

Supplementary Guide to 'Deciding Whether to do Business in States with Bad Governments'

The following paper is intended to be used as a supplement to Brochure 3 of the Human Rights and Business Project. The Brochure, entitled 'Deciding Whether to do Business in States with Bad Governments', provides a basic framework to help companies assess more systematically, from a human rights standpoint, whether they should operate or invest in a country with a poor human rights record. A copy of Brochure 3 can be downloaded from this website, or a hard copy can be ordered from the DCHR (+45 33 30 88 88).

Indicators and examples are given under each of the five main human rights considerations listed in Brochure 3. This supplementary paper gives more information about the indicators, and where possible, provides specific information so that the user does not have to research the original source him/herself, but rather can rely on the summary given here. For easy use, the structure of this supplementary guide parallels the structure of Brochure 3.

The research and writing of this supplementary paper was undertaken by Maria de los Angeles Villacis Paredes, who worked as an intern at the Danish Centre for Human Rights in Autumn 2000. More information on Maria's research and how to contact her is provided on the final page.

CONSIDERATION ONE: THE MINIMUM BOTTOM-LINE

RESPECT INTERNATIONAL SANCTIONS

This constitutes the first of the three criteria that a state must meet before Danish companies undertake operations in a country.

The United Nations and the European Union have established sanctions on specific economic activities in countries with poor human rights performance. The respect of this bottom-line demands that companies not invest in any states or activities which are specifically restricted by these bodies.

United Nations Sanctions

Within the United Nations system, the General Assembly and Security Council are the organs that can impose sanctions.

⑥ *General Assembly*: This body discusses and makes recommendations to the member states or the Security Council on matters related to the UN Charter, which can include the imposition of sanctions. The decisions taken at this level do not have binding power, so companies may choose whether or not to follow General Assembly sanctions.

⑥ *Security Council*: This body is mandated to maintain international peace and security, and as part of its remit, can impose mandatory (legally binding) sanctions on states, under Articles 41 and 42 of the UN Charter. Companies are expected to follow Security Council sanctions.

Countries subject to UN Security Council sanctions (as of 1 November 2000):

Country	Resolution #	Date	Description
Afghanistan	1267	1999	Flight ban or freeze on funds controlled by Taliban
Angola	864	1993	Oil and arms embargo on the National Union for the Total Independence of Angola (UNITA).
Eritrea and Ethiopia	1298	2000	Arms embargo.
Federal Republic of Yugoslavia/Kosovo	1160 1244	1998 1999	Prevent the sale or supply of arms, supplies, and training. Prohibitions imposed in resolution 1160 do not apply to arms and related material for the use of the international civil and security forces. ** These sanctions will be subject to revision soon
Iraq	661 712 1051 1158	1990 1991 1996 1998	Full trade embargo. Partial lifting of the embargo. Establishment of export/import monitoring system States are authorized to import petroleum and other related products.
Liberia	788 1116	1992 1997	Embargo on the deliveries of weapons and military equipment. Reiterates the imposition of arms embargo.
Libya	748 915	1992 1994	Arms and air embargo. Exemption from the provisions of resolution 748 regarding United Nations Aouzou Strip Observer Group (UNASOG) need to travel to the Libyan Arab Jamahiriya by air.
Rwanda	918	1994	Arms embargo.

Sierra Leone	1132	1997	Oil and arms embargo.
	1171	1998	Prevention in the sale or supply of arms and related material of all types, including weapons and ammunition, military vehicles and equipment.
	1306	2000	Measures to prohibit the direct or indirect import of all rough diamonds
Somalia	751	1992	Arms embargo.
	954	1994	Reiterates the imposition of the embargo. ** These sanctions will be subject to revision soon

Source: (<http://www.un.org/documents/scres.htm>)

European Union Sanctions

In response to the recent regional crisis in the former Yugoslavia, the EU introduced the Common Foreign and Security Policy (CFSP) with the objective of safeguarding the interests of the Union and preserving international peace and security. This policy is guided by a High Representative, who is also Secretary-General of the Council of the European Union.

One of the new tools introduced by the Amsterdam Treaty was the CFSP, however some of its instruments are still not clearly defined.

