about a particular state's record, the Commission may assign a country-specific Special Rapporteur or Representative to investigate and report further on the situation. Currently there are 14 country-specific

Special Rapporteurs and Representatives, all of whom are highly-qualified independent experts in the human rights field. The detailed reports of their investigations are publicly available and offer a useful resource for company checks on the human rights situations in particular states. The reports of the 23 Thematic Special Rapporteurs/Representatives, which examine across many states the fulfilment of particular rights, such as discrimination or arbitrary detention, also offer a rich store of information.

The UN system is full of human rights information generated by the work of numerous commissions, committees, working groups, and independent experts. A guide to researching human rights information at the UN is available on www.un.org/Depts/dhl/resguide/spechr.htm.

■ *Other sources of human rights information*

Human rights research through the UN can require more time and in-depth reading of some quite lengthy reports. Other human rights groups try to present the information in a more consolidated form and might offer easier access for those who are less familiar with the human rights field.

Amnesty International (www.amnesty.org) publishes annual reports on the human rights situation in over 140 countries, with a focus on a narrower range of civil and political rights.

Freedom House (www.freedomhouse.org) reports on an annual basis on civil and political freedoms in approximately 187 countries. FH produces a numerical-based index which enables an easier comparative ranking of the records of states.

Human Rights Watch (www.hrw.org) issues a World Report annually covering human rights abuses in approximately 70 countries.

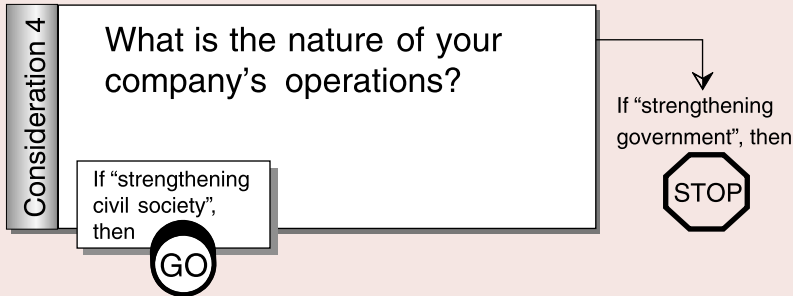
The United States State Department (www.state.gov/www/global/human_rights/hrp_reports_mainhp.html) publishes annual State Reports on Human Rights Practices, which provide

the most in-depth and systematic account of human rights in 194 countries.

National aid agencies frequently compile information on foreign governments' human rights records and offer another potentially useful source of information for companies. Because they are governmental, these aid agencies must work directly with the foreign recipient governments, either granting aid straight to the government or consulting with it on the best way to allocate the money. As a result, they tend to carefully scrutinize and keep track of the records of recipient governments. For more information, Danish companies can contact DANIDA at the Ministry of Foreign Affairs (www.um.dk). Other companies are advised to contact their state's foreign office or branch of government responsible for allocating bilateral humanitarian and development assistance.

Many states now have national human rights institutions which can be contacted for information on human rights both domestically and internationally. The Danish Centre for Human Rights (www.humanrights.dk) has developed a Human Rights Commitment Index which gives a well-rounded assessment of the records of approximately 60 governments through taking into account each state's accession to major international human rights treaties, the formal laws and policies enacted to uphold rights, as well as the actual recorded number of violations in the state.

There is no lack of information on human rights; the above list is certainly not comprehensive. However, human rights violations are difficult to document and are often influenced by political agendas, and can be flawed as a result. Therefore, companies should use several sources to assess a government's record, and also contact the human rights organisations located in the state under scrutiny. If, on balance, the research indicates that the government is ineffective rather than oppressive, the company is advised to become commercially involved, because the business need for security and stability will tend to work hand in hand with a government trying to promote good rule of law and is likely to have a positive effect on the state's human rights record. However, if the government appears to be oppressive, the company must be more cautious about its connections with the regime and should proceed to consideration 4 for another check.



Consideration 4: What is the Nature of your Company's Operations?

