

Enhanced business and human rights due diligence in conflict- and post-conflict settings

BSR's input to the UN Working Group project on business, human rights, and conflict-affected settings

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About BSR

BSR (Business for Social Responsibility) is a global nonprofit organization that works with its network of more than 250 member companies to build a just and sustainable world. From its offices in Asia, Europe, and North America, BSR develops sustainable business strategies and solutions through consulting, research, and cross-sector collaboration.¹ Over the past 25 years, BSR has worked with companies in multiple industries to conduct Human Rights Impact Assessments (HRIAs) that align with the UN Guiding Principles on Business and Human Rights (UNGPs) and develop due diligence methodologies to help companies identify, prevent, mitigate and account for how they address adverse human rights impacts.

About this submission

This submission was prepared by Jenny Vaughan and Joanna Lovatt, with input from Dunstan Allison-Hope, Ouida Chichester, Kelly Scott, and Shubha Chandra. It responds to a call for inputs by the UN Working Group on Business and Human Rights, to support the Working Group's project on business in conflict- and post-conflict settings.² It specifically responds to the following focus area: "enhanced" human rights due diligence.³ The submission is based on the following inputs:

- » Learnings from BSR's project work with companies operating in conflict- and post-conflict settings.
- » Consultations conducted as part of BSR's Human Rights Working Group meetings.
- » A review of relevant literature.

We seek to answer the following questions:

- » What are the key challenges and dilemmas that businesses face in conflict-affected contexts?
- » How are companies trying to overcome these challenges?
- » What guidance would be useful to guide companies in respecting human rights in conflict-affected contexts?
- » What specific measures should businesses take in conflict and post-conflict situations?

¹ Visit www.bsr.org for more information about BSR's more than 25 years of leadership in sustainability.

² The Organization for Economic Co-operation and Development (OECD) defines conflict-affected and high risk areas as "identified by the presence of armed conflict, widespread violence or other risks of harm to people. Armed conflict may take a variety of forms, such as a conflict of international or non-international character, which may involve two or more states, or may consist of wars of liberation, or insurgencies, civil wars, etc. High-risk areas may include areas of political instability or repression, institutional weakness, insecurity, collapse of civil infrastructure and widespread violence. Such areas are often characterized by widespread human rights abuses and violations of national or international law. Operating in conflict affected and high-risk areas presents unique and particularly difficult challenges."

³ <https://www.ohchr.org/EN/Issues/Business/Pages/ConflictPostConflict.aspx>

What are the key challenges and dilemmas that businesses face in conflict- and post-conflict settings?

BSR helps companies to apply the United Nations Guiding Principles on Business and Human Rights (UNGPs). This includes assessing impacts (principle 18), integration and action (principle 19), tracking (principle 20), communications (principle 21), as well as human rights policies (principle 16), remedy (principle 22), and context (principle 23). We have worked with our members in a number of conflict-affected and high-risk countries across the world, including Myanmar, Cambodia, Philippines, Ethiopia, Egypt, Chile, Papua New Guinea, and Guatemala. As such, we have observed the challenges that companies face implementing the UNGPs in conflict- and post-conflict settings and have ourselves experienced challenges—methodological and otherwise—while interpreting the guidance in high-risk and highly complex contexts. In our experience, the primary concerns are related to avoiding, preventing, and mitigating impacts (principles 13 and 19), assessing impacts (principle 18), remedy (principle 22), and context (principle 23).

