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Heightened Human Rights Due Diligence for Business in Conflict-Affected Contexts

A Guide

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The Working Group on the issue of human rights and transnational corporations and other business enterprises (also referred to as the Working Group on Business and Human Rights) was established by the Human Rights Council in 2011 by resolution 17/4. The Council renewed the Working Group's mandate in 2014 (resolution 26/22), 2017 (resolution 35/7) and 2020 (resolution 44/15). As set out in resolution 17/4, the Working Group has a mandate to promote, disseminate and implement the Guiding Principles on Business and Human Rights. The group is also mandated to exchange and promote good practices and lessons learned on the implementation of the Guiding Principles, and to assess and make recommendations thereon.

For further information on the UN Working Group including its thematic reports, guidance documents and its focused work on business, human rights and conflict, visit the Working Group's website here.

Cover photo: A man with a shopping cart walks in front of a destroyed marketplace in Makariv, Ukraine.

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Page 6 – Pierre Holtz | UNICEF CAR | www.hdptcar.net

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Preferred citation

United Nations Development Programme (2022). *Heightened Human Rights Due Diligence for business in conflict-affected contexts; A Guide*. New York, United States of America.

FOREWORD

Heightened Human Rights Due Diligence for Business in Conflict-Affected Contexts: A Guide

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Prevention and recovery in crisis settings require a 'whole of society' approach. Stakeholders of every kind have a role to play. Especially in conflict arenas, coordinated action is essential to maintaining peace and stability. And as recent outbreaks have shown, the private sector and business can exert substantial influence to either fuel or ease tensions.

From Afghanistan to Myanmar, Mali, Sudan, Ukraine and beyond, businesses have influenced events in a variety of ways. From suspended operations and hiring strategies to accusations of exploitation and corruption, some in the private sector have displayed a commitment to peacebuilding while others have been criticized for placing profits over people.

With this powerful influence in mind UNDP and the UN Working Group on Business and Human Rights developed this practical roadmap for action: Heightened Human Rights Due Diligence for Business in Conflict-Affected Contexts: A Guide.

This Guide aims to provide the business community, governments, civil society, and other stakeholders with a better understanding of the practical measures that should be taken to ensure responsible engagement from business in conflict-affected areas.

The Guide **provides parameters for business to design and implement effective due diligence measures in contexts affected by armed conflicts and other situations of widespread violence**. This Guide is based on the United Nations Guiding Principles on Business and Human Rights (UNGPs), the authoritative, global framework guiding States and companies in preventing and addressing adverse business-related human rights impacts.

Accordingly, the Guide seeks to unpack the concept of heightened human rights due diligence and identify the warning signs and triggers for businesses to act. The Guide recognizes that businesses invariably impact the dynamics of a conflict and that they therefore need to adopt conflict-sensitive practices to account for, and mitigate, these impacts. It sets out the elements of heightened human rights due diligence, which require businesses to identify and address their adverse impacts on human rights as well as on conflicts.

This collaboration between UNDP and the UN Working Group extends our cooperation on implementing the UN Guiding Principles on Business and Human Rights to conflict-affected areas, while introducing a new dimension to the support UNDP provides to crisis contexts.

Ultimately, UNDP and the UN Working Group hope this publication provides a reliable tool to ensure businesses play a constructive role in sustaining peace, for the realization of Agenda 2030, and above all, the preservation of human rights in conflict-affected areas.

Contents

I.

Introduction

Photo: A child in a rebel camp in the north-eastern Central African Republic.

The risk of companies becoming involved in grave human rights abuses is particularly high in contexts affected by armed **conflicts and other situations of widespread violence**. These situations differ widely, involving state and non-state actors (such as armies or guerilla groups), varying ambitions (such as obtaining territory or resources) and underlying motivations (such as imposing an ideology or gaining a profit). While it is impossible to provide definitive answers to respond to the multiple challenges of operating responsibly in these different situations, this Guide **provides parameters to design, update and implement heightened corporate human rights due diligence in contexts affected by armed conflicts and other situations of widespread violence**. This Guide is based on the United Nations Guiding Principles on Business and Human Rights (UNGPs)[1], the authoritative, global framework guiding States and companies in preventing and addressing adverse business-related human rights impacts.

Instead of reinventing the wheel, this Guide is aligned with the expectations of the UNGPs and brings together elements of existing materials, including the work of the UN Working Group on Business and Human Rights,[2] **connecting these dots to allow businesses to develop effective systems of heightened human rights due diligence**.

By providing clear information about what should be expected of companies in preventing and addressing human rights impacts in contexts affected by armed conflicts and other situations of widespread violence, this Guide can also be of interest to other stakeholders engaged either in the implementation of the UNGPs or in the peace and security agenda, such as officials and policymakers at international, regional or national levels, as well as civil society organizations, local communities, or investors. Member-based initiatives may also benefit from a clear reference in reviewing the extent to which their own codes and the expectations of their members align with heightened human rights due diligence.

1 UN Document A/HRC/17/31, unanimously endorsed by Human Rights Council resolution 17/4. See www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf.

2 In particular the OHCHR *Report on Business, Human Rights and Conflict-Affected Regions: Towards Heightened Action*, A/75/212, (21 July 2020).

II.

If you read only one thing

A. Why heightened human rights due diligence?

The Guiding Principles do not specifically mention a different type of due diligence for contexts affected by armed conflicts and other situations of widespread violence, but they are **built around a concept of proportionality: the higher the risk, the more complex the processes**. Hence, "because the risk of gross human rights abuses is heightened in conflict-affected areas",[3] action by States and due diligence by business should be heightened accordingly.[4] **Businesses in particular are required to conduct a 'heightened' version of human rights due diligence**.

B. Where to conduct heightened human rights due diligence?

Although there is no universal definition for the term "conflict-affected area" this Guide uses the term to describe a variety of contexts in which high levels of violence prevail. This includes, but is not limited to, geographic areas, regions, or countries that experience various levels of armed conflict or widespread violence including inter-state or civil war, armed insurrections, violent extremism or other forms of organized violence. At times, conflict can be quite localized and focused on inter-community violence, but nonetheless of a pervasive or ongoing nature. In post-conflict settings, it may refer to the recurrence of violent conflict or relate to contexts in which there are mounting concerns over human rights violations or widespread political and social instability. In such settings, and situations involving transitional justice, heightened human rights due diligence is an important tool to prevent recurrence of gross human rights abuses. A core pillar of transitional justice is a guarantee of non-recurrence or repetition of such abuses, so companies need to focus on this objective.[5]

3 Guiding principle 7.

4 See Report of the Working Group, *Towards Heightened Action*, UN doc A/75/212, 21 July 2020.

5 Report of the UN Working Group on Business and Human Rights. Report to the UN Human Rights Council. Implementing the third pillar: lessons from transitional justice guidance, A/HRC/50/40/Add.4 (June 8, 2022).

These contexts have **three distinctive features**:

First, conflict will always create adverse negative impacts on human rights. Therefore, causing, contributing or being directly linked to armed conflict and other situations of widespread violence always means causing, contributing or being directly linked to human rights abuses.

Second, business activities in a conflict-affected area will never be 'neutral' and without impact. Even if a business does not take a side in the conflict and strives for impartiality, its activities will necessarily influence conflict dynamics,[6] for example, a business using public or private security owing to the presence of conflict. Even if such security forces behave exemplarily, their presence affects the local context and may lead to an escalation of violence. Hiring practices fully compliant in terms of human rights, or the provision of specific products or services, might fuel a perception of a specific group having advantage over another, and lead to an escalation of grievances and violence. A simple land acquisition may fuel conflict when it is predicated on the prior dispossession or forced eviction of communities.

Third, business should respect the standards of international humanitarian law in addition to internationally agreed human rights.

The practical consequences of this overall situation are that in order for a business to know and show that it respects human rights in conflict contexts:

- **Business needs to identify and assess not only actual or potential adverse human rights impacts, but also actual or potential adverse impacts on conflict** that the company may cause or contribute to through its own activities, or that may be directly linked to its operations, products or services.
- The **imposition of sanctions may be a useful indicator, but not a substitute**, for a business to exercise heightened due diligence.
- Because contexts are particularly dynamic in armed conflicts and other situations of widespread violence, **business should carry out heightened due diligence on an ongoing basis** and ensure it updates its assessment periodically. Robust stakeholder engagement and grievance management systems are key tools to accomplish this.

C. What is specific about heightened human rights due diligence?

Traditional human rights due diligence helps businesses to know and show how to avoid or minimize human rights risks to people. Heightened human rights due diligence strengthens the understanding of the context where businesses operate and ensures that their activities do not contribute to violence by identifying flash points, potential triggers or the forces that are driving the conflict. For businesses, the nature of their business relationships in conflict settings matter. Conflict actors often are connected to, work for, invest in, or operate businesses. Therefore, it is critical for businesses to understand whether business partners are somehow linked to past or current conflicts.

In short, heightened human rights due diligence means identifying potential and actual impacts on people (human rights) as well as on the context (conflict).

6 See, e.g., Mary B. Anderson and Luc Zandvliet, *Getting it Right: Making Corporate-Community Relations Work*, Greenleaf Publishing, (2009).

D. What to do

What to do	How to do it
Understand the context in which you operate	Carry out a conflict analysis and update it regularly
Understand the interaction between your business activities and the context	Link the conflict analysis with the cycle of your business activities
Understand your impact on human rights	Carry out a human rights impact assessment
Use this understanding to avoid or mitigate negative impacts	Plan, implement, monitor and evaluate your business activities taking issues identified by heightened human rights due diligence into account and design the business activities accordingly

E. When to do it

Any Yeses?
Exercise Heightened Due Diligence!

- Is widespread "non-conventional" armed violence taking place?
- Is there an international armed conflict between two states (regardless of intensity)?
- Is there an internal armed conflict?
- Is there a military occupation?
- Are gross human rights violations (genocide, crime against humanity, war crimes) taking place?
- Are there early warning signals of any of the above?

III.

Scoping heightened human rights due diligence

Photo: In conflict zones, workers' rights and livelihoods are under threat not simply because they operate amid dangerous conditions, but also because some armed groups try to use natural resources as a source of financing for the conflict.

A. From human rights due diligence to heightened human rights due diligence

Key takeaways from section III

Heightened human rights due diligence is built around the concept of proportionality: the higher the risk, the more complex the processes.

As the risk of gross human rights abuses is heightened in conflict-affected contexts, businesses should carry out heightened human rights due diligence: identify and assess not only their actual or potential adverse impacts on human rights, but also their actual or potential adverse impacts on conflict.

As with 'traditional' human rights due diligence, the heightened version is based on four processes: identifying and assessing adverse impacts of a business on conflict and human rights, acting to cease or prevent them, and tracking and communicating the measures taken.

In situations of armed conflict, businesses should consider at a minimum international human rights law and international humanitarian law.

Human rights due diligence[7] is the cornerstone of the corporate responsibility to respect human rights. It is how companies proactively manage potential and actual risks of adverse impacts on the rights of people.

7 See Office of the High Commissioner for Human Rights (OHCHR), *Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework*, Guiding Principles 17–21, www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf OHCHR, The Corporate Responsibility to Respect Human Rights: An Interpretive Guide, 2012, www.ohchr.org/documents/publications/hr.pub.12.2_en.pdf

This responsibility does not specifically entail a different type of due diligence for conflict-affected regions, but it is **built around a concept of proportionality: the higher the risk, the more complex the processes**. Hence, "because the risk of gross human rights abuses is heightened in conflict-affected areas",[8] action by States and due diligence by business should be heightened accordingly.[9] Businesses operating in such contexts are required to conduct a 'heightened' version of human rights due diligence.

Heightened human rights due diligence strengthens the understanding of the context where businesses operate and ensures that their activities do not contribute to adverse human rights impacts by avoiding or minimizing the risk of business activities sparking or supporting violence.

The practical consequence is that for a business to know and show that it respects human rights in conflict-affected contexts, it needs to identify and assess not only actual or potential adverse human rights impacts, but also actual or potential adverse impacts on conflict that the company may cause or contribute to through its own activities, or that may be directly linked to its operations, products or services.

Similarly to 'traditional' human rights due diligence processes, heightened human rights due diligence **involves a series of interrelated processes, always including the following four core components**:

- **Identifying and assessing** actual or potential adverse conflict and human rights impacts that the business enterprise may cause or contribute to through its own activities, or which may be directly linked to its operations, products, or services through its business relationships.
- **Acting** on the findings from impact assessments across relevant functions and company processes. More specifically, if the business is causing or at risk of causing the impact, it should take steps to cease or prevent it, including not getting involved at all in situations of pre-investment; if it is contributing or at risk of contributing to the impact, it should take steps to cease or prevent its contribution and use leverage to mitigate the remaining impact; if it has not contributed to the impact, but that impact is actually or potentially directly linked to its operations, products or services through its business relationships, it should take steps to gain and use leverage to prevent and mitigate the impact, to the greatest extent possible.
- **Tracking** the effectiveness of measures and processes to address adverse conflict and human rights risks or impacts to understand if they are working.
- **Communicating** on how risks or impacts are being addressed and showing stakeholders (in particular, affected stakeholders) that there are adequate policies and processes in place to implement respect for human rights in practice.