If a company has determined in the preceding section that the government itself is primarily responsible for the violations, the next step is to consider how the nature of the company's wider activities and specific operations and products will affect the government relative to the civil society.

Civil society is the population's natural counter-balance to an oppressive government. Civil society, more generally, refers to the public sphere of self-organised communal groups, acting distinct from, and independent of, government. It can be political, such as NGOs or lobby groups which are formed with the intention of monitoring, advocating or influencing the policies of a government, or of a non-political character, such as educational societies, private foundations, or religious groups undertaking to work collectively to address and solve problems independent of the government.

Given the broad nature of civil society as well as the multi-faceted nature of company activities and operations, it can be complex for a company to assess its overall impact on civil society relative to its impact on government. Managers should look in detail at all areas and aspects of their business; amongst other things:

■ **company connections:** will the company be trading with many local private enterprises, or shipping supplies in from abroad? Does the company have to transfer in employees from company headquarters abroad, or can it use the local population, furthering their skills and income?

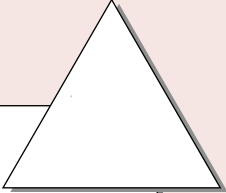
■ **company products:** is the company producing something that the population will have access to and benefit from, like pharmaceuticals, or is it producing something that is useless, priced too high for the locals, or even shipped out of the state altogether?

■ **company practices:** will the company have to bribe government officials? Bribery and corruption, per se, are not human rights issues. But if they severely cripple a government's duty to spend its money for the well-being of its population, then the company should take them into account in its assessment. More information and an index on bribery and corruption levels in most states is available through Transparency International (www.transparency.de).

Many of these things will have to be assessed on a case-by-case basis, and be subject to the usual criterion of reasonable expectations within the context. A newly constructed road system can promote trade by connecting remote regions, or it can facilitate the movement of military forces. A company can be expected to do no more than look carefully at the proposed location of the roads to assess which is the more likely use. Laser technology can be used for medical or military purposes, and a company can only look at the social developments in the country to estimate the probable application of such technology.

Certain aspects of business activity will always help a government - the obligation of companies to pay taxes is the most obvious example. It is worth remembering, however, that even NGOs recognise the necessity of compromise: for example, in situations when food is shipped to an area, it is accepted that a certain amount will get to the combatants and government troops, as well as to the starving population. The main purpose of a company's investigations should be what the NGO also looks for: a generally beneficial impact in humanitarian terms. If a company concludes that its overall operations will amount to a net

strengthening of an oppressive government, we suggest that they are discontinued. Whereas, a company should continue if it determines that the overall operations will amount to a net strengthening of civil society.



Remember!

Always be transparent in your activities involving human rights.

- Acknowledge any 'direct connections' to violations
- Disassociate your operations from 'oppressive governments'

The Final Consideration: Transparency in Activities Involving Human Rights

One of the most damaging things a business can do while working in a state with a bad government is to legitimise, or even apparently endorse, the continuous undermining of human rights by appearing complacent in the face of violations. A company should therefore mitigate any of the legitimacy that it might be lending to a bad government by being absolutely transparent in its dealings. This entails two things:

Acknowledge any direct connections to violations

This is the *direct* relationship, referred to in consideration 2 above, that a company has when it is forced to initiate or perpetrate violations of human rights itself. A company should acknowledge its direct connections by explaining in its public literature concerning these operations that *i*) the company recognises the right and regrets that it cannot fully comply with the right in the present circumstances, and *ii*) that the company has instituted special procedures to try to attenuate the negative impact of its operations on the right. For example, a company (*ABC inc.*) operating in Vietnam, where unions are outlawed, might make the following statement:

“ABC inc. recognises the rights of its employees to form company unions, and regrets that it cannot fully comply with this right in its operations in Vietnam. We have put in place special consultative procedures for our workers to represent their interests to management. The Company is also working with local human rights groups to ensure that those procedures work in practice, to meet our duties to the fullest extent possible as regards the rights of our employees.”