Challenges associated with avoiding, preventing, and mitigating impacts (principles 13 and 19)

- » There are several complementary but overlapping approaches for avoiding, preventing, and mitigating the human rights risks associated with conflict, and no clear guidance on which one to follow.⁴ These include “do no harm”, conflict sensitivity, conflict-sensitive business practices, peacebuilding, institutional/multilateral guidance (e.g. IFC Performance Standards, OECD Guidelines) and the UNGPs.
- » Many decision makers inside companies have a low awareness of conflict risk factors and the different manifestations of conflict, and can underestimate the risk of operating in/sourcing from/selling to specific countries. This is particularly the case for nexus issues like corruption, which can be both a consequence and a driver of conflict.
- » The business value for acting proactively to address the risk that conflict poses to both business and respect for human rights is not always fully understood or appreciated. In part, this is due to lack of data, but it may also be due to siloing between the business and human rights field and fields like international development aid and peacebuilding.
- » It can sometimes be challenging to demonstrate that a business has the responsibility to avoid, prevent, and mitigate impacts that occur significantly upstream or downstream of their business, for example the conflict drivers associated with raw materials sourcing or the end-use of a product or service.
- » As the effects of climate change increase the likelihood of conflict drivers like resource scarcity and migration, existing business operations and supply chains may be newly exposed to and implicated in human rights risks associated with conflict. Businesses may not anticipate this ahead of time or consider it in their human rights due diligence.

⁴ These include IHRB (2011), International Alert (2018), UN PRI/Global Compact 2010), Shift (2015), and Swisspeace (2016). See “Resources” at the end of this document.

Challenges associated with assessing impacts (principle 18)

- » Stakeholder engagement for human rights due diligence in conflict- and post-conflict settings is significantly more high-risk and challenging compared to due diligence in relatively more peaceful contexts. This includes risk to the physical safety of rightsholders and can result in a biased or incomplete picture of the human rights situation. This can amplify intersectional inequalities, including those associated with gender. Political tensions can also impede the identification of appropriate stakeholders.
- » The cost of enhanced human rights due diligence in conflict- and post-conflict settings can be prohibitive, particularly if it is up- or down-stream of the business's direct operations, and requires an in-depth investigation into indirect business relationships and beneficial ownership arrangements.
- » The cause-contribute-directly linked framework can be difficult to apply for assessing a company's attribution to the secondary outcomes of the human rights impacts that act as conflict drivers, and this may undermine access to remedy for affected rightsholders. This dilemma is frequently seen in downstream value chains, associated with the end-use or the end-user of a business's product or service. Some end-use impacts may be considered a lower priority for businesses according to assessments of their severity but could still act as drivers of conflict. It is also particularly present in contexts where business operations contribute to corruption, either directly (such as by lobbying the government for legislation that supports corrupt business practices) or indirectly (by failing to mitigate corruption risk through business relationships).
- » There is limited guidance available to help companies to understand how their actions interact with the actions of other actors to negatively impact human rights (i.e. cumulative impacts). The cause-contribute-directly linked framework can be difficult to apply in situations of cumulative impact, as it can be challenging to determine attribution in a way that meaningfully places responsibility on any given company to act. This can result in a diffusion of responsibility.
- » Businesses are increasingly facing situations where they need to react to challenging human rights dilemmas in real-time, such as social media companies who must decide whether to respect freedom of expression at the expense of potential security concerns (and vice versa). There is a critical need for guidance that supports businesses to implement the UNGPs in fast moving crisis situations.

The UN Fact-Finding Mission to Myanmar published an investigation into the Myanmar military's economic ties in August 2019.⁵ This report had the positive impact of stimulating significant business interest in enhanced due diligence in Myanmar, but many of the businesses who were implicated in the report claimed that the sources used were outdated or unsubstantiated. The report highlights a key challenge of operating in a context like Myanmar, where military- and state-owned enterprises are complex, obfuscatory, and pervasive in character. Key challenges that BSR has observed include the prohibitively high financial costs of investigating all potential business relationships and the sale of products to companies with ties to previously sanctioned individuals with military- and criminal-ties.

