

B+HR
BUSINESS AND HUMAN RIGHTS



Training Facilitation Guide

Heightened Human Rights Due Diligence

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ABBREVIATIONS AND ACRONYMS

BHR	Business and Human Rights
CAHRA	Conflict-Affected and High-Risk Area
CSDDD	Corporate Sustainability Due Diligence Directive (EU)
CSO	Civil Society Organization
CSR	Corporate Social Responsibility
ESG	Environmental, Social, and Governance
ESIA	Environmental and Social Impact Assessment
EU	European Union
HRDD	Human Rights Due Diligence
hHRDD	Heightened Human Rights Due Diligence
IFC	International Finance Corporation
IHL	International Humanitarian Law
IHRL	International Human Rights Law
ILO	International Labour Organization
NGO	Non-Governmental Organization
NHRI	National Human Rights Institution
OECD	Organisation for Economic Co-operation and Development
UN	United Nations
UNDP	United Nations Development Programme
UNGPs	United Nations Guiding Principles on Business and Human Rights
UN OHCHR	United Nations Office of High Commissioner for Human Rights
UNWG	United Nations Working Group on Business and Human Rights

OVERVIEW AND INTRODUCTION

The role of companies in conflict-affected and high-risk areas (CAHRAs) is under growing scrutiny. The progressive expansion of international standards and legislation governing corporate conduct is indicative of rising expectations that companies should do business in a manner that, at a minimum, does not lead to, exacerbate, or sustain conflict, and that they should proactively manage their impacts in CAHRAs.

This Training Facilitation Guide ('Training Guide') consists of training modules which clarify companies' responsibilities vis-à-vis human rights due diligence in CAHRAs, also known as "heightened human rights due diligence", or "hHRDD". The Training Guide provides a step-by-step approach to help companies better understand the process necessary to undertake hHRDD.

Textbox 1: What is Heightened Human Rights Due Diligence?

Heightened human rights due diligence is a process for assessing and addressing a company's actual and potential impacts on human rights and on conflict.

Heightened human rights due diligence is an element of corporate responsibility when a business operates or has value chains in a conflict-affected or high-risk areas.

Upon completion of the training, it is expected that trainees will understand: the key aspects of the process for undertaking hHRDD; why it is required; where and when it should be conducted; how it differs from human rights due diligence (HRDD); and what additional resources (such as conflict analysis tools, frameworks, guidance, third-party experts, etc.) they may need to enable them to perform hHRDD.

The Training Guide adheres to authoritative sources and commonly used terminology. Where there is a lack of consensus amongst experts or key international institutions on specific issues, the Training Guide notes this.

1.1 Heightened Human Rights Due Diligence

A number of multilateral and legislative bodies have affirmed that CAHRAs are uniquely challenging environments in which to do business, and that companies operating in such environments should exercise a degree of diligence that reflects the challenges of those environments.

Textbox 2: A note on terminology

There is no universal definition for the term “conflict-affected area” or “conflict-affected context”, but the United Nations Development Programme (UNDP) uses the term to describe a variety of contexts in which high levels of violence and/or a high risk of widespread violence prevail.¹ European Union (EU) legislation and a number of other institutions use the term “conflict-affected and high-risk areas” to refer to areas affected by ongoing conflict and also areas in which there is a high risk that conflict may occur.

Heightened human rights due diligence involves:

- Identifying, assessing, preventing, mitigating, and remedying impacts that drive, intensify, or sustain conflict;
- Identifying, assessing, preventing, mitigating, and remedying human rights impacts;
- Communicating about how the company is identifying and addressing both sets of risks and impacts; and,
- Monitoring risks and efforts to mitigating risks.

As a process, **hHRDD entails**:

1. Understanding the conflict dynamics in the context in which the company operates – by carrying out a conflict analysis and updating it regularly.
2. Understanding the potential and actual interaction between the activities of the company and its business associates, on the one hand, and between those activities and conflict, on the other hand. This is undertaken by linking the analysis of the company’s specific business activities (including both operations and value chains) to the analysis of conflict.

¹ UNDP Business and Human Rights in Asia, HRDD Training Facilitation Guide, 2021, p. 9. <https://www.undp.org/publications/human-rights-due-diligence-training-facilitation-guide>

3. Understanding the company's potential and actual impacts on human rights – by engaging stakeholders to identify ways in which their rights may be affected by the business.
4. Using these understandings as a basis for preventing or mitigating impacts by integrating the issues identified above in the design and implementation of business activities and by ensuring that the company has in place a system to monitor actual and potential impacts over time. The company should also remedy impacts that do occur.

This Training Guide situates hHRDD in relation to authoritative standards, international law, and “soft law” that pertain to human rights and conflict, elucidating the mandate for hHRDD and explaining how hHRDD differs from traditional HRDD. It breaks down *why* and *how* conflict settings differ from other operational contexts and *why* and *how* corporate human rights responsibilities are heightened within them. It offers insight into when and where hHRDD is called for and how companies might determine whether or not it is in specific cases. It explains the analysis processes necessary for companies to understand their impacts on human rights and conflict and, finally, provides a step-by-step approach to hHRDD.

1.2 Overview of the Training Guide

This Training Guide builds upon the **Guide on Heightened Human Rights Due Diligence for Business in Conflict-Affected Contexts** published by the UN Working Group on business and human rights (UNWG) and by UNDP, notably the Guide's concept of hHRDD.

Further, it complements UNDP's [Training Facilitation Guide: Human Rights Due Diligence](#). While hHRDD includes 'standard' HRDD processes as constituent elements, this Training Guide focuses on the elements of due diligence that are unique to hHRDD and not on those that are required for 'standard' human rights due diligence. However, to appropriately contextualize hHRDD, this Training Guide begins with a “refresher” module on human rights and the business responsibility vis-à-vis human rights.

Objective

The overall objective of this Training Guide is to provide trainers with a comprehensive introduction to the nature of hHRDD for company staff and other interested audiences. It seeks to help participants understand:

- What is hHRDD?
- When and where is hHRDD called for?
- How is hHRDD conducted?

- How does hHRDD relate to HRDD, international humanitarian law (IHL), and the obligations of companies?

Target audience

This training is meant for business representatives working in different capacities, whether in senior leadership or middle management positions or in functional roles involving sales, supply chain management, legal and compliance, public or government affairs, sustainability, security, and social and environmental sustainability reporting. The training is not exclusively for people in the business sector, however. It may also be useful to organizations that advocate for better due diligence practices in CAHRAs, including United Nations (UN) entities, other international organizations and regional bodies, national and local government offices, trade organizations, chambers of commerce, other Civil Society Organizations (CSOs) or National Human Rights Institutions (NHRI).

Audience size

This training was designed with both remote, hybrid, and in-person workshop modalities in mind. For either modality, these modules are intended for approximately 20-25 people. Groups larger than 25 people will likely make it difficult to facilitate discussions and complete the exercises.

Training modalities

The training is designed so that it can be tailored to specific audiences according to their familiarity with human rights and hHRDD processes. For example, Module 1 in Part I, which relates to business and human rights (BHR), may not be necessary when participants are sustainability or human rights experts already familiar with that material. The facilitator may also find some overlap of material between modules, which allows the facilitator to tailor presentation and facilitation approaches. A short course and full-length training can both be accommodated. Completing the full version of this training is estimated to take 10.5 hours. Facilitators may include consultants, CSO actors, staff at NHRIs, or UN employees, among others. The training can be broken up with panel discussions involving local experts, or even field trips to places of interest to witness and explain good practices.

Should you be interested in UNDP training services, please contact biz.humanrights@undp.org.

Organization

This Training Guide is organized into three parts, as described below.

PART I

Part I begins with a “refresher” on business and human rights, including a discussion on the UN Guiding Principles on Business and Human Rights (UNGPs) and other human rights responsibilities. It also provides an overview of hHRDD. These modules will help participants understand the business and human rights nexus and provide basic information about how hHRDD fits within that. Part I is divided into two modules.

- **Module 1:** Refresher on Business and Human Rights
- **Module 2:** What is “Heightened Human Rights Due Diligence”?

At the end of Part I, participants will have a foundational understanding of the basics of business and human rights, HRDD, and hHRDD, as well as the ways in which HRDD and hHRDD are distinct.

PART II

Part II describes when and why businesses should undertake hHRDD. It is divided into two modules:

- **Module 3:** The business case for hHRDD
- **Module 4:** When should companies perform hHRDD?

By the end of Part II, participants will be familiar with the concept of hHRDD and when and why it would be recommended to perform it.

PART III

Finally, Part III provides an overview of the processes necessary to undertake hHRDD. Part III is divided into five modules:

- **Module 5:** Introduction to the hHRDD Process
- **Module 6:** Understanding the conflict
- **Module 7:** Understanding the impacts of the operation on the conflict
- **Module 8:** Developing and implementing mitigation approaches
- **Module 9:** Disclosure and staying up-to-date

By the end of Part III, participants will be familiar with process necessary for undertaking hHRDD.

ADDITIONAL MATERIALS

The manual also includes three additional sets of items, all of which can be found at the end of the manual:

- Case studies, based largely on real-world business activities as described in public documents, that are intended to be incorporated into trainings as elements of exercises to illustrate and convey understanding of specific issues that are addressed in the manual; and
- A “resource pack” consisting of brief notes on specific areas of practice that are relevant to hHRDD but not in themselves elements of the hHRDD analysis process. These are intended as additional resources for workshop participants, and trainers may wish to distribute them as workshop materials.
- A bibliography listing both documents that are cited within the manual and websites and publications that are not cited in the manual but that address issues that are pertinent to hHRDD. The bibliography should not be considered exhaustive.

Methodology

As a content delivery-focused training, the hHRDD Training is mostly based on lectures. To help the facilitator in delivering the material, each module and section contains step-by-step guidance, background material, suggested exercises, visuals, and topic headings in the form of questions.



Resources: The headings marked by this signifier serve to indicate resources that provide additional information that can be found in the accompanying resource packet.



Exercises: The headings marked by this signifier indicates exercises.



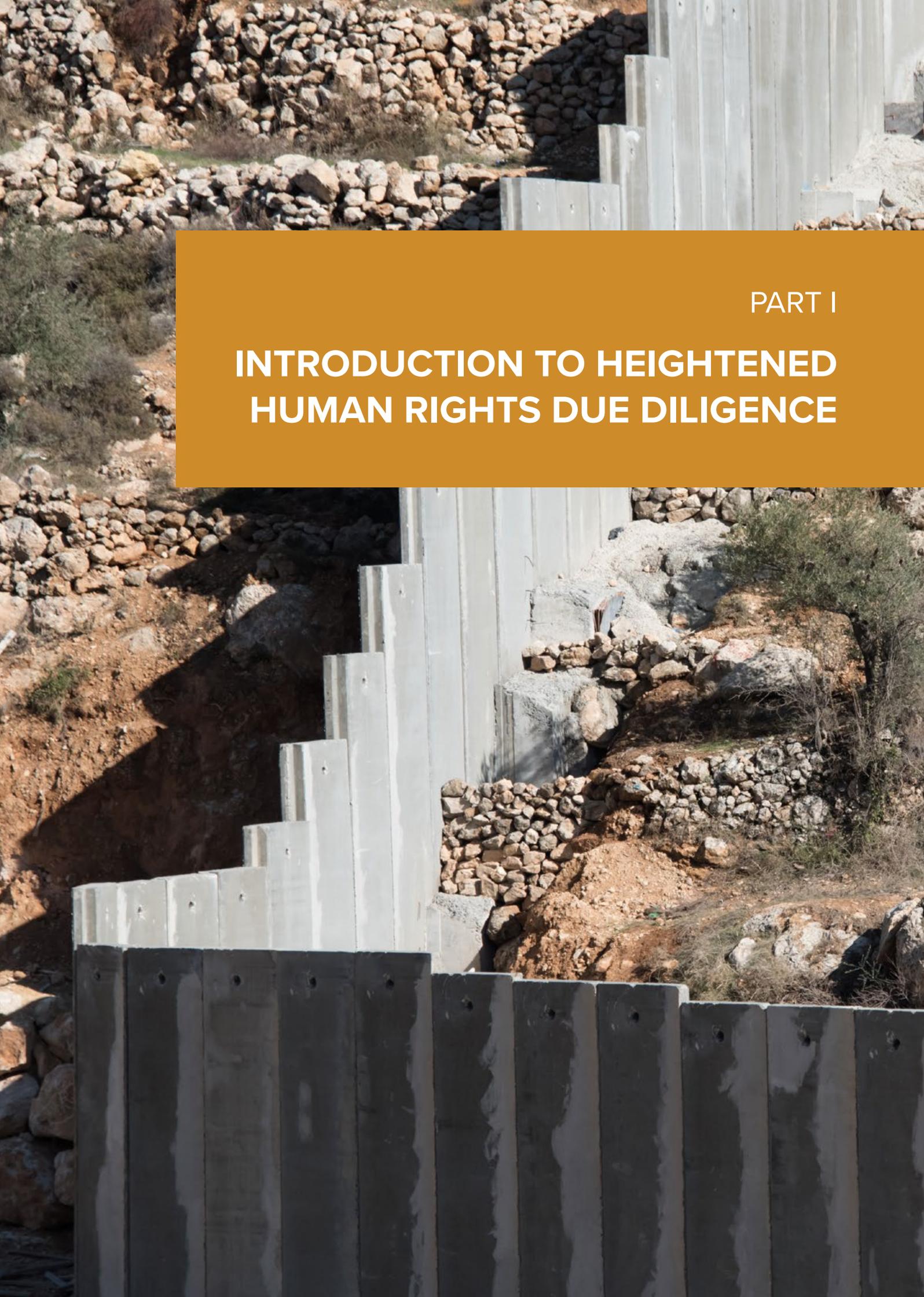
Facilitated discussion: The headings marked by this signifier indicates facilitated discussions.



Quiz: Finally, The headings marked by this signifier indicates a quiz.

1.3 Final note

Undertaking hHRDD is a complex process that requires some degree of technical skill in specialized areas (e.g. conflict analysis, analysis of impacts upon conflict, stakeholder engagement in complex contexts). If a company requires hHRDD, then the company is operating in an environment that is exceptionally challenging and risky. Companies with complex or extensive business operations may wish to consider engaging expert third-party support to perform or assist with hHRDD.

A photograph of a hillside with a stone wall and a corrugated metal fence in the foreground. The stone wall is built from irregular, light-colored rocks. The corrugated metal fence is made of vertical panels. The background shows a steep, rocky slope with some sparse vegetation.

PART I

INTRODUCTION TO HEIGHTENED HUMAN RIGHTS DUE DILIGENCE

MODULE 1

REFRESHER ON BUSINESS AND HUMAN RIGHTS

Time	75 minutes
Learning Objective	Participants will come away from this module with an understanding of the fundamental concepts of human rights, their relation to business, and the UNGPs, with a particular focus on Pillar II: the company’s responsibility to respect human rights. At the end of the training module, participants will have a sufficient understanding of the basics of business and human rights to enable them to proceed to the subsequent module, which focuses on hHRDD.
Methodology	The section begins as a lecture and ends with a quiz.
Facilitator’s Notes	<p>This module provides a concise overview of the fundamentals of human rights as well as business and human rights – and in particular the UNGPs. It does not recapitulate all of the material covered in the UNDP Human Rights Due Diligence Training Facilitation Guide.</p> <p>For groups of participants who are already familiar with human rights and business and human rights, it may be possible to skip all or part of Module 1. The module is segmented into numerous, shorter sessions to enable the facilitators to tailor the materials to participants’ needs. Subsequent modules will build significantly on this foundation, however. If participants are new to these issues or out of practice with them, then Module 1 should be covered in the training.</p>
Procedure	<ol style="list-style-type: none"> 1. Inform participants that this session will be 75 minutes. 2. Let participants know that there will be a quiz at the end of this module. 3. Facilitate discussions throughout. Start with a discussion on the fundamentals of human rights. 4. Use Mentimeter to gauge who has heard of: the UNGPs; the corporate responsibility to respect; and the Protect, Respect, and Remedy Framework. 5. Allow for discussion about the answers to the Mentimeter.

Textbox 3: Icebreaker

Ask participants to introduce themselves, the organization they represent, their role in the organization, and why they are participating in the training. You can use resources such as: <https://www.yourdictionary.com/articles/examples-icebreakers> and adapt these based on the group size, time available, and profile of training participants.



Session 1.1

Background on human rights



15 minutes



Facilitated Discussion

- What are human rights?
- How can businesses generate human rights risks and impacts?
- What are the UN Guiding Principles on Business and Human Rights?

Textbox 4: Mentimeter

Which aspects of Pillar II of the UNGPs are you most familiar with?

Which aspects do you recall less well?

What are human rights?

Human rights are rights we have simply because we exist as human beings - they are not granted by any state. These universal rights are inherent to us all, regardless of nationality, gender, national or ethnic origin, sexual orientation, race, religion, language, or any other status. They range from the most fundamental - the right to life - to those that make life worth living, such as the rights to food, education, work, health, and liberty. The [Universal Declaration of Human Rights](#) is considered the foundation of international human rights law, which is codified in:

- [International Covenant on Civil and Political Rights](#)
- [International Covenant on Economic, Social, and Cultural Rights](#)

Collectively, these three documents are known as the [International Bill of Human Rights](#).

It is the role of States to respect, protect, and fulfil the human rights of individuals within their respective territories and/or jurisdictions. This includes the duty to protect against human rights abuses by third parties, including businesses.

end of session

Session 1.2

Human rights and business



15 minutes



Facilitated Discussion:

- What are the most common ways in which companies can adversely impact basic human rights?

Business impacts on human rights

Businesses, like states and any other actors, can infringe upon people's human rights, deprive them of some of those rights or prevent them from realizing those rights.

There are many ways in which businesses can affect human rights, some of the most common being:

- **Violations of labour rights**
 - Excessive working hours
 - Workplace discrimination
 - Forced and bonded labour
 - Child labour
 - Prohibiting workers from unionising and otherwise violating their rights to associate freely
- **Violations of the rights of groups**
 - Indigenous Peoples' rights (such as the failure to consult with, and obtain free, prior, and informed consent from, indigenous peoples prior to undertaking projects on their land)
 - Women's rights (such as the failure to pay equal wages to women)
 - The rights of persons with disabilities (such as failure to provide an accessible workplace)
 - LGBTI rights (such as violations of the right to be free from discrimination in the workplace)

- **Workplace conditions**
 - Health and safety violations
 - Excess levels of pollution and toxic or hazardous chemicals
 - Sexual harassment
 - Privacy rights abuses
- **Operational impacts**
 - Land use and abuses of property rights
 - Inclusivity and participation issues
 - Community impacts
 - Misuse of private security forces

Textbox 5: Terminology on “risks” and “impacts” with respect to human rights

A human rights risk is the likelihood and severity of a potential abuse of human rights.

A human rights impact is an abuse of human rights that has taken place.

Risks are impacts that might occur in the future, and impacts are risks that have been realized in the past or are being realized in the present.

end of session

Session 1.3

The UN Guiding Principles on Business and Human Rights



20 minutes

What are the United Nations Guiding Principles on Business and Human Rights?

In 2011, the UN Human Rights Council unanimously endorsed the [United Nations Guiding Principles on Business and Human Rights](#), which are the most authoritative framework regarding the potential and actual adverse impacts that businesses may have on human rights. The UNGPs specify in detail the responsibilities of both companies and states vis-à-vis human rights, in relation to each other, and in relation to rightsholders. These responsibilities are distinct and complementary.

The Three Pillars of the UNGPs

The UNGPs consist of 31 principles that are divided into three “pillars”:

- **Pillar I: The State Duty to Protect Human Rights**
Under international human rights law, States have a duty to protect rightsholders against human rights abuses by third parties, including business enterprises, within their territories and/or jurisdictions. This means that States have the role of preventing, investigating, punishing, and redressing abuses of human rights.
- **Pillar II: The Corporate Responsibility to Respect Human Rights**
“Business enterprises should respect human rights. This means that they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.” – Principle 11.
- **Pillar III: Access to Remedy**
When adverse impacts occur, those affected must have access to effective remedy. Businesses should provide a form of non-judicial remedy for their adverse impacts on human rights.

