

Operating in Challenging Contexts – a Compass for amfori Members

This guide does not constitute legal advice. While it has been designed to be geographically neutral, it was drafted in December 2022 in response to requests in the context of the ongoing tensions in Myanmar. It is therefore particularly suited for that region.

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Maintaining, Suspending Operations, Exiting or...?

If you operate directly or indirectly via your suppliers in so-called **challenging contexts**¹, i.e. (a) in a region affected by conflict or widespread non-conventional armed violence; (b) where gross human rights violations are taking place; (c) where minorities, vulnerable groups or specific gender types are subjected to severe discrimination, or (d) where the military has taken control, sooner or later you might be confronted with the dilemma “**should I stay or should I go?**”. You might wonder, or be pressed to assess, whether maintaining operations / sourcing from business partners located in that challenging context remains the most responsible choice; or whether you should rather responsibly exit or suspend operations in order to avoid / mitigate negative impacts, or to support the international rule of law.

Let us be clear from the onset; there is no easy answer to such a complex question. It involves very many considerations, all of which are likely to vary considerably from one company to another.

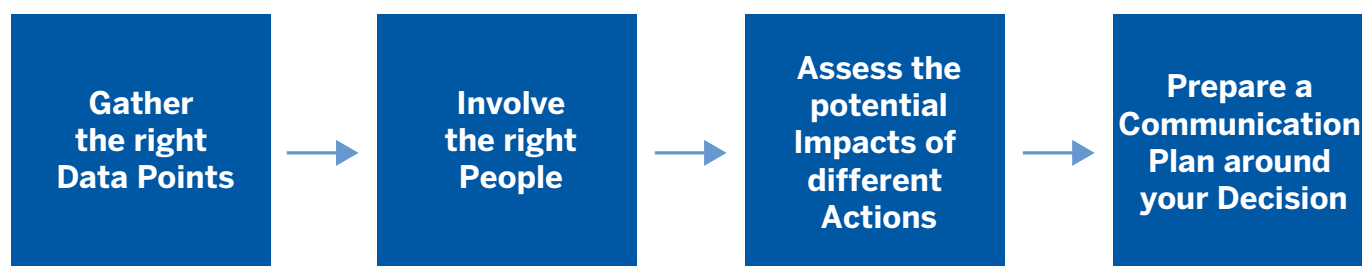
There is also no good or bad decision per se. However, you should expect greater scrutiny (from investors, customers, peers, consumers, NGOs) and be prepared to explain your rationale.

Carrying out ongoing **due diligence remains your key responsibility**. Since you are operating in a challenging context, you are expected to conduct **heightened due diligence**, that includes applying a conflict-sensitive lens to your traditional process of managing actual and potential risks to people and the environment.

Heightened due diligence is therefore your tool to assess whether you are linked to harm – in other words whether your direct / indirect activities support the ongoing unrest or conflict. However, even if your due diligence concluded you are not connected to the situation, you could still decide to leave, or suspend operations, in a region affected by conflict or unrest. If so, you would be expected to act responsibly by assessing the impacts of your decision on people (workers, local communities and vulnerable groups), and by mitigating its consequences (so called **responsible disengagement**).

What is this Guide for?

This guide will not replace your due diligence efforts, nor will it tell you what to do when operating in challenging contexts. Instead, it will provide you with a compass to navigate through some of the key reflections you might want to consider when assessing your options. Going through those considerations should provide you with useful data points and help you make more informed choices.



¹ For the purposes of this publication, the terms conflict and unrest will be used interchangeably to describe a variety of “challenging contexts” in which high level of violence prevail. According to the UNDP guide “[Heightened Human Rights Due Diligence for Business in Conflict-Affected Contexts](#)”, these contexts have three distinctive features: 1. Conflict will always create adverse negative impacts on human rights; 2. Business activities in a conflict-affected area will never be “neutral” and without impact; 3. Business should respect the standards of international humanitarian law in addition to internationally agreed human rights.