⑥ Definition of principles and guidelines as well as consensual decisions of the European Council on common strategies. Such strategies must have defined objectives, duration, and means. However, States can present their 'constructive abstention', which does not necessarily mean blocking the adoption of a decision (Amsterdam Treaty: 1999).

⑥ Common strategies are implemented by the Council of the European Union with the approval of a qualified majority. A common strategy already agreed by the European Council requires a qualified majority to be approved. These strategies are named: 'joint actions' and 'common positions'.

Joint actions: Common approach on issues at the international rather than just at the national level (The European Union's Common Foreign and Security Policy: 1996). They are actions taken by the Presidency in specific situations, which are legally binding as these actions "require the commitment of the member states in the positions and conduct they adopt" (Amsterdam Treaty: 1999). Joint Actions (Article 13 of the Treaty on European Union) have been implemented in the following cases:

- Middle East Peace Process Democratic Transition in South Africa
- Control of exports of dual-use (civil and military) goods
- Conference on the Stability Pact for Europe
- Nuclear-related export control and anti-personnel landmines
- Electoral process and peace plan in the former Yugoslavia
- Reestablishment of a viable police force in Albania
- Protect the OSCE Observer Mission on the border of the Republic of Georgia with the Chechen Republic

Source: (http://europa.eu.int/eur-lex/en/lif/reg/en_register_18.html)

Common positions: Guidelines for national policies about geographic or thematic matters -without specific action (European Union's Common Foreign and Security Policy: 1996). These are presented to the Parliament, which decides if they are legally binding or remain as mere declarations. These positions (Article 12 of the Treaty on European Union) refer to the imposition of embargoes, reduction and/or elimination of economic and/or financial relations.

Cases of countries subject to European Union sanctions (as of 1 November 2000):

Country	Resolution	Year	Description
Afghanistan	746/CFSP	1996	Embargo on arms, munitions, and military equipment
China		1989	Embargo on trade in arms.
Croatia/Bosnia and Herzegovina/Federal	184/CFSP	1996	Embargo on arms, munitions, and military equipment.

Rep. of Yugoslavia			
Ethiopia and Eritrea	206/CFSP	1999	Embargo on the export of arms, munitions and military equipment.
Federal Republic of Yugoslavia	273/CFSP	1999	Ban on the supply and sale of petroleum and petroleum products.
Libya	261/CFSP	1999	Arms and air embargo.
Rwanda	455/CFSP	2000	Prohibition to import diamonds.
Sierra Leone	409/CFSP	1998	Prohibition to sale or supply arms and related material of all types, and oil

Sources: (http://europa.eu.int/eur-lex/en/lif/reg/en_register_18.html)

Unilateral Sanctions: The United States

Unilateral sanctions imposed by the United States have introduced extra-territorial provisions, including some implications for countries that are not directly involved in the dispute. (These do not constitute part of the minimum bottom line for Danish companies, but information is provided here for those Danish companies which operate as subsidiaries of larger US firms or which conduct business in the US).

•Burma (Myanmar): The state of Massachusetts imposed sanctions on domestic and foreign companies willing to do business with Burma. This law has been enacted at the state level.

Source: (<http://www.csis.org/states/tdsburma.html>).

•Cuba: The Helms Burton Act has extraterritorial provisions as it limits new investments in expropriated property in Cuba. The EU, however, has decided to continue subsidizing companies that have already invested in the Island.

Source: (<http://www.csis.org/states/tdshelms.html>).

•Iran: The Iran-Lybia Sanctions Act (ILSA) imposes sanctions on foreign companies that engage in transactions with these two countries. It also prohibits moving certain goods and services such as arms, certain oil equipment, and civil aviation services with Lybia.

Source: (<http://www.state.gov/www/global/terrorism/Iranliby.html>).

RESPECT POPULAR SOVEREIGNTY

The second criteria that companies must take into account regarding the minimum bottom-line is based on the principle that governments should represent the will of the people (popular sovereignty). In most cases where governments clearly violate popular sovereignty, companies can do nothing. However, in a few cases there is another group in the country which is not recognised as the government, but which does represent the will of the people. In the event that the group has called for economic sanctions against the state, Danish companies should respect the wishes of these groups by staying out.