Challenges associated with integration (principle 19)

The UNGPs state that *"In order to prevent and mitigate adverse human rights impacts, business enterprises should integrate the findings from their impact assessments across relevant internal functions and processes, and take appropriate action... appropriate action will vary according to the extent of [the business's] leverage in*

⁵ UNOHCHR (2019). Economic interests of the Myanmar military. <https://www.ohchr.org/EN/HRBodies/HRC/MyanmarFFM/Pages/EconomicInterestsMyanmarMilitary.aspx>

addressing the adverse impact.”⁶ There are notable challenges with establishing leverage in conflict- and post-conflict settings, which are specific to different points in the value chain:

- » **Upstream/supply chain:** It can be challenging for businesses to manage the behaviour of their Tier 2+ suppliers, particularly in complex global supply chains that involve the sourcing of high-risk commodities.
- » **Direct operations:** In many of these contexts, businesses may have no choice but to work with government- or military-associated entities, despite their human rights track record. It can often be challenging for businesses to ascertain whether they are dealing with these entities, due to beneficial ownership arrangements. Leverage is typically very difficult to apply in these cases.
- » **Downstream/end-use:** The sale and use of products and services in conflict- and post-conflict settings has the potential to result in gross human rights violations conducted by a third party, but a business may lack leverage to prevent these violations from occurring after the point-of-sale. This is particularly the case if the product is a physical good (as compared to a software that can be shut down remotely), resold to a military- or criminal entity, or modified/used for an unauthorized application.

One theme that applies across the entire value chain is the decision of whether to continue operating, sourcing from, or selling to customers in conflict- and post-conflict contexts. This decision is critical in conflict-affected contexts, and could have significant implications associated with access to remedy (see below). A decision to leave a context or end a business relationship could put rightsholders at risk, for example if they are targeted by local authorities for having engaged in human rights dialogue with the business. A “no go” decision also limits the positive influence a business can have on these human rights ecosystems.

Challenges associated with remedy (principle 22)

Access to remedy is a significant challenge for businesses operating in conflict- and post-conflict settings, in particular because the presence of conflict may undermine judicial remedy mechanisms, and certain groups who are affected by conflict may not be able to access judicial remedy due to state-mandated oppression and corrupt criminal justice systems. In addition to supporting access to remedy, operational grievance mechanisms can support human rights due diligence in conflict- and post-conflict settings by providing safe and anonymous channels of communication for vulnerable groups. If a security situation deteriorates to the extent that a business must make a decision to leave, stop selling to, or stop sourcing from that country, the decision to leave may result in the affected rightsholders losing all access to remedy for the human rights impacts linked to that business or its business relationships. Any decision to leave should therefore take this into account and involve an exit strategy that includes a commitment to provide appropriate remedy to individuals and communities who have experienced human rights abuses.

Challenges associated with context (principle 23)

Particularly in conflict- and post-conflict settings, governments may not fulfil their duty to protect human rights. Even if the legislative framework protects these rights in theory, enforcement is likely to be low where there is weak or no rule of law. This can apply to an entire country or can be limited to smaller areas/states/regions within a country. The UNGPs accounts for this by stating that “*Where domestic context renders it impossible to meet this*

⁶ UNOHCHR (2011), page 20. https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf

responsibility fully, business enterprises are expected to respect the principles of internationally recognized human rights to greatest extent possible in the circumstances.”⁷

Many businesses find it extremely challenging to implement this principle in conflict- and post-conflict contexts. Businesses also struggle to understand their responsibility when the principle applies to a context that is several times removed within the supply chain from its direct operations, either up or downstream.

This raises several questions/dilemmas:

- » Should businesses have a role to play in advocating for the protection of certain human rights if they operate in conflict- and post-conflict contexts? How far up/downstream the value chain should this extend?
- » Should this extend to security rights, if a business has the opportunity to promote conflict-resolution and peacebuilding through its operations?
- » To what extent should this extend to civil and political rights, when it concerns the end-use of a business's products and services?

Cambodia is a fragile, post-conflict state characterized by high-levels of corruption and a recent backslide in the realization of human rights, particularly civil and political rights. While the media environment is not free or fair, social media platforms provide an important space for political expression in the country. At the same time, content that is user-generated is being used by the Government of Cambodia as evidence for the targeted arrest and detention of human rights defenders and the political opposition. Cambodian civil society is increasingly calling on social media platform companies to protect human rights in the country, by engaging in direct and indirect advocacy with the government for the reform of repressive laws that restrict freedom of expression, association, and civil and political rights.