The UNGPs provide approaches, policy coherence, minimum standards, and a sequenced approach towards the assessment and management of human rights risks and impacts. This overview will focus on Pillar 2 of the UNGPs, which outlines the responsibility of businesses to respect human rights.

What are business responsibilities under the UNGPs?

Pillar II of the UNGPs stipulates that, to respect human rights, companies should:

- Establish policy commitments that reflect their responsibility to respect human rights (Principle 16)
- Undertake human rights due diligence (HRDD), a process that identifies, mitigates, and accounts for their potential adverse human rights impacts (Principles 17-21, and 24)
- Remediate adverse human rights impacts that have occurred (Principle 22)

What is included in Human Rights Due Diligence?

Human rights due diligence requires companies to assess impacts and risks in their value chain, and act responsibly to prevent, mitigate and account for human rights abuses in which they may be involved through their own activities and business relationships. Identification under HRDD typically involves four steps:

1. Mapping activities of operations and the operations of suppliers and other business relationships
2. Understanding operational context
3. Identifying potential and actual impacts
4. Identifying potentially affected stakeholders/ rightsholders²

What else do the UNGPs suggest?

- **Compliance with local laws may not be enough**

Local legal frameworks in the host state may not be sufficient to meet the expectations set out in the UNGPs (Principle 13); and thus, compliance with those laws may not meet the standards established under the UNGPs. Companies should meet whichever of the two standards affords greater protection for human rights.

- **Applicability to all businesses**

The business responsibility to respect human rights applies regardless of the business' sector, industry, size, operating context, ownership, or structure (Principle 14).

- **Extends throughout the whole value chain**

The responsibility extends throughout the company's operations, which means across its relationships and value chains. This means that a company has responsibility for all impacts related to the services and products that reach its end-users (Principle 13).

- **Prioritization of the most severe risks and impacts**

Given the broad range of human rights risks and impacts that might arise, companies should prioritize those that are most severe or those would become irremediable if a response is delayed (Principle 24).

- **Positive impacts of Corporate Social Responsibility (CSR) and employment do not offset adverse human rights impacts**

Businesses cannot offset their adverse human rights impacts by doing good i.e. in their CSR or other similar initiatives. Harms must be avoided irrespective of any and all benefits.

² For more see: UNDP's Human Rights Due Diligence Training Facilitation Guide.

What do the UNGPs say about conflict-affected areas?

The UNGPs recognize conflict-affected areas as contexts in which the risk of gross human rights abuses is elevated. On these grounds, the UNGPs stipulate several points about the duties of states and the responsibilities of companies in such areas.

The duties of states in conflict-affected situations include:

- Engaging companies early in their business activities to help them to understand and address human rights risks
- Providing support to businesses for the same purposes
- Denying support and services to businesses that are involved in gross human rights abuses and that refuse to cooperate in addressing the situation
- Ensuring that policies, regulations, and enforcement are effective in addressing business involvement in gross abuses

Where the host state is incapable of protecting human rights, (foreign or transnational) companies' home states should provide the support described above, ensure coherence across development agencies and diplomatic missions, and deny support to companies that fail to cooperate in addressing human rights risks and impacts. Home states should also warn businesses about the risks of being involved in gross abuses when they operate in conflict-affected areas.

Corporate responsibilities in conflict-affected areas

The UNGPs suggest that, in conflict-affected areas, companies should:

- Be aware of the elevated risk of complicity in human rights abuses perpetrated by other parties and treat this risk as a legal compliance issue
- Endeavor not to exacerbate conflicts, consulting internally across the company and externally among expert parties in determining how best to respond to situations in which the company might do so

Principle 17 of the UNGPs also suggests that HRDD is proportional to human rights risk:

“Human rights due diligence will vary in complexity with the size of the business enterprise, the risk of severe human rights impacts, and the nature and context of its operations.”³

³ United Nations Office of the High Commissioner for Human Rights. *United Nations Guiding Principles on Business and Human Rights; Implementing the United Nations “Protect, Respect, and Remedy” Framework*, New York and Geneva: United Nations, 2011, p. 17-18. https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf

Session 1.4

Business and international law



15 minutes

Human Rights, businesses, and international law

One way to understand the UNGPs might be as an articulation of how International Human Rights Law (IHRL) determines the responsibilities of businesses. As such, the UNGPs are closely linked to IHRL.

International Human Rights Law:

A “series of international human rights treaties and other instruments adopted since 1945 have conferred legal form on inherent human rights and developed the body of international human rights.”⁴ These include the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, which form the so-called International Bill of Rights, the bedrock of IHRL. International Human Rights Law applies in all situations; however, certain major treaties contain so-called derogation clauses, which allow States to temporarily suspend or restrict the exercise of certain rights during states of emergency (which are often invoked during armed conflict).

International Humanitarian Law

Another closely related but distinct body of law is International Humanitarian Law (IHL), which is binding in situations of ongoing armed conflict.

International Humanitarian Law:

International humanitarian law is a “set of rules which seek, for humanitarian reasons, to limit the effects of armed conflict. It protects persons who are not or are no longer participating in the hostilities and restricts the means and methods of warfare”.⁵ IHL “does not prohibit all violence, but it tries to limit the harm caused during situations of conflict”.⁶ IHL binds States, organised armed groups and soldiers; it also binds the personnel of private businesses in certain circumstances.⁷ Unlike IHRL, IHL applies only in situations of armed conflict; it does not apply in situations of internal disturbances, such as protests or riots.

4 United Nations Office of the High Commissioner for Human Rights, *International Human Rights Law*, <https://www.ohchr.org/en/instruments-and-mechanisms/international-human-rights-law>, last accessed 10 February 2024.

5 International Committee of the Red Cross, *What is International Humanitarian Law?*, https://www.icrc.org/en/doc/assets/files/other/what_is_ihl.pdf, last accessed 10 February 2024.

6 Diakonia, *Understanding International Humanitarian Law*, <https://www.diakonia.se/ihl/resources/international-humanitarian-law/understanding-international-humanitarian-law/>, last accessed 10 February 2024.

7 Australian Red Cross and RMIT University, Australian Red Cross, *Doing Responsible Business in Armed Conflict: Risks, Rights and Responsibilities*, 2020, <https://www.redcross.org.au/globalassets/cms/documents/ihl--no-ihl/doing-responsible-business-in-armed-conflict-final-publication-web.pdf>, last accessed 10 February 2024.

Textbox 6: IHRL as applied to companies

“An authoritative list of the core internationally recognized human rights is contained in the International Bill of Human 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.”⁸

International Humanitarian Law – implications for businesses

Businesses run a potential risk of exposure to violations of IHL in a number of areas. The Australian Red Cross provides key guidance for companies on violations of IHL, indicating that, in war zones or in situations of occupation, companies should avoid causing, contributing to, or being directly linked to the following:

- The pillaging of property, including natural resources, which is prohibited under IHL for personal use. Thus, businesses operating in war zones should take care to ensure they do not illegally exploit such resources and property or acquire them without the freely given consent of their owner.
- The transfer of the occupying power’s own population into the occupied territory or the forcible transfer of the protected population into the territory of the occupying power (while allowing for temporary evacuation for their security or for imperative military reasons). An example is that businesses in war zones have previously taken advantage of military

⁸ United Nations Office of the High Commissioner for Human Rights. *United Nations Guiding Principles on Business and Human Rights; Implementing the United Nations “Protect, Respect, and Remedy” Framework*, New York and Geneva: United Nations, 2011, p. 14. https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf

interventions that displaced populations as a way of securing access to land; such forced displacement of residents and landholders may amount to a war crime.

- Violating IHL rules intended to limit damage to the environment. An example may be supplying armed forces carrying out attacks that lead to widespread environmental destruction.
- Benefitting from labour of civilians, prisoners of war or detainees in conditions that fail to meet minimum labour standards.
- The development, production or transfer of prohibited weapons, such as biological or chemical weapons.

Textbox 7: Business and IHL

IHL obligates businesses in certain circumstances, but it also protects both personnel and assets of businesses during armed conflict. Corporate staff are obligated to not breach IHL; if they do so either as direct perpetrators or accomplices, they risk criminal or civil liability.⁹ As stated by the International Committee of the Red Cross (ICRC), IHL applies to business activities when they are linked to hostilities. In this case, “being linked to hostilities” might mean, for example, that a party to conflict participates in a company’s value chain. More on IHL can be found [here](#).

end of session

Session 1.5

Other key guidance relating to business and human rights



10 minutes

What other frameworks pertain to business’ responsibility to respect human rights?

While the UNGPs are the key framework for businesses’ responsibility for respecting human rights and remediating negative impacts on human rights, there are several other important principles, standards, and guidelines which define aspects of responsible business operations. These include (but are not limited to):

⁹ 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.

- **The Organisation for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises**

Offers non-binding standards for companies operating in countries that adhere to the OECD Declaration on International Investment and Multinational Enterprises. The OECD Guidelines offers chapters on a number of issues relating to business’ responsibilities. The Guidelines indicate that, in “situations of armed conflict”, companies should respect IHL and conduct “enhanced due diligence.”¹⁰ The chapter on human rights is consistent with the UNGPs, and the OECD National Contact Points provide a non-judicial remedy mechanism that may be used to address grievances.

- **International Labour Organization (ILO) Tripartite Declaration Principles concerning Multinational Enterprises and Social Policy**

Offers eight fundamental conventions that cover key principles related to rights at work.

- **The EU Corporate Sustainability Due Diligence Directive (CSDDD)**

In 2024, the EU Corporate Sustainability Due Diligence Directive (CSDDD) was formally adopted by the EU Parliament, making human rights and environmental due diligence of supply chains mandatory for certain companies. Recital 42 of the CSDDD outlines specific expectations with regards to business activities in CAHRAs, referencing also the UNDP Guide on which this training is based:

“In conflict-affected and high-risk areas, as defined in accordance with Regulation (EU) 2017/821, human rights’ abuses are more likely to occur and to be severe. Companies should take this into account when integrating due diligence into their policies and risk management systems to ensure that codes of conduct and processes put in place to implement due diligence are adapted to conflict-affected and high-risk areas, consistently with International Humanitarian Law, as laid out in the Geneva Conventions and additional protocols. Companies should take into account that these situations constitute particular geographic and contextual risk factors when performing in-depth assessments as part of the identification and assessing process, when taking appropriate measures to prevent, mitigate, bring to an end and minimise identified adverse impacts, and when engaging with stakeholders. For this purpose, companies may rely on the Commission’s guidance on the assessment of risk factors associated with conflict-affected and high-risk areas, which should take into account the UNDP Guidance on “Heightened Human Rights Due Diligence for Business in Conflict Affected Contexts.”¹¹

10 OECD, *OECD Guidelines for Multinational Enterprises on Responsible Business Conduct*, OECD Publishing, Paris/Guidelines, 2023, p. 26. <https://www.oecd.org/publications/oecd-guidelines-for-multinational-enterprises-on-responsible-business-conduct-81f92357-en.htm>

11 European Parliament. Legislative resolution of 24 April 2024 on the proposal for a directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937, Brussels, 24 April 2024. https://www.europarl.europa.eu/doceo/document/TA-9-2024-0329_EN.html



QUIZ

1

Which of the following choices best defines “human rights due diligence”:

- A. A process of engaging activist groups and journalists to address the reputational risks to which a company is exposed.
 - B. A process undertaken by corporate counsel to ensure that the company’s business activities comply with applicable home- and host-state laws and regulations.
 - C. A process of identifying human rights risks and impacts associated with business activities and developing and implementing measures to address those risks and impacts.
 - D. A process of auditing suppliers to assess labor rights practices, risks, and abuses throughout a company’s value chain.
-

2

True or False: According to the UNGPs, companies that are linked to human rights abuses through their business relationships can fulfill their human rights responsibilities through initiatives that provide rightsholders with social and economic benefits as an alternative to addressing the abuses.

3

IHL applies **only** in situations of armed conflict between states, between states and armed groups, or between/among armed groups.

True or False: Company personnel who perpetrate or contribute to violations of IHL may be exposed to personal criminal liability.

QUIZ / Answers

1. Answer: C. Human rights due diligence is a process for identifying and mitigating human rights risks and impacts that arise from a company's business activities or from the activities of other actors to which the company is linked by a business relationship, such as the company's suppliers.

2. Answer: False.

Engaging in activities that benefit stakeholders does not relieve companies of the responsibility to address human rights abuses that companies cause, contribute to, or are linked to.

3. Answer: True.

Company personnel are obligated not to breach International Humanitarian Law. If they do so in a jurisdiction in which IHL is in force, either as direct perpetrators or as accomplices, they risk criminal or civil liability.

MODULE 2

WHAT IS “HEIGHTENED HUMAN RIGHTS DUE DILIGENCE”?

Time	50 minutes
Learning Objective	Participants will come away from this module with an understanding of the foundational elements of hHRDD, the relationship of hHRDD to the UNGPs, the relationship of hHRDD to relevant legal frameworks, and the business case for hHRDD.
Methodology	The section begins as a lecture and ends with a quiz.
Facilitator’s Notes	This module explains the foundations of hHRDD in the activities of the UNWG, UNDP and other agencies. It relies heavily on a lecture presentation by the facilitator with the aim of imparting a factual knowledge base of the conceptual and ‘soft law’ origins of hHRDD.
Procedure	<ol style="list-style-type: none"> 1. Inform participants that this session will be 50 minutes. 2. This module will largely be lecture-based. 3. Let participants know that there will be a quiz at the end of the module.

Session 2.1

Background on Heightened Human Rights Due Diligence



20 minutes

What do the UNGPs say about hHRDD?

The previous module introduced the principle of **proportionality** that is embedded in the UNGPs. The UNGPs indicate that HRDD will vary in complexity in proportion to the severity and extent of the human rights risks that are at issue, among other things.

The UNGPs also recognize that human rights risks are driven by two independent sets of factors:

- The specific nature and scope of a company’s business activities - some activities may have more serious potential impacts upon human rights than others do, and large-scale operations may entail more risks and impacts than smaller-sized operations.
- The characteristics of the context - including the characteristics of the actors in that context - in which those business activities take place.

Developments since the adoption of the UNGPs

In a [2020 report](#), the UNWG recognized that certain characteristics of operational environments heighten human rights risks and thus call for “heightened human rights due diligence”.¹²

The characteristics include:

- Armed conflict and other forms of instability, including “serious levels of volatility,” irregular regime change, nationalist or radical opposition movements, actual or impending humanitarian emergencies, or “volatility in economic or social affairs caused by acute poverty, mass unemployment or deep horizontal inequalities.”¹³
- Weak or absent state structures, which might be exemplified by the “lack of an independent and impartial judiciary, the lack of effective civilian control of security forces and high levels of corruption.”¹⁴
- States that have a “history of armed violence and serious violations of international human rights and international humanitarian law,”¹⁵ where violence or violations may be more likely to occur.

¹² Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises, *Business, human rights and conflict-affected regions: towards heightened action*, UNGA A/75/212, 21 July, 2020. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N20/190/21/PDF/N2019021.pdf?OpenElement>

¹³ Ibid., p. 5

¹⁴ Ibid., p. 5

¹⁵ Ibid., p. 5

Stipulations by the UNWG

The UNWG further recognizes that when companies operate in such environments, they may unintentionally and unknowingly act in ways that drive, intensify, or sustain violence, even if the company in question expressly intends to be impartial with respect to the conflict parties and to the issues that are at stake in the conflict.

The UNWG stipulates that, when a company operates in an environment that is affected by conflict or the characteristics noted above, the company should assess, prevent, mitigate, and remedy its **impacts on conflict** as a matter of the company’s human rights responsibility.

UNWG-UNDP Guide

Following the UNWG 2020 report, the UNWG and UNDP issued [Heightened Human Rights Due Diligence for Business in Conflict-Affected Contexts: A Guide](#). The Guide answers key questions regarding hHRDD, including what it is, why businesses should carry it out, what sets it apart from ‘regular’ human rights due diligence, and when and how it should be carried out. The present training manual, and this module in particular, is based on the explanations provided by the Guide and is intended as a practical companion piece to it.

//// end of session

 <h2 style="margin: 0;">Session 2.2</h2>	<h2 style="margin: 0; color: #0070C0;">What is Heightened Human Rights Due Diligence?</h2>	
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10 minutes

What is hHRDD?

Heightened human rights due diligence is:

A process for assessing and addressing a company’s actual and potential impacts on human rights and on conflict. Heightened human rights due diligence is an element of corporate human rights responsibility when a business operates in or sources from conflict-affected or high-risk area (CAHRAs).

In CAHRAs standard HRDD processes are insufficient to fully respect human rights because standard HRDD does not identify or address company actions that may cause, sustain, or intensify

conditions – e.g. violent conflict or the risk thereof – that make grievous human rights abuses much more likely and consequential.

What does hHRDD mean for companies?

To perform hHRDD, companies need to accomplish the following:

- Understand the conflict dynamics in the context which the company operates – by carrying out a conflict analysis and updating it regularly.
- Understand the potential and actual interaction between the activities of the company and its business associates, on the one hand, and the conflict, on the other hand. This is done by linking the analysis of the company’s specific business activities (including both operations and value chains) to the analysis of conflict.
- Understand the company’s potential and actual impacts on human rights – by engaging stakeholders to identify ways in which their rights may be affected by the business, including through methods such as carrying out human rights impact assessments.
- Use these understandings as a basis for preventing or mitigating impacts by integrating the issues identified above in the design and implementation of business activities and by ensuring that the company has in place a system to monitor actual and potential impacts over time. The company should also remedy impacts that do occur.

//// end of session ////



Session 2.3

How does hHRDD fit in with laws and other standards?



20 minutes

hHRDD and European Union legislation

Three interrelated EU legal acts play a significant role in establishing a legal notion of “conflict-affected and high-risk areas” and in stipulating that companies are obligated to treat those contexts differently from others.

- In 2017, EU Parliament and the EU Council adopted [Regulation \(EU\) 2017/821](#). The Regulation is intended to help businesses that import minerals into the EU to keep conflict minerals out of their supply chains. In this context, the Regulation defines “conflict-affected and high-risk areas”

16 Regulation (EU) 2017/821 of the European Parliament and of the Council, article 2(f)

as “areas in a state of armed conflict or fragile post-conflict as well as areas witnessing weak or non-existent governance and security, such as failed states, and widespread and systematic violations of international law, including human rights abuses.”¹⁶ The Regulation’s characterization of “conflict-affected and high-risk” areas may have a broader applicability.

- [European Commission Recommendation \(EU\) 2018/1149](#) of 10 August 2018 establishes non-binding guidelines for the identification of “conflict-affected and high-risk areas” for the purposes of establishing appropriate due diligence benchmarks in mineral sourcing and related supply chain risks. The Recommendation references Regulation 2017/821, particularly its definition of “conflict-affected and high-risk areas”.

Textbox 8: Note to facilitator

Facilitators might consider priming the participants in advance of this session. It may be useful to note the fairly rapid evolution of legislation, particularly from European countries, that relate to how companies analyze and understand their relationships with and impacts on society and the environment. Broadly, this body of legislation obligates companies to pay more attention to their human rights due diligence, among other things, and to be more accountable for impacts and for disclosures. In this regard, it may be worthwhile to point out the following laws:

- The French [Law on the Duty of Vigilance of Parent and Instructing Companies \(2017\)](#) requires large companies operating in France to establish, publish, and effectively implement a vigilance plan that, among other stipulations, identifies and ranks risks, and establishes actions to mitigate risks and prevent violations of human rights, fundamental freedoms, the health and safety of individuals, and the environment in their own and subsidiaries’ operations, and in those of their ‘established business relationships’.
- The [Norwegian Transparency Act \(2023\)](#) requires many companies doing business in Norway to regularly conduct HRDD, to publish an annual human rights statement, and to respond to third party requests for information regarding adverse human rights impacts.¹⁷

¹⁷ These are very brief summaries that cannot capture the nuances of the legislation in question. To ensure a full grasp of the implications of these laws, please consult them directly via the hyperlinks in the text.