8 Guiding principle 7.

9 See Report of the Working Group, *Towards Heightened Action*, UN doc A/75/212, 21 July 2020.

B. Applicable standards

The UNGPs clearly specify that business may need to consider additional standards in addition to human rights depending on circumstances, in particular international humanitarian law in situations of armed conflict.[10]

International human rights and international humanitarian law are similar but distinct bodies of law. International human rights law,[11] applies in all situations (in times of peace and conflict), but some rights may be temporarily suspended during states of emergency and armed conflict. Conversely, international humanitarian law is applicable only in armed conflicts, but no derogations are permitted from it.

As mentioned by the International Committee of the Red Cross (ICRC), international humanitarian law will apply to business activities when they are linked to hostilities (for instance, if a company provides support to a party to the conflict or if some staff of the enterprise are members of an armed group of a party to the conflict). It provides both protection to business personnel and assets during armed conflict but also imposes obligations on managers and staff not to breach international humanitarian law and provides for risk of criminal or civil liability if they do so either as direct perpetrators or as possible accomplices to such breaches.[12] Businesses therefore need to familiarize themselves with international humanitarian law.

International humanitarian law also provides useful guidance to business by precisely describing a number of situations or actions to limit the effects of armed conflict. For example, in situations of military occupation, business responsibilities mirror the obligations of the Occupying Power, including avoiding causing, contributing to, or being directly linked to:

- The privation of the basic needs of the occupied population; for example, implementing discriminatory destruction of essential services such as electricity.
- Seizing of private property, for example using land acquired by the occupying power by expelling local populations.
- The exploitation of the resources of the territory not for the benefit and without the consent of the local population including providing support to the exploitation of natural resources by the occupying power in the occupied territory.
- The transfer of the occupying power's own population into the occupied territory or forcible transfer the protected population, while allowing for temporary evacuation for military operations, for example supporting settlements of occupying power's nationals in the occupied territory.
- The destruction of property without absolutely necessary military reasons.

10 See commentary to Guiding Principle 12.

11 UNGP 12: "An authoritative list of the core internationally recognized human rights is contained in the International Bill of Human Rights (consisting of the Universal Declaration of Human Rights and the main instruments through which it has been codified: the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights), coupled with the principles concerning fundamental rights in the eight ILO core conventions as set out in the Declaration on Fundamental Principles and Rights at Work. These are the benchmarks against which other social actors assess the human rights impacts of business enterprises. The responsibility of business enterprises to respect human rights is distinct from issues of legal liability and enforcement, which remain defined largely by national law provisions in relevant jurisdictions. Depending on circumstances, business enterprises may need to consider additional standards. For instance, enterprises should respect the human rights of individuals belonging to specific groups or populations that require particular attention, where they may have adverse human rights impacts on them. In this connection, United Nations instruments have elaborated further on the rights of indigenous peoples; women; national or ethnic, religious and linguistic minorities; children; persons with disabilities; and migrant workers and their families."

12 See ICRC *Business and International Humanitarian Law*, 2006 and the update by the Australian Red Cross and RMIT University, Australian Red Cross, *Doing Responsible Business in Armed Conflict: Risks, Rights and Responsibilities*, 2020. See also the International Court of Justice Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory of 9 July 2004. (A/ES-10/273 and Corr.1, para. 78.

IV.

Exercising heightened human rights due diligence

Photo: Public unrest can be a red flag for carrying out heightened human rights due diligence.

Photo caption here

A. Triggers

Key takeaways from section IV.A

Heightened human rights due diligence is required in situations ranging from traditional forms of armed conflict to other situations of widespread violence. (For more see IV.A.I).

If a business is uncertain whether a situation requires heightened human rights due diligence, it should consider a simple rule of thumb: if in doubt, carry it out.

Heightened due diligence is required in conflict-affected situations, ranging from traditional forms of armed conflict to other situations of widespread violence. This includes contexts ranging from traditional forms of armed conflict opposing States to 'non-conventional armed violence'.

The vagueness of the definition of contexts affected by armed conflicts and other situations of widespread violence should not constitute a major obstacle for businesses wishing to act responsibly. The fundamental message of the Guiding Principles is that due diligence and heightened due diligence are operational concepts which should be read "in terms of their objective of enhancing standards and practices with regard to business and human rights so as to achieve tangible results for affected individuals and communities."[13]

1. From conventional armed conflicts to unconventional non-state actors

a) Conventional armed conflict

Heightened human rights due diligence is required in conflict-affected situations. There is no universally agreed definition of an 'armed conflict' under international humanitarian law. Instead, it distinguishes between international armed conflicts and non-international armed conflicts.[14]

13 See OHCHR, Guiding Principles.

14 Common Article 3 of the four 1949 Geneva Conventions. Such conflicts are commonly referred to as. Military occupations are a particular form of international armed conflict.

The International Criminal Tribunal for the former Yugoslavia has, however, offered a **widely accepted and operational definition that should guide business analysis**: "an armed conflict exists whenever there is a resort to armed force between States or protracted armed violence between governmental authorities and organized armed groups or between such groups within a State".[15]

In other words, there is an international armed conflict whenever there is a resort to armed force between states, regardless of the intensity of such force. In contrast, for a non-international armed conflict to exist, two cumulative criteria must be fulfilled. First, there must be 'protracted armed violence' in the sense that a certain threshold of armed violence has been reached in terms of intensity (which includes the number, duration, and intensity of individual confrontations; the type of weapons and other military equipment used; the number and caliber of munitions fired; the number of persons and types of forces partaking in the fighting; the number of casualties; the extent of material destruction, and the number of civilians fleeing combat zone; etc.). Second, at least one side to the conflict is an organized armed group.

b) Military occupation

Armed conflict does not necessitate active fighting. Military occupation is also considered a type of armed conflict. As with all types of armed conflict, the identification of a situation of occupation is determined by facts and not the subjective interpretation of the parties involved nor on the lawfulness of the military intervention which leads to the occupation.

A territory is under the 'authority' of a foreign army if it exerts 'effective control'. The effective control test consists of three elements:

- Armed forces of a foreign state are physically present without the consent of the effective local government in place at the time of the invasion.
- The local sovereign is unable to exercise its authority due to the presence of foreign forces.
- The occupying forces impose their own authority over the territory.

c) Mass atrocities

If armed conflict is the most obvious trigger for heightened due diligence, business should also apply heightened due diligence to other situations (including allegations) where gross human rights violations may take place, including, for example, genocide and crimes against humanity, which can occur during peacetime. The UN has developed a framework of analysis for the prevention of atrocity crimes.[16] While this framework was designed for the prevention of international crimes such as genocide, crimes against humanity and war crimes, the set of risk factors and indicators identified is relevant to recognizing when businesses (and states) should raise their level of due diligence.

15 ICTY, *The Prosecutor v. Duško Tadić*, IT-94-1-AR72, Appeals Chamber, Decision, 2 October 1995.

16 See UN, *Framework of Analysis for Atrocity Crimes: A tool for prevention*, 2014

d) Non-State actors (tribes, thugs, and terrorists)

Business should also pay specific attention to new forms of widespread violence distinct from those associated with traditional armed conflict that have emerged in recent years. This 'non-conventional armed violence' is the result of the activities of groups summarized as tribal networks, thugs (organized crime) and terrorists such as organized criminal groups ('gangs') and violent extremist organizations, illicit economy-related actors and other actors who may not be driven by clear political or ideological agendas, or be organized by the state.

The key element that businesses need to consider is that heightened human rights due diligence is required in situations of armed conflict as well as in these situations of widespread violence which fall below the formal threshold of armed conflict. In these situations, it is still important to understand the underlying dynamics, power relationships and drivers of the widespread violence. Such situations of violence may arise, for example, relating to conflicts over natural resources or critical minerals. In such situations, heightened human rights due diligence is key in terms of understanding how the demand and sourcing of such resources is connected to conflict.

In conclusion, if a business is uncertain whether a situation requires heightened human rights due diligence, it should consider a simple, yet effective, rule of thumb: if in doubt, carry it out.

Further resources for section IV.A may include the following (for a more exhaustive list, please see the Resources section):

a) Common Article 3 of the four 1949 Geneva Conventions (for more on international humanitarian law).
b) European Commission Recommendation (EU) 2018/1149 of 10 August 2018 on non-binding guidelines for the identification of conflict-affected and high-risk areas and other supply chain risks under Regulation (EU) 2017/821 of the European Parliament and of the Council (to help businesses identify conflict-affected and high-risk areas in the context of conflict minerals, which can be applied more broadly).
c) RULAC project of the Geneva Academy of International Humanitarian Law and Human Rights (an online portal that identifies and classifies situations of and provides information on the parties to these conflicts, at the national and sub-national level, based on open-source information in a format that is accessible to a wide audience, including non-lawyers and non-specialists in international humanitarian law.

B. Key parameters

1. Ongoing activity and anticipation

Key takeaways from section IV.B.1

Heightened human rights due diligence needs to be an ongoing process that accounts for evolving human rights risks and changes in conflict dynamics.

Businesses can use a number of 'red flags' as early signs of armed conflict or mass violence, which should prompt them to initiate heightened human rights due diligence.

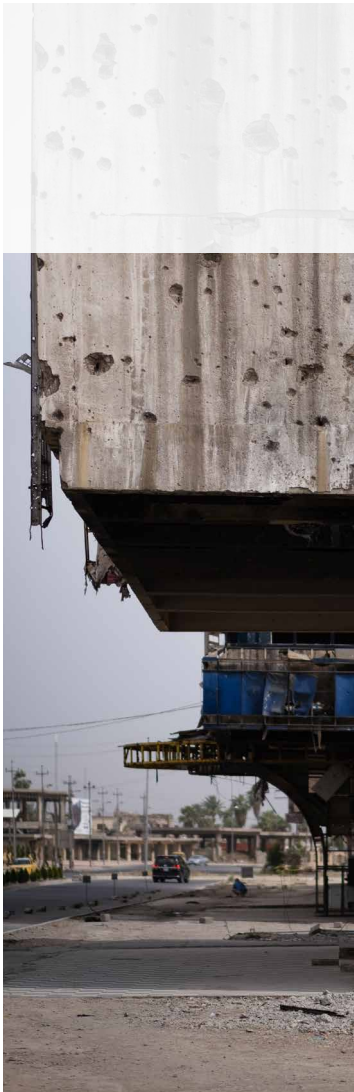
The existence of international sanctions is an indicator that businesses should undertake heightened human rights due diligence, but can never replace it.

The Guiding Principles underline that **due diligence "should be ongoing**, recognizing that the human rights risks may change over time as the business enterprise's operations and operating context evolve".[17] A proactive, dynamic approach, far from a tick-box or a one-and-done exercise, is even more important for heightened due diligence. Similar to human rights due diligence, assessments of conflict impacts should be undertaken at regular intervals: prior to a new activity or relationship; prior to major decisions or changes in the operation (e.g. market entry, product launch, policy change, or wider changes to the business); in response to or anticipation of changes in the operating environment (e.g. rising social tensions); and periodically throughout the life of an activity or relationship.

Robust stakeholder engagement practices and grievance management systems are key elements to accomplishing this. This means engaging with key civil society organizations that may be focused on the conflict in addition to actors who are providing input on human rights.

Further, most complex situations requiring heightened due diligence cannot be explained as isolated or spontaneous events that occur without some level of preparation. Significant resources are needed to commit massive or widespread acts of violence. Such resources are not always readily available and can take time to assemble.

17 OHCHR, Guiding Principles, Guiding Principle 17.



This means that businesses should be aware of early 'red flags' pointing towards armed conflict or mass violence which should prompt them to initiate (or update earlier) heightened human rights due diligence processes. These include:

- Amassing of weapons, especially arms, especially by non-state groups.
- Weak or absent state structures, including the imposition of emergency laws or extraordinary security measures, or the suspension of, or interference with, vital state institutions, particularly if this results in the exclusion of vulnerable or minority groups.
- Records of serious violations of international human rights and/or humanitarian law.
- Increased inflammatory rhetoric or hate speech targeting specific groups or individuals.
- Signs of militia or paramilitary group recruitment, public appearances or other activity.
- Strengthening of the state security apparatus or mobilization against specific groups.
- Strict control or banning of communication channels; including control of media and distortion of facts, censorship. propaganda, misinformation and lack of access to reliable objective information, lack of objective independent media (TV and radio) and closure of internet or websites.
- Expulsion or banning of non-governmental organizations, international organizations, media, or other relevant actors.
- Groups of individuals at the mercy of an authority they oppose or that perceives them as the enemy, and the members of their families and communities.
- People are not protected from acts of violence perpetrated against them.
- People are unable to meet their basic needs because of a climate of fear and violence.
- Presence of displaced persons including those who are internally displaced.

