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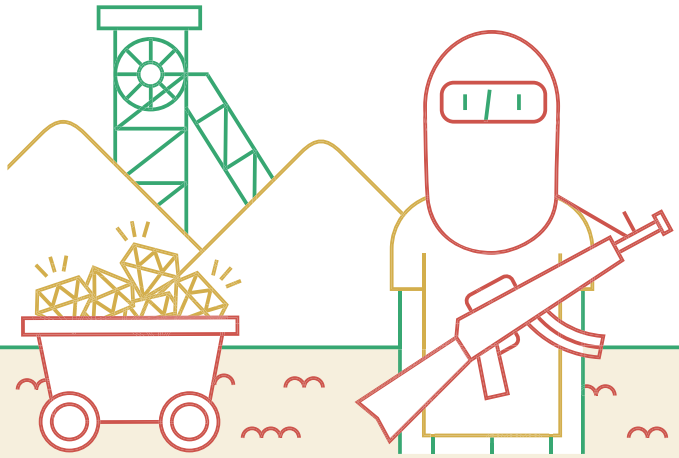
RESPONSIBLE BUSINESS IN CONFLICT-AFFECTED OR HIGH-RISK AREAS

Q&A for companies



Companies doing business in conflict-affected areas face a **higher risk to cause, contribute or be linked to adverse human rights impacts and to violate international humanitarian law.** The most severe human rights abuses involving business occur in conflicts around the control of territory or resources, or the legitimacy of a government. In these contexts, states often fail to deliver on their duty to protect human rights, and it is even more important that companies meet their responsibility to respect human rights.

How can companies meet their responsibility to respect human rights when doing business in or with conflict-affected or high-risk areas?
This Q&A gives an overview of what companies need to know about conducting heightened human rights due diligence (HRDD) and operating in a conflict-sensitive manner. It is based on the UN Guiding Principles on Business and Human Rights (UNGPs), which define the key principles of how companies are expected to respect human rights.

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1. What is a conflict-affected or high-risk area?

Because local contexts are constantly evolving, it is impossible to provide a definitive list based on which companies can identify conflict-affected[1] and/or high-risk areas. Among the **characteristics and signs to watch out for** are contexts where:

- **Public security** is compromised, armed conflicts and mass violence occur, with military and/or non-state armed actors occupying or fighting to control territory.
- **Human rights violations** are endemic, or mass atrocities take place and are committed by state authorities and/or non-state armed groups.
- **Rule of law** is ineffective or non-existent, political-administrative and governance systems are weak, the provision of public goods and services is poor, corruption and bribery are endemic, and organised (transnational) criminality is high.
- There are high numbers of **internally displaced persons,** refugees, and other groups of vulnerable and marginalised people, with high occurrences of gender-based violence, child labour and forced labour.
- **Fragility and instability** prevail, associated with economic, political, social, environmental and security-related factors.
- **Legacies of past conflicts** (e.g., civil wars, oppressive authoritarian regimes), coupled with religious, ethnic, or other endemic root causes, lead to lingering tensions and conflicts.
- **Impacts of climate change** and other environmental factors increase competition around accessing and using natural resources (e.g., water, land, forest areas and places where clean energy minerals are found).

There are some **indicators and guidance** that can be used to evaluate whether a specific area is conflict-affected and/or high-risk[2]. Heightened HRDD is recommended whenever an area shows respective characteristics and signs.

1 International humanitarian law (IHL) defines international and non-international armed conflicts: (a) an international armed conflict exists whenever there is resort to armed force between states; (b) a non-international armed conflict exists when two cumulative criteria are fulfilled: first, at least one side to the conflict is an organized armed group. Second, there must be "protracted armed violence" and a certain threshold of violence must be reached in terms of conflict intensity.

2 For example, the indicative, non-exhaustive list of CAHRAs issued under EU Regulation 2017/82, the OECD states of fragility list or the interactive RULAC listing of ongoing international and non-international armed conflicts.

2. In what ways can companies be connected to such areas?

Companies can be connected to conflict-affected and high-risk areas **along their full value chain.** For example, because they:

Source materials from such areas, including when the company cannot trace where the materials originate from.

Have **direct or indirect suppliers or business partners** from such areas, providing goods or services that are linked to the company.

Invest in these areas.

Have **own operations,** incl. joint ventures, in these areas.

Have **clients** in these areas.

Dispose unused goods or waste in these areas.

To ensure responsible business conduct with regards to conflict-affected areas, companies first need to **identify if and how they are connected to these areas.** Staff engaged in the activities listed above should be sensitized on the corporate responsibility to respect human rights and be tasked to identify company links to conflict-affected or high-risk areas on an ongoing basis.