Step 1

Gather the right Data Points

To help inform your assessment, start by collecting relevant data points regarding:



To set the groundwork for a sound assessment of **your business activities**, consider answering the following questions:

- 1. Do I have a full picture of my supply chains beyond tier 1 suppliers?**
Mapping your supply chain can be a powerful tool to visualise in what way you could be linked, directly or indirectly, to a conflict. It might not always be straightforward. However, not having that visibility will make the assessment considerably harder.
- 2. Within my company's portfolio of products / services, which ones are linked to areas affected by the challenging context e.g. civil unrest, the breakdown of the rule of law, conflict?**
Knowing which products / services are linked to areas affected by conflict might help you assess the relative importance of those products / services to your business. That is, the impacts that suspending / bringing to an end those operations would have on your business.
- 3. Is the product / service linked to the challenging situation, essential for my business?**
Answering this question might help you to judge whether the particular product/material is essential for your business.
- 4. Is the country / region affected by the situation, the sole / main sourcing area for the product/service in question?**
An answer to this question might help you understand whether you could potentially diversify your sourcing strategies.
- 5. Have I ever looked into further diversifying my production / consolidating it in another country? If so, what did the assessment conclude?**
If you already assessed the viability of other sourcing countries, you might want to go back to those assessment reports and reflect on the reasons that led you to choose that particular country over others. Are those reasons still valid?
- 6. Do I have my own dedicated factories in the country or am I sourcing from factories that supply to various customers?**
Understanding whether you are the sole customer might help you better assess the impact of a possible exit on e.g. the workers of those factories.
- 7. If the latter, do I have knowledge of my sourcing volume vis-à-vis other customers' sourcing volumes?**
This might help you to understand the kind of leverage you could exercise on your own / combined with other customers.

8. How well do I know my business partners? Have I ever visited them? Do I have a direct dialogue with them? Am I confident they can reliably share information with me?

If you know your business partners well and you have established a direct relationship with them, you might rely on genuine communication channels. Those are essential to get real live updates from the ground when operating in challenging situations.

9. Where are the factories located? Are they spread across different regions within a country affected by conflict or unrest? Are therefore all factories equally impacted by the challenging situation?

An understanding of whether all factories are equally impacted by the challenging situation in a given country might give you the temperature of whether you could still remain engaged in a country but leave / suspend operations in certain region(s).

10. How many business partners are located in the country / region affected by the challenging situation? How many workers work there? How many women work there?

Answering this question might help you understand how many workers might be impacted by your decisions including how many women.

11. Looking at the concerned country, what is the size of the sector / industry I operate in?

This could help you estimate the relevance of the sector to those perpetrating violence.

12. Are some of my key competitors (still) present on the same market?

Understanding whether they are still operating, whether they never did or whether they decided to exit might provide you with additional food for thought.

13. How have the employment rate and economic situation of the country evolved in the past years? How are they expected to evolve in the next few months?

Such an overview might help you put your decision in perspective with other issues affecting the country.

14. Do I have employees working on the ground?

If the answer is yes, you might want to think about your employees' safety and how you can best act as a good employer in times of conflict.

15. Have any of my business partners undergone monitoring activities since the conflict or unrest started? Have I observed any particular findings compared to previous monitoring results that could be linked to the challenging context?

Whilst audits are not due diligence per se and they only provide a snapshot of the situation at factory level, they might offer good insights into labour practices on the ground.

16. Would I be able to find similar products at the same price in a different sourcing country?

Answering this question would allow you to consider the economic impact of modifying your sourcing practices.



In order to prepare a sound **conflict risk assessment**, start by reflecting on the following questions:

1. Was a risk assessment ever done prior to entering / sourcing from the country in question?

The company (risk) assessment sets the basis of how the company operates in a given country. The amfori Country Risk Indicators offer a good starting point for such an assessment.

2. Before the conflict or unrest started, were there any “red flags”?

The answer to this question might help you reflect a posteriori as to whether there were any signs that a conflict could have erupted and draw some lessons out of those.

3. Is there a history to the conflict or unrest?

The conflict might be rooted in old tensions. Understanding those, might give you perspectives as to how the conflict could evolve.

² Those include e.g. amassing of weapons by non-state groups; weak or absent structures; suspension of vital state institutions; signs of militia or paramilitary group recruitment; mobilization against specific groups; strict control or banning of communication channels; exclusion or banning of NGOs, international organizations or media; people are unable to meet their basic needs; presence of displaced people.