Textbox 8: Note to facilitator

- In January 2023, new Swiss due diligence obligations entered into force: the Ordinance on Due Diligence and Transparency regarding Minerals and Metals from Conflict Areas and Child Labour, which requires Swiss companies to comply with due diligence and reporting obligations when importing or processing conflict minerals or offering products or services with risks of child labour.

The EU Corporate Sustainability Due Diligence Directive (CSDDD)

The CSDDD requires large companies (EU-based or non-EU with significant EU turnover) to carry out human rights and environmental due diligence. As part of this obligation, it states that in CAHRAs, human rights abuses are more likely to occur and be severe, and that conditions in CAHRAs constitute "geographic and contextual" factors that increase likelihood of adverse impacts by companies. Accordingly, the CSDDD expects companies with business activities in CAHRAs to adapt their HRDD processes, including in identifying negative impacts and consulting stakeholders. **The Directive notes that, to accomplish the foregoing, companies may rely on EC guidance (to be developed), which should take into account the UNDP/UNWG Guide on Heightened Human Rights Due Diligence.**

These legal and normative frameworks reflect international expectations of companies and underscore the importance of hHRDD for companies that do business in CAHRAs.

////// end of session



QUIZ

1

From among the following, identify at least one authoritative source that defines or explains “heightened human rights due diligence”.

- A. The **Report on business, human rights and conflict-affected regions: towards heightened action**, published in 2020 by the UN Working Group on business and human rights.
- B. The **OECD Guidance on Responsible Business Conduct** from 2018.
- C. The International Finance Corporation’s **Performance Standards on Environmental and Social Sustainability**, most recently updated in 2012.
- D. **Heightened Human Rights Due Diligence for Business in Conflict-Affected Contexts: a Guide**, published in 2022 by the UN Development Programme and the UN Working Group on business and human rights.

2

Fill in the blank with the best of the answers below:

The Guiding Principles on Business and Human Rights indicate that the complexity of human rights due diligence (HRDD) should be proportional to _____?

- A. The intensity of the conflict in the context in which the due diligence is being performed;
- B. The severity and extent of human rights risks that the due diligence addresses;
- C. The number of suppliers and contractors in the company’s value chain;
- D. The number of countries in which the company operates;
- E. The volume of conflict minerals in the company’s supply chain.

3

A useful, simple definition of “heightened human rights due diligence” might be:

- A. A process for mitigating the risks of sourcing minerals from conflict-affected and high-risk areas;
 - B. A process of human rights due diligence that is adapted to be more extensive, thorough, and detailed;
 - C. A process for assessing and addressing a company’s actual and potential impacts on human rights and on conflict;
 - D. A process designed to ensure that companies remain neutral in situations of conflict;
 - E. A process that is mandated by the EU Corporate Sustainability Due Diligence Directive.
-

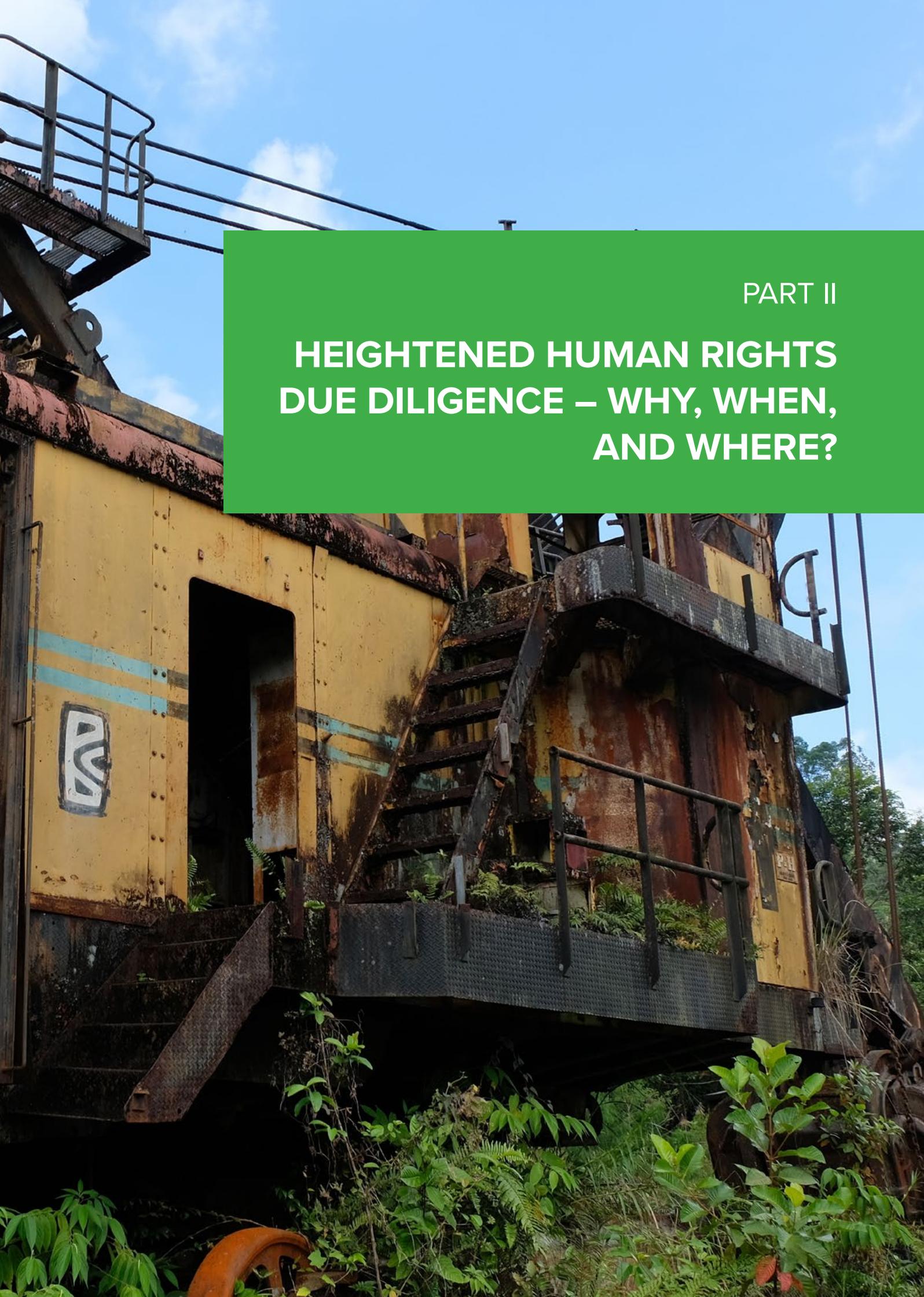
4

The EU Corporate Sustainability Due Diligence Directive expects companies that fall within the scope of the Directive to:

- A. Assess the impacts of the operations of their suppliers below “tier 1”;
 - B. Adapt their HRDD process in conflict-affected and high-risk areas to account for the elevated geographical and contextual risk factors that those areas present;
 - C. Avoid sourcing minerals from conflict-affected and high-risk areas;
 - D. Avoid conducting business operations in conflict-affected and high-risk areas;
 - E. Adhere to the OECD’s Standard of Responsible Business Conduct.
-

QUIZ / Answers

1. Answer: A and D are correct answers. Though various elements of hHRDD may be referenced in or required by various other standards and guidelines, the 2022 UNWG/UNDP Guide and the 2020 UNWG report are authoritative sources that define or explain hHRDD.
2. Answer: B is the best answer. Though some of the other answers identify factors that may heighten or drive human rights risks and impacts, the UNGPs indicate that the complexity of human rights due diligence should be proportional to the human rights risks and impacts that are being addressed.
3. Answer: C. Heightened human rights due diligence assesses and addresses both impacts on human rights and impacts on conflict.
4. Answer: B. The EU CSDDD requires a range of things of companies that fall into its scope, but the most accurate answer is that it requires companies to adapt their HRDD process in CAHRAs to account for the elevated geographical and contextual risk factors that those areas present.



PART II

**HEIGHTENED HUMAN RIGHTS
DUE DILIGENCE – WHY, WHEN,
AND WHERE?**

MODULE 3

THE BUSINESS CASE FOR hHRDD

Time	50 minutes
Learning Objective	Participants will come away with a basic understanding of corporate obligations and responsibilities vis-à-vis hHRDD. These include potential regulatory and legal obligations, normative frameworks and standards, obligations to investors and to stakeholders, and the relevance of hHRDD to the management of a range of risks.
Methodology	This section begins with a lecture and has a few exercises to test the participants knowledge of the content.
Facilitator's Notes	This module provides insights into the regulatory environment that has made hHRDD more significant for companies. It then offers insights into the various corporate risks associated with failing to undertake hHRDD and the relevant stakeholders for understanding and managing corporate risks.
Procedure	<ol style="list-style-type: none"> 1. Let participants know that this session will take 50 minutes. 2. Open the session with a question: who has experience with public reporting, stakeholder consultation, or reporting to investors about non-business risk? What legitimate interest do investors and stakeholders have in knowing how the company is managing risk? 3. Facilitate a discussion.

Session 3.1**The rationales for hHRDD**

50 minutes

The rationales for hHRDD

hHRDD is designed to help companies understand how their activities may exacerbate or sustain conflict or adversely impact human rights in CAHRAs, and to help them determine how to adapt their practices so as to eliminate or minimize such effects.

hHRDD is beneficial for companies for a number of reasons:

- It helps companies to understand how their presence and activities interact with conflict and human rights. For example, companies may discover that their recruitment practices are driving tensions between groups of stakeholders.
- It helps companies to understand their operational contexts more fully. In CAHRAs this can be instrumental in helping the company understand how to position itself vis-à-vis conflict issues and conflict actors. For example, it might help companies determine constructive approaches to engagement with states that have track records of serious human rights abuses.
- It enables companies to better meet their obligations to shareholders and the expectations of stakeholders. For example, it might provide a basis for a company to develop a new stakeholder engagement and community investment/ CSR strategy that enhances the company's relationships with key groups of stakeholders.
- It helps companies to identify options to mitigate the conflict and human rights risks that are inherent in CAHRAs – whether the company is sourcing from, providing products or services to, or operating in these contexts. For example, hHRDD might support the development of a land acquisition strategy that is acceptable to landholders.

How does hHRDD help to address risks?

Implementing hHRDD in CAHRAs can also help a company navigate a range of interrelated financial, legal, reputational, security, and operational risks.

Type of Risk	Explanation	Example
Financial Risks	<p>A nuanced understanding of conflict risks can increase a company's ability to predict plausible conflict scenarios that may bear upon their bottom lines.</p> <p>Business continuity is often an issue in CAHRAs, and accurate forecasting can be critically important.</p>	<p>Chevron Nigeria, Ltd. (CNL) lost in excess of USD 1 billion when violent conflict emerged in its operational area in the Niger Delta in 2003. CNL's own post-facto analysis of the conflict indicated that CNL's practices had unwittingly played a contributing role in the outbreak of conflict.¹⁸</p>
Legal Risks	<p>The EU CSDDD indicates that companies are expected to undertake hHRDD processes; lack of compliance could create significant legal risk.</p> <p>IHL specifically stipulates that, under some circumstances, company staff can face criminal legal liability if they are directly or indirectly linked to human rights abuses in areas in which armed conflict is taking place.</p>	<p>Lafarge SA and its then-defunct Syria subsidiary Lafarge Cement Syria (LCS) agreed with the U.S. Department of Justice to "pay a financial penalty of \$777.78 million and have agreed to plead guilty to one count of conspiring to provide material support to designated foreign terrorist organizations in Syria between August 2013 and October 2014."¹⁹</p>
Reputational Risks	<p>If corporate operations or supply chains link the company to severe human rights abuses, companies run the risk of significant reputational damage.</p> <p>A negative or inappropriately partisan reputation within a conflict context can be a significant driver of security risks and consumer boycotts.</p> <p>Activist organizations or members of the public can bring companies under scrutiny for their actions or inaction, potentially causing significant reputational damage to the company. Public campaigns and scandals can drive losses of market share and shareholder value.</p>	<p>Volvo faced significant pressure from advocacy and human rights groups when construction equipment it manufactured and then sold to the Government of Israel was discovered to have been used in the construction of illegal settlements in the Occupied Palestinian Territories.²⁰</p>
Security Risks	<p>This relates to the safety and security of staff and other stakeholders in the value chain. When companies are linked to or perceived to be linked to human rights abuses in CAHRAs or as aligned with one or more of the parties to the conflict they can become a target of conflict parties, which can significantly raise the safety and security risks for personnel and company facilities.</p>	<p>In Mindanao, Philippines, communist rebels have largely targeted companies operating in the area due to their connection to the national government and its perceived exploitation of the Mindanao region for its own benefit.²¹</p>

18 Hoben, Merrick, David Kovick, David Plumb, and Justin Wright, "Corporate and Community Engagement in the Niger Delta: Lessons Learned from Chevron Nigeria Limited's GMOU Process", November 2012. <https://www.cbi.org/article/corporate-and-community-engagement-in-the-niger-delta-lessons-learned-from-chevron-nigeria-limited-s-gmou-process/>

19 Holcim, "Holcim affirms support for Lafarge SA Resolution with the U.S. Department of Justice regarding legacy Lafarge operations in Syria. 18 October, 2022. <https://www.holcim.com/media/media-releases/statements-18-october-2022>

hHRDD and managing stakeholder relationships

hHRDD is a useful tool for understanding and managing relationships with stakeholders in conflict-affected settings and elsewhere. The table below lists various stakeholders, who they are, and why companies that do business in CAHRAs should be concerned about them.

Stakeholder	Who?	Why?
Local stakeholders	Local people, groups, or organizations who can affect or be affected by the decisions and activities of a business, organization, or project. For example, villagers living in the vicinity of a company production facility, and users of social media companies' platforms are stakeholders of those companies, respectively.	Company impacts on conflict may drive risks to the company's stakeholders because such impacts may intensify violence that may affect those stakeholders. In CAHRAs, antagonizing local stakeholders can in some circumstances drive security risks including the loss of human life.
Parties to the conflict	The groups or individuals participating in a conflict. "Primary parties" are those who are directly involved in the conflict, such as non-state armed groups and government forces. "Secondary parties" are those who are indirectly involved in the conflict or have a stake in the outcome of the conflict, such as partisans or supporters of an armed group or civilian government officials.	Linkages to parties to conflict may drive significant legal, financial risks to the company. Inaptly positioning the company vis-à-vis conflict issues can antagonize parties to conflict and drive security risks to the company and to its local stakeholders.
Investors	A person or organization that provides capital to or purchases shares in a company with the intention of achieving a financial return. For example, shareholders and managers of funds that hold equity stakes in a company are investors in that company.	Companies operating in CAHRAs may be obligated to make formal disclosures to their investors about their efforts to address risks. Even if such disclosures are not required, investors have a legitimate interest in understanding how companies in which they have invested capital are managing risks which may affect their investments.
Regulators	Legislative bodies or state agencies upholding or enforcing legislation or regulations that obligate a company, such as the EU under the CSDDD or the ministry of the host-state government that is responsible for the industry to which a company belongs.	hHRDD enables companies to know and show that they are meeting or working towards meeting a high standard of corporate responsibility.



end of session

20 Business and Human Rights Resource Centre, OPT: Mixed response from multinationals in Israeli solar sector accused of contributing to Palestinian displacement, 18 May 2018. <https://www.business-humanrights.org/it/ultime-notizie/opt-mixed-response-from-multinationals-in-israeli-solar-sector-accused-of-contributing-to-palestinian-displacement/>

21 Carmel Crimmins, "Communist rebels blamed for Philippines gold plant attack," *Reuters*, 6 February 2006. <https://www.reuters.com/article/philippines-rebels-gold-idUSMAN8113520080206/>

MODULE 4

WHEN SHOULD COMPANIES PERFORM hHRDD?

Time	50 minutes
Learning Objective	Participants will come away from this module with an understanding of when hHRDD is required of companies or how to determine whether it is required. Participants will be introduced to key, complex concepts, such as “conflict” and “high-risk areas”.
Methodology	The session is primarily a lecture, with discussion and exercises part way through the session, and a quiz at the end. The section also includes Resource 1 from the resource packet that provides more information about CAHRAs.
Facilitator’s Notes	This section details when it is necessary to do hHRDD assessments and provides critical definitional criteria about what is “conflict” and “high-risk”. Leave plenty of time for the exercises and discussion.
Procedure	<ol style="list-style-type: none"> 1. Let participants know that this module will take 50 minutes. 2. Explain that this session will cover hHRDD and corporate responsibility. 3. Let participants know that this session will end with an exercise.

Session 4.1

When to do hHRDD



50 minutes

When is hHRDD expected?

Heightened human rights due diligence is expected in situations of:

- Conflict,
- Post-conflict, and
- Other situations in which there is a high risk of conflict.

While there is no consensus on the definition of these terms, this session will provide information about each term in order to ensure you have a strong understanding of what pertains to each context.

What are conflict-affected areas?

The UNWG and UNDP Guide on hHRDD makes the following observations about the “conflict-affected areas” where companies have a responsibility to carry out hHRDD:

“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.”²²

“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

²² United Nations Working Group on Business and Human Rights and United Nations Development Programme. *Heightened Human Rights Due Diligence for business in conflict-affected contexts; A Guide*. New York, United States of America, 2022, p. 9.

human rights due diligence is key in terms of understanding how the demand and sourcing of such resources is connected to conflict.”²³



RESOURCE 1

Found in the resource pack, Resource 1 provides more information about the different types of conflict.

What are “high-risk areas”?

There is no indicator that predicts violent conflict perfectly reliably, but there are a number of contextual factors that make conflict and violence more likely or that indicate that violence may be imminent or likely. The Guide indicates that hHRDD should be conducted when any of the following are observed:

- “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.”²⁴

23 Ibid., p. 20.

24 Ibid., p. 21.

Throughout this manual, the phrase “high-risk areas” is used to describe states or regions that are characterized by one or more of the above described factors, all of which should be understood as intensifying the risk of widespread violence or as indicating that widespread violence is relatively likely.

The term “conflict-affected and high-risk areas” (or “CAHRA”) is in wide use beyond this manual. Other sources may employ the term in ways that diverge from its use in this manual.

Understanding whether the context is conflict-affected or high-risk

There are a number of resources that companies might use to determine whether or not a context is “high-risk” or “conflict-affected”. Two of the best-known are:

- [Rule of Law in Armed Conflict \(RULAC\)](http://www.rulac.org), at www.rulac.org. RULAC is an “online portal that identifies and classifies situations of armed conflict, provides information on the parties to these conflicts, and applicable international law.” The website is maintained by the Geneva Academy of International Humanitarian Law and Human Rights.
- The OECD’s [States of Fragility](https://www3.compareyourcountry.org/states-of-fragility/overview/0/) at <https://www3.compareyourcountry.org/states-of-fragility/overview/0/>. The OECD’s list of “fragile” and “extremely fragile” states, maintained by the Crises & Fragility team in the Global Partnerships & Policies Division of the Development Cooperation Directorate of the OECD. Specific profiles of all of the states are also available.

For more information about the contexts in which they are doing business or for opinions about the risk of violent conflict in those contexts, companies might also consider:

- Soliciting information from private political risk consultancies, which may have hard data relative to conflict incidents, fatalities, and so on.
- Consulting expert third parties, NGO partner organizations, diplomatic missions, or private security consultancies.

A list of potentially relevant resources can be found in the resource pack that is part of the materials associated with this training manual.

**If a company is uncertain whether a situation calls for hHRDD, consider a simple rule of thumb:
*If in doubt, carry it out.***



RESOURCE 2

Found in the resource pack, Resource 2 offers insights about where companies can get more information about the contexts in which they are working.



