

Training Tool: Security forces

November 2013

Human Rights and Business Dilemmas Forum





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The relationship between business and human rights



Photo: Katelyn Kenderdine



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 findings from impact assessments across relevant internal functions and processes, and the 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 security and human rights



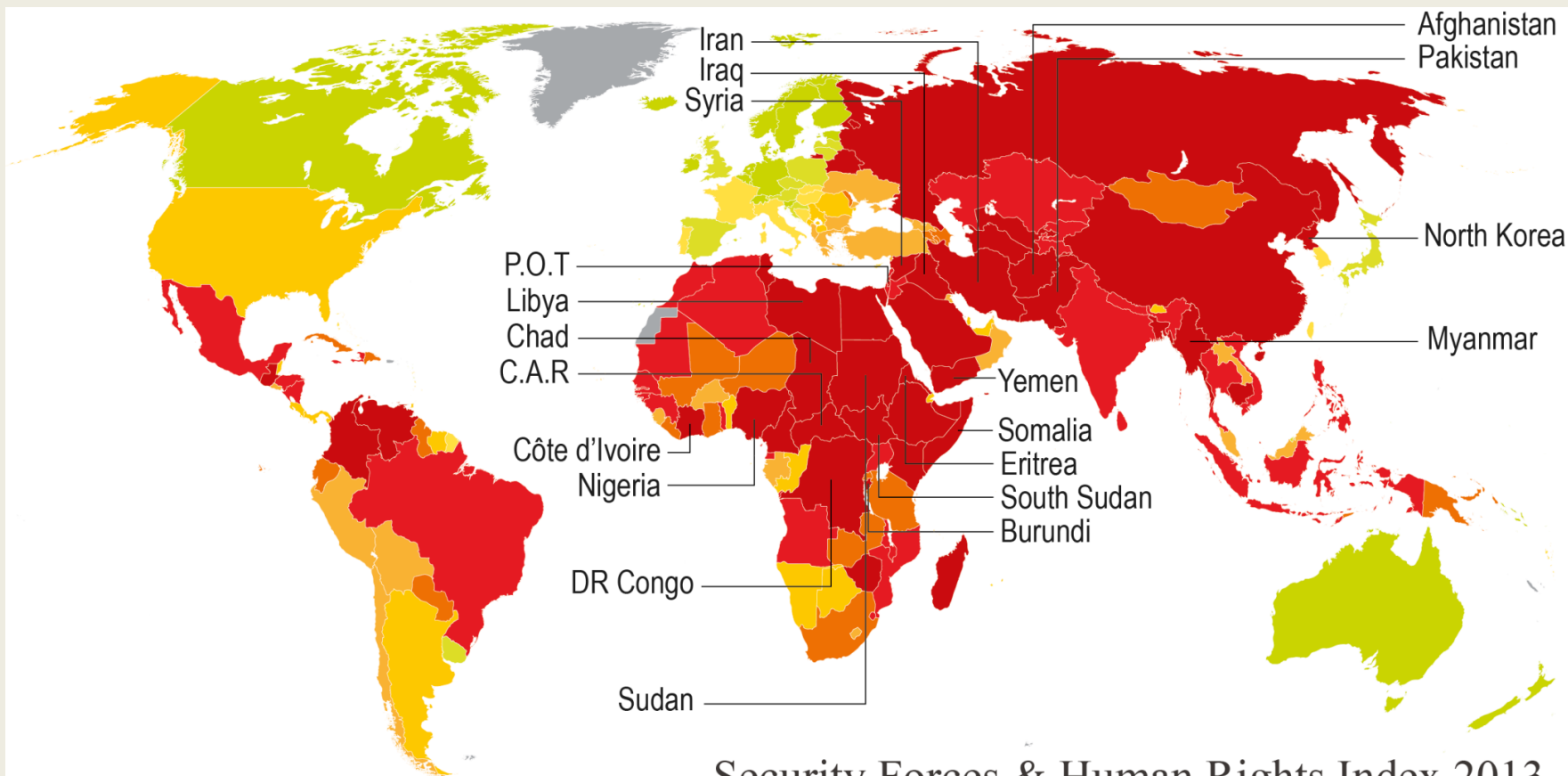
Photo: US Army Africa



Potential for complicity in human rights abuses

Although a company may have to rely on public security forces to help secure its people and assets – it has little power over how such public security forces conduct themselves and the degree to which they respect human rights as they carry out their duties. This raises the risk of complicity should these public security forces carry out human rights abuses. The risk of such abuses taking place can be influenced by a range of factors, including:

