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## **DIIS Brief**

# **Working in “Fragile States”: Problems, Dilemmas, and Guidance**

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### **Abstract**

This brief provides a concise overview of the problems and dilemmas that confront organizations and companies working in fragile states and presents the major guidelines, recommendations and ethical frameworks that have emerged to address these issues.

The brief is intended to serve as an introduction to the field for organizations and private firms that are engaged or consider engaging in areas of fragile statehood.

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## 1. Introduction.

Since the late 1990s, the international development and security agenda has been increasingly concerned with areas where state authorities exercise little or no control of territory and population. International agencies and donors have formulated policies for engaging in such *fragile states*.<sup>1</sup> An increasing number of international organizations, development agencies, NGOs, consultancy firms and other subcontractors are working in such areas alongside a growing number of transnational private companies, including private military companies.

This brief provides a concise overview of the problems and dilemmas that confront organizations and companies working in fragile states and presents the major guidelines, recommendations and ethical frameworks that have emerged to address these issues. The brief is intended to serve as an introduction to the field for organizations and private firms that are engaged or consider engaging in areas of fragile statehood.

The following sections deal with:

- Definitions and problems of fragile statehood
- Issues of operational security
- Responsibilities and international frameworks
- Engagement with state institutions

## 2. Definitions and problems of fragile statehood

“Fragile states” and similar concepts refer to countries where the state is unable or unwilling to provide safety and security, protection of rights, and basic social services, and where reforms of the public sector have proven very difficult or impossible to carry out.<sup>2</sup>

Apart from the obvious cases where central state institutions have collapsed – such as Somalia, Liberia, Sierra Leone, DRC - this description fits a wide range of states across the world. According to the OECD/DAC at least 35 states are currently ‘fragile’. Aspects of state fragility are, however, found in a much wider number of countries, since state control *within* countries often is very uneven across the territory and between different sectors.

State fragility presents foreign organizations and companies with operational and strategic problems: weak infrastructures for financial services and operational insurance, limited protection of property, malleable systems of contract enforcement, no tendering procedures, competing frameworks and institutions for conflict resolution, high volatility, high vulnerability to changes in global market, etcetera.

Managing the security of employees, assets and operations is a complex task in areas where the state does not hold the monopoly of force and where private security companies, militias, neighborhood-watch groups, and protection rackets for practical purposes may be responsible for the provision of security. Competition among different security providers is likely to arise, and protectors can turn into predators operating with impunity and becoming the very sources of abuse and insecurity. Likewise, the security of private or public employees may be achieved at the expense of the security of local populations.

Fragile statehood represents operational challenges as well as ethical dilemmas for organizations and companies. The operations of such actors can influence state fragility and affect whether the undermining of legitimate statehood will continue, be reversed, or perhaps lead to the stabilization of alternative (non-state) orders. This poses difficult questions of respons-

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<sup>1</sup> See DFID (2005) and USAID (2005)

<sup>2</sup> See OECD/DACs principles.

ibility and accountability for organizations and companies operating in areas of fragile statehood.

### 3. Issues of operational security

Operational security management comprises a series of elements and considerations related to the development of policies, plans and guidelines, the formulation of security strategy, the use of information and communication as well as insurance.<sup>3</sup>

#### *Policies, plans and guidelines*

Most guidelines on operational security management suggest that organizations and companies develop:

- security policies, principles, and mandates of operation;
- clearly defined responsibilities, routines, divisions of labor and lines of communication in the security management throughout the organization
- guidelines for recruitment and training of relevant personnel in security policies and routines
- plans of emergency and evacuation that also take account of citizens of the host country and citizens from countries without diplomatic presence.

Considering the often volatile conditions and the risk of violent conflict, security management should involve access to, or capacity to undertake:

- periodic risk assessments,
- contingency planning and scenario monitoring,
- peace and conflict impact analysis.

A range of tools have been developed to analyze both the context of operation of a given organization and the impacts of its presence and activities (or lack of activity) on the development or transformation of conflicts<sup>4</sup> The tools were developed for the analysis of aid, but have been adapted to more particular needs of business corporations.<sup>5</sup>

#### *Security strategies*

In dealing with insecurity, companies and organizations may rely on protection, deterrence or acceptance. Albeit the three options essentially represent different approaches, they can in practice be combined and mixed to form a comprehensive strategy:

- **Protection**. Reducing exposure and vulnerability through protective procedures and devices (defining no-go areas, curfews, driving in convoys, visitor-screening, satellite phones, radios, flak jackets, barbed wire etc.). Increasing visibility by using logos may provide protection in some contexts, while the opposite is the case in others. Some protective measures are ambiguous: Devices such as satellite phones and radios provide protection in some aspects but at the cost of increasing risks of robbery. Paying “protection money” or “taxes” may provide protection in the short term, but increases costs and risks in the longer term.
- **Deterrence**: Containing security threats by posing counter-threats through armed protection, threats of arrests, lawsuits, fines, or other sanctions. Whether relying on public or private security providers, companies and organizations are recommended to look at the human rights records of security providers, to keep

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<sup>3</sup> See for example Van Brabant 2000 and 2001 for guidance for humanitarian organizations.