Facilitated Discussion

- Is the country in which you do business a “conflict-affected” or “high-risk” context?
- Why or why not?

end of session





EXERCISE

Ask each participant to consider an operation they work with. Distribute the checklist below and ask them to check off anything that might apply to that context. Then in groups ask the participants to discuss their answers. Do your responses mean that this is a CAHRA?

Select one location in which your company operates. Then consider the following questions.

In or near areas where you are operating...	No	Yes
Are state structures weak or absent?		
Have emergency laws, extraordinary security measures, or a suspension of freedoms been imposed?		
Are there are illegal armed groups such as violent extremist groups, political insurgent groups, separatist groups, community 'self-defence' militias, or paramilitary organizations that persist over time and regularly engage in violent attacks against state forces, other non-state armed groups, or non-combatants?		
Does a foreign or non-state force occupy the country or control territory within it?		
Is there evidence of prior or ongoing violations of international human rights and/or humanitarian law?		
Are there clashes or mass violence occurring in multiple areas of the country or region, for example, relating to election outcomes?		
Is there frequent or escalating popular or intercommunal violence between members of different ethnic, religious, racial, or other social groups?		
Are there repeated, violent demonstrations or protests focusing on the same issue or cluster of issues?		
Is there popular or organized violence for control over natural resources such as land or water?		
Is there a mobilization of public forces, or recurring or ongoing police or military actions, against ethnic or religious minorities, their representatives, or civic or (legal) political organizations that represent them?		
Do people lack police or judicial protection against acts of violence perpetrated against them?		
Is there an increase in inflammatory rhetoric or hate speech targeting specific groups or individuals?		
Has the government-imposed censorship or other forms of control or banning of communication channels, including television, independent media, social media, or websites?		
Are there public security forces who commit regular, widespread violations of human rights, such as arbitrary arrests or detentions of opposition political figures or violent disruption of peaceful and legal opposition political activities?		

Are violent, criminal organizations able to sustain themselves and to exert influence or control over actors within institutions of justice such as the police or the judiciary?		
Is there a recent history of widespread, armed conflict without any widely accepted peace agreement or meaningful process of reconciliation?		
Is the government expelling or banning civil society actors, non-governmental organizations, international organizations, media/journalists, or other, similar actors?		
Does a climate of fear and violence prevent people from meeting their basic needs?		

Facilitator’s note: any “yesses” in response to the above questions suggest that the context is a CAHRA; hHRDD is therefore warranted unless the scope and scale of a company’s business activities and value and/or user chains are very limited, as may be the case with small enterprises and some medium enterprises.



PART III

hHRDD AS A PROCESS

MODULE 5

INTRODUCTION TO THE hHRDD PROCESS

Time	50 minutes
Learning Objective	Participants will come away from this module with an understanding of the process necessary to undertake hHRDD. They will also be informed about resources available to help support them to undertake this in practice.
Methodology	This section starts with a lecture and ends with a quiz about the process for understanding a hHRDD assessment. This section also refers to Resource 2 from the resource packet.
Facilitator's Notes	This module will guide participants through the features of a hHRDD assessment in order to help them understand what the various features are, and what they might need to do / know about them.
Procedure	<ol style="list-style-type: none"> 1. Let participants know this module will take 50 minutes. 2. Explain that additional resources will be provided in this module. 3. Let participants know that this module will end with a quiz.

Session 5.1

Overview of hHRDD



50 minutes

What does hHRDD look like?

The purpose of hHRDD is to prevent, mitigate, or remedy a company's actual and potential adverse impacts on human rights and on conflict. Achieving this goal requires several steps that build upon each other and are therefore performed in sequence. The steps primarily involve analysis, planning that is based on that analysis, and implementation, management, and adaptation of plans to changing circumstances.

The steps involved in hHRDD include:

Step 1: Understand the conflict by undertaking a conflict analysis.

Step 2: Identify potential and actual impacts of the business on the conflict and on human rights by mapping the operation (including its relevant relations and connections) to the conflict and engaging stakeholders.

Step 3: Prioritize potential and actual impacts. In order of priority, companies are expected to address:

- a. Actual and potential impacts on the conflict that are also human rights risks or impacts.
- b. Actual and potential impacts on the conflict that are not human rights risks or impacts.
- c. Risks to and impacts on human rights that are not risks to or impacts on conflict.

Step 4: Develop approaches to **addressing risks and impacts.**

Step 5: Validate the mitigation approaches with stakeholders and against the conflict analysis to ensure that mitigation efforts do not mitigate one impact in a way that generates another ("second order risks").

Step 6: Implement mitigation options and integrate them into the company's internal governance and accountability systems, policies, and standard operating procedures.

Step 7: Communicate/disclose hHRDD efforts, when possible, to all key stakeholders.

Step 8: Repeat all of the steps. More generally, all due diligence processes should be thought of as an ongoing, routine business activities.



Facilitated Discussion

Ask who has been involved in operations-level HRDD processes or hHRDD processes in areas affected by conflict. Invite reflections on that experience. Consider asking participants:

- What about it was challenging?
- What about it went well?
- Did it help the company? In what ways? Why or why not?
- How is it different from hHRDD as presented here?

Stakeholder engagement in CAHRAs

Effective stakeholder engagement is critical to several of the steps of the hHRDD process. Stakeholders' perspectives and experiences should be central to conflict analysis, to assessing companies' impacts on conflict, to understanding salient human rights risks and impacts, and to vetting and validating mitigation plans. Local stakeholders are also a key audience for external communication about risks and impacts.



RESOURCE 3

Found in the resource packet, Resource 3 offers key information about stakeholder engagement in CAHRA and additional resources.



Facilitated Discussion

Some of the skills and competencies that are important for an effective hHRDD process include skills that may not be available among the company's own personnel. The company might consider partnerships with NGOs, bilateral or multi-lateral agencies, or expert third parties who specialize in this type of support.

Ask participants which skills they think might be most useful for hHRDD process. Then share the following list as illustrative of some potential answers.

- Social science interviewing skills appropriate for performing interviews and focus group discussions, including with members of vulnerable populations
- Workshop facilitation skills
- Skills managing conversations and groups discussions about sensitive, contested, and emotional issues
- Social science analysis skills and especially conflict analysis and political economy analysis skills
- Cross-cultural and language skills appropriate to engaging people of diverse socio-economic, cultural, and linguistic backgrounds
- Patience, flexibility, and tolerance of contradictions, ambiguity, and uncertainty



QUIZ

1

Which is NOT among the aims of hHRDD:

- A. To identify the human rights risks and impacts associated with a company's business activities.
 - B. To develop approaches to addressing company impacts on conflict and on human rights.
 - C. To determine the company's reputational risks when the company operates on or sources from a conflict-affected and high-risk area.
 - D. To undertake publicity for the company amongst some of its key partners and consumers.
-

2

hHRDD differs from HRDD in that (pick more than one, if appropriate):

- A. The purpose of hHRDD is to identify and address actual and potential impacts on conflict and human rights, whereas HRDD does not include assessment of impacts on conflict or addressing such impacts.
 - B. hHRDD involves conflict analysis, whereas HRDD does not.
 - C. hHRDD is only required in areas where there is ongoing conflict or a high risk of such conflict, whereas HRDD is required far more broadly.
 - D. hHRDD always includes a process of HRDD, but it also includes additional analysis steps.
 - E. All of the above.
-

3

hHRDD can best be described as (pick the correct response):

- A. A more sophisticated approach to human rights.
 - B. A closer look at human-rights related issues.
 - C. An approach that combines HRDD and conflict analysis.
 - D. Looking only at certainly human rights-related issues.
-

QUIZ / Answers

1. Answer: D. The other answers form part of the aims of the hHRDD even if – with regards to C – the exercise is not limited to reputational risks.
2. Answer: E. All of the distinctions described above are ways in which hHRDD and HRDD differ from each other.
3. Answer: C. hHRDD is not about “more and better” approaches to human rights; it is a different way of analysing the interaction effects between companies’ business activities and the conflict which requires both HRDD and conflict analysis.



MODULE 6

UNDERSTANDING THE CONFLICT

Time	50 minutes
Learning Objective	Participants will come away from this module with an understanding of the basic elements of conflict analysis, including its aims, and the basic principles for conducting it. It explains step 1 of the hHRDD process.
Methodology	This module starts with lecture and uses a case study as an exercise to help participants better understand what is included in a conflict analysis. It also has external conflict analysis resources including public tools and frameworks which can be found in Resource 3 in the resource packet.
Facilitator's Notes	This module will help participants understand what a conflict analysis is and the key features that should be included in one. Leave plenty of space for discussion. The module concludes with a case study exercise (Case Study #1) that should help participants better understand conflict analysis.
Procedure	<ol style="list-style-type: none"> 1. Let participants know that this module will take 50 minutes. 2. Explain that they will use a case study as an exercise in this module to better help explain the topic. 3. Let participants know that a resource will be provided from the resource packet to provide more information.

Session 6.1

Step 1 – Understand the conflict



50 minutes

What is conflict analysis?

The first step in hHRDD is understanding the conflict by performing a conflict analysis. Conflict analysis is the deliberate study of the causes, actors, and dynamics of conflict. Conflict analysis is a formal analysis process that has been practiced and refined for many years in the peacebuilding field and among government actors such as aid agencies.

“Conflict analysis helps organisations trying to address conflict to know how to promote positive changes in the situation to reduce the potential for violence and/or transform the conflict.”²⁵

There are a number of highly regarded and widely used conflict analysis tools and frameworks, including the UNDP’s [Conducting a Conflict and Development Analysis](#), adopted by the UN System. Other tools and frameworks can be found in Resource 4 at the end of this manual.

What does conflict analysis cover?

A good conflict analysis should provide some degree of insight into:

- Likely or potential conflict triggers;
- Potential scenarios relating to the way the conflict might unfold; and
- Prospects for resolving or addressing the conflict.

A good conflict analysis that is focused on a conflict where a company is operating should make it possible to discern how different courses of action or business activities might affect the issues or the parties involved in the conflict and, therefore, how a company might impact the conflict.

What are the key elements of a conflict analysis?

A useful conflict analysis should present an understanding of the factors that drive and mitigate conflict, the actors involved in the conflict, and the relationships among them.

Factors are tangible and intangible features of the conflict as they exist at the time of the conflict analysis. Factors can be:

²⁵ GPPAC Network. *Conflict Analysis Framework: Field Guidelines and Procedures*, November 2017, p. 9. <https://www.gppac.net/resources/conflict-analysis-framework-field-guidelines-and-procedures>

Structural, relating to a country's social, political, economic, environmental, security, or institutional systems. Examples of structural factors that might, in a specific context, drive conflict are pronounced regional or ethnic inequalities within a country, institutions of justice that enable influential people to act with impunity, or significant bureaucratic or financial barriers to establishing titles to land.

Behavioural, relating to actions undertaken by specific actors in the context. Examples of behavioural factors that might, in a specific context, drive conflict are repeated violent disruptions of peaceful demonstrations by security forces, spontaneous violence among members of different ethnic or religious groups, or widespread acts of public corruption that undermine confidence in public administration.

Attitudinal, relating to perceptions, culture and psychology. Examples of attitudinal factors that might, in a specific context, drive conflict are the perception that members of another social group present a threat of violence to one's own group or a conviction that public security forces are incapable of providing protection.

Diminishing the salience of a factor that drives conflict may - depending on the details of the context - reduce the likelihood of conflict or violence or drive peace. For example, in a context in which pronounced regional or ethnic inequalities within a country drive conflict, initiatives that diminish those inequalities, and are seen to diminish those inequalities, might have a positive impact on conflict dynamics, depending on other factors driving conflict in the scenario in question.

Actors

Actors are people, organizations, or groups in which the members share a perspective and/or act collectively. The most important actors to consider are those that, by virtue of their formal or informal authority or influence, have the power to decide whether or not the conflict ceases or continues. Actors may include:

- Illegal armed groups or militias, activists, or extremists in a local ethnic or religious group
- Local security actors
- Local government authorities
- Local or national political elites, and so on

Textbox 9: Conflict Analysis

At a minimum, a good conflict analysis should help explain:

1. The factors in the context that are driving the conflict. While factors that drive conflict are highly context-dependent, illustrative examples of such factors might be the suppression of legitimate political opposition by the governing political party or the perception among members of one ethnic group that the members of another ethnic group are organizing violent actions against them.
2. The factors in the context that are constraining or inhibiting conflict or driving peace. Examples of these factors might be the actions of informal, local peace committees, the promulgation of a new national constitution, a formal national reconciliation process, or processes through which ex-combatants are disarmed and re-integrated into civilian life.
3. The actors that affect or “act on” the factors. While relevant actors and the ways that they might drive conflict are highly context-dependent, illustrative examples of such actors might include armed non-state groups seeking to address grievances through violence, political elites that incite their followers to violence, or business elites that manipulate or circumvent legal processes to orchestrate a land acquisition that displaces people.
4. The patterns of interaction between 1, 2, and 3.

What can conflict analysis illuminate?

A good conflict analysis will elucidate:

- **The issues that are at play in the conflict.**
 - What are the interests of the parties?
 - What they are fighting about, and with whom, and what they are not fighting about? It should also offer some indications of which issues are most important to the various parties.
- **The actors and the relationships amongst the actors.**
 - What are their respective needs and interests?
 - Who is aligned with whom?

- How do they perceive their respective situations, and how do they perceive each other?
- **Existing efforts to mitigate conflict or resolve conflict issues.**
 - Who is working to resolve conflict issues?
 - How are these actors positioned relative to the other actors?
 - What are they doing specifically and how are they doing it?
 - Are their efforts effective? Why or why not?



RESOURCE 4

Found in the resource packet, Resource 4 offers tips for companies considering undertaking a conflict analysis and additional resources that might help guide a conflict analysis process.



EXERCISE

Break participants into groups. Ask each to read Case Study 1, which presents a conflict analysis. After they have read the conflict analysis, ask the groups to discuss the following questions:

- What are some of the factors driving conflict?
 - Who are the key actors in the conflict? How can their relationships with each other be characterized?
-

//// end of session

MODULE 7

UNDERSTANDING THE IMPACTS OF THE OPERATION ON THE CONFLICT

Time	100 minutes
Learning Objective	Participants will come away from this module with a better understanding how corporate impacts might affect the dynamics of conflict as understood in the previous section. This section presents steps 2 and 3 of the hHRDD process.
Methodology	This section will start with a lecture and include two facilitated discussions with small group exercises.
Facilitator’s Notes	The group exercises in this section will help the participants understand what conflict impacts made by the company might look like.
Procedure	<ol style="list-style-type: none"> 1. Let participants know that this module will take 100 minutes. 2. Explain that this module will have several facilitated discussions and exercises to deepen understanding of the topic at hand.

Session 7.1

Step 2 – Identify potential and actual impacts of the business on the conflict and on human rights

50 minutes

What are impacts on conflict?

An impact on conflict is something a company does or omits to do that shapes the nature and/or intensity of conflict.

Companies always have an impact (positive or negative) on the area where they operate - company impacts are never neutral.

- **Positive impacts** on conflict are impacts that diminish the intensity of conflict, resolve one or more of the issues that drive conflict, or encourage one or more of the parties to conflict to desist, withdraw, or change a position that makes a conflict difficult to resolve.
- **Negative impacts** on conflict are impacts that trigger, drive, sustain or exacerbate conflict, intensify or abet violence, encourage or compel more actors to enter into conflict with one another, or deepen animosity between groups that are already in tense or hostile relations.

It is important to note that companies can trigger, drive, exacerbate or sustain conflict between themselves and communities or stakeholders, and they can also trigger, intensify, exacerbate or sustain conflicts among different groups of stakeholders. It is possible for a company to adversely impact a conflict that the company itself did not cause or bring into being through its own actions or inaction.

The exercise below will help participants understand conflict impacts.

How do impacts on conflict occur?

A company's conflict and human rights risks and impacts arise from the effects of actions (or inaction) of the company, its contractors, its suppliers, or distributors on other actors, including potentially employees of the company or of any of the companies with which the company does business as well as consumers.

The scale and nature of a company's business activity and value chains or "user chains" are significant determinants of the risks and impacts that a company may have on conflict; this is also true with respect to human rights risks and impacts. Because of this, conflict and human rights risks and impacts can be expected to vary significantly from one company to the next, depending on these and other factors.



EXERCISE

Break the participants into two groups and ask each group to read Case Study #2. Ask each group to brainstorm a list of ways in which the company's actions or inaction intensified conflict that was already occurring, or made conflict more likely to occur in the future. In plenary discussion, ask the group to consider the following questions:

- What kinds of actions or inaction by companies might give rise to conflict risks and impacts?
 - Are the conflicts or potential conflicts between the company's stakeholders and the company? Among the company's stakeholders? Or some combination of the two?
 - Are the companies the cause, or one of the causes, of the conflict? Or would the conflicts exist if the company were absent from the context?
-

Impacts across the value chain

One way that companies may begin identifying conflict and human rights impacts is by adapting their value chain mappings. Many value chain mappings do not identify specific companies, suppliers, distributors, or users/customers; such an approach provides insufficient disaggregation for the purpose of identifying risks. Value chain mappings adapted for the purposes of hHRDD should identify individual companies, suppliers, distributors and/or users (as appropriate). If there are a very large number of individual actors in a particular 'link' in the value chain – for example, a large number of smallholder farmers growing cacao upstream in the supply chain – then it may be reasonable to aggregate them together in the value chain mapping and refer to all of them collectively in the mapping as “cacao farmers in the X region.” The modified mapping should be tailored by industry, to reflect the locus of risks. It should identify the specific actors in the value chain, the company's and its suppliers' or contractors' stakeholders, and the geographical areas in which they are located and in which business activity takes place.

Using both the value chain mapping and the conflict analysis, the company should consider whether its own presence and/or activities affect or interact with any of the factors that drive or exacerbate conflict as a result of its exposure to the conflict through its suppliers and/or partners. To the extent possible, the company should make this determination through discussions with the relevant stakeholders.

Session 7.2

Step 3 – Prioritize potential and actual impacts



50 minutes

How to prioritize potential and actual conflict impacts

Once the company identifies the range of potential and actual impacts on conflict and on human rights, sorting risks and impacts into three categories based on the nature of their effects is a starting point for prioritization.

The UNWG specifies a specific hierarchy of mitigation priorities as follows:

- a) First priority** is conflict risks or impacts that are also human rights risks or impacts. That is, activities that the company is undertaking that drive both human rights risk and conflict risk: activities or omissions that constitute both abuses of human rights and impacts that intensify or sustain conflict.

Example: An involuntary land acquisition and resettlement process for the purposes of a company project during which public security forces use violence to remove people from their lands, especially if the affected people are already in a conflictual relationship with the state or the company.

- b) Second priority** is conflict risks or impacts that are not also human rights risks or impacts.

Example: Community development initiatives by a company that contribute to tensions between communities that benefit from the initiatives and communities that do not; particularly if relationships between the communities in question are historically or currently conflictual in nature.

- c) Third priority** is risks to or impacts upon human rights that are not also conflict risks or impacts.

Example: Labor rights abuses by a supplier company, if the labor rights abuses are not tied to any conflicts occurring in the context.



Facilitated Discussion

Ask participants to review Case Study #2. Facilitate a discussion of the company's impacts on conflict and on human rights. Ask participants to then:

- Identify impacts that drive or sustain conflict
- Identify separately impacts that are abuses of human rights

- Assign prevention/mitigation priorities to the impacts that they have identified

Impacts that fall into both categories (driving or sustaining conflict AND abuses of human rights) are first priority. Impacts that fall into only one of the two categories are either second or third priority.