- ❑ **Repressive governments** (a factor behind past controversy around Total's Yadana gas project in Myanmar)
- ❑ **Political instability/conflict** (a long-running issue in the oil producing regions in the Niger delta in Nigeria)
- ❑ **Weak governance** (a key issue behind 'conflict-mineral' production in eastern DR Congo)
- ❑ **A lack of public resources** (a challenge in many countries – including poor training, equipment and discipline amongst public security providers)
- ❑ **Unscrupulous acts by partners** (such as union-busting, intimidation and illegal resettlement)



Security Forces & Human Rights 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 might be impacted by public security forces

Right	Reference	Description	Examples
Right to freedom from arbitrary arrest, detention or exile	ICCPR, Article 9	Includes illegitimate arrest/detention by poorly regulated/judicially unaccountable public security forces	Arbitrary arrest of striking workers who are exercising their legal right to strike
Right to life	ICCPR, Article 6	Includes 'legitimate' (i.e. lawful self-defence), illegitimate (e.g. use of excessive force) and accidental (e.g. negligent discharge) killing of locals/employees	Use of excessive force when carrying out involuntary resettlement, resulting in death
Right not to be subject to torture, cruel, inhuman and/or degrading treatment or punishment	ICCPR Article 7	A particularly risk where public security forces are the only real authority in an area, are not subject to oversight, have poor discipline and target vulnerable groups and/or perceived enemies within local communities	The sexual abuse of local community members by local security providers as a result of ill discipline and abuse of position



Rights that might be impacted by public security forces

Right	Reference	Description	Examples
Right of detained persons to humane treatment	ICCPR, Article 10	Even where the arrest/detention of a person is legitimate, their rights may be violated where they are (for example) held in inhumane conditions (e.g. lack of food/water, extreme heat/cold)	The keeping of an employee suspected of theft from the company in inhumane jail conditions – following their handover by the company
Right not to be subjected to slavery, servitude or forced labour	ICCPR, Article 8	Public forces may forcibly enlist local people for their own purposes (e.g. food, domestic services, sex) or for purposes that indirectly benefit a company	The extraction of forced labour from local communities to clear land for oil/gas pipeline routes running through their areas
Right to freedom of movement	ICCPR, Article 12	Public security forces may impose restrictions on the ability of local people to legitimately access land – or restrict their ability access other areas/services	Road blocks preventing community members accessing markets, public services and resources



Risks posed to business

Aside from the moral imperative to avoid complicity, poor management of security and human rights can result in a number of other risks for companies.

These include:

- Legal liability**, including under local law and under the US Alien Torts Claim Act (although its scope was curtailed by the Supreme Court in 2013)
- Consumer boycotts**, resulting in reduced sales
- Brand erosion** due to negative publicity and activist campaigns
- Divestment** by ethical and/or mainstream investors
- Loss of social licence** due to community animosity
- Escalating insecurity** due to the potential for abuses to fuel conflict
- Violation of external obligations, including relevant** financing conditions (e.g. the IFC Performance Standards) and political risk insurance



Case study boxes

Striking Lonmin miners killed by security forces

(South Africa)

On 16 August 2012, 34 people were killed by the police at the site of a miners' strike in Marikana, South Africa. Over 3,000 miners had gathered on a hillside near the mine, some armed with clubs and machetes, protesting for a monthly wage increase of around US\$1,000. Eyewitness reports suggest protestors had charged, causing the police to open fire. The police also claimed the miners had begun 'firing shots'. However, the Association of Mineworkers and Construction Union claimed the force used by the police had been excessive, and accused them of having committed a 'massacre'. The shootings came after several days of violence in which 10 people, including two police officers, were killed.