Businesses should note that international sanctions are a useful indicator to exercise heightened due diligence but sanctions, particularly unilateral sanctions, are primarily a political or diplomatic tool imposed for political or diplomatic reasons and can never replace due diligence.

These changes in either the operating context or business activities should trigger alerts to staff for further investigation – but detecting changes isn't the same as taking action. Therefore, companies should make sure to create and follow systematic procedures to follow through on any red flags as crucial for ongoing heightened due diligence.

Photo: Destruction at the corniche along the Tigris in Mosul, Iraq, following the war with the Islamic State.

The first key point is to have set policies and procedures for various scenarios. Anticipating responses will help companies to clarify which tactics to take and will accelerate responses.

Even if it may seem uncomfortable for business, the second key point is: Don't ignore the conflict because the conflict won't ignore you.

Further resources for section IV.B.1 may include the following (for a more exhaustive list, please see the Resources section):

a) UNGPs, Guiding Principle 17 and commentary (for more on the ongoing nature of human rights due diligence.
b) Organisation for Economic Co-operation and Development (OECD), *OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas*, 2016. https://www.oecd.org/daf/inv/mne/OECD-Due-Diligence-Guidance-Minerals-Edition3.pdf.
c) Organisation for Economic Co-operation and Development (OECD), *High-Risk Areas*, https://www.duediligenceguidance.org/risks/#, last accessed 31 May 2022 (for more on using red flags for initiating heightened human rights due diligence).

2. Identifying the relationship between business activities and conflict

Key takeaways from section IV.B.2

Heightened human rights due diligence requires businesses: a) to understand the conflict; b) to identify their adverse impacts on it); and c) to act on its findings.

Conflicts are always the result of complex interactions between different social, political, economic, cultural and environmental drivers. In most cases, business activities are just one variable among a range of others that may aggravate pre-existing tensions but will rarely, if ever, be the only cause of conflict.

This does not diminish business responsibility in any way because exacerbating existing problems can have consequences leading to or reinforcing conflict and instability.

The primary focus of due diligence is precisely avoiding or mitigating negative impact that a business can cause, contribute to, or be directly linked to. Building on that, the primary focus of heightened human rights due diligence is to identify and assess not only actual or potential adverse human rights impacts that business may cause or contribute to through its own activities, or that may be directly linked to its operations, products or services, but also actual or potential adverse impacts on the conflict that the enterprise may cause or contribute to through its own activities, or that may be directly linked to its operations, products or services.

Identifying the relation between business activities and conflict requires businesses to a) understand the conflict; b) identify their impact on the conflict; and c) act upon those findings by identifying business responsibility.

a) Understanding the conflict

Understanding how business activities interact with conflict in a particular context and how to mitigate unintended negative effects is commonly known as 'conflict sensitivity'. Several resources have emerged over recent years that can help business apply a conflict-sensitive lens and implement this heightened due diligence.[18]

Typically, the overall approach for companies to identify and assess the relationship between business activities and conflict requires them to delineate the profile of the conflict and its actors, causes and consequences, by answering the following key questions:

1) What is the context shaping the conflict?

- Is there a history of conflict? (e.g. When? Where? How many people have been killed and displaced? Who has been targeted? What methods of violence have been used?).
- What political, economic, social and environmental institutions and structures have shaped the conflict? (e.g. elections, reform processes, economic growth, inequality, employment, social groups and composition, demographics, the role of businesses and resource exploitation).

2) Who are the actors influencing the conflict?

- Who are the main actors? (e.g. the military, leaders and commanders of non-state armed groups, criminal groups, political or religious leaders, influential persons in the community, businesses).
- What are their interests, concerns, goals, hopes, fears, strategies, positions, ideologies, preferences, worldviews, expectations and motivations? (e.g. autonomy, inequality between groups ('horizontal inequality'), political power, ethno-nationalism, reparations).

18 See annex D.

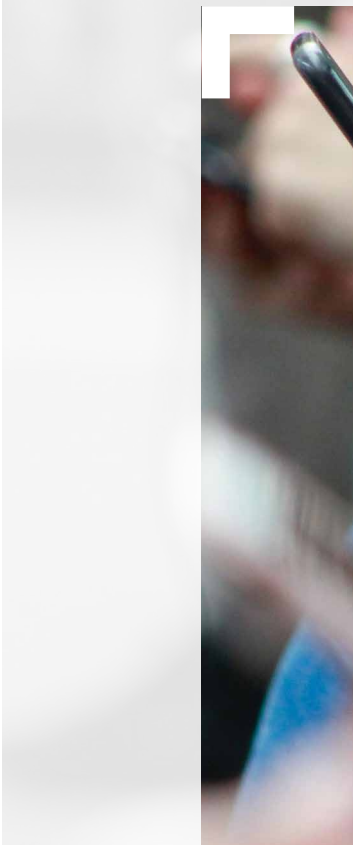
— What power do they have? How do they exert power? What resources or support do they have? Are they vulnerable? (e.g. local legitimacy through provision of security, power over corrupt justice institutions, weapons, and capacity to damage infrastructure).
— What are their incentives and disincentives for conflict and peace? (e.g. benefitting or losing from the war economy, prestige, retribution for historic grievances).
— What capacities do they have to affect the context?
— Who could be considered spoilers (i.e. individuals and organizations that believe peace threatens their power, worldview and interests, and who seek to undermine attempts to achieve it?)
— What divides people? Who exercises leadership and how? (e.g. economic beneficiaries of conflict, criminal groups, opposition leaders).
— What are the relationships between actors? What are the trends? What is the strategic balance between actors (who is 'winning')? (e.g. conflictual, cooperative or business relationships).

3) What are the causes of the conflict?

— What are the structural causes of the conflict? (e.g. unequal land distribution, political exclusion, poor governance, impunity, lack of state authority).
— What are the proximate causes of the conflict? (e.g. arms proliferation, illicit criminal networks, emergence of non-state armed actors, overspill of conflict from a neighboring country, natural resource discoveries).

4) What are the current dynamics/trends of the conflict?

— What are the current trends of the conflict? What recent changes in behavior have there been? (e.g. acts of conflict have increased but the number of deaths has decreased; political violence has intensified around local elections; defence spending has increased; paramilitaries have started running in local elections).
— Which factors influencing the conflict's profile, actors and causes reinforce or undermine each other? Which factors balance or mitigate others? (e.g. horizontal economic and political inequalities can increase the risk of conflict; uncertainty about succession of the president strengthens party factionalism; cash for disarmament, demobilization and reintegration fuels the proliferation of small arms).
— What are, or could be, the triggers the conflict? (e.g. elections, economic and environmental shocks, an economic crash, an assassination, a coup d'état, increased food prices, a corruption scandal).



19 See for ex.: Sanjana Hattotuwa, *The Janus Effect: Social Media in Peace Mediation*, ICT4Peace Foundation (2018).

20 See OHCHR, *The Corporate Responsibility to Respect Human Rights: An Interpretive Guide*, HR/PUB/12/02 (2012).

— What scenarios can be developed? (e.g. best-case scenario: a peace agreement is signed quickly and the conflict parties implement a ceasefire; worst-case scenario: local politicians mobilize along ethnic lines in the run-up to elections and political violence and riots increase where groups meet).

5) Monitoring social media

Most stakeholders use social media and a range of tools and techniques to influence public perception, including in contexts affected by armed conflicts and other situations of widespread violence. Further, many businesses use social media data analytics tools to monitor various elements of their activities and reputation (or those of their competitors). These tools should be used or adapted in conflict-affected contexts to gather open-source intelligence such as conflict-related news, public perceptions of the company, and narratives of the conflict parties and other stakeholders to support or conduct the conflict analysis.

— What positions do parties to a conflict (governments, opposition parties, civil society, armed groups, diasporas, etc.) convey through online communication to promote their own narratives and counter-narratives on issues relating to the conflict.

— Are the competing narratives on the causes of the conflict used to incite hatred, violence and fear and to disseminate misinformation and disinformation?[19]

b) Understanding the impact of business activities on the conflict

Having formed a profile of the conflict, businesses should then answer the following questions to understand the connection between their activities and the conflict:

— How might business activities affect the positions of power or relationships between different actors – for example, do they/will they affect groups' access to natural resources?

— Are any of the identified conflict actors' 'business relationships' as defined by the Guiding Principles, including relationships a company has with business partners, entities in its value chain and any other State or non-State entity, directly linked to its operations, products or services? They include indirect relationships in its value chain, beyond the first tier, and minority as well as majority shareholding positions in joint ventures?[20]

— How might business activities impact the conflict causes identified earlier?

— How might business activities impact the conflict dynamics identified earlier?

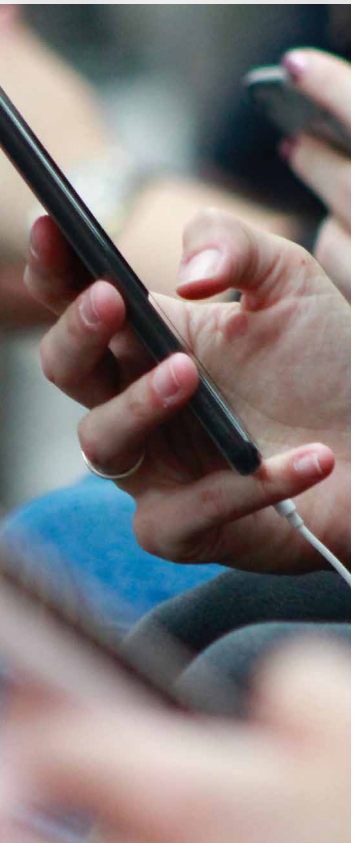
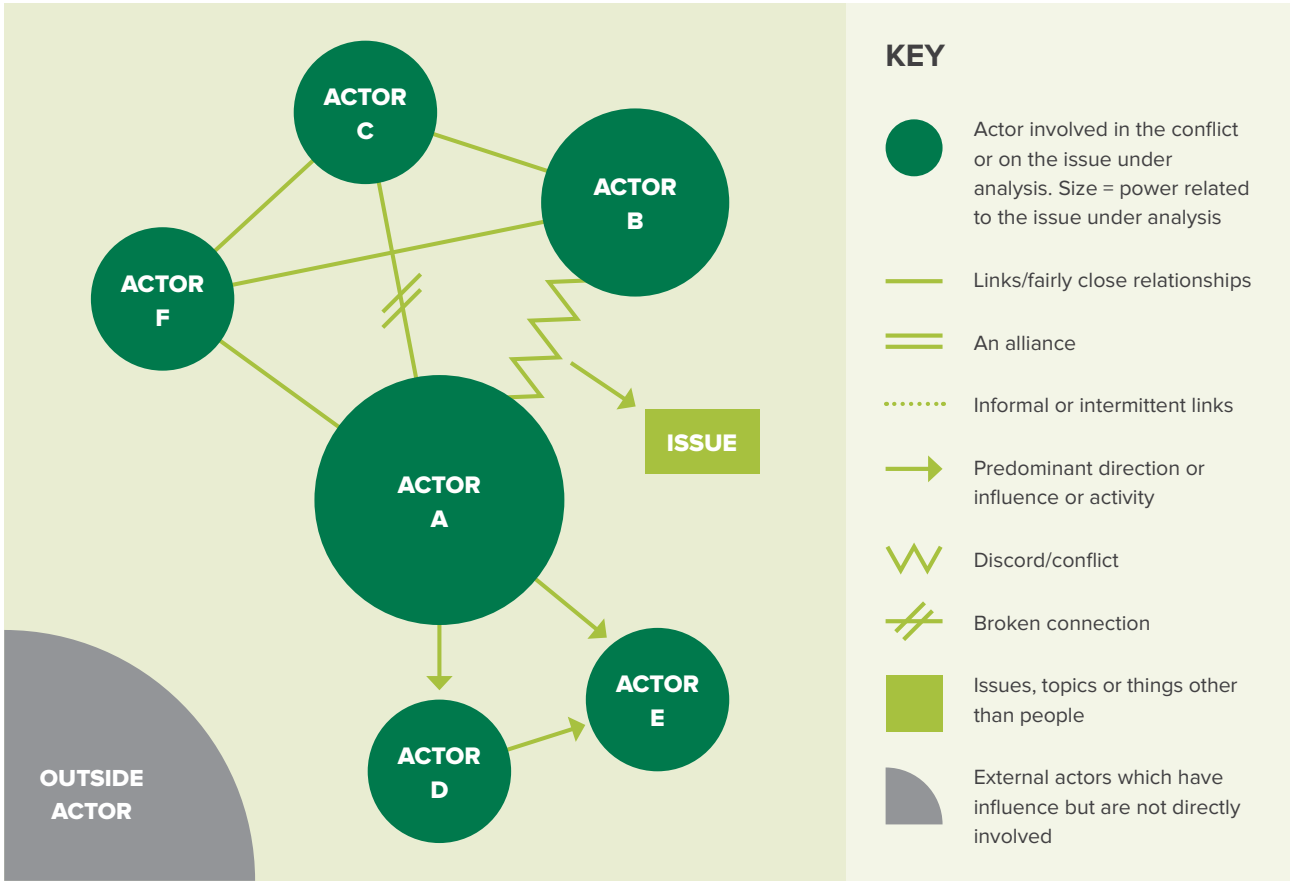


Photo: Monitoring social media is a key tool for understanding conflict.