Notes to the facilitator:

- Analysis of the case study may identify a range of human rights abuses and a range of conflict impacts. While there may be some value in allowing debate amongst participants about the nature of the impacts, it may not be possible to resolve disagreements among participants about the nature of the impacts in a reasonable time frame. The purpose of the exercise is to categorize the impacts according to prevention/mitigation priorities, and participants' attention should be focused on that.
- Case Study #2 suggests that some initiatives by the company for the benefit of communities had the effect of elevating tensions and may have been an important factor driving the conflict. Those initiatives may therefore usefully illustrate "second priority impacts": impacts that intensify or drive conflict without in themselves constituting clear-cut abuses of human rights.

////// end of session ////////////////

MODULE 8

DEVELOPING AND IMPLEMENTING MITIGATION APPROACHES

Time	150 minutes
Learning Objective	Participants will come away from this module with insights about how a company can understand the type of impact they had, how to determine mitigation approaches, and how to integrate those approaches into their organizations. It walks participants through steps 4, 5, and 6 of the hHRDD process.
Methodology	This module starts with a lecture but has case study exercises at the end of key sessions. It also includes resource 4 from the resource.
Facilitator’s Notes	Case studies (#2 and #3) are quite important here; ensure that participants have plenty of time to discuss in small groups. The same case studies will be used at the end of session 1 and 2. At the end of session 2 however there will be additional information about the case to share with the participants.
Procedure	<ol style="list-style-type: none"> 1. Let participants know that this module will take 150 minutes. 2. Explain that case studies will be used to discuss the topic in small groups and that the groups will use the same case study throughout the module. 3. Let participants know that they will also use Resource 4 from the resource packet for additional information.

Session 8.1

Step 4 – Develop approaches to addressing risks and impacts



50 minutes

Causation, contribution, and linkage

The relationship that the company has to the risk or impact determines the nature of the required response to the risk or impact. Companies may have three possible relationships to their risks and impacts:

Company's relationship to the impact	Description	Steps the company should take to meet its minimum responsibility
Causation	The company's activities, products, or services are in themselves sufficient to generate the impact.	Prevent the impact. If the impact is not prevented, cease and remedy the impact.
Contribution	The company's activities, products, or services make the impact more severe (likely and/or consequential) but are not sufficient in themselves to cause the impact.	Prevent the contribution. If the contribution is not prevented, cease and remedy the contribution and use leverage to encourage other contributors to prevent or cease and remedy their contributions.
Linkage	The impact is linked to the company's actions, products, or services.	Use leverage to prevent or mitigate the impact. Use leverage to induce other actors to remedy the impact.



EXERCISE

In this exercise, split the participants into small groups and return to Case Study #2. After reading the case study, ask the groups to discuss how they would categorize the relationship between the company and some of its impacts (e.g. causation, contribution, or linkage). Then bring the groups back into plenary to share and discuss.

Develop approaches to mitigating impacts

Mitigating human rights and conflict risks and impacts may involve a range of actions by the company or by one or more third parties acting in collaboration with the company and/or each other. It might include:

- Revising internal plans and procedures for actions that cause or contribute to significant risks, such as recruitment and hiring practices, for example. It might also entail taking action “beyond the gate” to change the behaviour, perceptions, or circumstances of other actors.
- Developing new initiatives, such as mediated dialogues or community development projects, or attempting to enhance, strengthen, or expand third-party initiatives or activities of this kind that are already underway.
- Using leverage by developing and implementing a strategy for engaging actors to which the company is linked in order to influence them to cease their impacts on conflict and/or human rights.

end of session

Session 8.2

Step 5 – Validate the mitigation approaches with stakeholders and against the analysis of conflict



50 minutes

Why validate the mitigation plan with external stakeholders?

For mitigation processes that aim to achieve specific effects among external stakeholders, companies should consult with those stakeholders to develop or at a minimum validate their plans. Without input from stakeholders, mitigation plans can omit key details or considerations and can yield counter-intuitive, perverse and/unintended impacts.

Companies should, therefore, also check prospective mitigation plans with stakeholders as a validation step, to check for the possibility of unintended impacts and unforeseen pitfalls in their plans.

As a final step before implementing mitigation plans, companies should check their plans against the original conflict analysis to determine whether or not any of the planned actions may lead to any unintended impacts on conflict.



EXERCISE

Ask the groups to return to Case Study #2. Ask the small groups to brainstorm some potential mitigation strategies that could respond to the conflict impacts identified in the previous discussion.

After discussing in small groups, share with each group Case Study #3, which is a continuation of Case Study #2. Case Study #3 provides information about how the company mitigated its impacts on the conflict.

Once the groups have read Case Study #3, ask them to come back to their groups to discuss the company’s mitigation strategy in comparison with the ones they had identified. The Facilitator may choose to reconvene the plenary to continue the discussion.

end of session

Session 8.3

Step 6 – Implement mitigation options and integrate them into the company’s internal governance systems and standard operating procedures



50 minutes

Steps to take once mitigation options have been planned and validated

For mitigation approaches to be effective, companies need to ensure that they are integrated into their existing governance and accountability systems, policies, and operating procedures.

How companies do this depends on the mitigation approach that the company has identified, and on the company’s existing systems, procedures, and policies. As appropriate, companies might consider revising any or all of the following items as a way of integrating risk and impact mitigation plans:

- Policies, codes of conduct, supplier codes of conduct
- Key Performance Indicators (KPIs) or bonus or other reward structures for personnel, functional areas, suppliers, and contractors

- Procedures for processes such as recruitment, procurement, contracting, selection of distributors, supplier due diligence, etc.
- The language of contracts with suppliers, distributors, and other third parties
- Strategies, approaches, and benchmarks for communications, stakeholder engagement, public affairs, and other functional areas
- Staff training and development processes
- Grievance mechanisms
- Risk assessments and impact assessments such as ESIA's, HRIA's, etc.
- Approaches to external partnerships and to corporate advocacy/diplomacy and community development or CSR initiatives.

Remedy in CAHRAs

It may not always be possible to remedy adverse impacts on conflict by simply repairing or “undoing” the harms that generate those impacts. Some impacts on conflict are impacts on relationships among actors or social groups. Those relationships may not in all cases be returned to the *status quo ante* by remedying a discrete impact that lead to the deterioration of the relationship. It may sometimes be necessary to undertake measures that are designed to reconcile the parties or repair the relationships in question among social groups that are in conflict, through, for instance, a facilitated dialogue or mediation process among groups that are experiencing heightened tensions or antagonism.



EXERCISE

Ask participants to read Case Study #4. Case Study #4 considers one company’s approach to mitigating conflict impacts. Ask participants to consider the following questions:

- What was the company’s relationship to the impacts? Did it cause them, contribute to them, or was it linked to them?
 - Would it have been effective to attempt to address the impacts through a grievance mechanism or a whistle-blower hotline? Why or why not?
-

Grievance mechanisms

The UNGPs ask companies to make non-judicial grievance mechanisms available to stakeholders as a way to remedy adverse human rights impacts. An effective grievance mechanism should enable a company to demonstrate to its stakeholders that it is responsive to their needs and concerns and can thus be an important tool in managing stakeholder relationships and mitigating conflict risks. The UNGPs identify effectiveness criteria for grievance mechanisms, which are presented in the resource pack associated with this training manual.

Some grievances that are captured by a company's grievance mechanism may in themselves be impacts on conflict. Remediating those grievances through the company's grievance mechanism may in some cases be sufficient for addressing those impacts.



RESOURCE 5

Found in the resource packet, Resource 5 provides information about the UNGP's effectiveness criteria for grievance mechanisms as explained in Guiding Principle 31.

end of session

MODULE 9

DISCLOSURE AND STAYING UP-TO-DATE

Time	60 minutes
Learning Objective	Participants will come away from this module with more information on how a company can communicate, disclose and stay up-to-date with regards to its hHRDD practices. It walks participants through steps 7 and 8 of the hHRDD process. It also offers information about responsible exit and internal governance of hHRDD.
Methodology	This module begins with a lecture, it engages resources from the resource packet and a case study exercise (Case Study #5). It allows for facilitated discussions.
Facilitator’s Notes	This module uses resources 5 and 6 from the resource packet. It also uses a case study as an exercise. It also includes the closing session and a recap of the training for participants.
Procedure	<ol style="list-style-type: none"> 1. Let participants know that this module will take 60 minutes. 2. Explain that this module will use a case study (Case Study #5) as an exercise to provide greater understanding. 3. Let participants know that they will also be using additional resources from the resource packet.

Session 9.1

Step 7 – Communicate and disclose hHRDD efforts



20 minutes

Disclosure

The UNGPs indicate that companies should communicate externally to rights-holders and shareholders about their efforts to ensure that their operations in CAHRAs are managed in a way that respects human rights.

The UNWG and UNDP have been clear that companies should also disclose to stakeholders their efforts to prevent and mitigate conflict risks and impacts. However, hHRDD processes take place in contexts of conflict and of elevated tensions. They can involve actions, discussions, and documentation that can be highly sensitive in nature. Sensitivities can be especially high in relation to issues that are contested or disputed, and corporate disclosures become part of the public domain.

Companies should understand that their disclosures will enter into the public domain, where they can be viewed by parties to the conflict and any other interested party. Some parties in CAHRAs might find matters that are discussed in detailed corporate disclosures to be provocations. Companies should take care that their disclosures do not elevate risks to themselves, their personnel, or any of their stakeholders, and that they do not themselves intensify conflict.

end of session

Session 9.2

Step 8 – Repeat all of the steps



50 minutes

Keep the analyses up-to-date

All human rights and conflict-related due diligence processes (including hHRDD) should be thought of as an ongoing process that is never finished and that is a routine aspect of business activity because:

- **Conflicts can be highly dynamic.** As conditions change, companies need to ensure that their understanding of the conflict remains up-to-date, and their mitigation efforts continue to be appropriate and effective. Companies should update their analysis of the conflict when it is clear that the patterns identified in the analysis are beginning to change.

- **Companies' business activities may change over time.** As they do, companies should re-assess the impacts and risks of their activities.
- **Mitigation activities might need to change.** Companies should keep track of the progress and effectiveness of their mitigation activities, if necessary adjusting them to make them more effective or to account for changes in the conflict and/or changes in their own activities.

The good news is that hHRDD is typically easier to update than to undertake in its entirety for the first time.

Ways to integrate aspects of hHRDD into routine processes

It may be possible for companies to use other assessments, analyses and CSR projects in ways that advance hHRDD processes. This may make hHRDD less burdensome as an undertaking. For example, elements of Human Rights Impact Assessments (HRIAs) are essential in some of the analysis steps of hHRDD; CSR projects might be developed that address factors that drive conflict; grievance mechanisms may help companies to identify, learn from, and remedy some of their adverse impacts on conflict; and information gathered through standard internal systems might help to maintain an up-to-date analysis of conflict and human rights risks.



RESOURCE 6

Found in the resource packet, Resource 6 provides information about internal governance of hHRDD systems.



Facilitated Discussion

Ask participants to think about the various steps they just undertook in the case studies. Ask them:

- What steps of this process could fit into existing practices at your company?
- What would need to happen to ensure that the information is informing your hHRDD processes?

Whether or not to exit

The UNGPs are clear that companies should prevent, mitigate and/or remedy their adverse impacts. If they cannot do any of those, then they should accept the risks to the company that those adverse impacts entail, which may be financial, reputational, or operational, and in some cases may entail criminal liabilities.

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 CAHRAs should consider whether:

- exiting/suspending could cause or exacerbate conflict or tensions: and
- whether harms to people outweigh the benefits.



RESOURCE 7

Found in the resource packet, Resource 7 provides information about the key elements of responsible exit and additional resources and information about responsible exit.



EXERCISE

Ask participants to review Case Study #5 independently. After participants have completed the reading, break them up into small groups to discuss the case study. Ask the groups to think about:

- What were the factors that weighed into Telenor's decision to exit?
 - Using Resource 6, assess whether Telenor exit responsibly.
 - What else could the company have done to improve how they exited?
-



CLOSING SESSION

Time	20 minutes
Learning Objective	To evaluate the effectiveness of the training, and to communicate any final messages or key lessons that have emerged over the course of the training.
Methodology	When covering this summary session, the trainer should not go into detail but rather go over the headlines and simply remind the participants what was covered. If a certificate of completion is contemplated, then a small ceremony should be hosted.
Facilitator’s Notes	Begin with a high-level review of what was covered in the training. Move onto reflections from participants and then a survey.
Procedure	<ol style="list-style-type: none"> 1. Congratulate trainees on completing the training. 2. Inform participants that this session is the final session and is mainly to summarize and to take in reflections. 3. Inform participants that you will begin with a quick summary of the training and then seek feedback through an online survey. 4. Turn to a facilitated discussion based on the questions below. 5. Finally, thank the trainees for their participation. Provide certificates of completion if appropriate.

Recap of the content of the training

The training started with a recap of human rights, business and human rights, and the UNGPs. We also discussed obligations companies have to different external audiences, the expectations of those audiences, and the business case for hHRDD.

We covered the conceptual foundations of hHRDD in the UNGPs and the work of the UNWG, especially the principle of proportionality, and we talked about legislation, regulations, and normative frameworks that call for hHRDD.

In Part II, we looked at contexts that warrant hHRDD by virtue of the risks that they present, underscoring that there are “grey areas” and areas of disagreement, which renders risk assessment important.

In Part III we talked about the steps involved in hHRDD, some of the external actors and resources that might be useful or important in performing some of the steps of hHRDD, and the basics of performing each of the steps.

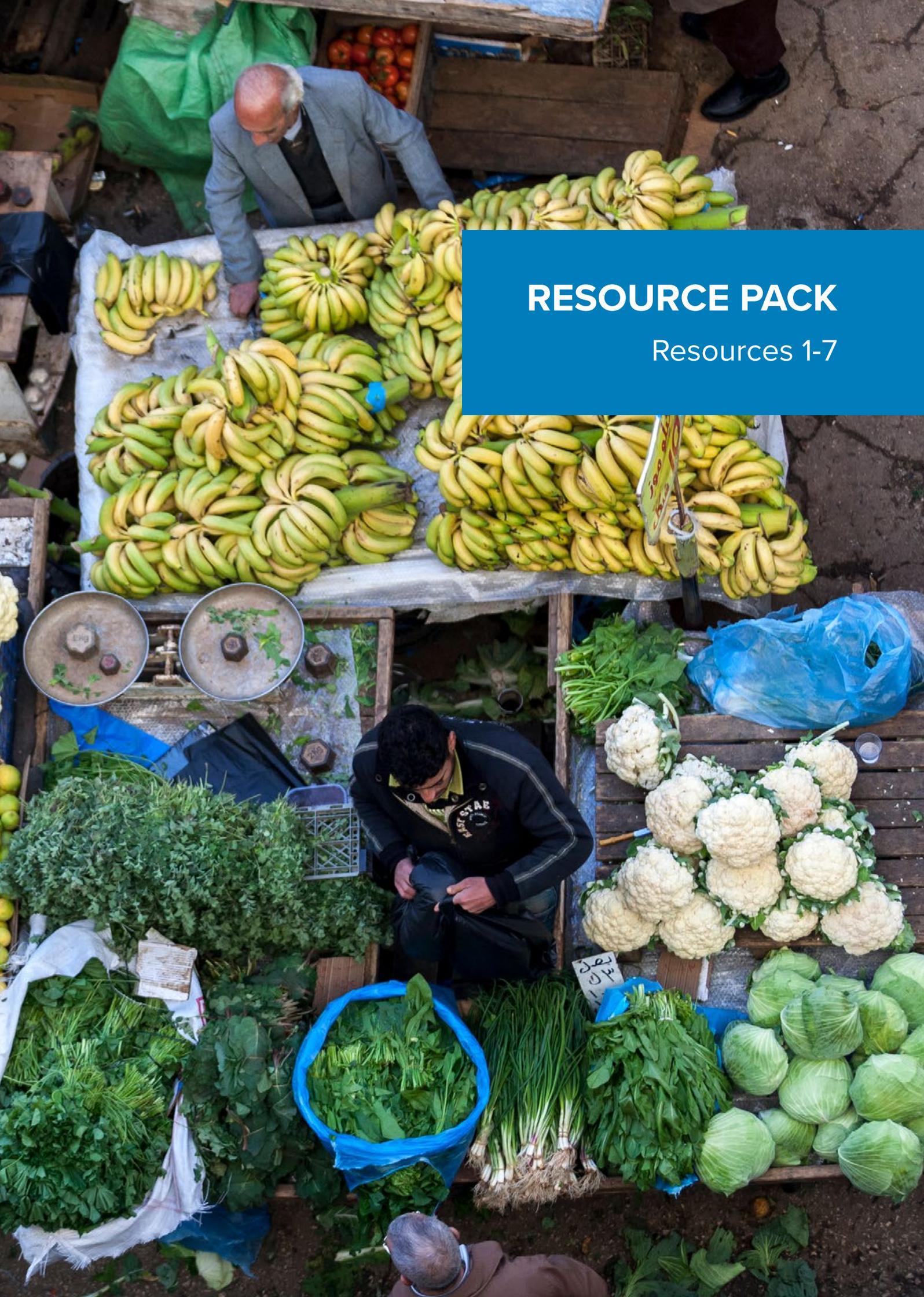
Mentimeter or survey evaluating individual modules

Ask participants to score individual sessions on a scale of 1 (needs improvement) to 5 (excellent). Solicit comments on their favourite and least favourite sessions. If they scored a session as a 1 or 2, ask them to indicate what improvements are needed.



Facilitated Discussion

- What did you learn that you did not know before?
- In your opinion, what is the most important take-away for your company?
- What will you do differently as a result of this training?
- What else would you like to learn?
- What would you do to improve the training?



RESOURCE PACK

Resources 1-7

RESOURCE 1

MORE INFORMATION ABOUT CONFLICT

Conflict comes in diverse forms. The table below presents – at a high level - some of the most common conflict scenarios. It is key to remember that in high-risk contexts, violent conflict can emerge quite rapidly following trigger events.

Type of conflict ²⁶	Definition	Details
Active conflict	Ongoing, organized, or spontaneous violent clashes between groups.	<p>“Active conflict” includes conventional armed conflicts in which:</p> <ul style="list-style-type: none"> • two states engage in violent conflict against each other; • a government is in conflict with one or more non-state armed groups; • two or more non-state armed groups are in conflict with each other. <p>It can also include:</p> <ul style="list-style-type: none"> • situations of military occupation; and • contexts in which mass atrocities or widespread violence are occurring.
Latent	The potential for conflict exists whenever people have different needs, values, or interests and they have no broadly credible or legitimate way of resolving or balancing them. Conflict may not become apparent until a “triggering event”.	<ul style="list-style-type: none"> • Conflict exists as elevated background social or political tensions without conspicuous, ongoing violence. • Low levels of observable violence coexist with a high risk of violence and some likelihood that violence, if triggered, might become widespread and ongoing.
Unresolved / “Frozen”	Relatively violence-free conditions that are caused by ‘stalemate’, rather than a resolution of conflict issues; violence might be triggered easily.	<ul style="list-style-type: none"> • Conflicts can be stable or “frozen”, with little or no violence for long periods of time. • They can also be rapidly changing and highly dynamic, quickly becoming “hot” conflicts that spread rapidly.
Post-conflict	The transitional period after active conflict has ended.	<ul style="list-style-type: none"> • Transitions out of violent conflict are often periods of high risk. The grievances that originally drove the conflict may not be fully resolved, transitional justice may be partial or incomplete, and new norms of governance may not yet be established. • Peace agreements may open new areas of contestation. • For these reasons, the risk of a return to some form of violent conflict may be high in “post-conflict” or “transitional” states.

26 Eric Brahm, “Latent Conflict Stage,” *Beyond Intractability*, eds. Guy Burgess and Heidi Burgess. *Conflict Information Consortium*, University of Colorado, Boulder, September 2003. https://www.beyondintractability.org/essay/latent_conflict

RESOURCE 2

RESOURCES TO HELP COMPANIES TO UNDERSTAND THE CONTEXT IN WHICH THEY ARE WORKING

As explained in the training manual, knowing whether the operational environment is conflict-affected and/or high-risk may be challenging for companies. However, there are many INGOs, UN agencies, for-profit consultancies, academics, and others who have developed reliable and reputable public resources about most states that are high-risk, in conflict, or in crisis.