4. **Why is there a conflict or unrest?**
Understanding the reasons behind a conflict might help you avoid exacerbating the conflict with your actions.
5. **Is there a functioning government that is recognised by the international community, or relevant, recognised local or regional government/authorities?**
The absence of one is a clear indicator that you will be operating in a challenging context.
6. **Who are the main actors? What are their interests / concerns? What powers do they have? Is there a sector they are mostly linked to (or conversely, a sector they are not at all linked to?)**
Understanding who the main actors are in a conflict is essential to properly assess whether or not you might be connected to those and therefore to harm. If a conflict involves two parties opposing one another, it is likely that violence will be perpetrated by both parties.
7. **Can I reasonably keep up with local developments on the ground? How so (website, social media, local / international news?)**
Conflicts and situations of unrest are by definition very fluid and unpredictable. Situations can change very rapidly. It is therefore important to rely on up-to-date information to promptly react to changing contexts.
8. **Are my products essential to the country affected by the conflict / unrest, or are there local substitutes?**
Understanding whether your products are essential, means assessing whether you can easily find local substitutes. This point should not be interpreted loosely. You need to assess whether the lack of your products' availability might put people's life in danger.
9. **Am I obliged to comply with local laws that de facto make me a direct contributor to the war efforts?**
If the answer to this question is yes, your decision might be much easier to make.
10. **Are there sanctions in place from the EU and / or from other countries?**
If so, make sure you operate in compliance with those.
11. **Are there any implications of the conflict or unrest on neighbouring countries?**
As part of your due diligence, you should assess the possible implications of the conflict on neighbouring countries.
12. **Are there signs that the context could change in the short / medium term?**
This could be about changes for the worst or the better. This will help you prepare for different scenarios.



To help inform your **human rights risk assessment**, consider the following:

1. **Are there workers' rights organisations in the country? If so, can they freely operate independently of government or regime in charge?**
If the answer is no, this is a sign that workers' rights might be undermined.
2. **Has the government or regime in charge of the affected area passed laws that violate the right to a fair trial, liberty and security and undermine most basic rights?**
If the answer is yes, this is a sign that workers' rights might be undermined.
3. **What are the most severe human rights and labour rights risks facing workers?**
This could help you prioritise your due diligence efforts.
4. **Have you mapped relevant stakeholders and identified those you are engaged with – their roles, agendas, influences and interests, capacities and relationships of all relevant stakeholders.**
Used in conjunction with other tools, this analysis supports the identification of initiatives to help reduce the risk of violence and maximise opportunities for stability. Engagement is also an important prerequisite of solid Due Diligence.

5. **Have you reviewed international reports on the conflict / unrest (e.g., UN agencies, the International Crisis Group, HRW) and the consequences on human rights (especially on listed amfori BSCI Performance Areas)?**

Authoritative reports might provide you with a good starting point for your human rights risk assessment.

6. **Is the situation negatively affecting specific categories of population?**

Some categories of population might be more vulnerable than others. You should therefore apply a vulnerability lens to your assessment.

Step 2

Involve the right People

Now that you have gathered sufficient information about your business, the context you operate in and the human rights situation on the ground, make sure you involve the right persons in the conversations that will follow.

That includes, at a minimum, top management, colleagues from across diverse teams, relevant actors across your supply chain, stakeholders (particularly affected people or their proxies), independent experts as well as initiatives you might be part of.

Determine clear roles and responsibilities in order to ensure there is a culture of real accountability.

Because conflicts are unpredictable, ensure that you have established an internal cross-functional crisis team, involving key colleagues from relevant functions / departments, that meets on a regular basis and ad-hoc when necessary. This will offer a one-stop-shop where relevant information can be shared and escalated as appropriate.

Step 3

Assess the potential Impacts of different Actions



Once the right people identified and the right internal processes put in place, you can start assessing the potential impacts of the different options.

In particular, the following impacts will need to be considered:

- Impact on workers
- Impact on the conflict / unrest
- Impact on the business

When conducting the impact assessment, priority should be given to **assessing and managing negative impacts on workers and the conflict, over impacts on your business.**

Step 4

Prepare a Communication Plan around your Decision

Start by drafting an internal communication to all teams. As part of the plan, clear lines of responsibility should be delineated. Consider developing dedicated training programs for managers and employees.

At this stage of the process, business partners will have normally already been involved. Do make sure that the rationale of your decision is clearly communicated to them and explain how / in how far their perspectives have been taken into account.

Once your decision made, make sure you also inform external stakeholders and partners. As per communication to your business partners, also here, do not underestimate the importance of explaining the rationale of your choice and the way you went about assessing the possible impacts. Importantly, do provide a roadmap for actions which you will care to regularly update as things evolve.

Conclusions

The decision to stay or disengage from a region affected by conflict or unrest will ultimately be the **responsibility of each individual company**. Importantly, whichever the decision, **the actions** stemming from it **will not be without repercussions**. There will be impacts not only on your business, but especially on workers, local communities including vulnerable groups and specific gender types, the environment in which you operate and, potentially, the conflict itself.

amfori offers a safe space for you to exchange, including with peers, on the challenges you face when operating in challenging contexts. Do not hesitate to reach out to the main office or, locally, to our network representatives.



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