Reproduced from Herbert, S., Conflict Analysis: Topic Guide[21]

Actor mapping can be a useful tool for obtaining a graphic snapshot of actors' relative power in the conflict, their relationships, the conflict issues between them and the overall way the business interacts with these different elements.

c) Acting on the findings: Identifying business responsibility

Once business has assessed the conflict and its relationship to it, it will be in a position to identify its responsibility for any adverse impacts on human rights and conflict dynamics.

The OECD has identified three fundamental questions to help assess potential negative impacts:[22]

1. Is there an actual or potential adverse impact on human rights or the conflict connected either to the company's activities (actions or omissions), products or services?
2. If so, do the company's activities (including actions or omissions) increase the risk of that impact?
3. If so, would the company's activities (including actions or omissions) in and of themselves be sufficient to result in that impact?

21 Reproduced from Herbert, S., *Conflict Analysis: Topic Guide*, (GSDRC, University of Birmingham, May 2017), p. 14. Available at gsdrc.org/wp-content/uploads/2017/05/ConflictAnalysis.pdf.

22 See OECD, *OECD Due Diligence Guidance for Responsible Business Conduct*, (2018).

If the answer to all three questions is "yes," then the business causes, or may cause, an adverse human rights impact and is expected to take appropriate measures to cease or, prevent, and remedy the impact. **Examples include private security companies that commit human rights violations in conflict-affected contexts**.

If the answer to 1 and 2 is "yes" and the answer to 3 is "no," the business is contributing, or may contribute, to an adverse impact and should take appropriate measures to cease, prevent, and remedy its contribution; it should also exercise its leverage to mitigate any remaining impact to the greatest extent possible. **Examples include a social media company allowing its platform to be used for disseminating hate speech calling for violence against vulnerable and/or minority groups; a company allowing military forces to use its facilities, and the military forces subsequently committing torture there**.

If only the answer of the first question is "yes", then the business may directly be linked to the abuse and should exercise its leverage to mitigate any remaining impact to the greatest extent possible. **Examples include a company extracting resources from a territory whose ethnic population was deported by a state or non-state actor that controls the territory**.

Responsible companies should consider a "maybe" as a "yes" and initiate further investigation/assessment in order to confirm their exact level of involvement.

Further resources for section IV.B.2 may include the following (for a more exhaustive list, please see the Resources section):

a) UN Development Group, *Conducting a Conflict and Development Analysis*, 2016, unsdg.un.org/sites/default/files/UNDP_CDA-Report_v1.3-final-opt-low.pdf

b) Voluntary Principles Initiative; *Voluntary Principles Initiative Conflict Analysis Tool for Companies*; 2022; www.voluntaryprinciples.org/resource/voluntary-principles-initiative-conflict-analysis-tool-for-companies/

c) S. Herbert, *Conflict Analysis: Topic Guide*, GSDRC, University of Birmingham, May 2017. gsdrc.org/wp-content/uploads/2017/05/ConflictAnalysis.pdf (for a guide to carrying out a conflict analysis)

d) Conciliation Resources; *Gender & conflict analysis toolkit*, 2015 ; https://www.c-r.org/resource/gender-and-conflict-analysis-toolkit-peacebuilders

e) Conflict Sensitivity Consortium, *How To Guide To Conflict Sensitivity*, 2012; https://www.conflictsensitivityhub.net/wp-content/uploads/2020/09/6602_HowToGuide_CSF_WEB_3.pdf

3. Operating in states engaged in an armed conflict

23 GP 23 commentary.

Key takeaways from section IV.B.3

In wars between two states, businesses need to exercise heightened human rights due diligence in both states (look at the guiding questions in section IV.B.3).

Where a war is unlawful under international law, businesses should, at a minimum, assess, and avoid or mitigate its connection to the war efforts of the aggressor country.

Most conflict-affected contexts requiring heightened human rights due diligence are intra-state armed conflicts or situations of widespread violence.

However, in 'classical wars', i.e. when one state is at war against another, business needs to exercise heightened human rights due diligence with regard to its activities, products and services in BOTH states using the same three fundamental questions cited above to assess potential negative impact:

- Is there an actual or potential adverse impact on human rights or the conflict connected either to the company's activities (actions or omissions), products or services in any of the state parties to the conflict?
- If so, do the company's activities in any of the state parties to the conflict increase the risk of that impact?
- If so, would the company's activities in any of the state parties to the conflict in and of themselves be sufficient to result in that impact?

Businesses should then act accordingly (for more, see section IV.C).

The situation is more complicated when the use of force – the war – is deemed unlawful under international law. In this case, in addition to respecting human rights and international humanitarian law, ***at a minimum***, business should assess, and avoid or mitigate its connection to the war efforts of the aggressor country to "ensure that they do not exacerbate the situation."[23]

The question of whether a war is lawful is complex, especially as the boundaries of the right to self-defence is still unclear. Furthermore, there are competing views on whether war can be waged lawfully for purposes of humanitarian intervention, for example under the responsibility to protect doctrine.

Simply put, the use of force between states is prohibited with two generally accepted exceptions. First, the United Nations Security Council may authorize the use force to maintain and restore peace and security. Second, states may use force when acting in self-defence against an armed attack.

In the absence of a mandate from the Security Council, assessing the lawfulness of a war will be a complex and challenging question. Business should seek adequate guidance, including from their home state and relevant experts. They should also be mindful that individual economic actors may be accused of complicity in international crimes, with several countries with internal armed conflicts having ratified the Rome Statute[24] and many others having incorporated relevant provisions of international criminal law into their domestic penal laws, allowing for the prosecution of legal and natural persons in national jurisdictions.[25]

4. Integrating a "vulnerability" lens

Key takeaways from section IV.B.4

Businesses should ask themselves how the conflict and their activities specifically impact vulnerable groups.

There is ample evidence of the differentiated impact of violence on specific groups identified through race, ethnicity, religion, sexual orientation, gender identity, disability, class or other forms of discrimination. For example, multiple studies have identified that conflicts specifically affect women and girls and exacerbate gender-based discrimination.[26]

Accordingly, it is important for business to realize the particular impacts both of the conflict and of business activities on specific groups in conflict and post-conflict situations as part of any heightened human rights due diligence.[27] To do so, businesses should ask themselves:

— What is the different impact of the conflict and of business activities on such specific groups, including but not limited to forms of direct violence?

Photo: Inter-state wars require heightened human rights due diligence in both states

24 Andrew Clapham, "Human rights obligations of non-State actors in conflict situations", *International Review of the Red Cross*, Vol. 88, No. 863, (September 2006).

25 Anita Ramasastry and Robert C. Thompson, *Commerce, Crime and Conflict: Legal Remedies for Private Sector Liability for Grave Breaches of International Law*, Fafo Report No. 536 (Fafo, 2006).

26 See for example Conciliation Resources, *Gender & conflict analysis toolkit*, 2015. UN-Women, "Women 2000: Sexual Violence and Armed Conflict: United Nations Response", 1998.

27 See www.ohchr.org/EN/Issues/Business/Pages/GenderLens.aspx and www.geneva-academy.ch/joomlatools-files/docman-files/Academy%20Briefing%2012-interactif-V3.pdf.

— Do men, women and gender minorities play similar or different roles? How do men, women and gender minorities relate to each other?
— Which data beyond 'traditional' sources of information exist to inform the conflict and business activities analysis, such as reports by women's or indigenous' organizations or consultations with experts in the local contexts?
— How have the conflict and business activities disrupted/changed gender roles? For example, who are the displaced and what are the specific challenges faced by different displaced men, women and minorities?
— How will stakeholder engagement allow for equal and meaningful involvement of different participants? What are possible obstacles to, or even risks of, participation for particular people?

5. Prioritization

Key takeaway from section IV.B.5

Businesses may need to prioritize their actions to address adverse impacts on the conflict and on human rights.

The Guiding Principles recognize that it may be necessary to prioritize actions to address a long list of identified actual and potential adverse human rights impacts. According to the Guiding Principles, the order in which impacts are addressed is based on their severity.[28]

The UNGPs established the typology of scale, scope and irremediability to measure the severity of human rights impacts. By analogy, in conflict situations, the same principle applies but prioritization requires businesses to think about the likelihood and consequences of conflict as a crucial element, by asking themselves the following key questions:

— Scope: How widespread is the armed violence that impacts people, e.g. number of people affected?
  – High: a large number of people affected, which might include the workforce, families or workers and surrounding communities.
  – Medium: a moderately large number of people impacted.
  – Low: a small number of people impacted.

28 See OHCHR, Guiding Principles, Guiding Principle 14 and commentary.

- Scale: How grave or serious is the armed violence, i.e. does it include a large number of deaths and casualties?
  - High: the abuse involves severe impact on the physical, mental and/or emotional well-being of a person and/or communities; the community is considered especially vulnerable.
  - Medium: the abuse involves a moderate impact on the physical, mental and/or emotional well-being of people and/or communities.
  - Low: the abuse does not have long-term or substantive effect on the victims' lives and does not target vulnerable populations.
- Irremediability: What are the limits to restoring the people impacted to at least the same, or equivalent to, their situation before the armed violence occurred?
  - High: unless action is taken immediately, the impact of human rights abuses can never be remedied.
  - Medium: unless action is taken soon, the impact of abuses will not likely be remedied.
  - Low: action not required immediately to remedy the abuses in full.

In some cases, an impact may be categorized as less severe according to the 'traditional' human rights connected scale-scope-irremediability criteria, but still likely to drive conflict. For example, an employee's religious beliefs may not be the most salient human rights issue in a non-conflict setting, but, if a conflict has been fueled by religious divisions, it may well be a salient conflict issue and hence one that should be addressed.

Therefore, businesses need to consider salient risks in terms of both human rights and conflict. Because the impact of conflict is usually more severe for more people, business should prioritize salient conflict issues which are not necessarily identified as salient in terms of human rights, and then salient human rights issues which are considered unlikely to cause or exacerbate conflict.

Further resources for section IV.B.3-5 may include the following (for a more exhaustive list, please see the Resources section):

a) Conciliation Resources; *Gender & conflict analysis toolkit*, 2015 ; https://www.c-r.org/resource/gender-and-conflict-analysis-toolkit-peacebuilders

b) UN-Women, "Women2000: Sexual Violence and Armed Conflict: United Nations Response", 1998.

c) UNGPs, Guiding Principle 14 and commentary (for more on judging the severity of human rights impacts (and, by analogy, of the impacts of conflicts) by their scale, scope and irremediability)

d) Shift, Mazars LLP, *UN Guiding Principles Reporting Framework*, 2015 https://shiftproject.org/wp-content/uploads/2015/02/UNGPReportingFramework_withguidance2017.pdf (for more on scale, scope and irremediability)

C. Acting

Key takeaways from sections IV.C.1 and IV.C.2

If a business causes (or may cause), contributes (or may contribute) to, an adverse human rights impact, it should take measures to cease or prevent, and remedy the impact.

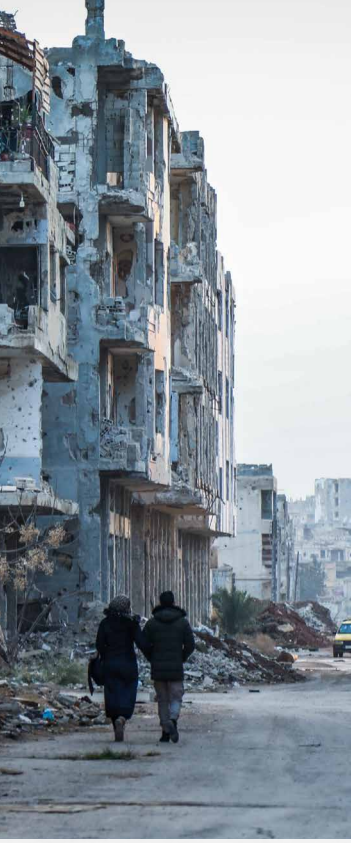
It should also exercise its leverage to mitigate any remaining impact to the greatest extent possible, particularly if it is directly linked to it.