Some of these reliable sources include:

Resource	Details
Rule of Law in Armed Conflict (RULAC):	An “online portal that identifies and classifies situations of armed conflict, provides information on the parties to these conflicts, and applicable international law.” Website maintained by the Geneva Academy of International Humanitarian Law and Human Rights.
Cahralist.net	An “illustrative, non-exhaustive” list of states that the EU regards as “conflict-affected and high-risk areas” for the purposes of mineral sourcing. The website is maintained on behalf of the EU.
States of Fragility	The OECD’s list of fragile and extremely fragile states, maintained by the Crises & Fragility team in the Global Partnerships & Policies Division of the Development Cooperation Directorate of the OECD. Specific profiles of all the states are also available.
List of Fragile and Conflict-Affected Situations	The list of fragile and conflict-affected situations (FCS) is released annually by the World Bank Group (WBG) and aims to inform strategic and operational decision-making within the WBG. The list is not meant to be comprehensive— it does not include all countries affected, nor is it a ranking of countries.
Global Freedom Map	Country-by-country assessment of political freedoms, maintained by Freedom House, an American non-governmental organization.
Corruption Perceptions Index	A global ranking of countries based on perceived corruption, maintained by Transparency International, an anti-corruption watchdog and non-governmental organization.

Resource	Details
International Crisis Group	ICG states that it provides early warning through its monthly CrisisWatch bulletin, a global conflict tracker designed to identify both risks of escalation and opportunities to advance peace.
Fund for Peace - Fragile States Index	On an annual basis, The Fund for Peace updates The Fragile States Index, a ranking of 178 countries across 12 indicators of the risks and vulnerabilities faced by individual nations.
Institute of Economics and Peace (IEP) - Global Peace Index	A composite index measuring the peacefulness of countries made up of 23 quantitative and qualitative indicators each weighted on a scale of 1-5.
The Armed Conflict Location and Event Data Project (ACLED)	The Armed Conflict Location & Event Data Project (ACLED) is a disaggregated data collection, analysis, and crisis mapping project. ACLED collects information on the dates, actors, locations, fatalities, and types of all reported political violence and protest events around the world.
Uppsala University - Uppsala Conflict Data Program	Produces high-quality data, which are systematically collected, have global coverage, are comparable across cases and countries, and have long time series which are updated annually.

In addition to exploring the information provided by the resources above, companies may also consider private political risk consultancies, which may have hard data relative to conflict incidents, fatalities, and so on. Companies might also ask or consult:

- International business associations for their industry
- Their local chambers of commerce in host states
- Local or headquarter offices of NGO partners or associates that operate in the country
- Home state diplomatic missions (if not a domestic enterprise)
- UN agencies operating in the country
- The local OECD National Contact Point
- Other companies in similar industries that operate in the country

RESOURCE 3

KEY INFORMATION AND ADDITIONAL RESOURCES FOR STAKEHOLDER ENGAGEMENT²⁷

Adapting to the challenges of CAHRAs requires stronger- and broader-than-usual external relationships, and an ability to work constructively with a broad range of local actors. Success may require social capital that companies are unlikely to accumulate without significantly enhancing their standard stakeholder engagement approaches. Effective engagement in such contexts is broad and inclusive, and early and ongoing; and it is focused on building constructive relationships, rather than on instrumental objectives.

Companies are advised to develop approaches to external stakeholders and to stakeholder engagement on a case-by-case basis, based on a detailed knowledge of the context and the actors in question. The more granular the company's knowledge of those, the better. In this regard, conflict analysis may be a useful tool for understanding stakeholders, their needs and interests, and how they relate to each other.

Challenges of stakeholder engagement in conflict

In CAHRAs, stakeholder engagement can be difficult, complex, dangerous, and highly sensitive, for several reasons:

- Broad-based stakeholder engagement may expose personnel and also the stakeholders that the company engages to security risks. Companies should always assess these risks and take them seriously. They may limit a company's ability to perform stakeholder engagement.
- CAHRAs tend to be highly polarized environments, and parties to conflict sometimes put pressure on neutral parties to take sides or to stay silent about certain issues. Some stakeholders may be reluctant to share their true views and perspectives. Further, raising sensitive or polarizing issues for discussion with stakeholders may drive risks to companies or to their stakeholders.

²⁷ Parts of this discussion are adapted from the April 10, 2020 "Memorandum on Stakeholder Engagement in Conflict Contexts", produced by Sarah Cechvala and Ben Miller for CDA Collaborative Learning Projects as a submission to the UN Working Group on business and human rights on during the course of the Working Group's consultations about business operations in conflict-affected settings. https://www.cdacollaborative.org/wp-content/uploads/2020/05/CDA-Memo_UNWG_SHE_10April2020.pdf

- Parties to conflict, including armed groups or other proscribed entities, may themselves be among a company's stakeholders. Companies should consult with their local counsel to ensure that stakeholder engagement activities do not violate local laws (e.g. in the case of proscribed groups or individuals).
- Parties to conflict sometimes deliberately seek to punish actors that engage with their enemies or treat their enemies or their interests as legitimate. Companies should therefore consider how all of their stakeholders may respond to their engagement activities.
- Stakeholders that have a vested interest in the outcome of a conflict may deliberately seek to influence companies to take courses of action that those stakeholders believe may benefit them or their "side" in the conflict. They may deliberately provide partial and misleading information to the company. Companies should triangulate information they receive from stakeholders, checking it against what other stakeholders say and assessing the comments of stakeholders in light of their interests and motivations.

In such scenarios, companies may find that there are no good options for engaging stakeholders, only "less bad" options.

Further, conflicts vary substantially, as do companies and therefore their stakeholders. Accordingly, "off-the-shelf" solutions to the challenges of stakeholder engagement in conflict are unlikely to be useful; in some cases, they may be harmful or drive risks.

Building social capital

In situations of conflict, a "social license to operate" is of far greater importance and is typically more difficult to maintain than it is in other contexts. Companies with track records of effective operations in these contexts focus on building and maintaining stakeholders' trust and confidence in the company. Local sourcing, local value chain development initiatives, and community development or CSR activities are opportunities to establish and strengthen external relationships for these purposes, and they should be designed with relationship-building as one of their primary purposes.

Companies may need to identify representatives in whom stakeholders have confidence and whom they trust to negotiate on their behalf. This may be instrumental for a range of purposes: to work out equitable ways to compensate for untitled land; to ensure that a broad base of community members - including marginalized ethnic groups and vulnerable populations such as illiterate people - are made aware of consultations and the company's grievance mechanism; and, ensure that local hiring and procurement are

designed and managed in ways that diverse community members perceive to be fair, equitable, and transparent.

Companies tend to be more effective in CAHRAs when they are able to position themselves deliberately and strategically in relation to a broad range of actors and in relation to key conflict issues. Identifying constructive ways of doing so requires a robust understanding of a broad range of perspectives, relationships, grievances, and conflict drivers.

Engaging stakeholders by proxy

Whenever possible (given legal, security, and sensitivity constraints), direct engagement with stakeholders themselves is preferable to engagement with a proxy of those stakeholders. Companies should be aware that individuals who have formal mandates to represent stakeholders (such as labor union heads, elected local officials, traditional chiefs, and so on) do not always faithfully represent the views of those stakeholders. If possible, companies should ask stakeholders directly about who represents their views and who they trust to negotiate or engage in dialogue on their behalf.

Whenever possible, companies should engage their stakeholders directly themselves, rather than using professional third parties to manage the company's external relationships.

If it is safe and legal to do so, and *only* if it is safe and legal to do so, companies should engage armed groups to understand them, explain the company's commitments (to human rights and to the security of their personnel and contractors, for instance), and establish channels of communication in the event of crises.

Early engagement

Companies consistently find themselves in better positions during periods of violence if they take unusually robust measures to build constructive relationships with external stakeholders before conflict and violence begin. Therefore, when companies do business in areas where there is a high risk of violent conflict in the future, they are well advised to enhance their stakeholder engagement practices and focus on building a broad range of constructive, trusting relationships with local actors as a precaution. Once violence breaks out, it may be extremely difficult to build or strengthen those relationships.

Additional resources

Excellent resources about engaging stakeholders in CAHRAs have been developed among humanitarian agencies, which routinely operate in conflicts of ongoing violence. Companies may find some of their resources practically useful when considering how to approach stakeholder engagement.

- [Guidance on Engaging People in Crisis-Affected Communities to #Reshape Aid](#), CDA Collaborative Learning, 2015.
- [Engaging with People Affected by Armed Conflicts and Other Situations of Violence](#), International Committee of the Red Cross and the Harvard Humanitarian Initiative, 2018.
- [Community Engagement with Armed Actors: Strengthening Protection, Prevention, and Response](#), Humanitarian Exchange, Issue 82, Humanitarian Practice Network, 2023.

RESOURCE 4

IMPORTANT TIPS AND RESOURCES FOR CONFLICT ANALYSIS

While most companies likely do not have the capacity or staffing that is appropriate to undertake a conflict analysis, if a company is considering undertaking one itself, there are some key tips and additional resources it might consider.

Key tips include:

A conflict analysis should be based on evidence gathered during the course of engagement with different stakeholders, often through a deliberate evidence-gathering phase consisting of interviews and focus group discussions. It is important to include in a conflict analysis the perspectives of a diversity of stakeholders and experts on the context for several reasons:

- Conflict is driven at least in part by the perspectives of the parties to the conflict. Understanding the dynamics of conflict and what kind of actions might mitigate conflict requires understanding the divergent perspectives that underpin conflict.
- CAHRAs are often highly polarized politically, and triangulation among the perspectives of different actors can help develop a more objective understanding of the situation. It can also foster an understanding of how different experiences shape different perspectives about conflict issues.
- CAHRAs are often data-poor environments. Comparing multiple perspectives on the same events and histories can be a useful way to approximate a factual baseline for decision-making.
- Stakeholders will have varying opinions based on their relationship to conflict issues. Some may be parties to the conflict or even combatants, and this may bear upon how they are engaged or convened for discussion. Also, consider power dynamics, the vulnerability of different populations, and so on, in deciding whom to convene at the same time and place.

Some additional resources

There are numerous, well-established approaches and tools for conflict analysis, many of which have good track records of use in the field. None of them is recognized as being inherently better than any other.

Best practice is clear about one thing, however: action that is not linked to analysis is often ineffective or generative of unanticipated, perverse impacts. All actions intended to mitigate conflict should be tied to and flow from the conflict analysis. Bad practice would involve making inferences about what is needed or appropriate without reference to the analysis or thinking that the answers are obvious because they are “self-evident” or “common sense”.

Well-regarded public resources that present conflict analysis methodologies, tools, and guidance include:

- GPPAC - [Conflict Analysis Framework: Field Guidelines and Procedures, 2017](#)
- CDA Collaborative Learning - [Reflecting on Peace Practice \(RPP\) Basics: A Resource Manual, 2016](#)
- World Vision International - [Making Sense of Turbulent Contexts, 2015](#)
- Peaceful Change Initiative and WeWorld - [Introduction to the conflict sensitivity operational toolkit, 2022](#)
- Voluntary Principles Initiative - [Conflict Analysis Tool for Companies, 2022](#)
- United Nations Development Group, [Conducting a Conflict and Development Analysis, 2017](#)
- Various government aid agencies have their own conflict analysis tools, many of which are adapted from one or more of the foregoing tools or frameworks.

RESOURCE 5

GRIEVANCE MECHANISMS

There are some key considerations when establishing a grievance mechanism. First, who is the user of the mechanism? Companies should consider having **both** internal mechanisms (for staff, employees, and potentially contracting companies), and external ones (for local communities, customers, staff of suppliers, etc.). The following table²⁸ provides an overview of the typical grievance mechanisms.

	Level	Accessible to	Examples	Types of issues	Driver of installation/adoption
INTERNAL	Company-wide	All employees; may be open to external parties	Hotline or whistleblower procedure	Typically fraud and corruption, broader ethics issues	<ul style="list-style-type: none"> • Corporate governance regulations • Business principles
	Country, business unit or factory	Employees	Complaints procedure or 'persons of trust' network	Related to staff interaction (for example, harassment, intimidation)	<ul style="list-style-type: none"> • National legislation • Common business practice
	Third party	Customers	Customer support and complaints	Complaints related to warranty or service	<ul style="list-style-type: none"> • National legislation • Customer loyalty
		Neighbours	Phone number or neighbourhood council	Pollution, noise, smell	<ul style="list-style-type: none"> • Good relations/ 'social licence to operate'
		Local community	Operational-level grievance mechanism, community liaison officers	Impact on livelihoods, pollution, distribution of benefits	<ul style="list-style-type: none"> • Early dispute resolution • Investor pressure • Financing requirement

28 Shift, Oxfam and Global Compact Network Netherlands, "Doing Business with Respect for Human Rights: A Guidance Tool for Companies", 2016. https://shiftproject.org/wp-content/uploads/2020/01/business_respect_human_rights_full-1.pdf

	Level	Accessible to	Examples	Types of issues	Driver of installation/adoption
EXTERNAL	Industry or initiative mechanism	Varies, but typically includes member company's own workers, workers in the supply chain	Fair Labor Association's third-party complaints procedure	Working conditions, living wage, or any alleged breach of initiative's own standards	<ul style="list-style-type: none"> • Industry/ collaborative action • Level playing field
	National Contact Points under the OECD Guidelines for Multinational Enterprises	Any individual or organisation (affected or not affected)	All adhering countries required to establish one	All issues related to the OECD guidelines (including human and labour rights, environment, anti-corruption)	<ul style="list-style-type: none"> • OECD governments • Trade relations • Civil society
	State-based mediation and arbitration bodies	Workers	UK: Advisory, Conciliation and Arbitration Service South Africa: Commission for Conciliation, Mediation and Arbitration	Usually workplace-related issues	<ul style="list-style-type: none"> • Government regulation • Reducing pressure on the court system
	Courts	Everyone subject to jurisdiction	Netherlands: judicial system	Any issue subject to jurisdiction	State obligation to provide access to remedy

The mechanism should meet the effectiveness criteria that are presented in the UNGPs in Guiding Principle 31:²⁹ *In order to ensure their effectiveness, non-judicial grievance mechanisms, both State-based and non-State-based, should be:*

(a) Legitimate	Enabling trust from the stakeholder groups for whose use they are intended, and being accountable for the fair conduct of grievance processes
(b) Accessible	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
(c) Predictable	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

29 UNGPs, 2011, p. 33-34.

(d) Equitable	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
(e) Transparent	Keeping parties to a grievance informed about its progress, and providing sufficient information about the mechanism’s performance to build confidence in its effectiveness and meet any public interest at stake
(f) Rights-compatible	Ensuring that outcomes and remedies accord with internationally recognized human rights
(g) A source of continuous learning	Drawing on relevant measures to identify lessons for improving the mechanism and preventing future grievances and harms

Operational-level mechanisms should also be

(h) Based on engagement and dialogue	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
--------------------------------------	--

The OHCHR Accountability and Remedy Project also has resources for meeting the UNGP’s effectiveness criteria may also be useful to review: <https://www.ohchr.org/sites/default/files/2022-01/arp-note-meeting-effectiveness-criteria.pdf>

Moreover, the Annex of the main report (A/HRC/44/32/Add.1) contains useful recommendations on how to meet the effectiveness criteria, which may also be a helpful additional resource: <https://docs.un.org/en/A/HRC/44/32/Add.1>

An important chapter in “Doing Business with Respect for Human Rights: A Guidance for Companies”³⁰ (Chapter 3.8 remediation and grievance mechanisms) relates to grievance mechanisms offers insight to key lessons about grievance mechanisms and the effectiveness criteria:

Learning from practice: grievance mechanisms and the effectiveness criteria

- It is important to **be explicit about what issues can be reported**; this can also help avoid inadmissible complaints.
- Low frequency in the use of a mechanism may be due to a lack of awareness and trust in the mechanism; it can be countered by better **understanding the sources of distrust and by increasing interaction with potential users of the mechanism**, possibly via third party to maintain anonymity.

30 Shift, Oxfam and Global Compact Network Netherlands, “Doing Business with Respect for Human Rights: A Guidance Tool for Companies”, 2016. https://shiftproject.org/wp-content/uploads/2020/01/business_respect_human_rights_full-1.pdf

- Confidence by users that the **reporting of issues will, in and of itself, not lead to sanctions** against the person lodging the report is important to ensure that people feel confident bringing issues to the mechanism.
- Difficulties arising from anonymous complaints can be resolved by engaging a **trusted third party**, which ensures confidentiality but enables a channel for communication with the complaint.
- Concerns about potential liability related to complaints can be best addressed by **responding adequately when a complaint is brought** to the attention of the company, not by ignoring it.
- Types of grievance processes include direct negotiation, facilitation, conciliation, mediation, investigation, adjudication and arbitration. **Different types of complaints call for a different response (or mix of responses)**. For example, whereas fraud requires investigation, a complaint that involves unfair treatment may need to include additional approaches such as mediation.
- **Mediation**, including through a third party, may be a particularly effective way of achieving the goal of early dispute resolution as it makes the process less adversarial and enables more of a focus on mutual gains.

There are quite a number of key resources that provide additional insight into the features of a strong grievance mechanism including:

- Shift, Oxfam and Global Compact Network Netherlands, “Doing Business with Respect for Human Rights: A Guidance Tool for Companies”. 2016. <https://shiftproject.org/resource/doing-business-with-respect-for-human-rights/>
- SOMO, “What are Grievance Mechanisms?” Website. <https://www.somo.nl/hrgm/what-are-grievance-mechanisms/>
- IHRB. EC Guide, Part 3, Section 6: Remediation and Operational-Level Grievance Mechanisms. https://www.ihrb.org/uploads/reports/EC-Guide_ERA-12_Part-3-Section-VI.pdf
- Rees, Caroline. “Grievance Mechanisms for Business and Human Rights: Strengths, Weaknesses and Gaps.” Corporate Social Responsibility Initiative, Working paper No. 40. Cambridge, MA: John F. Kennedy School of Government, Harvard University. 2008. <https://media.business-humanrights.org/media/documents/files/reports-and-materials/Rees-Existing-grievance-mechanisms-Jan-2008.pdf>

- The Compliance Advisor/Ombudsman (CAO). “A Guide to Designing and Implementing Grievance Mechanisms for Development Projects: Advisory Note. 2008. <https://documents1.worldbank.org/curated/en/598641478092542645/pdf/108864-WP-CAO-ENGLISH-Implementing-Grievance-mechanisms-PUBLIC.pdf>

Companies could also explore what other organizations use for grievance mechanisms, such as feedback mechanisms in the humanitarian sector.

- Bonino F., with Jean, I. and Knox Clarke, P. Closing the Loop – Practitioner guidance on effective feedback mechanisms in humanitarian contexts. ALNAP-CDA Guidance. London: ALNAP/ODI. 2014. <https://www.cdacollaborative.org/wp-content/uploads/2016/01/Closing-the-Loop-Effective-Feedback-in-Humanitarian-Contexts.pdf>
- IFRC. How to establish and manage a systematic community feedback mechanism. *International Federation of Red Cross and Red Crescent Societies*, Geneva. 2018. https://www.ifrc.org/sites/default/files/IFRC_feedback-mechanism-with-communities_ok_web.pdf
- UNHCR. “Chapter 7: Feedback and Response Mechanisms.” *Using social media in Community-Based Protection: A Guide*. January 2021. <https://www.unhcr.org/innovation/wp-content/uploads/2022/02/Using-Social-Media-in-CBP-Chapter-7-Feedback-and-Response-Mechanisms.pdf>

RESOURCE 6

INTERNAL GOVERNANCE OF hHRDD SYSTEMS

Who in the company should be responsible for the company's hHRDD?

The answer depends substantially on the company's business, scale of operations, internal structure, and on the skills and capacities of its personnel. As a general rule, it is usually best to avoid creating new internal structures to govern conflict-related risks and hHRDD, and in many instances it is appropriate to situate hHRDD within a company's existing human rights governance architecture.