Wiwa v. Shell

(Nigeria)

In June 2009, Shell paid US\$15.5m in an out of court settlement re claims (under the ATCA) that it was complicit in the deaths of nine activists in 1995, including Ken Saro-Wiwa. Shell still denies liability. In the early 1990s, Saro-Wiwa was a vocal critic of Shell, as well as its impact on Ogoni communities and the environment. All nine activists were reportedly tortured by Nigerian security forces and hanged for allegedly murdering political rivals in November 1995 following a trial that activists denounced as a sham. The plaintiffs claimed Shell provided the military with transport, including helicopters.

Suggestions for responsible business



Photo: Faungg's Photo



Suggestions for responsible business (continued)

I. Applic. of the [Voluntary Principles on Security and Human Rights](#)

- RISK ASSESSMENT:** Including risks relating to security, violence, human rights, rule of law and equipment transfers, as well as conflict analysis
- SECURITY ARRANGEMENTS:** Including consultation with host govt.'s and local communities regarding impacts of security arrangements
- DEPLOYMENT AND CONDUCT:** Including use of company influence to ensure:
 - Public security personnel do not include those implicated with past abuses
 - Only necessary and proportionate force is used
 - Individuals do not face abuse when exercising the right to freedom of association (and related rights)
 - Where force is used, it is reported to authorities/company and medical aid is given



Suggestions for responsible business (continued)

I. Applic. of the Voluntary Principles on Security and Human Rights (continued)

CONSULTATION/ADVICE: This includes:

- Regular meetings with public security providers
- Consultation with peers, host/home govt.'s and civil society
- Promotion of int.'l law enforcement principles with host govt.'s and human rights training for public security personnel

RESPONSES TO ABUSES: Companies should:

- Report all credible allegations of human rights abuses by public security personnel to the host government
- Monitor the use of any equipment it has provided to public security forces/investigate incidents of misuse



II. Development of multi-stakeholder security agreements

This includes the agreement between a range of relevant stakeholders of transparent/mutually accepted 'rules' by which security will be provided – as well the respective roles, responsibilities and rights of each of the stakeholder groups.

Where violations occur, the agreement (which helps 'deepens' the public security provider/company relationship and provides a performance benchmark that public security provider performance can be compared to) can be used to:

- Ensure remediation
- Push for future performance improvements

Potential participants

- Company
- Public security officials
- Local communities
- Host/home govt.
- Local/int. NGOs



Suggestions for responsible business (continued)

III. Use of influence to promote respect for human rights

Where a company has leverage, it should use it to promote respect for human rights. For example:

- If it is providing logistical support to such forces (e.g. fuel, accommodation, etc.) it should make this conditional (ideally in the form of a written contract) on respect for human rights
- If it has influence with the host govt., it should stress the role respect for human rights will play in influencing long-term investment – and encourage this to be passed on to local commanders
- If practical, include security and human rights protections into all investment agreements (e.g. req.'s for all project partners to apply the Voluntary Principles, human rights training, etc.)



Suggestions for responsible business (continued)

IV. Consider use of private armed security providers

Where public security forces are ineffective, ill-disciplined and/or have a history of abuse, it may be preferable to use well trained/responsible private security providers. Key issues to consider include:

- Due diligence:** Includes assessment of its ownership, management systems, reputation, experience, training, effectiveness, human rights record etc.
- Participation in good practice initiatives:** This includes, for example, the [International Code of Conduct for Private Security Service Providers](#) – as well as relevant national/sector initiatives



Suggestions for responsible business (continued)

IV. Consider use of private armed security providers (continued)

- Conditions of contract:** This includes the integration of conditions relating to:
 - Adherence to the company's security and human rights policies
 - Implementation of human rights training
 - Adherence to the Voluntary Principles
 - Adherence to UN law enforcement principles
 - The exclusion of personnel with credible human rights allegations against them