1. On cause, contribute or link

The Guiding Principles have established clearly what type of action business should take depending on their connection to a given negative impact: If a business causes, or may cause, an adverse human rights impact, it is expected to take appropriate measures to cease or, prevent, and remedy the impact. If the business is contributing, or may contribute, to an adverse impact, it should take appropriate measures to cease, prevent, and remedy its contribution, while also exercising its leverage to mitigate any remaining impact to the greatest extent possible. Finally, if the business is directly linked to the negative impact, it should exercise its leverage to mitigate any remaining impact to the greatest extent possible.

The specific actions business will need to take to prevent or mitigate their negative impacts will be highly context-specific but should be taken within some basic parameters:

- Business response should have a clear lead, preferably from a single entity. This provides clarity, minimizes the chances of incoherent communication, in particular with the conflict parties, and facilitates coordination and the development of a coherent response.
- The decision regarding who should lead should take into account the conflict context and be based on comparative advantage, for example of an headquarters (HQ) or country-based lead. Proximity to the conflict and its parties should be neither dismissed nor taken for granted as an automatic advantage.



- Organizational capacity, capability and available resources should be considered in deciding on the division of labour.
- All the different business units involved should work together to agree on the degree of transparency and coordination mechanisms for information sharing. They should cooperate based on a common strategy, ensure consistent external and internal messaging, particularly towards the parties to the conflict, and avoid duplication or overloading the parties with multiple competing processes.
- International businesses should consider using or establishing coordination mechanisms, independently, as groups of companies or through international business organization groups, to provide consistent political and resource support for their own effort. They should also recognize that there may be circumstances in which such groups risk replicating the conflict dynamics.
- Planned mitigation measures should be elaborated and discussed with affected stakeholders and other relevant parties as much as the context allows, using proxies such as the diaspora for example if engagement is difficult in country.

When considering human rights risks mitigation measures, business should know whether:

- Appropriate mitigation measures have been identified? Are they realistic? Does the plan of 'normal' business activities reflect the mitigation measures?
- The conflict influences the design of the business response?
- There are precise criteria in place with business partners and others (in particular security forces) to address the negative impact or more broadly to decrease tensions? For example, do contracts with business partners address the need for partners to mitigate negative human rights impacts?
- The mitigation measures take into account how they will be influencing existing power structures (e.g. empowerment/exclusion of a certain group) and how is it mitigating the related risks?
- Dialogue with stakeholders is initiated and regularly maintained?
- All the staff is informed?
- Business partners/business operations managers and staff are informed and perceived as impartial by the communities where the project is implemented?
- The (ethnic, religious, social, political, etc.) diversity which exists in the region is taken into account?
- There is enough time to explain the business response to all relevant stakeholders to avoid misunderstanding or misconceptions?
- Any measures exist to support the business response at bilateral level between the business' home state and the local government?

Photo: A couple walks in front of the remains of houses in Daraa, Syria

2. Leverage

In the context of heightened human rights due diligence, and aligned to the exercise of regular human rights due diligence, direct linkage refers to a situation where there is a direct link between the operations, products or services of a business and the human rights abuses or the armed violence committed by an entity, including other businesses and state and non-state entities.[29] As mentioned in the guidance tool for companies "Doing Business with Respect for Human Rights",[30] ultimately, leverage is about creating the opportunity to change how people think and behave. In the context of heightened human rights due diligence, leverage is about changing the thinking and behavior of key people within a supplier, contractor, business partner, customer, client or most likely within governments, opposition parties, armed groups where that organization's actions are increasing the likelihood of conflict or the risk to human rights.

There are many steps a company can take to use its leverage that could be as simple as picking up the phone and calling an individual to try to persuade or reason with them to change their approach.

For business, this means responding to the following questions:

- What are possible points of leverage where we can promote change?
- What alternative strategies and activities for change would be possible?
- Why would those approaches work, or how might they succeed/fail?

Business maintains the various types of leverage it has in context not affected by armed conflict or widespread violence. The required action is then to think about whether and how each could be relevant in a given situation:

- Traditional commercial leverage that is common to all commercial relationships, such as contracting.
- Broader business leverage that a company can exercise on its own but through activities that are not routine or typical in commercial relationships, such as capacity building.
- Leverage together with business partners created through collective action with other companies in or beyond the same industry.
- Leverage through bilateral engagement generated through engaging bilaterally and separately with one or more other actors, such as government, business peers, an international organization, or a civil society organization.
- Leverage through multi-stakeholder collaboration through action collectively with business peers, governments, international organizations and/or civil society organizations.[31]

29 OHCHR, *The Corporate Responsibility to Respect Human Rights: An Interpretive Guide*, HR/PUB/12/02 (2012).

30 Shift, Oxfam and Global Compact Network Netherlands, *Doing Business with Respect for Human Rights: A Guidance Tool for Companies*, (2016).

31 Ibid.

3. Exit strategy

Key takeaways from section IV.C.3

A hasty exit can be as damaging as one that comes too late. If a business decides to exit, it needs a proper exit strategy.

A business contemplating exiting or suspending its operations in a conflict-affected context should consider whether: a) exiting/suspending could exacerbate tensions: and b) whether harms to people outweigh the benefits.

The conclusion of the due diligence exercise by a business may lead to the decision to not engage, relocate, suspend or terminate its activities in or linked to a conflict-affected context. For situations when activities have started, the Guiding Principles refer to disengagement (termination or suspension) as an option for addressing adverse human rights impacts of a business relationship but do not deal directly with this situation.[32] They nonetheless make clear that "at all times, enterprises need to be aware of any risks that a particular course of action may pose to affected stakeholders and take these into account in their decisions".[33]

A hasty exit may be as damaging as one that comes too late. For example, an early exit might force people who depended financially on the business activities to join an armed group as a means of subsistence.

Therefore, **the overarching element is to consider whether exiting could exacerbate tensions within a conflict-affected setting and whether the adverse impacts of the decision to exit or suspend the operations outweigh the benefits**.

Once this is established, the concrete steps that businesses need to take will be extremely context-dependent, but an exit strategy requires more than ordinary shutting down of operations and evacuation of expatriate employees. A proper exit strategy requires business to:

— Anticipate and plan a clear exit strategy in advance, ideally at the same time as it plans the start of activity. This will allow it to identify and assess the short- and longer-term risks of disengagement and work to avoid or at least minimize harmful impacts with the people affected, including business partners and communities.

32 Commentaries to Guiding Principles 19 and 23.

33 OHCHR, *The Corporate Responsibility to Respect Human Rights: An Interpretative Guide*, HR/PUB/12/02, (2012).

— Consider whether suspending or exiting could exacerbate tensions within populations and whether the harms outweigh the benefits.
— Develop mitigation strategies, as suspending or terminating business activities often has significant consequences for communities that can include broader economic and social effects. These strategies may include providing reasonable notice to communities, suppliers, workers and other partners affected by the pending disengagement; ensuring that staff continue to receive income for the duration of the crisis, in the event of temporary suspension or training, and capacity-building to mitigate the loss of employment; also, ensuring the security of remaining staff who cannot be evacuated.
— When transferring ownership, to assess the human rights capacities of the buyer and request, including through contractual terms, that the buyer put specific human rights-related policies and procedures in place to enable them to operate responsibly in a conflict-affected context.
— When offering ancillary services or philanthropic programmes, mitigate the effects of its exit, for instance by providing for a handover to an adequate entity, such as a civil society actor.

Some of the key questions business should be able to answer are:

— Is there an exit strategy?
— Was the exit strategy planned during the entry phase?
— Are there plans to inform stakeholders about the exit phase? Were they involved as much as possible in the planning process?
— Do the human rights costs outweigh the benefits?
— Are responsibilities and roles clear once the company activities are over, including for a new owner or investor? Is sustainability and business continuity required and/or secured?
— Are transparent rules and criteria in place for the handover, including of equipment and personally-identifiable data of employees, customers and other parties?

Further resources for section IV.C may include the following (for a more exhaustive list, please see the Resources section):

a) Shift, Oxfam and Global Compact Network Netherlands, “Doing Business with Respect for Human Rights: A Guidance Tool for Companies”, 2016.
b) OHCHR, *The Corporate Responsibility to Respect Human Rights: an Interpretive Guide*, 2012

D. Tracking

Key takeaways from sections IV.D and IV.E

Businesses should track the effects of measures they have taken and consider how lessons learnt relating to heightened human rights due diligence are captured, stored and shared to ensure that they inform future activities.

When communicating, businesses should be careful not to disclose information about how specific impacts are being addressed when it could pose risks to affected stakeholders or personnel.

Tracking the effects of measures and processes developed as part of the due diligence process is fundamental to ensure that the company's efforts are fit for purpose and improve company performance over time. Identifying adequate indicators and metrics is a constant challenge because gathering such information requires a reflection on the qualitative aspects of the business response and exploring questions linked to the perceptions of staff, communities and other stakeholders. This process is even more sensitive in conflict-affected situations. For example, business will need to get information on questions such as the proportion of people in communities A and B who perceive the company's activities benefiting both communities equally or one community over the other, or identifying the number of staff who believe the company's activities have (not) had any impact on conflict in a given community or exacerbated some tensions.

It can be hard for staff to give honest views when their work is having negative impacts. The success of an indicator, such as the one above, rests upon staff understanding the long-term benefits of heightened human rights due diligence, creating an environment in which discussing the potential pluses and minuses of alternative options is encouraged and creating a safe space for staff to discuss project challenges without feeling their work is being criticized.

Further, tracking needs to consider how lessons learnt relating to heightened human rights due diligence are captured, stored and shared to ensure that they inform future activities. There is often a reluctance to document and communicate when business activities face difficulties, yet this is the time when the most valuable lessons can be learned and shared.

Businesses should also use existing indicators such as those included the UN Guiding Principles Reporting Framework, which provides a concise set of questions to which any company should strive to have answers in order to know and show that it is meeting its responsibility to respect human rights in practice. It offers companies clear and straightforward guidance on how to answer these questions with relevant and meaningful information about their human rights policies, processes and performance.[34]

E. Communicating

The final step of heightened human rights due diligence is to communicate how business addresses its adverse impacts.

The United Nations Human Rights Office (OHCHR) Interpretive Guide on the Corporate Responsibility to Respect Human Rights has clarified precisely what is expected from business:[35]

- If the purpose is to communicate to potentially affected stakeholders how the business is addressing a human rights risk it has identified, then the communication could be limited to that group and should take account of literacy, language and cultural communication barriers (for instance whether verbal communications are considered more respectful than written communications). Meetings with the group or its legitimate representatives may be the most appropriate and successful.
- If the purpose is to account also to shareholders and other interested parties, including civil society, for how the enterprise is addressing a specific risk or risks in general, then it might be appropriate to provide documents and presentations at an annual general meeting, web updates, messages to electronic mailing lists of those who self-identify as interested parties or similar means of communication.
- If a business is active in the context of risk of severe human rights impact, which is by definition the case with heightened human rights due diligence, it should report formally on how it is addressing such impacts.

34 See Shift and Mazars, *UN Guiding Principles Reporting Framework*, (2015).

35 OHCHR, *The Corporate Responsibility to Respect Human Rights: An Interpretive Guide*, (HR/PUB/12/02 (2012).

36 For further guidance on the risks to human rights defenders and others who may be at risk, see Report of the UN Working Group on Business and Human Rights to the UN Human Rights Council, The Guiding Principles on Business and Human Rights: guidance on ensuring respect for human rights defenders, A/HRC/47/39/Add.2, (June 2021).

For all type of communication, business should be careful not to disclose information about how specific impacts are being addressed when it could pose risks to affected stakeholders or personnel. This may be because they would reveal, by implication, the identity either of a complainant or of individuals responsible for actions that are judged harmful, making them the potential targets of retaliation. Publicizing information about discussions with government officials or representatives of the armed forces that are aimed at halting or preventing harmful action against individuals might jeopardize that process.[36]

Similarly, business must be aware that communication could be – in a particular conflict-affected context – counter-productive, even when providing factual information. Therefore, the way and content of what business communicate must be sensitive to the particular context, including when the communication is with stakeholders outside of the conflict or crisis region.

In both cases, however, neither the protection of affected stakeholders nor the required conflict-sensitivity of communication should be seen as a blanket assumption and become an easy justification to avoid sharing information that can legitimately be made public.