<sup>4</sup> A useful entry point is Africa Peace Forum et al. (2004)

<sup>5</sup> See UN Global Compact

themselves informed on the impact on local populations of their security arrangements, and to ensure that the security providers observe good reporting practices and operate in accordance with UN's Code of Conduct for Law Enforcement Officials and the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.<sup>6</sup> However, companies and organizations may sometimes have to rely on less formalized providers. In this case it is essential to achieve information on their popular legitimacy and track records, local forms of accountability, checks and balances, and histories of relations to conflicting parties.<sup>7</sup>

- Acceptance: Reducing threats and vulnerability by achieving social acceptance of the organization or company and its activities in the immediate environments of operation (what in military terms is known as *hearts and minds operations*). Transparency in terms of aims, plans and legitimate access, and the generation of benefits for local populations (education, health, employment, advocacy) is known to increase social acceptance, while involvement with local networks increase information on structures of authority and power, emerging conflicts and potential threats. Large companies have increasingly incorporated community projects in their portfolio, but they should be aware of paternalism, coordinate with local and governmental development plans and needs, work through consultations with de facto authorities, and consider the impact in terms of different and potentially conflicting segments of the population. In the longer term, organizations and companies should seek not to take over governmental responsibilities (see also section 5).

#### *Information and communication*

Access to reliable information is crucial for security management. It is good practice to have a wide spectrum of sources of information as this allows for verification of information through 'triangulation', combining for example local, government, and insurance company information. Also it is recommended to participate in inter-institutional fora or platforms for sharing information, experience and interpretation of events and changes. Such platforms may also be used for advocacy *vis a vis* international agencies, government or other armed actors in terms of their responsibilities for changes in the security situation.

#### *Insurance*

Even though insurance in areas of fragile statehood is more expensive and subject to more exception clauses than normally, expatriate staff and consultants are usually insured. But what about national staff or the employees of partners working under short term contracts with foreign companies or NGOs? What are their rights and entitlements if kidnapped, injured, or exposed to extortion or other "malicious acts", and which entity is responsible if evacuation is necessary? And how are responsibilities for products and actions defined, e.g. in case of malfunction or environmental degradation?

For financial or practical reasons, aid agencies seldom have international insurance for national/local staff, but in cases with no national insurance coverage, organizations have relied on indigenous practices of compensation and reparation (e.g. in Afghanistan, Somalia, or Chechnya) or they have contributed a lump sum to common savings funds for relatives and friends of employees.<sup>8</sup> However, external actors risk being caught in serious dilemmas between customary practices of retaliation and sanction on one side, and Western law and expectations of breaking the impunity of de facto authorities on the other.

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<sup>6</sup> For extensive recommendations and good practices see the *Voluntary Principles* and the *Human Rights and Business Project*.

<sup>7</sup> For a description of different forms of relations between state and non-state agents of policing, see Baker in Andersen et al 2007..

<sup>8</sup> Van Brabant 2000: 353

#### 4. Responsibilities and International Frameworks

One problem of state fragility is the highly uneven and fickle application of legal frameworks that follows from law enforcement being left to the discretion of individual and under-resourced state officials. An environment characterized by violent conflicts, instability, and competing state and non-state authorities, create strong incentives and opportunities to evade regulation.<sup>9</sup> This contributes further to creating an environment where it is difficult to uphold clear-cut lines between activities that are considered legitimate and those which are illegitimate.

In the context of fast globalization, state fragility favors linkages between legitimate economic, social and political activities and the operation of illicit networks and conflict entrepreneurs. The distinction between the two therefore tends to become blurred. Guidelines essentially recommend two distinctly different ways of dealing with this complexity:

1. “*heightened managerial care*” at the level of the individual organization or company
2. *international legal frameworks* developed and enforced by supra-state actors such as the UN.