How are companies trying to overcome the challenges of operating in conflict-affected and high-risk areas?

In addition to supporting businesses with their obligations under the UNGPs, BSR also engages in a wide range of projects with companies that overlap with human rights and conflict. These include sustainability management and governance, diversity and inclusion, supply chain, climate change, and futures methodologies. As such, we have insight into the holistic strategies employed by companies when operating in conflict- and post-conflict settings, which often do not fall neatly into business and human rights frameworks. These are described below.

How are companies identifying and assessing these challenges? Are they conducting some form of “enhanced HRDD” or drawing on assessment tools from other disciplines?

Although there is increasing recognition of the validity and need for human rights due diligence, “enhanced” human rights due diligence is less well understood. This is complicated by a lack of authoritative guidance on what “enhanced” human rights due diligence entails. Companies therefore often seek to balance business and human rights frameworks with other overlapping/complementary assessment tools and obligations.

- » **Organizational governance and management systems:** Companies with a high-level of exposure to conflict in their business operations often utilize their existing governance and management systems to identify and assess these risks. For example, enterprise risk management (ERM) systems for extractives companies operating in a conflict-affected area will typically also include risk assessments of conflict. While these assessments may not necessarily consider the human rights impacts of conflict, they might identify human rights-relevant issues, like the need for community engagement to prevent project delays due to

⁷ UNOHCHR (2011), page 25. https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf

company-community conflict. These risk assessments are generally informed through the use of free and paid-for resources that identify human rights risks, including Verisk Maplecroft human rights products, the Global Slavery Index, and US State Department Human Rights reports, among others. Businesses are also increasingly using innovative technology—including blockchain, Everledger, Provenance, and MineSpider—to track the provenance of raw materials in their supply chains.

- » **Business and human rights frameworks:** The UNGPs are increasingly used by companies to understand their human rights risks and opportunities, but are more challenging to apply in conflict- and post-conflict settings where “enhanced” human rights due diligence is required. Supplemental guidance developed by civil society exists for conducting “enhanced” human rights due diligence, but is underutilized. This is particularly the case for industries with emerging risk exposure in conflict- and post-conflict settings, like companies that sell technology software, products, and services. This additional guidance has been developed by organizations including International Alert, Swisspeace, PeaceNexus, IHRB, Shift, UN Global Compact, and others.⁸ These frameworks are very high quality and establish excellent “theory”; however, in practice they are often overlapping or are too general to be useful for specific contexts and business needs. Many companies therefore undergo a subjective interpretive exercise to understand what the UNGPs mean for them in conflict- and post-conflict settings, with outcomes that are inconsistent in quality.
- » **Other multilateral and multistakeholder assessment frameworks:** Companies seek to comply with assessment frameworks that are either directly or indirectly human rights-relevant, and which are often handed down by investors as conditions for financing. Conflict is explicitly addressed in several of these frameworks, which are primarily directed towards extractives companies with large footprints in conflict- and post-conflict settings. They include the Equator Principles, the IFC Performance Standards, and the OECD Guidelines on Multinational Enterprises and Bribery. Some multi-stakeholder initiatives also provide human rights risk assessment guidelines, including the Voluntary Principles, ICMM, and IPIECA.
- » **Futures methodologies:** Also known as scenarios planning or strategic foresight, futures methodologies have been used by a limited number of companies since at least the 1970s to identify and assess unforeseen risks, including human rights risks and conflict risks. BSR has begun testing futures methodology applied to human rights due diligence, but not yet in conflict or post-conflict settings.

How are companies mitigating these challenges, what objectives are they aiming to achieve, and what are the gaps?