Both conflict impacts and human rights impacts can arise from the actions (or inactions) of virtually any functional area within a company. By the same token, mitigation plans and actions will often require the involvement of all of a company's functional areas.

In view of the risks and impacts that are at stake in CAHRAs, it is appropriate for the ultimate responsibility for hHRDD to lie with the company's chief executives and Board of Directors. Internal reporting and lines of communication should reflect these responsibilities.

With respect to information gathering and analysis processes, some of the relevant skills are discussed in the manual. It may be appropriate for a company to put evidence-gathering and analysis in the hands of personnel who have the relevant individual skills and competencies, though relatively high-level representatives of all functional areas within the operating company should participate in the analysis and mitigation planning steps.

Some rules of thumb for governance of hHRDD include:

- In large companies it may be appropriate for at least some members of the Board of Directors to understand hHRDD and the risks that it addresses, and for the ultimate responsibility for hHRDD to lie with the C-suite.
- In companies where human rights and conflict risks are largely driven by the day-to-day business activities of the company itself, it may be most effective for a high-level, cross-functional team that reports to the chief executive to

have the responsibility for implementing, or ensuring the implementation of, risk mitigation actions.

- In companies with extensive value-chains, risks may be substantially driven by the actions of suppliers or contractors. Procurement, contracting, supply-chain, and legal departments (as appropriate, depending on how the company is organized) may play an important role in risk assessment and mitigation.
- In companies with subsidiaries in multiple jurisdictions it is important to recognize that subsidiaries in CAHRAs may need to deal both with human rights issues that are identified as salient risks for the company as a whole and also with context-specific conflict risks. These may be driven by conditions that are specific to each subsidiary. This may mean that hHRDD plans in CAHRAs may be distinctive and unique from one subsidiary to the next.

RESOURCE 7

KEY ELEMENTS OF RESPONSIBLE EXIT³¹ AND KEY RESOURCES

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 CAHRAs should consider whether:

1. exiting/suspending could exacerbate tensions or violence: and
2. whether the harms to people that arise from exiting outweigh the benefits of exiting.

The overarching concern is whether exiting could exacerbate tensions within a CAHRAs and whether the adverse impacts of exiting or suspending the operations outweigh the benefits of that action. An exit strategy requires a company to do the following:

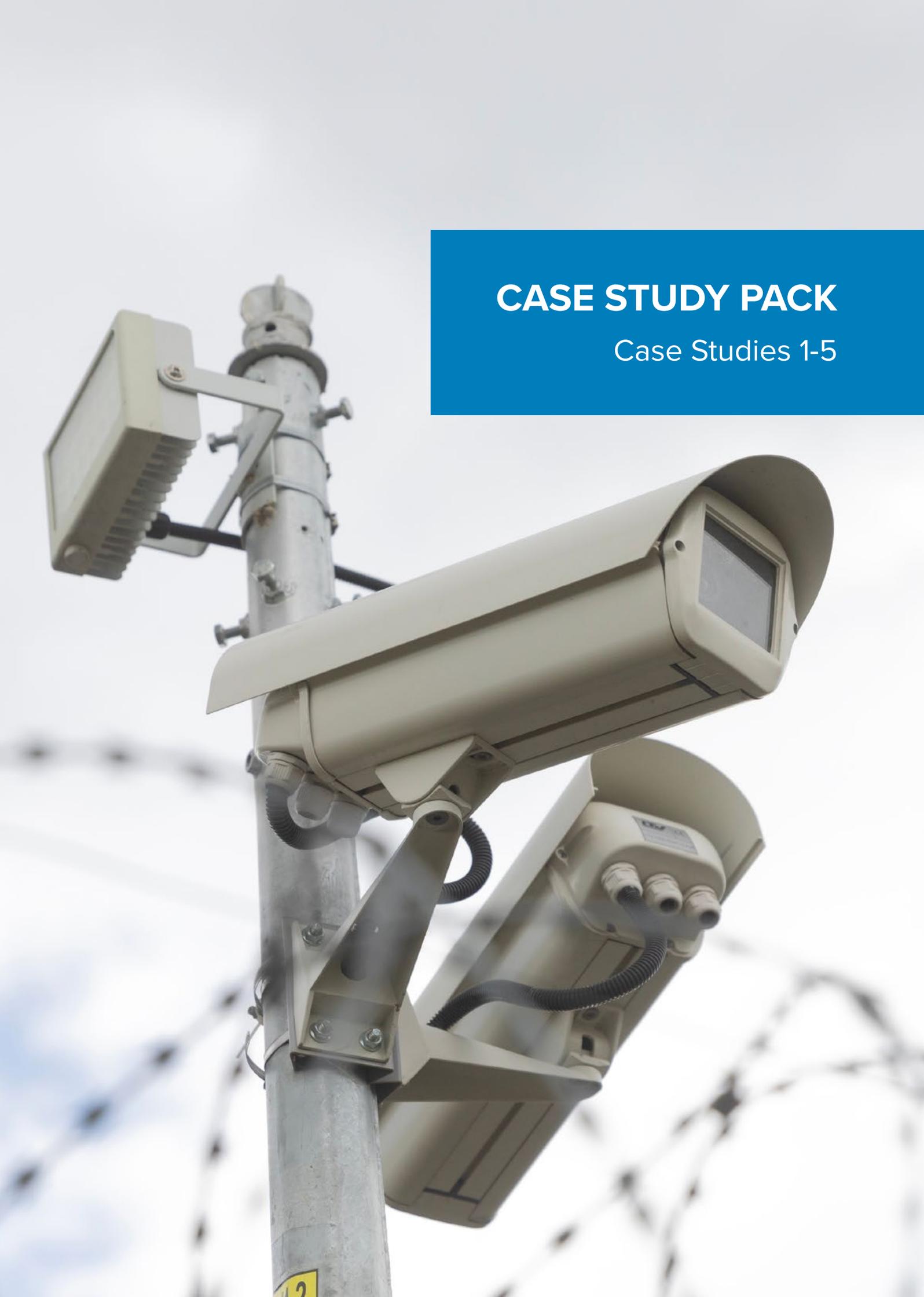
- Anticipate and plan a clear exit strategy in advance, ideally at the same time as it plans the start of activity.
- Consider whether suspending or exiting could exacerbate tensions within populations and whether the harms outweigh the benefits.
- Develop mitigation strategies, as suspending or terminating business activities often has significant consequences for communities that can include broader economic and social effects.
- When transferring ownership, to assess the human rights capacities of the buyer and request that the buyer put specific human rights-related policies and procedures in place.
- When offering ancillary services or philanthropic programmes, mitigate the effects of its exit on those programs.

Additional resources when considering a responsible exit include:

- United Nations Office of the High Commissioner for Human Rights. Business and Human Rights in Challenging Contexts: Considerations for Remaining and Exiting. New York and Geneva: United Nations, August 2023. <https://www.ohchr.org/sites/default/files/documents/issues/business/bhr-in-challenging-contexts.pdf>

³¹ The following material is extrapolated from the UNDP hHRDD Guide

- United Nations Development Programme. Heightened Human Rights Due Diligence for business in conflict-affected contexts; A Guide. New York, United States of America. 2022. Section IV.C.3 <https://www.undp.org/publications/heightened-human-rights-due-diligence-business-conflict-affected-contexts-guide>
- Wilde-Ramsing Joseph, et. al. “Should I stay or should I go? Exploring the role of disengagement in human rights due diligence.” *SOMO Discussion Paper*, April 2016. <https://www.somo.nl/should-i-stay-or-should-i-go-2/>
- Wilde-Ramsing, Joseph, et al. “Telenor’s Exit from Myanmar - A Cautionary Tale for the Just Transition.” *Institute for Human Rights and Business: Just Transitions Commentary*, September 26, 2021. <https://www.ihrb.org/focus-areas/just-transitions/telenor-exit-from-myanmar-a-cautionary-tale-for-the-just-transition>
- IFC. *Draft IFC Responsible Exit Principles*. 2023. <https://www.ifc.org/content/dam/ifc/doc/2023/ifc-draft-responsible-exit-principles-en.pdf>
- CAO-Ombudsman. *Responsible Exit: Discussion and Practice in Development Finance Institutions and Beyond*. Washington D.C., United States of America. 2023. https://www.cao-ombudsman.org/sites/default/files/2023-04/03c_Rpt-WBG-3518-CAO%20ResponsibleExit_External%20R2%20v1%20FIN.pdf
- SOMO. *Responsible disengagement from coal as part of a just transition*. June 2021. https://www.somo.nl/wp-content/uploads/2021/06/Responsible-disengagement-from-coal_final.pdf



CASE STUDY PACK

Case Studies 1-5

CASE STUDY #1

SWATI WEST AND SWATI NORTH

Part II Module 2 Session 1

Narrative Conflict Analysis Swati West and Swati North

This case study focuses on a greenfield oil and gas exploration project in a remote area of a sub-Saharan African country. The case study is based on documents that are in the public domain. Names appearing in the case study have been changed from the original text and the case itself has been modified slightly for pedagogical purposes.

Historical background

The area that is now Swati County, in the sub-Saharan country of Yamazia, was neglected by colonial and post-colonial governments, and today, many Yamazians from other parts of the country consider Swati County to be a something of a remote backwater within their own country. Until recently, there has been little educational or transportation infrastructure, and only a few small settlements, and a marginal formal economy. The region is arid, with no rainfall at all in some years, and agriculture is practiced only along the banks of the Achur River. A majority of the population practices transhumant pastoralism, moving livestock and households seasonally to access water and pasture.

Swati County borders three foreign countries and three other counties within Yamazia, among them East Achur County. Swati County and the surrounding areas have been characterized by pervasive insecurity, minimal state presence and a proliferation of small arms as a consequence of porous international borders and recent civil wars in all three of the neighbouring countries. Insecurity has a number of different characteristic forms: clashes among pastoralist or transhumant ethnic groups over control over resources such as water and pasture, and, therefore, over control of land; armed banditry along major roadways; and, armed stock theft and raiding between ethnic groups. In some cases, these forms of violence have manifested as sustained conflict between particular ethnic groups that are present in the region.

In particular, feuding between Swati and Achur ethnic groups has demonstrated a high degree of resilience.

Achur people reside primarily in East Achur County, which borders Swati County to the north. Achur and Swati people speak related languages and are culturally similar, observing broadly similar rites of passage and other rituals. While Swati are predominantly transhumant pastoralists, Achur people live both in fertile highlands in the northern areas of East Achur, where agriculture predominates, and in arid lowland areas bordering Swati county, where they also practice transhumance and livestock husbandry.

The GasCo Yamazia Business Venture (GYBV) launched oil exploration activities in Swati County in 2012. Since that time, significant proven reserves have been discovered in Swati North and Swati West sub-counties, in the area bordering East Achur County. There have been no oil discoveries in East Achur County. In the course of exploration, GYBV established a base camp in Swati County and acquired additional land for the construction of well pads. GYBV anticipates producing oil in the Swati County fields using injection water drawn from the Achurbi Gorge Reservoir – which is in East Achur County, very near to Swati County. GYBV has yet to undertake a final investment decision.

In 2013, Yamazia's new constitution created county-level governance structures through which significant public funding passes. County governments are still in the process of developing their capacity for public administration, and the Swati Country Government (SCG) is no exception.

Overview of the conflict

Broadly, conflict in the northern regions of Swati county has been driven by competition for scarce resources in the context of weak or absent state governance. Resource competition and weak governance animate two interrelated conflict dynamics: intermittent violent conflict between ethnic Swati and ethnic Achur populations in the regions near the border between Swati County and East Achur County, where livestock raiding and efforts to displace populations are symptomatic of efforts to control land and to increase personal, sub-clan, and clan wealth; and rising tensions within and between local Swati communities over land, wealth, and governance within Swati county.

Boundary conflict

The boundary between East Achur and Swati counties is also the contemporary geographical boundary between two ethnic groups that have historically raided each other for livestock and competed with each other for resources such as water and pasture. Both current and past violence and conflict in the borderlands areas

have led to involuntary displacement of communities away from the border, and away from areas where those populations have their own resources such as water and pasture.

Histories of violence and displacement shape the contemporary conviction among Swati and Achur communities that these resources must be fought for and defended. The perception in local media that border-area clashes are about “historical grievances” or “traditional conflicts” obscures the fact that they are driven by contemporary resource competition and political dynamics and excuses inaction by the Government of Yamazia (GOY) with respect to those conflicts. The lack of any effective intervention by the state to halt or contain violence contributes to a sense in each ethnic community that it must fend for itself, and that it faces continuous risk from the other community. The perception of being locked in an intractable conflict with an obstinate foe thus itself becomes a factor that sustains conflict.

The historical persistence of livestock raiding between Swati and Achur populations lends the Swati-Achur conflict a “traditional” veneer, but events in the recent past suggest ways that the conflict might be relevant to contemporary oil and gas development in Swati County. The Achurbi Gorge Reservoir was created 25 years ago through the construction of a hydroelectric dam in the Achur River. Swati people indicate that, when the dam project was announced, the site of the project was within what was then Swati District, and the population living near the site of the works was predominantly ethnic Swati people. In response to the announcement of the project, nearby ethnic Achur groups engaged in a successful campaign of concerted “traditional” violence to drive Swati populations out of the area, with the intention of controlling jobs and contracts associated with dam construction and also access to the water in the Reservoir and in the Achur River below the dam.

Since then, the boundary between Swati and East Achur has been demarcated by three discrete government commissions – with the boundary located differently by each commission – but none of those demarcations has ever been enforced by any county or state level entity, and the GOY has proven unable to ensure either security or land rights in the region of the county borderline. A number of other factors contribute to the intensity of this dynamic – inflammatory and manipulative rhetoric by politicians during election seasons, the “commercialization” of stock theft as a criminal, for-profit activity, an interest in controlling the resource-rich lands in which GYBV’s operations are taking place, and, within each ethnic group, vilification and suspicion of the other group.

The loss of livestock in episodes of violence often leads to abandon a transhumant lifestyle, and people who suffer such losses becoming unable to feed themselves. They, together with people

32 There have in fact been a number of efforts to reach peace agreements between the two communities and to permanently and finally demarcate the boundary between the two counties, but none has proven to be sustainable, often due to weak enforcement by the GOY.

displaced by drought, fill Internally Displaced Persons (IDP) camps operated more or less permanently in several locations in Swati County by the Yamazia Red Cross.

The GYBV has identified the Achurbi Gorge Reservoir, inside East Achur County, as the most likely source of water for pressurizing oil wells. It is planning to pipe water from the Reservoir to the oilfields for this purpose. If this plan is implemented, Achur people living near the reservoir and between the reservoir and the oilfields would become “project-affected populations”, or stakeholders of the project.

Land and social cohesion

Resources introduced into the context by GYBV, GYBV’s way of operating, and the absence of clear, known “rules of the game” for oil operations are also factors that drive intracommunity conflict within Swati County. Lack of reliable, public information about GYBV’s plans and practices drives rumours and perceptions of corrupt dealings by the company, by local authorities, and by and other “gatekeepers”. Community squabbles over who is entitled to what benefits or compensation from the company are intensified by the absence of information about when and how benefits might be disbursed, distributed, and accessed. Yamazia’s regulatory frameworks and policies relating to oil are under development, and royalties from production have yet to start flowing. These dynamics lie at the root of a decline in trust between communities, and between communities and the company, the Swati County Government (SCG), and the GOY.

Most of the land in Swati County is “communal land” (which is a legal designation in Yamazia) that is legally held in trust by the SCG. The only exceptions are roadway corridors and areas that are designated as municipalities. Swati people recognize various cultural forms of connection between clans or sub-clans and specific lands within the county, but these have no standing in Yamazian law. Communal land can only be titled to individuals in rare circumstances, and the bureaucracy for accomplishing this is formidable. The fact that communal lands are, for practical purposes, inalienable, means that there is no established market for rural lands in Swati county. Accordingly, there is no existing standard of land valuation, or even a clearly understood market rate for land.

Oil exploration and internal displacement of people drive considerable land pressures. GYBV’s land acquisition processes have relied on *ad hoc* negotiations with clan and sub-clan heads (who are themselves informal authorities without officially recognized titles or roles). Neither clan and sub-clan heads nor the people in their clans and sub-clans know whether or not they have been dealt with fairly, what their rights are with respect to

land, or whether or not they have any means of legal redress for grievances relating to land. There are widely differing opinions about the appropriateness of GYBV's compensation rates or the identities of people who are, or should be, entitled to receive compensation for any particular parcel of land. Swati clans and sub-clans have responded to this uncertainty with conflict amongst themselves over land claims, which has in some cases been violent or involved involuntary displacement. Many Swati people feel disempowered and helpless in the face of what many perceive to be a threat to their livelihoods and patrimony. This in turn fuels animosity and mistrust both within and between communities.

GYBV has negotiated land access with clan and sub-clan seers and elders, who have important informal roles in clan-based decision-making, including decisions about leases and allocations of land to the oil company. Lack of broad participation in compensation-sharing and in consequential land negotiations is itself an element of what many locals see as the opacity of oil company operations. Locals who are not party to these negotiations, and may not themselves receive compensation from seers or elders, are quick to perceive corruption in any closed-door land dealings. These suspicions reflect the perception of locals that traditional governance structures are being co-opted by the company and that they thus fail as mechanisms of accountability, transparency, and community protection.

Governance, secrecy and corruption

Yamazia is a greenfield with respect to oil operations. Laws and regulations have not kept pace with oil development, and local people have no experience with oil operations other than GYBV's. Further, oil operations are unfolding in a legal grey area where standards, protocols, laws and regulations are unclear, or do not cover numerous circumstances and contingencies that have arisen. As a consequence, local communities are uncertain about what laws and regulations in fact stipulate about how oil operations are supposed to proceed, and Swati people are generally uncertain of their rights, protections, and obligations with respect to the oil project.

Local people on aggregate have very little accurate information about GYBV's operations and plans, and they perceive those to be opaque. As a consequence, many people perceive that there is a culture of secrecy amongst the big players in Yamazia's oil industry – GYBV, the national government, and the county government. They perceive that secrecy benefits those players, and that this at least partly explains the lack of transparency in GYBV's operations.

More generally, many Yamazians – and many Swati people among them – perceive political elites and government institutions

to be corrupt, and the press and popular rumors are quick to blame corruption among officials for a broad range of issues that the government proves unable to ameliorate. The lack of transparency in oil operations contributes to perceptions that practices in the oil and gas sector are also corrupt. Perceived corruption erodes trust in both governments and in the oil company, leading to feelings of disempowerment and declining demands for transparency; communities have grown accustomed to corruption and, in effect, normalize corrupt practices.

“Community work interruptions” and slowdowns

Real and perceived broken promises and agreements and unfairness in access to opportunities fuel local-level hostility towards the company. Communities express this hostility in the form of roadblocks, protests, and demonstrations which have ranged in scale and intensity from localized roadblocks lasting a few hours to large-scale shut downs of a few weeks in length. Work interruptions have been costly to the company and have, on at least one occasion in the past, lead to project scale-backs and the retrenchment of employees.

CASE STUDY #2

AN OIL AND GAS COMPANY IN SUB-SAHARAN AFRICA³³: PART I

Part III Module 4 Session 1

Part I of the case study

I. The Context

In a sub-Saharan country, oil was first discovered in 1956, and today the country is among the world's largest exporters of crude oil. 'Black gold' has been the engine of the national economy, accounting for as much as 95% of the country's export earnings and 80% of the country's income. However, far from benefiting from the oil production in the region, the people of the oil zones are— in statistical terms — worse off today than they were several decades ago. Over the last half-century, military and civilian governments have been largely unresponsive and unaccountable to the needs of the oil-producing region. At the same time, the region suffered serious environmental degradation from oil operations that destroyed local watersheds and traditional fishing livelihoods. The grievances of local communities were often dealt with militarily, resulting in allegedly severe violations of human rights.