Disassociate operations from oppressive governments

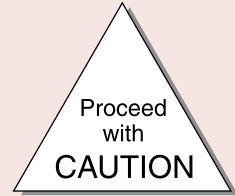
If a company is *indirectly* connected with an *oppressive* government (as identified in considerations 2 and 3 above) a transparent policy will ensure that it is seen to acknowledge the state’s poor human rights record. This does not necessarily require direct condemnation of the regime, as this could put business operations and personnel in that state in a difficult position. Instead, the company could recognise that reputable human rights groups have found a consistent pattern of poor human rights practices in the country, and that in light of the finding, the company is taking particular care to ensure that its operations are in compliance with human rights and the general welfare of the population.

In this manner, the company avoids taking the dangerous line of condemning the regime itself, but rather acknowledges human rights groups’ condemnations, with the added benefit of lending these groups some weight. In reality this might simply mean the addition of the following footnote to its literature concerning operations in the state:

“ABC inc. is aware of and acknowledges the criticism of Sudan’s human right’s record by Amnesty International and Human Rights Watch. We acknowledge our responsibilities as a company operating in this country and are taking special precautions to ensure that our operations in Sudan remain in full compliance with human rights and that our impact on the lives and welfare of the people is one which is consistently beneficial.”

When making such public statements, a company should not risk promising more than it can deliver. Companies cannot change regimes,

and very few have enough economic leverage to force a government to adopt a better human rights policy. But companies can explain what their policies and operations are in oppressive states, so that their customers and the wider public can be satisfied that they are doing their best to respect human rights in these areas.



The Limitations of Responsibility

Human rights are set within national political contexts. Companies are not political actors, and as a general rule they should not interfere in the internal political affairs of the countries in which they operate. Interference can be dangerous both for the company personnel and the state's political system, which should be determined by the population and not a foreign business. However, while human rights are exercised within a domestic political setting, they embrace principles that extend beyond the political context. As such, they constitute legitimate international concerns as well.

The two points above, considered together, often leave companies in a difficult position. They suggest that companies do have a role to play in relation to human rights, but that the role must have some kind of natural limitation. Can a company lobby a government to change discriminatory legislation? Can a company financially support an opposition group which promises to put in place good human rights practices if it is allowed to take over the government? While there is no clear consensus as to the maximum of what a company, as a non-political foreign actor, can do to support human rights, the company's minimum requirements - or *duty* - is clear: the duty to ensure that it is not involved in the violation of human rights.