Activity	What objectives does this activity aim to achieve?	What are the gaps?
Whole value chain		
Anti-Corruption and Compliance Programs	These programs are typically aimed at compliance with anti-corruption legislation, such as the US Foreign Corrupt Practices Act (FCPA) and the UK Bribery Act 2010. Recently, there have been attempts to introduce “hard law” human rights standards using anti-corruption legislation, like the Global Magnitsky	While all large businesses have anti-corruption and compliance programs, these activities play a particularly important role in mitigating conflict drivers in conflict- and post-conflict settings. With few exceptions, businesses still address human rights and corruption via separate oversight processes, and most corporations’

⁸ See “Resources” at the end of this document.

	Human Rights Accountability Act and the Anti-Corruption Sapin II Law,	anti-corruption efforts follow a compliance-focus approach, aimed at avoiding the payment of bribes, without fully understanding how corruption impacts their ability to respect human rights. ⁹
Stakeholder engagement and community investments	These activities are designed to identify, assess, and mitigate human rights risks, as well as ensure social license to operate. They include ad hoc consultations as well as longer-term community investment programs and are an obligation under the UNGPs as well as many other frameworks for responsible business practices.	These activities are often undertaken outside of explicit human rights due diligence systems but are complementary to and supportive of human rights due diligence. Businesses with up- or down-stream conflict-related human rights risks often do not undertake sufficient community and stakeholder engagement along the value chain.
Policy Advocacy	Businesses often engage in policy advocacy with host governments to promote a regulatory environment that is supportive of foreign investment. In some cases, they promote legislation that supports the realization of human rights, including through nexus areas like anti-corruption. ¹⁰	These activities are often undertaken outside of explicit human rights due diligence systems. In some cases, foreign businesses promote policy agendas that can have a negative impact on the human rights and conflict context in the host country.
Conflict-Sensitive Human Rights Policies	The UNGPs require businesses to have a human rights policy. Enhanced human rights due diligence implies that this policy should be conflict-sensitive, for example by identifying security risks and conflict-drivers as salient human rights issues.	Very few companies have (on record) a conflict-sensitive human rights policy.
Human Rights Integration, Tracking, and Communication	The UNGPs require companies to integrate the findings of their human rights due diligence into business operations, for example via human rights training and human resources management, as well as to track and report on the effectiveness of these activities.	Relevant activities may be undertaken outside of explicit human rights due diligence systems. Very few companies outside of the extractives industry track and report on explicit mitigation strategies for human rights and conflict risk. ¹¹
Grievance and Remedy mechanisms	The UNGPs require companies to provide access to remedy for rightsholders who have experienced human rights violations as a result of business activities. In conflict- and post-conflict settings, company-led grievance and remedy mechanisms can be particularly critical	Very few companies have successfully implemented these in conflict- and post-conflict settings. Grievance mechanisms that exist downstream (for rightsholders impacted by the

⁹ BSR (2020). Human Rights and Anti-Corruption: Making the Link More Explicit. Written Inputs to Inform the Human Rights Council. In press.

¹⁰ <https://www.nestle.com/csv/what-is-csv/contribution-global-goals>

¹¹ Peace Nexus (2019). Peacebuilding Business Criteria. <https://peacenexus.org/wp-content/uploads/2019/05/PBBC-final-revision.pdf>