Further resources for sections IV.D-E may include the following (for a more exhaustive list, please see the Resources section):

a) Danish institute for Human Rights, *Human Rights Impact Assessment: Guidance and Toolbox*, 2020. www.humanrights.dk/sites/humanrights.dk/files/media/ dokumenter/udgivelser/hria_toolbox_2020/eng/dihr_hria_guidance_and_ toolbox_2020_eng.pdf (for more on human rights impact assessments)

b) UN Human Rights Office of the High Commissioner, *The Corporate Responsibility to Respect Human Rights: An Interpretive Guide*, 2012. www.ohchr.org/documents/publications/hr.pub.12.2_en.pdf (for more on the elements of tracking, communicating as part of human rights due diligence)

c) Organisation for Economic Co-operation and Development (OECD), *OECD Due Diligence Guidance for Responsible Business Conduct*, 2018. www.oecd.org/investment/ due-diligence-guidance-for-responsible-business-conduct.htm (for another view on the elements of tracking, communicating as part of human rights due diligence)

F. Stakeholder engagement

Key takeaways from section IV.F

Meaningful consultation with potentially affected groups and other relevant stakeholders is an essential element of heightened human rights due diligence. These may include vulnerable groups impacted by business activity, government, armed groups, civil society, and others.

When engaging armed actors, it is important to: understand them; define an engagement strategy; create contact; maintain impartiality; and collaborate with other businesses and institutions (by sharing information and otherwise).

Meaningful consultation with potentially affected groups and other relevant stakeholders is an essential element of due diligence to, as mentioned in the commentary of the Guiding Principles, allow business to understand, as far as possible, the concerns of those who may be directly affected by their operations and whether stakeholders have the same or different perspectives than the business and each other.[37] Engaging with potentially affected groups and other relevant stakeholders provides important insights into their perspectives and concerns regarding the business' activities and the implications these have for human rights. Effective engagement can also help demonstrate that the enterprise takes stakeholders' views and their dignity, welfare and human rights seriously. This can help to build trust and make it easier to find ways to address impact in an agreed and sustainable way, avoiding unnecessary grievances and disputes.[38]

This is all the more so in conflict-affected contexts even if it sometimes seems counter-intuitive for business, which, in a volatile environment, might be tempted to avoid interactions with 'the outside' in order to be shielded from the conflict or not to be seen as conferring legitimacy on a specific group. However, this narrow approach creates many problems and may well expose the business to more risks, including because avoiding or undertaking a consultation exercise that excludes certain actors or gives too much weight to others can lead to increased tensions and skewed perspectives.[39]

Photo: Stakeholder engagement encourages voices of the most vulerable groups to be heard.

37 See Guiding Principle 18 and commentary.

38 See OHCHR, *The Corporate Responsibility to Respect Human Rights: An Interpretive Guide*, HR/PUB/12/02, (2012).

39 See Ben Miller and others, *A Seat at the Table: Capacities and Limitations of Private Sector Peacebuilding*, CDA, Africa Centre for Dispute Settlement and Peace Research Institute Oslo, (2018). Available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3311737.

Business should also be aware that its engagement might put stakeholders, and particularly human rights defenders, at risk of retaliation, violence, death, legal harassment or other forms of silencing or stigmatisation. Therefore, businesses engaging in meaningful stakeholder engagement have a responsibility to assess and address the risk of retaliation against stakeholders.

Stakeholder engagement requires an adequate understanding of the different actors and their goals, interests, capacities and relationships (all of which would have been identified in the conflict analysis), as well as sensitivity to the causes of conflict identified in the analysis, such as marginalization of certain groups. While each exact group will vary depending on the context, they will most likely include:

- Those impacted by the business activity, especially the most vulnerable and marginalized groups, taking into account gender dynamics. Generally speaking, this includes in particular people who are under authorities they might oppose or that perceive them as the enemy, people in a hostile environment who are not protected from the acts perpetrated against them, people who are unable to meet their basic needs because of the situation of violence such as displaced persons or those whose movements are restricted.
- Government institutions, including the relevant national ministries and agencies as well as regional and local government institutions.
- Security and justice sectors, including armed forces and police; management and oversight bodies such as national security advisory bodies and ministries of defence; the judiciary and justice institutions, such as human rights commissions and ombudspersons; and non-statutory security forces such as liberation armies, guerrilla armies, private security companies and political party militias.
- Civil society, such as local and international non-governmental organizations (NGOs), civil society organizations, religious leaders, traditional elders, and women's groups.
- Academic organizations, such as universities and think tanks, and the media.
- Other members of the private sector, such as international, national and local corporations and businesses.
- The international community, including donors, multilateral institutions, and regional and intergovernmental organizations.

1. Affected stakeholders' engagement

Consultation can bring to bear local perspectives on the plans for the sector in a particular region; ensure it is informed by local realities; highlight any likely sources of tension or insecurity and suggest approaches to managing that tension. In addition to providing information on key conflict risks, the process of stakeholder involvement needs to be broad in conflict-affected contexts, in order to mitigate the

polarization and high level of mistrust which usually exist among groups and communities, and to get a sense not only of the facts but of the perception of the situation among different stakeholders. In particular, perceptions and the subjective interpretations and attitudes that the people affected by conflict have about the reality or events related to the conflict, and often even the nature of the 'others', weigh heavily in the context of conflicts and should be incorporated in the analysis.[40]

Engagement at the local level might not be possible or optimal for a variety of reasons, including fear of retribution or safety. Business should nonetheless strive to get a local perspective, including by engaging the diaspora.

Finally, robust stakeholder engagement benefits business directly by increasing its social capital with local communities. This is particularly important where there are strong connections between such communities and armed groups.

2. Armed actors engagement

In addition to potentially affected groups, the Guiding Principles underline the need for business to engage also with other relevant stakeholders in order to exercise their human rights due diligence.

Be they state armed forces or tribal networks, thugs or terrorists, no other stakeholders are more relevant than armed groups. Engaging with such groups allows business to get essential information for their own due diligence as well as paving the way to exercise leverage if these groups are committing violations connected to the business activities. It also provides the opportunity for business to communicate their expectations that all must respect human rights and humanitarian law.

Armed non-state actors on the other hand represent unique challenges for businesses. Beyond the violence, businesses find themselves confronted with potential criminal liability if found to have benefited or assisted an armed group designated a terrorist organization. At the same time, it is often impossible to continue operating in a region without having some interaction with armed non-state groups or dealing with a business operated by such a group as part of its own profit-making operations.

The ICRC estimates that between 60 and 80 million people live under the exclusive control of non-State armed groups, and many more in areas in which non-States armed groups operate but how to deal with them has been largely neglected as an issue in the context of business activities,[41] and more broadly rarely openly discussed or acknowledged in either the humanitarian[42] or development[43] communities. This is not surprising, considering how legally and politically challenging – and sensitive – the topic is. More clarity is needed to help business navigate this very specific challenge.

40 See Brian Ganson (ed), *Management in Complex Environments: Questions for Leaders*, International Council of Swedish Industry, (2013). Available at https://www.usb.ac.za/wp-content/uploads/2018/06/Management-in-Complex-Environments-Questions-for-Leaders-Brian-Ganson_Smal.pdf.

41 See Ben Miller and Dost Bardouille, with Sarah Cechvala, "Business and Armed Non-State Actors: Dilemmas, Challenges and a Way Forward" (Cambridge, United States, CDA Collaborative Learning Projects, 2014); International Conflict and Security Consulting Ltd. (INCAS), *Stabilising Areas Affected by Criminalised Violent Conflict: A Guide for Analysis and Stabilisation Strategy*, (INCAS, 2014).

42 See, for example, Ashley Jackson, "Humanitarian negotiations with armed non-state actors: key lessons from Afghanistan, Sudan and Somalia" (Humanitarian Policy Group, Policy Brief No. 55, Overseas Development Institute, 2014).

43 See Colin Walch, "Why Should Development Actors Engage with Non-State Armed Groups?" *IPI Global Observatory*, (March 21, 2019).

While more research is needed to guide business, and other actors, operating in conflict-affected contexts, there are clear minima that should frame business engagement with state as well as non-state armed groups in order to exercise the best diligence possible:

a) Understand the armed groups

First, armed groups should be understood. The lack of engagement between business and armed groups gives rise to a poor understanding of their motivations and objectives. For example, armed groups may be respectful of communities or willing to permit business to operate in the hope that doing so will earn them greater international legitimacy. Other groups may see business as a source of revenue or logistical support or may attack a business because it represents foreign interests. Having a clear understanding of their structure, their control of territory and population, their objectives, their political agenda, and the support from the local population is essential to identifying how likely it is that the armed group will interact with the business.

b) Define an engagement strategy

Business should have a clear engagement strategy. Experience seems to indicate that interacting with armed groups is mostly left to an *ad hoc* approach at the operational level. This results in inconsistent approaches and a transfer of responsibilities to field staff, or even local communities when they are used as a proxy. Businesses need to be aware of the formal classification of an armed group, particularly when they are designated as terrorist organizations. However, when reality dictates that they must engage with them, they should consider tools developed by relevant initiatives dealing with security and human rights issues, such as the Voluntary Principles, to avoid abuses. There are times when it is not suitable to have any formal relationship with a government – for example if the government is contributing to violent conflict or oppressing particular groups. In other instances, it is essential to build relationships with different levels of government, to gain access to areas where you want to work or in order to influence policy and practice.

Developing a strategy should be an opportunity to communicate with the host and sometimes home government, about engagement with the armed group, as it may have criminalized any contact with such groups. Experience demonstrates that businesses have an interest in keeping home and host governments informed of their interactions, even when such contact is officially forbidden. Business, like humanitarian groups, may have to engage in dialogue with armed groups and should be prepared to explain their own commitments to human rights and to respect for the well-being of people impacted by their operations.

c) Create contact

The analysis of the armed group should determine the entry point, and the mode(s) of action. For example, if the armed group has no clear hierarchical structure or if a state army has a dysfunctional chain of command, it is unlikely that a message passed from higher ranks will trickle down. This means that the delegation, as well as having to consider military hierarchy, must determine levels of interaction: local/national, regional, global.

At all of the levels described below, targeting key individuals can sometimes be a good point of entry. This involves identifying individuals who stand out as having either influence or a semblance of military ethos (in the positive sense) and thus have the potential to become allies to a specific cause (influencers).

d) Maintain impartiality

Businesses should strive to maintain impartiality. As mentioned earlier, businesses cannot be neutral actors in a context affected by armed conflict, in the sense that they have an effect on the conflict dynamics. This does not mean that businesses should not try to be impartial, understood as not choosing any side but abiding by principles, in this case, international human rights law and international humanitarian law. This would include consistently demonstrating independence from government-led or non-state armed group-led efforts and avoiding any activity or public statement that may be construed as supporting or as excusing their abuses.

e) Collaborate

Businesses should look to collaborate with other businesses, NGOs and international organizations. Most businesses consider that coordination or information-sharing is neither feasible nor desirable given legal liability concerns, but cooperation would be more cost-efficient because the resources required to conduct conflict analysis and incorporate conflict sensitivity are vast, and the task is continuous.

Photo: Businesses should have a clear strategy fior engaging armed actors

Further resources for section IV.F may include the following (for a more exhaustive list, please see the Resources section):

a) Danish institute for Human Rights, *Human Rights Impact Assessment: Guidance and Toolbox*, 2020. www.humanrights.dk/sites/humanrights.dk/files/media/ dokumenter/udgivelser/hria_ toolbox_2020/eng/dihr_hria_guidance_and_ toolbox_2020_ eng.pdf (for more on stakeholder engagement)

b) Geneva Centre for Security Sector Governance and International Committee of the Red Cross, *Addressing Security and Human Rights Challenges in Complex Environments Toolkit*, 3rd ed, 2017, www.securityhumanrightshub.org/content/call-project-partners-toolkit-and-knowledge-hub-addressing-security-and-human-rights (for more on stakeholder engagement strategies and approaches)

c) Voluntary Principles on Security and Human Rights, https://www.voluntaryprinciples.org/ (for more on engagement with armed actors)

d) International Code of Conduct for Private Security Service Providers Association, icoca.ch (for more on engagement with armed actors)

G. Grievance mechanisms

Key takeaways from section IV.G

Operational-level grievance mechanisms should be tailored for conflict-affected contexts. Businesses should pay particular attention to the safety of persons accessing mechanisms while engaging with appropriate institutions, including the ICRC where appropriate.

Operational-level grievance mechanisms are a major tool in conflict settings. They should follow the established effectiveness criteria, but their design and operation require heightened attention. Just like stakeholder engagement, robust grievance mechanisms are more important in conflict-affected contexts.

As mentioned in the Guiding Principles, grievance mechanisms need to be based on:

- Legitimacy, understood as enabling trust from stakeholder groups for whose use they are intended and being accountable for the fair conduct of grievance processes.
- Accessibility, understood as being known to all stakeholder groups for whose use they are intended and providing adequate assistance for those who may face particular barriers to access.
- Predictability, understood as providing a clear and known procedure with an indicative time frame for each stage, and clarity on the types of process and outcome available and means of monitoring implementation.
- Equitability, understood as seeking to ensure that aggrieved parties have reasonable access to sources of information, advice and expertise necessary to engage in a grievance process on fair, informed and respectful terms.
- Transparency, understood as keeping parties to a grievance informed about its progress and providing sufficient information about the mechanism's performance to build confidence in its effectiveness to meet any public interest at stake.
- Compatibility with rights, understood as ensuring that outcomes and remedies accord with internationally recognized human rights.
- Continuous learning, understood as drawing on relevant measures to identify lessons for improving the mechanism and preventing future grievances and harms.
- Engagement and dialogue, understood as consulting the stakeholder groups for whose use they are intended on their design and performance, and focusing on dialogue as the means to address and resolve grievances.