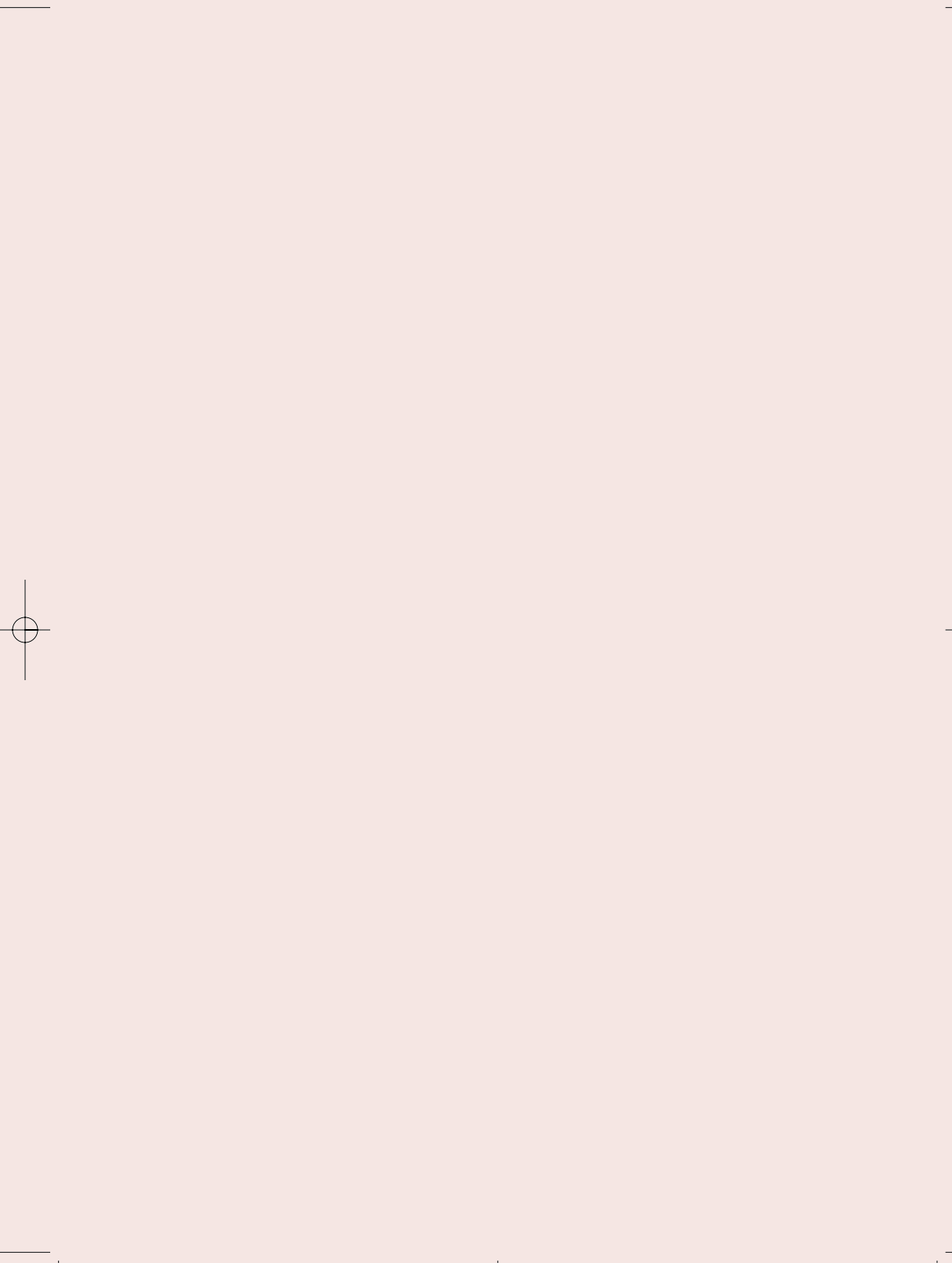
Where the political system of a state sustains or perpetrates severe human rights violations, a business should not be complicit in the exploitation of the population or contribute to propping up the

repressive regime. Fulfilling this requirement can be difficult in practice. The impact of large-scale company operations can be extremely far-reaching, and often this means that even the purely commercial activities of a business are not wholly apolitical or neutral in their effect on human rights. Simply discouraging businesses from operating in such complex situations is temptingly straightforward, but total exclusion is not the best solution, and risks losing the potentially beneficial effects resulting from foreign companies operating in states with bad governments.

The best a company can do is 'proceed with caution'. It should be mindful of human rights, and give the human rights considerations outlined above the weight that they deserve alongside the more traditional economic considerations which are taken into account before entering a new foreign market. The need for caution is particularly important where states have bad governments, where the population has no rule of law in its favour and is more vulnerable as a result. The company that operates with this caution will be acting as a responsible representative of Danish society, and as a responsible member of all the societies in which it takes part.

■ Where to go for more information:

More extensive coverage of the indicators and examples given in this brochure are available on the website of the Danish Centre for Human Rights (www.humanrights.dk).



This is the third in a series of brochures offered by the *Human Rights & Business Project*, jointly sponsored by the Danish Centre for Human Rights, the Confederation of Danish Industries, and the Danish Industrialization Fund for Developing Countries. The three groups have joined forces in a programme designed to provide guidance to Danish businesses faced with human rights issues when operating abroad. Danish businesses play an active role in the research through serving as case-studies and providing constructive feedback on the results.

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The text of this and previous brochures on human rights and business can be obtained from the following websites:

www.di.dk, www.humanrights.dk, and www.ifu.dk