At present, only one state falls into this category: Burma (Myanmar).

The following websites can be taken as a starting point to look for specific information related to elections, democracy and governance. A summary of the contents of each site is presented below in decreasing order of the amount of information contained in the site.

National Democratic Institute (NDI)

<http://www.ndi.org/ndi/worldwide/worldwide.htm>

- Large number of countries.

- The activities cover three phases:
 - Pre-election assessments.
 - Election observer delegations.
 - Complementary democratic processes such as governance, citizens' participation, political party development, civil-military relations, and women's participation.
- The information of each country includes: current situation, programs in different areas of democracy, and in some cases documents related to the democratic process and pre-election assessments.

Freedom House

<http://www.freedomhouse.org/survey/2000/reports/>

<http://www.freedomhouse.org/reports/worst98/>

- It presents a classification of the countries among 'free', 'partially free', and 'no free' based on a methodology created by them (table of comparative data since 1950).
- The classification is "determined by the combination of the political rights and civil liberties ratings, indicates the general state of freedom in a country or territory."
- There is a large number of countries including a historical brief, issues on political rights and civil liberties (it does not refer exclusively to elections but to other particular issues of each country).
- It includes a list of the most repressive regimes in 1998 with an explanation of historical issues and civil and political rights.

Organisation for Security and Cooperation in Europe (OSCE) http://www.osce.org/odihr/elecprep_byelect.htm

- Its activities are classified between: elections observation and elections assistance.
- It does not give much information on historical or current situation in a given country.
- It gives a brief explanation of the purpose of the activities and time frame.

International Foundation for Electoral Systems (IFES)

<http://www.ifes.org/eguide/elecguide.htm>

<http://www.ifes.org/projact.htm>

- Complete information about terms, dates, and results of elections held all over the world (from 1998 to 2001).
- Projects, conferences and/or observation activities organized in different countries.

International Republican Institute (IRI)

<http://www.iri.org/region.asp>

**Similar to NDI

**Monitoring elections and democracy building

Carter Center

<http://www.cartercenter.org/elections.html>

**Links with NDI

**Observing elections and democracy building

Organization of American States (OAS)

<http://www.oas.org>

**Reports on countries about human rights (there is an analysis of elections on some countries)

**Observing elections

DO NOT LEGITIMIZE EGREGIOUS VIOLATORS

Companies should look at the following indicators to avoid undertaking operations in countries where governments have been recognized as egregious violators of human rights as the last criteria of the minimum bottom-line.

Acts of Massacre or Genocide

At present there is no clear-cut case of a government involved in acts of massacre or genocide. The indicators checked include the following:

- Reports in the popular press indicating that a government is actively and directly responsible for the deaths of a significant proportion of its population. Significant proportion is defined as a mortality rate of 5% of the population arising from direct governmental action¹, or mortalities exceeding 100,000 individuals within a consecutive three month period (M. Jungk).
- The United Nations Security Council condemnation of a Government for genocidal or similar practices.

Refused access to the International Committee of the Red Cross (ICRC)

The ICRC does not disclose information related to countries where its access has been denied. However, some examples have been mentioned in past annual reports.

- The Annual Report 1999 mentions that access to Kosovo and East Timor has been momentarily denied in a clear violation of the rules of international humanitarian law.
- The Annual Report 1998 indicates that ICRC did not have access to the entire prison population in the disputed enclave of Karabakh within Azerbaijan.

CONSIDERATION TWO: THE PROXIMITY BETWEEN COMPANY'S OPERATIONS AND HUMAN RIGHTS VIOLATIONS

In Brochure 3, the connection between a company's operations and human rights violations is categorized as non-existent, indirect or direct. In this sense, the definition of indicators applicable to all companies is subject to different criteria. Companies should review their own operations in relation to this consideration.

CONSIDERATION THREE: THE PROXIMITY BETWEEN THE GOVERNMENT AND THE HUMAN RIGHTS VIOLATIONS

THE UN AS A SOURCE OF HUMAN RIGHTS INFORMATION

United Nations Commission on Human Rights

In its 56th Meeting held in April 2000, the Commission adopted resolutions on certain states in relation to their human rights performance (as of 15 November 2000). It is important to note the different degrees of concern expressed by the Commission, which companies could take as an indication of the specific human rights situation in each state.