In designing and operating their grievance mechanisms, business should consider some specific points:

- A grievance mechanism may not be fit for purpose for all circumstances, for example if the allegations involve gross human rights abuses or other serious criminal matters.
- Conflict will increase the level of risk, and of fear, and make more individuals afraid to report their grievances. Confidentiality of the process, and the security of the people accessing the mechanisms, should therefore be fully secured. The International Code of Conduct Association for Private Security Providers, for example, has developed a guidance manual and policy on grievance mechanisms, which provides examples of how security providers should address the issue of reporting crimes to national authorities.[44]
- The breakdown of the rule of law and the judiciary system or the polarization and/or repression of civil society organizations, which

44 https://icoca.ch/wp-content/uploads/2020/07/Manual.pdf.

ordinarily provide an avenue for communities to raise grievances, may transform a business mechanism into a sole recourse for communities to be heard. Businesses should ensure that their design allows for such grievances to be transmitted to the appropriate actors. When grievances and/or complaints may refer to abuses by the army or armed groups against people in the community, employees or contractors, the business "should make the facts known to competent authorities, to avoid any accusation of complicity by omission and … can and should communicate to victims or their families the ICRC contact information for reporting their case … ICRC and its delegates, in accordance with its own rules, should explain to the victims or their families the course of action to follow, as well as any humanitarian answers ICRC may provide, on a case-by-case basis."[45]

45 Fundación Ideas para la Paz, *Guide on Grievance and Complaints Mechanisms: Respectful of Human Rights and International Humanitarian Law*, (Bogotá, Colombia, 2017), p. 18. Available at www.ideaspaz.org/media/website/FIP_GC_Grievance&Complaints_web_C-0519.pdf.

Further resources for section IV.G may include the following (for a more exhaustive list, please see the Resources section):

a) UN Human Rights Office of the High Commissioner, *The Corporate Responsibility to Respect Human Rights: An Interpretive Guide*, 2012. www.ohchr.org/documents/publications/hr.pub.12.2_en.pdf (for more on the grievance mechanisms)

b) International Code of Conduct for Private Security Service Providers Association, Manual: Developing and operating fair and accessible company grievance mechanisms that offer effective remedies, 2020. icoca.ch/wp-content/uploads/2020/07/Manual.pdf

c) Guias Colombia, Guide on Grievance and Complaints Mechanisms, www.ideaspaz.org/media/website/FIP_GC_Grievance&Complaints_web_C-0519.pdf (for more on grievance and complaints mechanisms)

H. Building institutional capacity for heightened human rights due diligence

Key takeaways from section IV.H

Building capacity for heightened human rights due diligence require three main initiatives from business:

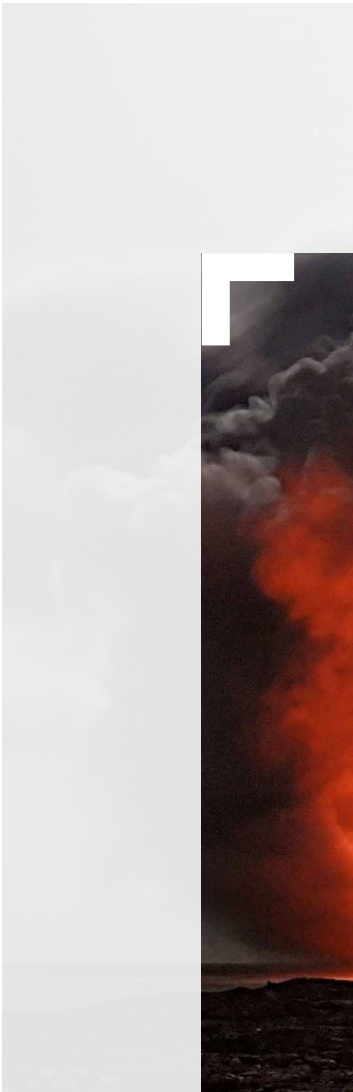
Organizational strengthening, translated into institutional commitment (buy-in from leadership and overcoming a lack of interest)

Skill upgrading, translated into human resources (minimizing divisions and perceptions of bias in recruitment; and building capacities and skills of staff)

Building capacity for heightened human rights due diligence requires three main commitments (or initiatives?) from business: organizational strengthening, procedural improvements and skill upgrading, translated into institutional commitment, policies and strategies and human resources.

Effective heightened human rights due diligence will happen by securing resources (human, financial, networks, knowledge, systems and culture) and integrating them in a way that leads to change in individual behavior and ultimately to more efficient and effective operations. It demands two types of capacity, both tangibles such as organizational structure and systems, legal frameworks and policies and non-tangibles, such as social skills, experience, creativity, values and motivation.

For heightened human rights due diligence, the intangible capabilities are as important as the tangibles because they determine how well a given business will use the other resources at its disposal and allow them to realize the most effective analysis.



46 See also The Conflict Sensitivity Consortium, *How To Guide To Conflict Sensitivity*, (2012).

1. Institutional commitment

Institutional commitment is critical to enable the sustained implementation of heightened human rights due diligence.[46]

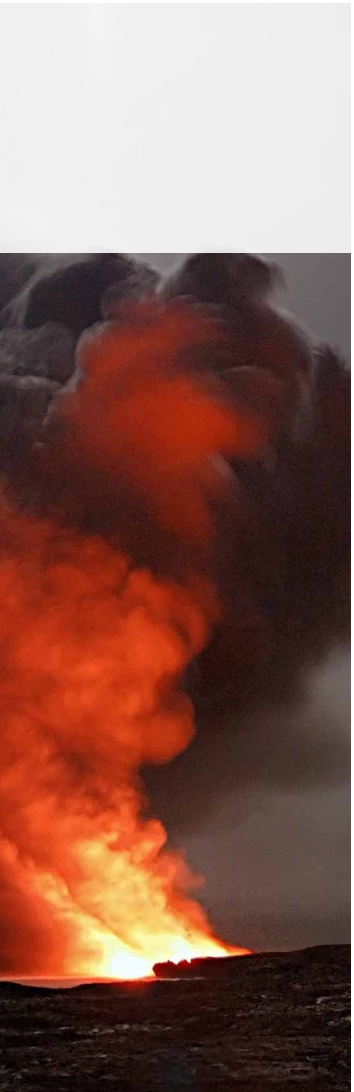
a) Generating buy-in at leadership and senior management level

Getting buy-in from chief executives, presidents, directors and senior managers can be a challenging process, especially when multiple agendas and cross-cutting issues are competing for their attention. Senior management buy-in is central to driving heightened human rights due diligence.

b) Overcoming lack of interest

However, even where leadership commitment is lacking, action can still be taken to build on existing awareness and best practices in particular sections of a business and progressively generate buy-in at higher levels.

The push for effective heightened human rights due diligence will often rely, at least initially, on the identification of 'champions' or focal points within the business. Focal points may be located in teams with a particular focus on conflict or human rights or broader sustainability, but this is not necessary as it is also important to see heightened human rights due diligence as relevant to the whole business and to avoid having it isolated within one particular function.



2. Policies and strategies

a) Organizational policies

Just like for human rights in general, ensuring that a business has a policy on heightened human rights due diligence is a key step to ensuring a sustained commitment to heightened human rights due diligence principles and notably to overcoming the challenge of commitment falling due to staff turnover, common to conflict affected markets. An overall policy on heightened human rights due diligence can be used as the basis for reviewing and adapting other policies such as procurement, security or market development, which will benefit from a review from a heightened human rights due diligence perspective. If a stand-alone policy is not appropriate or feasible, it can be helpful to include it into broader key organizational strategies and policies, such as within a human rights code of conduct or statement of organizational principles.

b) Strategic plans

Integrating heightened human rights due diligence into organizational or market strategies will not only help to ensure sustained commitment from the business but will often offer the chance to generate initial attention from senior management.

Strategic planning processes represent a key opportunity to integrate heightened human rights due diligence into overall strategies as they offer unique spaces for broad organizational consultations. This can create space for more open discussions among staff regarding the context in which they are working, the conflict issues they are facing and how the context is affected or impacted on by their work.

Integrating heightened human rights due diligence into organizational strategies may translate into a simple reference or it may be more extensive and lead to different choices of activities, or methodologies because of issues or risks highlighted by its analysis.

3. Human resources

a) Recruitment

Who is recruited and how they are recruited is important from a heightened human rights due diligence perspective. In all contexts, attention will have to be paid to staff competencies (detailed below) and to the overall staff composition.

In conflict-affected contexts in particular, perceptions of equality, trust and diversity can have peaceful consequences in the workplace and even more broadly in the community. Conversely, bias, lack of impartiality and association with particular groups or parties to a conflict can have adverse effects on a business. The way a business recruits its staff may increase tension, exacerbate existing divisions, diminish trust towards the organization from particular groups and increase security risks for staff. The effects can move beyond the enterprise and impact wider communities.

The way to mitigate risks and ensure that recruitment policies include a heightened human rights due diligence lens will be highly specific to each context as it needs to be very closely linked to the conflict analysis and to an assessment of the particular make up of the area where staff are being recruited. The overriding objective in all cases will be to minimize divisions and perceptions of bias.

b) Capacity-building, staff development and learning

Capacity-building plans are crucial to ensure that all staff develop, or reinforce, their heightened human rights due diligence competencies. Training is necessary, but not sufficient to ensure heightened human rights due diligence practice. Training needs to be reinforced by institutionalized learning processes that facilitate and encourage reflection on practice.

Ensuring that there are safe spaces to talk about what might be going wrong is extremely important from a heightened human rights due diligence perspective. Conflict issues, lines of division and how a person's work may impact on a context and vice versa are extremely sensitive issues, particularly in very fragile and divided contexts.

Businesses, particularly small-to-medium enterprises (SMEs), should focus on finding ways to leverage and pool resources and expertise, including by requesting more tangible support from home states in the case of international businesses.

V.

Annexes

Photo: Collaboration is key for carrying out heightened human rights due diligence.

A. Heightened human rights due diligence – Q&A for businesses

Question(s)	Answers
Where should a business conduct heightened human rights due diligence?	In 'contexts affected by armed conflicts and other situations of widespread violence'. These include: — Conventional armed conflict — Military occupation — Mass atrocities — Widespread violence If you're uncertain whether a situation needs heightened human rights due diligence, consider a simple rule of thumb: If in doubt, carry it out.
When should a business conduct heightened human rights due diligence?	It should conduct heightened human rights due diligence on an ongoing basis. It is not a 'one-and-done' exercise; instead, it requires assessments of conflict impacts to be carried out: a) regularly; b) prior to a business engaging in new activities, relationships, etc.; and c) changes in the operating environment (e.g. rising social tensions).
How can a business prepare for heightened human rights due diligence?	It should be aware of early 'red flags' pointing towards armed conflict or mass violence which should prompt it to initiate (or update earlier) heightened human rights due diligence processes, including: — Amassing of weapons, especially arms, especially by non-state groups. — Weak or absent state structures, including the imposition of emergency laws or extraordinary security measures, or the suspension of, or interference with, vital state institutions, particularly if this results in the exclusion of vulnerable or minority groups. — Records of serious violations of international human rights and/or humanitarian law. — Increased inflammatory rhetoric or hate speech targeting specific groups or individuals. — Signs of militia or paramilitary group recruitment, public appearances or other activity. For a more complete list, see IV.B.1.
International sanctions are in place. Do businesses still need to undertake heightened human rights due diligence?	Yes. International sanctions are a useful indicator to exercise heightened due diligence, but can never replace it.
What does heightened human rights due diligence require of a business?	To: a) Understand the conflict. b) Identify your adverse impacts on the conflict. c) Act upon the findings by identifying business responsibility for potential negative impacts on human rights and conflict.
How can a business understand the conflict?	You should answer the following questions: 1. What is the context shaping the conflict? 2. Who are the actors influencing the conflict? 3. What are the causes of the conflict? 4. What are the current dynamics/trends of the conflict? To help do this, a business can monitor social media as a useful tool. For a more complete list, see IV.B.2.a.