3. How are businesses required to operate in connection to conflict-affected or high-risk areas?

Companies that are connected to conflict-affected or high-risk areas are required to **conduct heightened HRDD.** Heightened HRDD goes beyond "basic" HRDD[3] in that it seeks to alert specifically to the human rights risks that arise from doing business in such areas. It requires that companies not only assess their exposure to human rights risks and impacts, but also their (potential) **direct and indirect impacts on conflict dynamics.** By conducting heightened HRDD as an ongoing process, companies are well equipped to continuously recognise, prevent and mitigate human rights risks in conflict-affected or high-risk areas.

Companies operating in the context of an armed conflict should also be aware of how their **activities may be affected by international humanitarian law (IHL).** States have obligations under IHL to ensure that such companies and their personnel respect relevant rules of IHL. IHL can also apply directly to individual personnel, for instance when their activities become linked to the conduct of hostilities. Staff and managers involved in the provision of goods, services or other support to a party to the conflict, even if company assets or personnel are not physically in the conflict area, can for example have obligations under IHL. Companies operating in such circumstances need to assess and avoid the risk that they become involved in violations of IHL.

Some countries, including Switzerland and EU member states, have recently introduced **laws and regulations** that require companies to conduct HRDD if they are invested, operate in, or source production inputs from conflict-affected or high-risk areas.

Companies' role in conflicts:

Companies are not neutral actors operating in isolation of conflict dynamics. Instead, when operating within conflict-affected areas, companies impact the incentives and power structures that underpin political, economic, or social tensions. Through their actions and behaviours, companies may be able to influence conflict dynamics in ways that help to mitigate or contain conflicts and human rights abuses. Thus, companies' impacts on the risk of human rights abuses occurring can be negative or positive, direct or indirect, intended or unintended.

3 How to implement the basic HRDD process is outlined e.g. in focusright's practical guide for the implementation of human rights due diligence. More information about the heightened HRDD process can be found in UNDP's Guide on Heightened Human Rights Due Diligence for Business in Conflict-Affected Contexts.

4. How can companies recognize human rights risks in these contexts?

Heightened HRDD serves companies to recognise, counter and manage human rights risks in conflict-affected areas. In such contexts, severe human rights abuses may arise because of the way companies operate, the products and services they provide, and/or the nature of the business relationships they entertain.

Examples of activities through which companies can recognise human rights risks in such contexts include:

- Drawing on **publicly available or purchasable resources** on the dynamics of conflict and human rights situations.
- Making use of **specialist advisory services** to appraise themselves of their risk exposure in specific contexts.
- **Engaging with local communities and other stakeholders,** which is essential to the heightened HRDD process and the identification of risks.
- Drawing on **conflict sensitivity analyses** to gain a deeper understanding of the root causes and the drivers and triggers of conflicts. Such analyses are typically provided by peace and specialist advisory organisations.
- Offering **internal training and awareness raising activities** to ensure that company staff acquire the knowledge and skills needed to identify and address human rights risks.

5. What are the most salient human rights risks in such contexts?

Among the most salient human rights risks that companies need to have on the radar in conflict-affected areas are:

- Abuses carried out **by public and private security forces,** that are linked to protecting and safeguarding business investments. Such abuses may include unlawful detentions, physical abuse, intimidations, sexual harassments, forced disappearance and kidnapping of persons linked to the business. Especially at risk are persons who dare to protest or express grievances against a company's business activities or state-granted rights to land and other natural resources, and those who alert to or defend the rights of such persons (i.e., journalists, human rights defenders, community activists).
- Incidents of **gender-based violence, child labour,** working conditions that meet the criteria of **forced labour, and human trafficking.**
- Unlawful or forced **land expropriations** and corporate infringements on **land or land user rights** that affect human rights, e.g. access to water.
- **Corrupt business dealings and bribing government** officials and non-state armed groups, which bears the risk of potentially abetting or financing terrorist activities[4], e.g. to maintain the safety of operations or employees.

As part of heightened HRDD, companies should closely monitor the occurrence of these and other human rights-related risks.

4 For example, as it occurred in the case of Lafarge in Syria, which pleaded guilty to supporting the Islamic State and other terror groups after the war broke out in 2011.

6. What does it mean to do business in a conflict-sensitive manner?

Doing business in a conflict-sensitive manner means that a company not only considers the impacts of the business on external stakeholders, but also understands **how the business interacts with conflict drivers and triggers** in areas where conflicts are ongoing or where there is a heightened risk that the present situation may evolve into conflict.