Efforts should be made to give comfort to local public security officials by giving them an (appropriate) degree of operational influence over the use of private providers (e.g. rules of engagement)



V. Support of human rights training

This includes – for example – the provision of direct training or funds for third-party expert training of public security personnel. This should ideally cover (amongst other things):

- Why it is in the interests of the company to ensure respect for human rights
- Why it is in the interests of public security providers to respect human rights
- Applicable international human rights standards
- Relevant legal requirements
- Common situations/scenarios in which abuses may take place
- Procedures for avoiding such abuses
- Procedures to follow if abuses do take place

Training should be culturally/linguistically appropriate and carried out in cooperation with local commanders and other relevant public officials.



VI. Promotion of Community Liaison Committees

Encourage the formation of a multi- stakeholder liaison committee through which communities can voice recommendations, concerns and grievances in an informal and constructive way.

Participants should include the company (e.g. security, community relations, health and safety managers), community representatives, public security officials and other relevant stakeholders. This will help:

- Ensure security arrangements remain responsive to community needs
- Reduce the chances of friction and conflict that may give rise to abuses
- Keep the company appraised as to the human rights performance of public security forces



Suggestions for responsible business (continued)

VII. Establishment of formal grievance mechanisms

Establish and publicise an independent, rights-compatible grievance mechanism to allow impacted individuals (and related stakeholders) 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 impacted individuals
- Provide credible evidence of 'non-performance' by public security providers, where the company has made them subject to relevant human rights requirements (see above)

Scenario exercise: Reacting to demands for logistical support in a conflict situation



Photo: Steve Evans



The situation

How to react to a demand for logistical support by public security forces in a conflict situation

- **Location:** Central Africa
- **Context:** You are general manager for an extractive company which has a strategically important, active operation in a country characterised by weak governance, poor logistics, localised instability and ethnic/sectarian tension. Because of this, you have close relations with the local military unit (1 Brigade), which has (amongst its other duties) been assigned to protect your facility. Such protection is necessary for your continued operation. As part of this relationship, you provide 1 Brigade with occasional logistical support so that it can carry out its everyday duties– including the provision of transport and fuel. Like many of its peer units, 1 Brigade displays poor discipline and has been subject to allegations of serious human rights abuses in the past including the killing of civilians in conflict situations
- **Demand for assistance:** One morning, you hear there has been a small ethnic uprising in a town 50km away from you – and the government has vowed to act decisively to quash the rebellion. Shortly afterwards, armed, agitated officers from 1 Brigade arrive at your offices with their men, demanding you provide them with immediate road and air transport so that they travel to Likwa as soon as possible. They assert that it is a state of emergency – meaning they have the right to requisition the vehicles. They become menacing as soon as this right is called into question, and begin to threaten you with the official – and unofficial – consequences of non-compliance. There is not time to investigate if their assertion is true or not



Initial issues to consider

Before any action is taken, you should consider some immediate questions with respect to what should guide you in this situation and who you should inform about it. 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 I should contact about this?
- Who are the external stakeholders I should consider contacting about this?

Human Rights

Note: Suggestions on next slide



Initial steps to consider (continued)

Potential immediate priorities

- Ensuring the health and safety of yourself and employees
- Avoiding complicity in abuses against the Likwa
- Avoiding potential legal liability of yourself and employees

Potential internal guidance

- Principles/Values
- Policies/procedures (security, HR's, ethics, stakeholders)

**Any other
priorities?**

**Any other
guidance?**



Initial steps to consider (continued)

Potential internal stakeholders to contact

- Country/region manager
- Country/region security manager
- Group legal counsel
- Group government relations manager
- Group security manager

Potential external stakeholders to contact

- Local ministerial/government contacts
- 1 Brigade's superior military commander