How can a business understand the impact of its activities on the conflict?	By answering the following questions: — How might business activities affect the positions of power or relationships between different actors? — Are any of the identified conflict actors' 'business relationships' directly linked to its operations, products or services? — How might business activities impact the conflict causes identified earlier? — How might business activities impact the conflict dynamics identified earlier? To help do this, a business can use actor mapping as a useful tool. For a more complete list, see IV.B.2.b.
How can a business identify its responsibility for potential negative impacts on human rights and conflict?	Three fundamental questions can help: 1. Is there an actual or potential adverse impact on human rights or is the conflict connected either to the company's activities (actions or omissions), products or services? 2. If so, do the company's activities (including actions or omissions) increase the risk of that impact? 3. If so, would the company's activities (including actions or omissions) in and of themselves be sufficient to result in that impact? If the answer to all three questions is "yes," then the business causes, or may cause, an adverse human rights impact and is expected to take appropriate measures to cease, prevent, and remedy the impact. If the answer to 1 and 2 is "yes" and the answer to 3 is "no," the business is contributing, or may contribute, to an adverse impact and should take appropriate measures to cease, prevent, and remedy its contribution; it should also exercise its leverage to mitigate any remaining impact to the greatest extent possible. If only the answer of the first question is "yes", then the business may directly be linked to the abuse. Responsible companies should consider a "maybe" as a "yes".
How should a business exercise heightened human rights due diligence in wars between two states?	In wars between two states, a business should exercise heightened human rights due diligence in both states. If the use of force – the war – is deemed unlawful under international law, in addition to respecting human rights and international humanitarian law, *at a minimum*, business should assess, and avoid or mitigate its connection to the war efforts of the aggressor country to "ensure that they do not exacerbate the situation."
How can a business account for vulnerable groups?	Conflicts differently impact people depending on race, ethnicity, religion, sexual orientation, gender identity, disability, class or other forms of discrimination. To account for their impact on vulnerable groups, businesses should ask themselves questions including: — What is the different impact of the conflict and of business activities on such specific groups, including but not limited to forms of direct violence? — Do men, women and gender minorities play similar or different roles? How do men, women and gender minorities relate to each other? — Which data beyond 'traditional' sources of information exist to inform the conflict and business activities analysis, such as reports by women's or indigenous' organizations or consultations with experts in the local contexts? For a more complete list, see IV.B.4.
How should a business prioritize actions to address the adverse impacts it is, or could be having on conflict and human rights?	It should address its most serious impacts on conflict and human rights; to ascertain these, it should use the typology of scale, scope and irremediability: — Scope: How widespread is the armed violence that impacts people, e.g. number of people affected? — Scale: How grave or serious is the armed violence, i.e. does it include a large number of deaths and casualties? — Irremediability: What are the limits to restoring the people impacted to at least the same, or equivalent to, their situation before the armed violence occurred? For a more complete list, see IV.B.5.

If a business is causing (or may cause) or contributing (or may contribute) to an adverse human rights impact in a conflict-affected context, what should it do?	The business should take measures to cease, prevent or remedy the negative human rights impact (for a list of parameters and considerations to guide measures to mitigate human rights risks, please see IV.C.1). It should also exercise its leverage to mitigate any remaining impact to the greatest extent possible, particularly if it is directly linked to it (for more on the types of leverage your business could exercise, please see IV.C.2).
When should a business exit a conflict-affected context?	A hasty exit can be as damaging as one that comes too late. A business contemplating exiting or suspending its operations needs an exit strategy that: — Is planned in advance, ideally at the same time as the business plans the start of activity. — Considers whether suspending or exiting could exacerbate tensions within populations and whether the harms outweigh the benefits. — Develops mitigation strategies, as suspending or terminating business activities often has significant consequences for communities. — When transferring ownership, assesses the human rights capacities of the buyer and requests, including through contractual terms, that the buyer put specific human rights-related policies and procedures in place to enable them to operate responsibly in a conflict-affected context. — When offering ancillary services or philanthropic programmes, mitigates the effects of its exit, for instance by providing for a handover to an adequate entity, such as a civil society actor. For a more complete list, see IV.D.
How should a business track and communicate about the measures it has taken as part of the heightened human rights due diligence process?	Businesses should track the effects of measures they have taken and consider in particular how lessons learnt relating to heightened human rights due diligence are captured, stored and shared to ensure they inform future activities. When communicating, businesses should be careful not to disclose information about how specific impacts are being addressed when it could pose risks to affected stakeholders or personnel.
How should a business engage stakeholders in contexts affected by conflict?	Meaningful consultation with potentially affected groups and other relevant stakeholders is an essential element of heightened human rights due diligence. These may include vulnerable groups impacted by business activity, government, armed groups, civil society, and others. When engaging armed groups, businesses should: a) Understand the armed groups – their structure, control of territory, objectives, political agenda and support from the local population. b) Define an engagement strategy – be aware of their formal classification as an armed group, and use tools by initiatives such as the Voluntary Principles on Security and Human Rights to avoid abuses. c) Create contact – determine at what level to interact: local/national, regional, global, while identifying influential individuals. d) Maintain impartiality – do not choose sides, but abide by principles (international humanitarian law and international human rights law). e) Collaborate – with other businesses, non-governmental organizations and intergovernmental organizations, in carrying out this task.
How should a business build its capacity for heightened human rights due diligence?	Businesses should undertake three main initiatives: 1. Organizational strengthening, translated into institutional commitment (buy-in from leadership and overcoming a lack of interest). 2. Procedural improvements, translated into policies and strategies. 3. Upgrading skills, translated into human resources (minimizing divisions and perceptions of bias in recruitment; building capacities and skills of staff). For an institutional capacity assessment, please see Annex C.

B. Heightened human rights due diligence – action overview

Your business can use the following to check whether it has taken the appropriate steps to undertake heightened human rights due diligence:

Actions

- [ ] **1. Determine whether and when to undertake heightened human rights due diligence**
(for guidance on how, see sections IV.A, IV.B.1 and IV.B.3).

- [ ] **2.1. Understand the conflict by carrying out conflict analysis**
(for guidance on how, see IV.B.2.a).

- [ ] **2.2. Monitor media (including social media) to understand the conflict and your impact on the conflict**
(for guidance on how, see IV.B.2.a.5).

- [ ] **2.3.a Understand the impact of your activities on the conflict**
(for guidance on how, see IV.B.2.b).

- [ ] **2.3.b Carry out actor mapping to understand the impact of your activities on the conflict**
(for guidance on how, see IV.B.2.b).

- [ ] **2.3.c Understand the impact of your activities on vulnerable groups**
(for guidance on how, see IV.B.4).

- [ ] **2.4. Identify your responsibility for potential or actual negative impacts on human rights and conflict**
(for guidance on how, see IV.B.2.c).

- [ ] **2.5. Take appropriate measures to cease, or prevent, and remedy negative impacts on human rights and conflict that your business is causing, contributing to, or linked to**
(for guidance on how, see IV.B.2.c, IV.C.1 and IV.C.2).

- [ ] **2.5. Prioritize actions to address the adverse impacts your business is, or could be, having on conflict and human rights**
(for guidance on how, see IV.B.5).

- [ ] **2.6. Develop an 'exit strategy'**
(for guidance on how, see IV.C.3).

- [ ] **3.1. Track the measures your business has taken as part of the heightened human rights due diligence process**
(for guidance on how, see IV.D).

- [ ] **3.2. Communicate the measures your business has taken as part of the heightened human rights due diligence process**
(for guidance on how, see IV.E).

- [ ] **3.3. Engage stakeholders in contexts affected by conflict**
(for guidance on how, see IV.F).

- [ ] **3.4. Tailor grievance mechanisms for victims of human rights abuses in conflict-related contexts**
(for guidance on how, see IV.G).

- [ ] **3.5. Assess and build your business's capacity for heightened human rights due diligence**
(for guidance on how, see IV.H and Annex C).

C. Heightened human rights due diligence capacity assessment

1. Institutional commitment

1.1. Management commitment and leadership

Management / leadership in the business understand heightened human rights due diligence and can explain why heightened human rights due diligence is relevant for the business.

a) Are management aware of heightened human rights due diligence?
b) Can they describe heightened human rights due diligence accurately?
c) Is heightened human rights due diligence given high priority in decision making?
d) Is commitment translated into enabling decisions, resources etc.?
e) Have management actively promoted heightened human rights due diligence within the business and with external partners, suppliers, etc.?

1.2. Responsibility and accountability mechanisms

Organizational accountability systems are in place for enabling heightened human rights due diligence.

a) Do existing performance monitoring systems consider heightened human rights due diligence practice of staff?

Heightened human rights due diligence is integrated into decision-making criteria in activities approvals.

a) Are there any mandatory heightened human rights due diligence checks in proposal approval processes?

b) Is it explicit where responsibility for various aspects of heightened human rights due diligence lie (among staff in HQ and in market countries)?

2. Policies and strategies

2.1. Heightened human rights due diligence policy

There is an organizational heightened human rights due diligence policy, or heightened human rights due diligence is integrated into other key organizational policies.

a) Is there a heightened human rights due diligence policy?
b) Do any other key organizational policies or strategies refer to heightened human rights due diligence (such as a strategic plan or a code of conduct)?

2.2. Internal policies and strategies

Current institutional policies dovetail with the heightened human rights due diligence policy.

a) Are there institutional policies relevant to heightened human rights due diligence? (Human rights, procurement, recruitment, sustainability, audit policy, partnership policy, security).
b) Do these policies explicitly refer to heightened human rights due diligence?

3. Human resources – staff competencies, skills and understanding of heightened human rights due diligence

3.1. Staff have heightened human rights due diligence expectations

The business has clarified what expectations (in terms of specific actions) are required from different functional roles in order for the business to be ready to carry out heightened human rights due diligence.

a) Are the expectations of each role in terms of heightened human rights due diligence clear?
b) Are staff aware of the implications that heightened human rights due diligence has for their role?
c) Are they receiving support to build skills / awareness where there are deficits?

3.2. Staff heightened human rights due diligence awareness, attitude and behaviors

Staff are competent to fulfil the heightened human rights due diligence expectations for their role.

a) Do staff feel able to fulfil the expectations of their roles?

Staff are able to articulate appropriate attitudes and behaviors.

a) Are staff aware of the key attitudes for heightened human rights due diligence?

Where deficits in current knowledge or skills are identified, the business ensures that training is provided.

a) Is there a systematic way in which skill/ knowledge deficits are noted and capacity built?

The entire business has a basic level of awareness and understanding of heightened human rights due diligence.

a) How many staff are able to give a good basic description of heightened human rights due diligence and why it is important to the business?
b) Do staff working outside of human rights functions consider heightened human rights due diligence as relevant to their work? (e.g. marketing, finance, logistics, human resources)

4. Learning and knowledge management

4.1. Learning and reflective practice

The business has effective heightened human rights due diligence knowledge management, documenting and learning from its experiences in applying heightened human rights due diligence.

a) How are lessons learnt, collected and shared?
b) What incentives are present for people to share experiences of poor heightened human rights due diligence practice or the lack of heightened human rights due diligence in situations where it was needed?

The business has created a 'safe space' where people can openly discuss areas where they feel business activities and programming may have negative impacts on conflict.

a) What do people do when they feel business activity may contribute or be directly linked to conflict?
b) Is there formal guidance on what steps they should take?

The business has promoted a culture of reflection, where sufficient priority is given to thinking and analysis, such that staff are encouraged and enabled to reflect on the potential unintended consequences of business activities.

a) How much priority is given to thinking and analysis? How does the business ensure that such consideration is prioritized?

4.2. Encouraging heightened human rights due diligence best practice

Institutional blockages to heightened human rights due diligence have been assessed and a system put in place to overcome such blockages.

a) Has the business systematically considered blockages to heightened human rights due diligence (prior to this assessment)?
b) Have any changes been made as a result?

D. Contextual factors checklist

	Not Relevant	Possible Linkages to business activities	Likely linkages to business activities
History of Conflict			
On-Going			
Insurgency or Rebellion			
Security Forces			
Post-Conflict Environment			
Crime Rate			
Political Context			
Regime Type			
Role of Executive			
Electoral System			
Political Party System			
Economic Context			
Per Capita Income			
GINI Index			
GDP			
Social Context			
Social tensions			
Youth Prominence			
Role of Elites			
Role of Diaspora			
Migration Patterns/ Demographics			
Structural Context			
Regional Conflict Dynamics			
Political Confrontations			
Channels for Hate Speech			
New Media			

E. Spoiler/motive evaluation checklist

WHO	WHY	HOW	Not Relevant	Possible Linkages	Likely linkages
State and State Proxies	Maintaining government power	State and state proxies may employ state resources to engage in conflict to secure power			
Coalitions of Opposition Parties	Overturning government	Coalition of opposition parties, adversaries engage in mass-based actions to protest			
Political Rivals	Political competition	Political rivals engage in conflict in order to gain political advantage/power			
Insurgents	Delay, discredit, or derail the election	Insurgents seek success or to compromise the credibility of the government			
Criminals/ Organized crime	Corruption of governance to their advantage	Criminals engage in bribery, intimidation and violence to ensure that local government does not disrupt its criminal pursuits			

F. Resources

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