For example, a conflict-sensitive approach to business means:

Conflict sensitivity:

A thorough analysis of the root causes, drivers and triggers of ongoing and latent conflicts and instability, and how these factors interact with business operations and relationships. Conducting business in a conflict-sensitive manner means acting upon the in-depth understanding of the root causes, drivers, and triggers of conflicts to prevent, minimise and mitigate negative impacts of the business on the conflict dynamics.

a **Assess** which stakeholders are likely to gain from the presence of business operations (or the provision of goods and services) and which may lose out.

b **Evaluate** whether respective trade-offs increase or decrease the risk of conflict and human rights violations.

c **Act** upon this understanding, seeking to minimise any (direct and indirect) impacts of the company on the drivers and triggers of conflict.

7. How can companies recognize an increasing risk level in a specific context?

As part of heightened HRDD, companies need to closely and continuously monitor if and how the risk level in a specific context is changing. To do so, companies should have in place a **monitoring system that captures early warning signs** and changes to these.

A monitoring system might draw information from **screening relevant news and reports** (for example published on business and human rights platforms, by the UN and other relevant international organisations or provided by relevant policy and research entities/think tanks), **engaging with local stakeholders,** and **keeping track of relevant indicators and data** (see list in Q1). It is important that due diligence is embedded in the company's internal risk management system and communication, and that there is **clarity on who is responsible** to respond, act and coordinate with internal and external stakeholders in case of significant changes in the risk level.

8. Who in the company should lead and be involved in the heightened HRDD process?

As with the basic HRDD process, the primary responsibility for heightened HRDD lies with the company's **Executive Board** setting the strategic direction, providing the oversight, and guiding the development and the operation of appropriate due diligence systems. At the same time, **operational staff across different headquarter and asset-based functions** and especially those working on the ground in conflict-affected and high-risk areas need to be appropriately skilled and resourced to carry out and deliver the heighted HRDD process. Key functions to involve may include business continuity/risk management, operations, procurement, health, safety and security, social performance and community liaison, CSR, sustainability, and public affairs/governmental relations.

9. Should companies draw in external support to conduct heightened HRDD?

Companies can draw in external advisors to conduct heightened HRDD assessments as well as conflict sensitivity analyses and develop respective risk management plans that underpin the HRDD process. However, it is important for companies to **develop their own in-house expertise** to drive and substantiate the HRDD process(es) at the Group and country or regional level.

A common fallacy is to commission external advisors to conduct human rights impact assessments (HRIA) but fail to use and **integrate the findings and identified risks into an iterative HRDD process** and into the systems and decision-making processes of respective management and operational functions at the headquarter and the in-country asset level.

10. What considerations should inform a company whether to stay in or exit a conflict-affected area?

When deciding whether to stay in or exit a conflict-affected area, companies should consider **potential harm to employees and customers,** e.g., how it will affect their health and safety.
Companies should also consider if its **goods and services or revenue payments** (e.g., taxes) are used to **benefit parties** in an armed conflict. It must be avoided that the goods and services a company provides are weaponised, provide a strategic advantage to one of the parties, or can be used as a means of oppression in the conflict (e.g., used for surveillance, espionage).

Furthermore, it is argued that companies producing goods and services that contribute to the **fulfilment of the local population's human rights** (e.g., access to essential foods, pharmaceutical supplies) can make a case for staying. However, this does not apply universally but requires case-by-case assessment.

Important

In essence, if, when and how to exit a conflict-affected context responsibly is highly **dependent on local circumstances, engagement, and alternatives,** for example whether and how many other national and/or local companies provide essential goods and services to the local population.

CHECKLIST Key actions for companies

- [ ] Identify and continuously **monitor the signs that indicate whether an area** the company is connected to **is conflict-affected or high-risk.** Track changes in the conflict dynamics and the company's exposure to human rights risks.
- [ ] Understand the **applicability of international humanitarian law (IHL)** in a given context, as well as the company's rights and obligations under IHL when applicable.
- [ ] **Conduct a heightened HRDD process** to proactively identify and address salient human rights risks that (may) arise from doing business in conflict-affected areas.
- [ ] Conduct and integrate **conflict sensitivity analyses** into the heightened HRDD process to understand how the company's operations and/or business relationships influence conflict dynamics and act upon this understanding.
- [ ] Assign **responsibility for the heightened HRDD process to staff at all relevant levels,** dedicate the necessary resources and build internal capacity to effectively deliver on this process.
- [ ] Identify the relevant **internal and external stakeholders and expertise needed** for heightened HRDD, including at local level, and establish periodic stakeholder engagement processes and dialogue.

Further information

- UNDP & UN Working Group on Business and Human Rights (2022): Heightened Human Rights Due Diligence for Business in Conflict-Affected Contexts. A Guide.
- DCAF & ICRC (2022): Addressing Security and Human Rights Challenges in Complex Environments – Toolkit for companies.
- Voluntary Principles Initiative (2022): Conflict Analysis Tool for Companies
- BSR (2021): Business in Conflict-Affected and High-Risk Contexts
- International Code of Conduct for Private Security Service Providers: About us

Imprint

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