**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
Likwa rebels	<ul style="list-style-type: none"> ❑ The need to minimise the risk of human rights abuses carried out by 1 Brigade 	<ul style="list-style-type: none"> ❑ If you provide assistance to 1 Brigade, it is likely serious human rights abuses will take place against the rebels
Group management	<ul style="list-style-type: none"> ❑ Protection of people and assets ❑ Operational continuity ❑ Avoidance of allegations of complicity 	<ul style="list-style-type: none"> ❑ Compliance with demands may breach company's human rights policy/ obligations ❑ Compliance may expose the company to local/international legal liability ❑ Non-compliance may expose company to legal liability (i.e. 'state of emergency')
Employees	<ul style="list-style-type: none"> ❑ Maintenance of employee safety ❑ Protection employees from legal liability 	<ul style="list-style-type: none"> ❑ Non-compliance with demands may result in violence against employees ❑ Non-compliance may expose employees to legal liability (e.g. 'state of emergency') ❑ Compliance with demands may expose employees to international legal liability



Potential stakeholders (continued)

Stakeholders	Stakeholder priorities	Associated risks
Investors	<ul style="list-style-type: none"> <input type="checkbox"/> Assurance re project continuity <input type="checkbox"/> Assurance re responsible human rights practices 	<ul style="list-style-type: none"> <input type="checkbox"/> Possible investor flight if you get the balance wrong (e.g. maintenance of workable govt. relations vs. avoidance of complicity)
1 Brigade	<ul style="list-style-type: none"> <input type="checkbox"/> Maintenance of workable relations to ensure continued protection of operation <input type="checkbox"/> Assurance that it will not expose the company to allegations of complicity 	<ul style="list-style-type: none"> <input type="checkbox"/> Refusal to cooperate may obstruct 1 Brigade from carrying out its lawful duties <input type="checkbox"/> Refusal to cooperate may result in non-cooperation by 1 Brigade in future

Anyone else?

What are their priorities and what risks do they represent?



Analysis of potential reactions

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

- Option 1:** Comply – on condition you get a written commitment that they will only use the vehicles for lawful purposes
- Option 2:** Comply – on condition they are attended by media/ NGO representatives
- Option 3:** Passively refuse
- Option 4:** Refuse and render vehicles temporarily non-operative



Analysis of potential reactions(continued)

Option	Implications
1: Comply – on condition you get a written commitment that they will use the vehicles for lawful purposes	<p>Opp.: Safeguards employees/operation, offers negotiation leverage and provides limited assurance regarding the behaviour of 1 Brigade</p> <p>Risk: May further undermine relations with 1 Brigade, whilst only offering ‘lip-service’ responsibility – with little actual protection with regards to complicity</p>
2: Comply – on condition they are attended by media / NGO representatives	<p>Opp.: Safeguards employees/operation, offers negotiation leverage and the presence of third-parties is likely to diminish the risk of serious abuse</p> <p>Risk: May further undermine relations with 1 Brigade, volunteers are likely to be hard to find and protection from allegations of complicity will still be limited</p>

Option	Implications
3: Passively refuse	Opp.: Marks a clear stance and offers a high degree of protection from allegations of complicity
	Risk: Leaves you with no leverage and it is likely that 1 Brigade may simply requisition the vehicles anyway
4: Refuse and render vehicles temporarily non-operative	Opp.: Offers the maximum degree of protection from allegations of complicity – and will minimise the immediate risk of abuse
	Risk: Will poison relations, put employees at risk, actively obstruct 1 Brigade’s otherwise lawful duties and delay abuses at Likwa

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 legal analysis of your rights and duties in relation to 1 Brigade
 - For:** Better insight into the legal risks of non-compliance with their demands
 - Against:** Time and expense

- A formal written agreement with govt. buy-in that sets out your relationship with the public security forces and makes it clear that you will never be asked to support operations likely to result in the death, injury or abuse of others
 - For:** Will make 1 Brigade think twice before making their demands – and provide better defence against complicity
 - Against:** No guarantee that will have weight in the heat of the moment

- Avoid reliance on 1 Brigade and use private armed security instead
 - For:** Much higher degree of control and reduced contact with 1 Brigade
 - Against:** Expense – plus no guarantee that this would prevent 1 Brigade demands

Any other options?

What are their respective strengths and weaknesses?

Continue the discussion at:

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