¹'Direct government action' refers to any policy or activity carried out by the Government or affiliated bodies. This does not include the *failure* to take action (i.e. the 'positive' duties of government); for example, mortality arising from a government's failure to provide welfare or adequate medical facilities is not taken into account when identifying egregious violators.

Country	Resolution	Description
Afghanistan*	E/CN.4/2000/L.26	<p><i>Strongly condemns:</i></p> <ul style="list-style-type: none"> - Mass killings and systematic human rights violations against civilians and persons deprived of their liberty. <p><i>Expresses deep concern:</i></p> <ul style="list-style-type: none"> - Massive and forced displacement of the civilian population, in particular of women and children. <p><i>Condemns:</i></p> <ul style="list-style-type: none"> - Violations and abuses of the rights to life, liberty and security of person, freedom from torture and from other forms of inhuman treatment. - Violation and abuses of the freedom of opinion, expression, religion, association and movement. - The continuing violations of the human rights of women and girls, including all forms of discrimination against them (abductions, kidnappings or trafficking).
Southern Lebanon and West Bakaa	E/CN.4/2000/L.23	<p><i>Deplores:</i></p> <ul style="list-style-type: none"> - Arbitrary detention of civilians, destruction of their dwellings, confiscation of their property, and expulsion from their land. - Bombardment of villages and civilian areas.
Iraq*	E/CN.4/2000/L.25	<p><i>Strongly condemns:</i></p> <ul style="list-style-type: none"> - Suppression of freedom of thought, expression, information, association, assembly and movement through fear of arrest. - Imprisonment, execution, expulsion, house demolition and other sanctions. - Widespread use of the death penalty. - Arbitrary executions, including political killings and the continued so-called clean_out of prisons, as well as enforced or involuntary disappearances, routinely practised arbitrary arrests and detention. - Systematic torture and the enactment and implementation of cruel and inhuman punishment.
Democratic Rep. of Congo*	E/CN.4/2000/L.15	<p><i>Expresses concern:</i></p> <ul style="list-style-type: none"> - Continued perpetration of massacres, arbitrary execution, disappearance, torture, beating, harassment, arbitrary arrests and detention without trial.
Equatorial Guinea*	E/CN.4/2000/L.27	<p><i>Encourage measures:</i></p> <ul style="list-style-type: none"> - Guarantee full enjoyment of the freedoms of movement and association. - Respect the right to physical integrity by putting an end to torture. - Respect to the right to human dignity of detainees by ensuring adequate sanitary conditions.
Western Sahara	E/CN.4/RES/2000/2	Continue the implementation of the settlement plan approved by the Security Council (resolutions 658/1990 and 690/1991).
Burundi*	E/CN.4/2000/L.28	<p><i>Condemns:</i></p> <ul style="list-style-type: none"> - Illegal sale and distribution of weapons and related materials which disturb peace and security in the region. <p><i>Expresses deep concern:</i></p> <ul style="list-style-type: none"> - Reports of massacres, enforced or involuntary disappearances, and arbitrary arrests and detention.
Rwanda*	E/CN.4/2000/L.29	<p><i>Condemns:</i></p> <ul style="list-style-type: none"> - Illegal sale and distribution of arms and all other forms of assistance to former members of the Rwandan armed