##### *“Heightened managerial care” and due diligence*

A plethora of voluntary (and inconsistent) frameworks of ethical guidelines and codes of conduct have emerged from business associations, public-private partnerships, and international agencies.<sup>10</sup> They emphasize that companies and organizations that are working under conditions of fragile statehood have to operate with “heightened managerial care” and “due diligence” if they want to act responsibly and protect their reputation.<sup>11</sup> The main thrust of these recommendations are as follows:

- Develop policies, principles and practices that induce a culture and a set of practices which enables the entity to handle the heightened risk of being involved in, or associated with, human rights abuses, bribery and corruption, extortion, smuggling, money laundering, or financing of illicit networks and activities.
  - Practices should involve information and screening procedures for hiring employees,<sup>12</sup> considering partnerships, joint ventures, subcontracts,<sup>13</sup> and considering new investments or programs.
  - Policies and principles should work to avoid the punishment of employees who lose business opportunities by complying with existing policies and laws, who blow whistles, or make *bona fide* reports to the management. Rather such individuals should be protected and channels for reporting of wrongdoing provided.
- Set aside the extra resources necessary for awareness raising and training of employees, hotline and back-up facilities, and for the extra burdens of review, auditing, monitoring and internal and external control.
  - Train employees in detecting “red flags”. This is especially relevant when dealing with high ranking state officials, politicians and other “politically exposed persons”<sup>14</sup> in weak fiscal systems (indicated by unavailable accountancy policies or fiscal reports, deficient audit systems etcetera),<sup>15</sup> or when dealing with offshore banks and financial services. Unwillingness to disclose information on a Bank’s stakeholders and board-members would be

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<sup>9</sup> Lunde and Taylor 2005

<sup>10</sup> See for example The International Association of Oil and Gas Producers, Wolfsberg, or International Chamber of Commerce

<sup>11</sup> OECD 2006

<sup>12</sup> For hiring practices and policies see the International Association of Oil and Gas Producers

<sup>13</sup> On “supply chain management” see the Human Rights and Business Project

<sup>14</sup> See the FATFs Glossary of Terms

<sup>15</sup> See OECD 2001. The IMF publicizes government’s fiscal policies at [www.imf.org](http://www.imf.org)

- a red flag. Extreme care is necessary if only informal (trust-based) financial services are available for money transport and exchange.
  - Train employees in observance of relevant international regulations and ethical frameworks (see below)
- Guarantee public access to plans, operations, contractual relations with partners and governments and financial reports (along lines of geographical areas of operation when relevant), including considerations of populations in areas of operation that do not have access to internet.

### *International regulation*

In the absence of effective state regulation, international legal frameworks may constitute a major source of regulation. Currently, existing frameworks being reviewed for their relevance and efficiency under conditions of state fragility, and new frameworks are being debated, developed and tested. The main drivers of this development have been the wars on drugs and terror, and the awareness of how certain economic activities – in particular the extractive industries – have worked to nurture and sustain armed conflict.

The field is still fragmented and weakly developed. It mostly relies on voluntary compliance and self-regulation, but is moving towards more mandatory forms of regulation. The complete list of relevant international instruments is lengthy and diverse depending on the specific activities.<sup>16</sup> The main instruments of general relevance are as follows:

- The Universal Declaration on Human Rights<sup>17</sup>
- The International Humanitarian Law<sup>18</sup>
- UN Convention against Corruption<sup>19</sup>
- UN Convention against Transnational Organized Crime<sup>20</sup>
- UN Convention for the Suppression of the Financing of Terrorism<sup>21</sup>
- OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions<sup>22</sup>
- Financial Action Task Force on Money Laundering: Forty Recommendations on Money Laundering.<sup>23</sup>

Apart from these, a plethora of ethical frameworks have emerged from business associations and public-private partnerships, such as the Extractive Industries Transparency Initiative (EITI). EITI includes extractive industries, governments from Western and third world countries, and NGOs. The aim is to foster transparency of revenues around the world, reduce incentives for companies to free-ride, and reduce incentives for governments to use divide-and-rule tactics in relation to companies seeking concessions.

Within the field of regulation of business in conflict zones,<sup>24</sup> different instruments are being reviewed and developed in the wake of the debate around “blood diamonds” and other conflict-related goods:

<sup>16</sup> See OECD 2006c for an exhaustive list.

<sup>17</sup> For their relevance and application for private companies, see *Voluntary Principles* and DIHR

<sup>18</sup> In cases of armed conflict, IHL is relevant in regard to the provision of security for companies and organizations. See Ishøj 2004 for a field-guide to IHL

<sup>19</sup> See [http://www.unodc.org/pdf/crime/convention\\_corruption/signing/Convention-e.pdf](http://www.unodc.org/pdf/crime/convention_corruption/signing/Convention-e.pdf) .