The country stabilized, with civilian governments and regular democratic elections beginning in the 1990s, but substantial governance challenges still remained. Local, state and federal government efforts to provide socio-economic development in the oil-producing regions have been very uneven, and have failed to meet expectations or achieve substantial improvement. Corruption remains a substantial challenge at every level of society.

In the oil producing region, injustice and poverty gave rise to an armed militant movement that, until recently, targeted both government and oil industry facilities and operations. This led to further militarization and an even more unstable security situation in the region as the government deployed a specialized security force to combat the militants.

The dire socio-economic situation has only heightened the expectations that local communities have of foreign oil companies. With so little perceived government support, many communities

33 Adapted from Hoben, Merrick, David Kovick, David Plumb, and Justin Wright, November 2012. http://www.cbuiding.org/sites/default/files/field_expertise_products/Corporate_and_Community_Engagement_in_the_Niger_Delta_Lessons_Learned.pdf

have come to see oil companies as the only viable source for employment, economic development, and support. These expectations have far surpassed what companies can provide.

As a result, relationships in the oil-producing regions are characterized by a profound sense of injustice and frustration. Communities sitting on the country's greatest resource feel passionately that they should not live in such destitute conditions while others amass wealth. There is substantial mistrust of leaders, of government and of international oil companies, fuelled by years of broken promises, exploitation and marginalization.

In 2003, the western area of the oil region descended into a bloody and destructive inter-ethnic conflict, fuelled in part by increasing competition over mineral rights, and the associated benefits that communities and individuals hoped to reap.

II. The Company's Approach to Community Engagement

The company began producing oil in the country in the 1960s. The company is in a joint venture with the federal government of the country, which owns a majority stake in the operation. Those operations have a large footprint, spanning five states and touching multiple ethnic groups, including over 420 separate communities and more than 850,000 people.

Prior to the crisis in 2003, the company's approach to engagement with local communities included (a) agreements with individual communities impacted by the company's operations (which provided funding for small-scale development projects, as well as "homage" payments to traditional leaders and sometimes contracts for work), and (b) larger-scale infrastructure development projects intended to benefit the region as a whole.

Individual agreements with communities were problematic:

- First, although individual agreements included funding for local development projects, there were few development results to show for them. Community leaders were able to divert funds, and were in many cases the sole or primary beneficiaries of the company's development initiatives.
- Second, the lack of transparency fuelled inter-community conflict and rivalry. Each community measured itself against an imagined benchmark of what other communities were rumoured to be receiving. None was aware of the content of the others' agreements with the company.
- Third, these agreements were completely unmanageable from the company's perspective. There were over 400 separate community agreements, each individually negotiated. Any time

operational realities required a change in the status quo (such as relocating an oil rig), new negotiations were required with each community.

- Fourth, with so many agreements, there were countless promises (both real and perceived) made by the company to individual communities, and when those promises went unfulfilled — and when there was miscommunication and misperception about whether a promise had been made — mistrust continued to grow.

In addition to individual community agreements, the company also developed larger-scale infrastructure projects including hospitals, clinics, and schools. These facilities were selected, designed and implemented by the company, and seen as ‘company’ projects, rather than community projects. They generated little by way of community ownership and were often under-utilized even after they were completed. Far from seeing these infrastructure projects as their own, communities targeted them during the 2003 crisis.

In addition to these community engagement and community development activities, the company increased local hiring and local sub-contracting in an effort to support local economic development. They also provided scholarships for local communities. These efforts also had the unintended effect of further inflaming tensions since there was confusion and mistrust over how they were allocated.

From a business perspective, the company’s approach to community engagement was failing. It did not reduce disruptions to its operations. Many minor community grievances turned violent and halted operations entirely. Theft and extortion, sometimes presented as community agitation, were rampant. Women and children were encouraged by community leaders to invade company facilities to demand jobs, food, and contracts, knowing that such tactics often succeeded.

During the 2003 crisis, ethnic tensions boiled over into a prolonged period of violent and destructive clashes between ethnic groups, in particular two of the largest groups in the region. Villages were destroyed, and many community members were killed. The company (along with other international oil companies) was forced to shut down and evacuate the region until the security situation stabilized. The company suffered more than \$1 billion USD worth of damage to infrastructure, as well as the destruction of social projects intended to benefit the community.

CASE STUDY #3

AN OIL AND GAS COMPANY IN SUB-SAHARAN AFRICA: PART II

Part III Module 4 Session 2

Part II of Case Study

Global Memoranda of Understanding as a New Approach

As the crisis unfolded and company production remained shut down, the company re-evaluated its community engagement approach. While many of the issues that led to ethnic strife in the region were beyond the company's control, the existing model had resulted in neither a stable operational environment nor contributions to community development of the sort that the company intended, or that most community members wanted. It was clear to the company that a new community engagement approach was needed in the region.

Still, with MOUs outstanding with many of the communities after the crisis in 2003, the company debated how to address these unmet commitments. One option put forward was to hand over the money as a lump sum. However, after internal debate, agreement emerged within the company that a reliable governance model would be required in order to effectively distribute the funds for development. The company gathered feedback from selected community opinion leaders and other key stakeholders (e.g. the Government) before formulating the new proposal of the Global Memorandum of Understanding or GMOU.

As the company thought about a new approach to engaging communities impacted by its onshore operations, it identified several key corporate objectives of its own:

- First, it needed to reduce and/or eliminate disruptions to the company's operations — a single day of disruption cost the company millions of dollars;
- Second, it wanted to promote unity rather than competition among communities through its community engagement activities;

- Third, it needed to streamline its community engagement approach, reducing 400 individual agreements to a more manageable set of relationships;
- Fourth, it wanted to see real development impacts resulting from its community investments, on the assumption that development would help address historic grievances and reduce escalating pressures on the company to serve as the sole source of income, employment, and economic activity; and,
- Fifth, it wanted to encourage other partners to join in development efforts in the region, in recognition of the fact that the company would never be able to provide sufficient resources for economic development in the region by itself.

Moreover, the company anticipated that communities would be motivated by opportunities to have more control over development funds and activity, and well as clearer lines of communication with the company.

Key principles underpinning the model: As the company worked with consultants to develop details of a new approach, key principles emerged to guide the design:

- *Accountability:* Accountability had been lacking in previous company/community relationships: community leaders were not accountable to the communities they were intended to represent, and neither the company nor the communities were accountable for the commitments they made to each other. Formal agreements were not monitored. Under the new approach, community leaders were intended to be accountable to their communities through clear governance structures, as well as requirements to hold annual general meetings and local town halls. The company and communities would be accountable to each other through clearly recorded agreements.
- *Community ownership:* Under the previous agreements, the company often designed and delivered development projects to communities, which typically had little to no involvement in creating the projects. Similarly, agreements made with individual leaders, who were often not accountable to their communities, were not really “owned” by the community. The new model would shift from company-led social investment based on community demands, to community-led social investment (with company funding) based on community-identified needs.
- *Transparency:* The previous agreements lacked transparency. Under the new model, the company’s agreements would be negotiated with a representative group of leaders, who were

required to share and discuss those agreements with their communities for review and feedback. Local development projects funded by the representative group were expected to be awarded through open bidding.

- *Partnership:* Under the previous approach, communities were perceived by the company as the beneficiaries of their philanthropy. Under the new model, the company and communities would be partners in socio-economic development projects. Each had clearly defined roles, and the overall structure was expanded to include still other partners, such as NGOs and donors.
- *A single platform for dialogue:* The company's previous approach was unsuccessful in creating a single channel for the company and/or community to raise and address concerns with each other. Agreements were sometimes reached with a single leader, only to have other members of the community make additional demands or take disruptive action against the company's operations. The new model would make clear to all parties that the GMOU mechanism would be the platform by which nearly all issues that arose in the relationship between onshore operations and the communities would be addressed.

The company also identified four key drivers of risk within the oil-producing region, both in its own areas of operations and beyond: 1) unemployment; 2) lack of capacity for employment and small business management; 3) weak governance, both within government institutions and within institutions of civil society; and, 4) conflict. The company viewed these issues as beyond its own remit and capacity to influence in any comprehensive way. At the same time, the company recognized that making progress on these issues was important for the stability of the region and the success of its own work there. It established and partially funded an independent foundation that seeks to partner with other interested organizations to design and implement development initiatives that address those issues in oil region. To date, partners include well-known bi-lateral and multi-lateral development agencies, international NGOs, and local NGOs.

CASE STUDY #4

REMEDYING CONFLICT IMPACTS – A HYDRO-POWER PROJECT IN LATIN AMERICA³⁴

Part III Module 4 Session 2

This case study discusses an approach to remedying conflict impacts in the context of a project to construct a hydroelectric power plant between 2006 and 2013 in a mountainous rural area in a Latin American country. The area was at the time characterized by the long-term presence of the of the most important section of a guerrilla group waging a longstanding, violent insurgency against the state. A military offensive against the group was underway in the area during the project’s construction phase.

Background Context

The residents of the area have experienced persistent violence of different kinds since the 1950s. The 1960s and 1970s witnessed the emergence and strengthening of the guerrilla group, as well as other organizations connected to illegal insurgent and counter-insurgent armed groups, and finally the problems generated by the illegal cultivation of poppies as a form of financing for those armed groups.

At the time of the events discussed here, there were two fundamentally different contexts in the area in question: one in the local urban settlement, where the majority of the population is located, with the mayor’s office, the Church, the coffee-growers’ committee, the police command, and other institutions; and the others in the canyon where the hydropower project took place, where, at the onset of the project, the guerrillas exercised near-complete control. The canyon was known as the “resort” of the guerrillas because they used it as a place to regroup and recover between military actions. Before the company’s investment in the area, the majority of the roadways were in bad condition, and there was no military presence, so few ventured into the area without advanced permission from the leaders of one of the local community organization.³⁵

In regions under the control of the guerrillas, the armed group became its own sort of government for the residents of canyon. The guerrillas administered justice, maintained security and

³⁴ The text of this case study is excerpted with only minor modifications from a longer, public case study by CDA Collaborative Learning Projects and the Fundación ideas para la Paz.

³⁵ These community organizations are formal, grassroots-level civic organizations composed of the residents of a neighbourhood or vicinity. Throughout the country, these organizations organize, initiate, and manage local, often small-scale development initiatives.

civic order, and controlled transit schedules and movement of people, among other services. A community leader from the area indicated that at that time, there was no crime and people left the doors of their houses unlocked.

The Company

In 2006, a national energy company decided to implement a hydroelectric project at the fork of two rivers, taking advantage of the fact that, at that site, the project could be viable without the construction of a dam and the creation of an inundation zone. At the time, the area in question was under the control of the guerrillas.

Despite the security risks, the company decided to take on the challenge of building a hydroelectric station at the site. On the basis of its experience during projects in other high-risk areas of the country, the company concluded that, in order to successfully complete the hydroelectric station, it would need the approval and participation of the communities, which were represented by an umbrella organization composed of members of all of the community organizations in the valley: the Association of Community Organizations, or “Ascomorg”.

Negotiations

The company carried out a long process of dialogue and coordination with Ascomorg, amid the guerrillas’ presence and the armed forces’ attempt to recover control of the region from the guerrillas. From the beginning, there was clarity between the company and Ascomorg that project implementation required the presence of the national army for security purposes. As the project moved forward, the confrontation between the army and the guerrillas unfolded, affecting the peace and security within the local area, whose residents had learned to live with the armed group in relative calm over the course of decades.

As the negotiations progressed, community security emerged as a sticking point. The army had long viewed the communities as collaborators with the guerrillas, and the communities had long seen the army as a hostile and violent force. Within the military, the rank and file regarded inhabitants of guerrilla-controlled areas as partisans of the armed group. Knowing this, residents of the canyon feared that, in the context of an armed confrontation between the armed forces and the guerrillas, they would be exposed to grievous human rights abuses at the hands of the military. Before signing their agreement with the company, the leaders of Ascomorg expressed serious concern about losing the relative tranquility that had reigned for years in the canyon. This delayed the formalization of the agreement between the company and the community and impeded civil works.

The community's fears motivated the company to seek options for a human rights protection mechanism and a channel for voicing and remedying complaints about possible human rights violations in the villages.

The Armed Forces

By the middle of 2007, the army had also strengthened its operations in the canyon. The command of the military offensive was in the hands of a general who supported the hydroelectric project, as he believed that in areas in which the guerrillas had a strong base and historic presence in local communities, the armed forces' response should be integrated and not only military. He thought that there should be a process by which the army gained the trust of the community through social investment, health brigades, and construction of basic infrastructure, among other initiatives.

The general knew about the reconciliation roundtables that had been created in another region of the country with communities and civil society in contexts marked by disagreement and confrontation, and he proposed that the company replicate this type of institution in the nearby municipality. The company agreed, dubbing the dialogue forum the "Transparency Roundtable," and complementing it with a mechanism proposed by the community, namely a Human Rights Observatory. During the creation of the roundtable, the Governor of the Department was crucial as a mediator between the parties, also coordinating between the Vice President's Office for Human Rights and a United Nations delegate.

The Transparency Roundtable

The company and Ascomorg ultimately reached a comprehensive agreement about the project's impacts and benefits, including environmental management measures, local content and community benefits, regional development, and the intervention mechanisms to be used to implement the project during the conflict, with human rights guarantees for the residents of local communities. The agreement was elaborated in a document entitled "Coordination of benefits with the community in the area of influence of the Hydroelectric Project." The community took this document as the frame of reference for the project's implementation and referred to it as "the Testament."

The agreement included topics such as the functioning of the Transparency Roundtable, the creation of the Human Rights Observatory, the creation of a Citizen Oversight Committee, and programs for the recovery of micro-watersheds, the conservation of water resources, and the reforestation and maintenance of forested areas.

The Human Rights Observatory acted as a mechanism to identify ahead of meetings of the Transparency Roundtable any events or incidents that could affect human rights or community-army relations. Communities received human rights training, including how to record information necessary for the investigation of alleged abuses. The Observatory was convened jointly by community members and the Municipal Ombudsman's Office and was meant to receive and discuss allegations of abuses by the armed forces. Allegations were then assessed and analyzed before being presented to the Transparency Roundtable. This process aimed to avoid the need for victims of abuses to appear in person at the Transparency Roundtable to present their cases.

The company facilitated formation and operations of the Transparency Roundtable and provided a venue for it in the urban area near the project site. In addition to the Governor's Office, the Roundtable included delegates from the United Nations (UN), the Vice President's Council for Human Rights, the People's Ombudsman's Office, the armed forces, the local police, the Attorney General's Office, the Mayor's Office, and the Municipal Ombudsman's Office, as well as the communities of the canyon themselves. The Roundtable provided a forum for communities to express their complaints, and for the armed forces to respond to them, enabling dialogue between conflicting groups and allowing for the remedy of documented human rights abuses.

The Transparency Roundtable and Observatory were useful mechanisms to confront critical situations in the relationship between the population and the armed forces. Between 2007 and 2008, farmers from the area frequently alleged "false positives": the name given to an alleged practice attributed to the army which involved killing innocent farmers and passing them off as members of the guerrilla group in order to claim a bounty on guerrillas that was established by the government. The farmers also presented claims of other excesses by the armed forces, including forcible entry to private lands in search of guerrillas, and the capture of community leaders who the army accused of belonging to or supporting the guerrillas.

The company's role in the Transparency Roundtable was limited to logistical support and participation as an official observer. The company was not an active participant in discussions, even though complaints relating to the implementation of the company's project could also be voiced at the Roundtable.

The hydroelectric center was inaugurated in July 2013, despite security problems, attacks against workers, interruption of the Roundtable dialogue, and other obstacles. However, the inauguration was also the result of an exemplary process in terms of strengthening and expanding leadership, especially that of the Ascomorg organization as a competent and credible representative of the communities.

CASE STUDY #5

TELECOMMUNICATIONS IN AN ASIAN COUNTRY

Part III Module 5 Session 2

During the colonial period, the roughly 135 ethnic groups in the country were largely managed by functionaries drawn from the country's largest ethnic group – the Ambar. Following independence in the mid-20th century, other ethnic groups sought greater autonomy from the central government, which was to some degree perceived as a continuing Ambar domination over the ethnic minorities. The central government of the country failed to protect or represent these minority groups, instead seeking to consolidate greater control over them. Many of the ethnic political movements seeking greater autonomy and recognition formed armed wings, which are presently known as Ethnic Armed Groups (EAG).

In 1962, the military overthrew the country's weak central government and seized power, framing the push for greater 'federalism' by ethnic minorities as an anti-national threat. The military takeover was used to justify the armed forces' control over the state administrative apparatus. The country's armed forces governed the country both directly and indirectly from 1962 until 2011. Persistent features of that period were armed violence between EAGs and the national armed forces, with episodes of cease-fires and failed peace negotiations in relations between different EAGs and the central government.

Starting in the mid- to late 2000s, the country experienced a process of "opening up": a transition to greater democratic participation in politics, increasing integration into international economic markets, and growing popular participation in civic life. In 2015, the country experienced its first general election that was widely regarded as substantially free and fair, and the largest opposition political party won an absolute majority of seats in Parliament. In national elections held in 2020, the same party won a majority of Parliamentary seats. However, the leadership of the armed forces refused to accept the results and brought a case before the Supreme Court. On the grounds of alleged electoral fraud, in early 2021, the armed forces seized power in a bloodless coup, overthrowing the country's civilian government and returning the country to military rule under a State of Emergency.

The coup sparked massive uprisings by the civilian population in an outright rejection of the armed forces' control of the government and claims to legitimacy and a refusal to cede freedoms gained under the previous, democratically-elected governments. The military responded to the peaceful protests with extreme brutality, including arbitrary and targeted killings, detention, and torture. In response to the violence, many protestors fled to areas under the control of EAGs or into rural areas of the central region of the country and began to organize localized groups with the intention of fighting the armed forces by force of arms. These diverse, spontaneously organized groups, or "Popular Militia Forces", have increasingly garnered public support and expanded recruitment efforts.

In 2021, a multinational telecommunication company which had launched its mobile telecommunications network in the country nearly a decade earlier, found itself in a challenging situation. With increasing violence between the armed forces and civilians and activists, the armed forces ordered the company, which had users numbering in the millions, to activate surveillance technology within its operating systems. Installing such equipment would potentially violate the rights of millions of people, putting the company's customers' privacy and safety at risk, and constitute a violation of European Union and the company's home-state's sanctions.

Given this, the company decided to exit the country announcing it has to adhere to its own values on human rights and responsible business, and because local laws conflict with the laws of its home state. It further added that the security situation is extreme and deteriorating, and that it must ensure that its exit does not increase the safety risk for employees. It concluded that it has limited options available, and as a result it deemed the sale of its local asset to be the most realistic alternative to keep its employees safe. The company attempted to sell its local holdings to a foreign conglomerate with existing business ties to the country's armed forces; but the armed forces refused to approve the deal until the conglomerate agreed to identify a local partner. This allowed for a host-state conglomerate, also with ties to the armed forces, to join the deal, by the end of which the local conglomerate owned 80% of the company and could access all of the company's users' historical call data.

The company was roundly criticized for the way it exited the country. International and local civil society groups presented a formal complaint to the OECD's National Contact Point on the grounds that the conglomerate is unlikely to take measures to respect the human rights of telecommunications users and that the company therefore failed to act responsibly in selling its assets to the conglomerate. Additionally, some groups argued that the company did not adequately consult with civil society before

announcing the sale. Such consultation, it was argued, might have encouraged the company take measures ahead of the sale to protect customer's data. The company refutes this suggestion and argues that actions to protect data would have violated local law and put its employees at risk. Further, media reports suggested that the armed forces did not allow some of the company's expatriate staff to exit the country until the deal was finalized.

The company was positioned between two options: continuing to operate in violation of international and home-state law as well as the company's own commitments to responsible conduct; or leaving and potentially allowing greater harm by not preventing human rights abuses by the asset's new ownership.

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