		forces. - Evasion of justice of most of the perpetrators of the genocide and other gross violations of human rights.
Myanmar*	E/CN.4/2000/L.33	<i>Deplores:</i> - Arbitrary executions, particularly in areas of ethnic tension, and enforced disappearances, torture, harsh prison conditions. - Abuse of women and children by government agents, arbitrary seizures of land and property. - Discriminatory practices against persons belonging to minorities, including extrajudicial executions, rape, torture, ill_treatment and the systematic programmes of forced relocation directed against ethnic minorities. - Violations of the human rights of women, in particular forced labour, trafficking, sexual violence and exploitation, often committed by military personnel. - Conscription of children into forced labour programmes through their sexual exploitation. - Severe restrictions on the freedoms of opinion, expression, assembly and association. - Restrictions imposed on citizens wishing to travel within the country and abroad.
Sierra Leone	E/CN.4/2000/L.34	<i>Expresses grave concern:</i> - Atrocities against civilians being perpetrated by the Revolutionary United Front, Armed Forces Revolutionary Council and the ex_Sierra Leone Army (rapes, abductions, hostage_taking, summary executions, mutilations, forced labour). - Recruitment and use of child soldiers.
Cuba	E/CN.4/2000/L.35	<i>Expresses concern:</i> - Continued violation of human rights and fundamental freedoms such as freedom of expression, association and assembly and the rights associated with the administration of justice.
Federal Rep. of Yugoslavia (Serbia and Montenegro)	E/CN.4/2000/L.36	<i>Expresses grave concern:</i> - Continued repression of the independent media, political opposition and non_governmental organizations. - Arbitrary administration of justice and application of the law. <i>Condemns:</i> - Discrimination and violence against ethnic minorities.
Rep. of Croatia and Bosnia-Herzegovina	E/CN.4/2000/L.36	<i>Condemns in the strongest terms:</i> - Intimidation of and perpetuation of violence against minority refugees and internally displaced persons returning to their homes, the destruction of their homes and all other acts designed to discourage their voluntary return.
Sudan*	E/CN.4/2000/L.52	<i>Expresses deep concern:</i> - Arbitrary execution resulting from armed conflicts use of children as soldiers and combatants in contravention of international human rights standards, forced conscription, forced displacement, arbitrary detention, torture and ill_treatment of civilians. - Abduction of women and children to be subjected to forced labour or similar conditions. - Use of weapons, including landmines, against the civilian population. - Severe restrictions on the freedoms of religion, expression, association and peaceful assembly. - Use of torture and arbitrary arrest and detention without trial.

Islamic Rep. of Iran* E/CN.4/2000/L.16

Expresses

concern:

- Executions in the apparent absence of respect for internationally recognized safeguards, cases of torture and cruel, inhuman or degrading treatment or punishment.
- Discrimination against religious minorities.
- Lack of full and equal enjoyment of rights by women.

Source: <http://www.unhcr.ch/huridocda/huridoca.nsf/FramePage/External3?OpenDocument>

* Special Rapporteur's mandate extended for another year.

Special Rapporteur

The United Nations Human Rights Commission has assigned Special Rapporteurs to the following states: Afghanistan, Burundi, Cambodia, Democratic Republic of the Congo, East Timor, Equatorial Guinea, Former Yugoslavia, Haiti, Iran, Iraq, Myanmar, Occupied Arab Territories (Palestine), Rwanda, Somalia, and Sudan. If the Commission has assigned a Special Rapporteur to these states, it can be assumed that there is some evidence of poor human rights performance in these states and companies should take this into account before undertaking activities with the government.

OTHER SOURCES OF HUMAN RIGHTS INFORMATION

Amnesty International

<http://www.amnesty.org>

- 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

<http://www.freedomhouse.org>

- Reports on an annual basis on civil and political rights in approximately 187 countries. Freedom House ranked the following states as the 'least free'² in 2000 (www.freedomhouse.org/ratings): Afghanistan, Burma, Cuba, Equatorial Guinea, Iraq, North Korea, Libya, Saudi Arabia, Sudan, Somalia, Syria, Turkmenistan, Vietnam.

Human Rights Watch

<http://www.hrw.org>

²'Least free' is assessed in relation to the state's recognition of political rights and civil rights.

- Annual World Report covering human rights abuses in approximately 70 countries.

United States State Department

http://www.state.gov/www/global/human_rights/hrp_reports-mainhp.html

- Annual State Reports on Human Rights Practices, which provide the most in-depth and systematic account of human rights in 194 countries.

Danish Center for Human Rights

<http://www.humanrights.dk>

- 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.

ALLOCATION OF INTERNATIONAL ASSISTANCE

The aim of this indicator is to make companies aware that due to poor human rights performance in certain countries, the Danish International Development Agency (Danida) has had to review its strategy for the allocation of international assistance.

