

# Recent Discussions on the Role of Home and Host States

## Presentation Overview

- Summary background
- The problem
- The Context
- Conclusions
- Recommendations
- Next Steps?



# Summary Background

- In his 2007 report, the UN Special Representative to the Secretary General on Business and Human Rights (SRSG) elaborated on the nature of state duties. He stated that many important questions remain unanswered including:
  - due diligence requirements of home states when they provide material or other assistance to business operating in conflict zones
  - and what, if any, duties do home states have to “regulate and adjudicate” human rights abuses by “their” multinationals in these zones.
- Global Witness secondment focusing on ‘Business and Human Rights in Conflict Zones: Role for Home States’
- Three important questions needed to be explored:
  - What do home states do to prevent or deter abuses?
  - What can home states do to prevent or deter abuses?
  - How can states deal with wrongdoing by their companies in conflict zones



# The Problem

- Corporations are currently operating in conflict areas where there is widespread repression and weak protections against human rights violations.
- Companies operating in conflict zones risk either directly committing or being complicit in human rights abuses.
- In these areas, gross human rights violations often occur and criminal activity goes unchallenged.



# The Context

- Conflict zones can exist at local, sub-national, national or global levels.
- Characteristics commonly including, but not limited to:
  - Violence, human suffering, or large numbers of displaced persons;
  - Two or more armed factions competing for power and control; and
  - Collapse of civil infrastructure; an absence of governance, legal structure and individual security.
  - In these areas, gross human rights violations can occur and criminal activity goes unchallenged.



# The Argument

**1. Action at the international level is required.**

**2. In the short to medium term, action by home states is required:**

- **Must enforce applicable minimum legal standards**
- **Adopt new regulations to ensure that corporate accountability and human rights issues in conflict zones are adequately addressed**
- **Adopt a series of policy and due diligence measures**
- **Issue public statements to minimize corporate related human r**



global witness

# Proposed Recommendations

## *Home State Level - Regulatory Actions*

1. Home states must recognize and enforce current minimum legal standards that minimize human rights abuses caused by registered companies operating in conflict zones.
  - Home states should focus on improved enforcement and prosecution of individuals and companies that violate UN Chapter VII sanctions.
  - Home states should focus on improved enforcement and prosecution of individuals and companies that violate UN Chapter VII sanctions.
  - Home states should compel compliance around the Red Flags identified by FAFO and International Alert
  - Home states should prosecute companies for engaging in pillage or plunder during periods of internal armed conflict
  - Home states should adopt new regulation that applies extra-territorially to minimize human rights abuses caused by registered companies acting in conflict zones.



# Proposed Recommendations

## *Home State Level - Policy Actions*

1. **Home states must take proactive steps to clarify expectations and principles relevant to business behaviour and human rights in conflict zones.**
  - Home states should review and synthesis into one document (2-3 pages) all human rights principles that currently apply to companies operating in conflict zones.
  - Home states should formalize and monitor the implementation of existing voluntary codes.
  - Home states should make use of tools available to the government in exercising leverage over companies breaching human rights.



# Proposed Recommendations

## *Home State Level - Policy Actions*

- 2. Home states need to engage in better human rights due diligence when providing advice, financial support or insurance to registered companies operating in conflict zones.
  - Export Credit Agencies
  - Officials in government agencies who promote foreign investments should be aware of the human rights situations in all areas where an investment is proposed
  - Government agencies should provide companies with current, accurate and comprehensive information of the local human rights context so that the companies can act appropriately
  - Laws in the host state are assessed and properly enforced. If these laws do not exist, home states should determine which of their laws apply
  - Meaningful on-the-ground advice to companies through their embassies in host countries



# Proposed Recommendations

## *Home State Level - Policy Actions*

3. Home states should acknowledge through public policy statements that companies can harm human rights when operating in conflict zones and that they must take steps to ensure that they do no-harm.
  - Home states should adopt a 'no-go' position where it is determined that direct or indirect violations of human rights cannot be mitigated by the company. In these instances home states should take a public position stating its reasons for concern and calling for companies to cease economic activity until human rights conditions improve. This is a position of last resort.



# Next Steps to consider

- Where do we go from here?
- What about strengthening the role of host states in minimizing human rights abuses caused by companies operating in conflict zones?