<sup>20</sup> See [http://www.unodc.org/unodc/crime\\_cicp\\_convention.html](http://www.unodc.org/unodc/crime_cicp_convention.html)

<sup>21</sup> See [http://www.unodc.org/unodc/resolution\\_2000-02-25\\_1.html](http://www.unodc.org/unodc/resolution_2000-02-25_1.html)

<sup>22</sup> The convention requires that states criminalize bribery ([www.oecd.org/daf/nocorruption](http://www.oecd.org/daf/nocorruption))

<sup>23</sup> FATF encourages states to develop legislation that obligates their companies to adhere to international performance criteria, see [www.fatf-gafi.org/standards](http://www.fatf-gafi.org/standards)

<sup>24</sup> See Ballentine and Nitzschke 2005

- UN sanctions, with positive but also negative effects in terms of putting extra burdens on frontier states, giving incentives to sanction busters, and removing livelihoods of many poor people involved in extraction and trade without promoting alternatives.<sup>25</sup>
- Naming and shaming campaigns from UN expert panels, which only works in regard to companies and organizations that are concerned with their reputation and perceived legitimacy.
- Commodity certification, such as the Kimberly Process Certification Scheme that promises to make it difficult for predatory groups to capture rough diamonds while preserving economic benefits for responsible extraction and trade,

The main problems of regulating economic activities in fragile and conflict ridden states are related to:

- The lack of a level playing field. State-owned and private companies from some countries are less concerned with sanctions, public image and adherence to international standards than companies and organizations from other parts of the world.<sup>26</sup>
- The lack of a policy home and the involvement of a huge number of international and governmental actors.
- Economic and practical challenges of monitoring.
- The relatively high costs of participation for smaller companies.
- Concerns that private companies are taking over state responsibilities
- The fact that international regulation by and large is less effective when it cannot rely on states for implementation and enforcement.

## 5. Dilemmas of state building

The establishment of effective and legitimate state institutions is increasingly seen as the solution to the problems posed by state fragility. To further - or at the very least refrain from damaging - state building processes, guidelines for working under conditions of fragile statehood recommend companies and organizations to:<sup>27</sup>

- Avoid undermining state institutions (eg. bypassing national budget processes or setting up parallel systems).
- Promote institutional reform and rule-based practices whenever possible. Even private companies have an interest in promoting long term stability and predictability which may lead to engagement beyond the immediate interests of optimizing profits. Guidelines recommend denouncing Human Rights abuses, promoting transparency, denouncing illegal transactions, avoiding bribery, and advocating control of detrimental behavior of private and public agents.
- Support the development of civil society institutions, such as chambers of commerce, professional and business associations, unions, etcetera
- Forge broad alliances with local, regional or international civil society organizations and companies to reduce the risk of reprisals towards employees, assets, or interest in case of opposing government or non-state armed groups.
- Leave decisions on the country's future to host governments and their populations; in case central government is too weak, organizations and companies may seek alignment with regional or sectoral stakeholders. In the security sector, for example, it is impossible to imagine a sustainable reform without recognizing and incorporating the contributions to everyday security by non-state entities.<sup>28</sup>

<sup>25</sup> For an overview of UN sanctions and ways of making them 'smarter' - i.e. more targeted and effective - see Wallensteen et al 2003.

<sup>26</sup> See e.g. Patey 2006

<sup>27</sup> See OECD 2006c

<sup>28</sup> See for example this argument in Scheye and Andersen in Andersen et al. (eds) 2007

- Coordinate closely with national and international actors if embarking on state-building initiatives. Considering that the capacity for reform is limited, prioritization is called for.

### *Dilemmas*

For companies and organizations working in fragile states, the state building agenda presents a number of dilemmas. Foremost is the dilemma between working with central or local government. Although easier to get access to, support for local government can strengthen centrifugal forces and put further strains on weak central governments; this at least, is what central governments may fear. Similarly, companies and organizations may encounter a dilemma between the urge to get involved with local actors for acceptance and information, and the risks of further politicization of image or activities by association.

The lack of rule-based frameworks will often compel companies and organizations to forge close informal relations to officials in administration or security forces in order to effectively protect and enhance operations and assets. This, however, further reduces the checks on the powers of political actors and state officials. In practice it may be a dilemma of having to choose between lesser evils, for example in regard to security provision where armed groups seldom have a clean human rights record.

First and foremost, organizations and companies have to recognize that their presence have political effects no matter what they do. Being aware of these political effects and the options for dealing with them is probably the most important aspect of learning to work in areas of fragile statehood.

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