In 1989, Denmark adopted human rights as a criterion in selecting countries to receive aid, specifically in relation to the issues of freedom of association and protection of the rights to organise and bargain collectively (Danish Support to Promotion of Human Rights and Democratisation: 2000).

Danish bilateral assistance (government to government) is based on general criteria, amongst others: i) levels of economic and social development; ii) supply of aid from other bilateral and multilateral donors; and, iii) possibility of promoting respect for human rights. Accordingly, 20 programme countries were selected as the primary recipients of Danish aid: Bangladesh, Benin, Bhutan, Bolivia, Burkina Faso, Egypt, Eritrea, Ghana, India, Kenya, Malawi, Mozambique, Nepal, Nicaragua, Niger, Tanzania, Uganda, Vietnam, Zambia and Zimbabwe. Danida, a branch of the Danish Ministry of Foreign Affairs, is responsible for the allocation of humanitarian and development assistance. When Danida has noticed that countries are going against democratization and human rights, it has channelled its assistance through NGOs and/or district authorities. Thus, Danida has reviewed its policies for the allocation of assistance in Kenya, Niger, and Zimbabwe due to their poor human rights performance.

Country	Allocation of aid	Description
Kenya	Allocation of assistance is not channelled through central government but through district authorities. Areas: Health, agriculture, roads.	Danida is implementing individual projects instead of following a sector-programme policy.
Niger	Assistance is not channelled through central government but on a decentralized basis. Areas: District authorities: water and traditional energy. NGOs: water and natural resources management.	Since June 1997, programs were reinstalled but arranged in a more decentralized basis.
Zimbabwe	Assistance will follow	

different strategies.

Areas:

Agriculture: Danida will stop working with the Ministry of Agriculture, but will continue with on-going projects by working with local

people.

Infrastructure: Danida will continue working with the Ministry of Infrastructure but on minor projects.

Health: Danida will continue working with the Ministry of Health.

On November 20, 2000 the Danish government decided to stop the allocation of further foreign assistance for new projects due mainly to the lack of progress in land reforms and violence in the rural areas.

In the cases of Burkina Faso and Zambia, for example, there is a periodic revision of their performance on issues related to human rights, democracy, among others. Now, the allocation of assistance in these two countries is channelled almost exclusively through the central governments with some cooperation of NGOs and civil society. Danida's policy, however, could be reviewed in case of a negative evaluation of these governments' performance regarding human rights and/or other practices.

CONSIDERATION FOUR: WHAT IS THE NATURE OF YOUR COMPANY'S OPERATIONS

The information regarding this consideration cannot be subject of indicators. Companies will have to review their own operations to establish the degree to which these aid an oppressive government as opposed to the civil society. Examples of areas which should be examined are provided in Brochure 3.

Companies interested in more information regarding fraudulent/corrupt practices of potential business partners should refer to the World Bank's list of firms that are ineligible for the Bank's-financed contract (<http://www.worldbank.org/html/opr/procure/debarr.html>). 'They [the listed companies] were found to have violated the fraud and corruption provisions of the Procurement Guidelines or the Consultants Guidelines' (World Bank: 2000).

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Ministry of Foreign Affairs (Danida). *Danish Support and Promotion of Human Rights and Democratisation*. Vol.1 Synthesis Report. Denmark, 2000.

Carter Centre:

<http://www.cartercenter.org>

Center for Strategic and International Studies:

<http://www.csis.org>

Danish Ministry of Foreign Affairs:
<http://www.um.dk>

European Union:
<http://europa.eu.int>

Freedom House:
<http://www.freedomhouse.org>

International Committee of the Red Cross:
<http://www.icrc.org>

International Foundation for Electoral System:
<http://www.ifes.org>

International Republican Institute:
<http://www.iri.org>

National Democratic Institute:
<http://www.ndi.org>

Organisation for Security and Cooperation in Europe:
<http://www.osce.org>

Organization of American States:
<http://www.oas.org>

US State Department:
<http://www.state.gov>

United Nations:
<http://www.un.org>

United Nations Commission on Human Rights:
<http://www.unhchr.ch>

World Bank:
<http://www.worldbank.org>