	because judicial access to remedy does not exist.	end-use or end-users of products and services) are especially rare. ¹²
Multistakeholder initiatives	Collective business and non-business action are responses to complex problems that require a group of actors to collaborate, including terrorism, corruption, conflict minerals, and weak rule of law.	Some collective action platforms are successful and widely adopted (e.g. Voluntary Principles, Global Network Initiative), but companies are often unwilling to put their name to incident- or location-specific initiatives for fear of reputational risk (e.g. sourcing in Myanmar). There are few multistakeholder initiatives that address the human rights and conflict risks associated with the downstream/end-use part of the value chain.
Upstream / Supply Chain		
Supplier compliance programs	These activities are designed to improve transparency in conflict-affected supply chains, as well as the capacity of suppliers to identify, assess, and mitigate conflict drivers.	These activities address supplier performance as it relates to compliance (e.g. 3TG sourcing), but do not address wider human rights issues or conflict drivers such as procurement practices and resource utilization.
Commodities sourcing platforms/initiatives	Companies involved in conflict minerals and diamonds supply chains were able to map their value chains using industry collaboration, including the Kimberly Process, and subsequently identify points of leverage based on their position in the value chain.	The commodities that are monitored are largely limited to those designated as “conflict minerals” in domestic legislation (3TG: tin, tantalum, tungsten, gold), as well as diamonds, with limited attention to the sourcing of other commodities that also act as a drivers of conflict (e.g. copper, cobalt). A similar approach could be applied to other high-risk commodities, as well as to downstream business relationships.
Direct Operations		
Voluntary commitments, frameworks, principles	These activities are designed to mitigate social risk associated with direct business operations, and include initiatives like the Voluntary Principles on Security and Human Rights, the Extractive Industry Transparency Initiative, the Code of Conduct for Private Security Service Providers, the International Council and Mining & Metals Social Management Tools, the Equator Principles, and the IFC performance	These activities are often undertaken outside of explicit human rights due diligence systems but are complementary to and supportive of human rights due diligence.

¹² One notable exception is that of the Facebook Oversight Board, which was established as an experimental grievance mechanism for providing remedy to all users of Facebook for potential harms associated with the use of the platform. Although this initiative is still nascent, BSR conducted a human rights review to assess how the Board could be governed so that it could meet the UNGPs effectiveness criteria for access to remedy. BSR (2019). A Human Rights Review of the Facebook Oversight Board, <https://www.bsr.org/en/our-insights/blog-view/a-human-rights-review-of-the-facebook-oversight-board>

	standards.	
Downstream / End-Use		
Export control procedures	These include lists of embargoed states, restricted parties/individuals, and prohibited end-uses, and are primarily aimed at preventing threats to global and regional peace and security (not human rights). They create clear “no-go-zones” for sales.	Export control procedures are usually designed for preventing specific end-uses that relate to compliance (e.g. sales to sanctioned countries), without human rights considerations. With some exceptions, human rights are generally not integrated into export control laws and regulations.
End-user compliance checks (know your customer/market checks and SDN Lists)	These are typically observed as a compliance check, where an SDN list is accompanied by non-compliance civil penalties in a company’s host country, or a company needs to comply with anti-corruption legislation.	Human rights considerations are not typically integrated into these end-user compliance checks.
Sales approval procedures	Sales approval processes (including go/no-go lists) act as a 2nd round of review if a sale is flagged as high-risk due to the nature of the end-user, end-use, or destination country.	Sales approval procedures are often used for compliance checks, but increasingly are being adopted to screen for major human rights red flags.
End-use contractual terms	These can include terms of service agreements, product-specific terms, and acceptable use policies that place clear restrictions on what all customers are permitted to do (or not to do). They can, but do not always, reflect human rights principles. They can also include instalment sales and after-sale service agreements	Integration of human rights principles into sales, distribution, and reseller contracts is rare, outside of narrow technology end-use cases.

What guidance would be useful to guide companies in respecting human rights in conflict- and post-conflict settings?

There is a substantial body of work that draws upon expertise from the fields of international humanitarian aid and peacebuilding to inform recommendations for “conflict sensitive business practice” and “enhanced human rights due diligence.” This has been referenced above, and includes multilateral assessment frameworks (UNGPs, OECD Guidelines, IFC Performance Standards, etc.), as well as civil society thought leadership (International Alert, IHRB, Shift, etc.).

However, despite this guidance, there remains a significant gap between theory and practice, and very few companies are implementing frameworks for “enhanced human rights due diligence” to address human rights

risks in conflict- and post-conflict settings. In BSR's experience, this is the case for several reasons, including the following:

- » The business case for action is still too weak or is insufficiently backed by hard data.
- » Companies are often unaware of the guidance.
- » There can be a capacity gap between in-house teams and the skills required to implement the guidance.
- » The current guidance is not presented in language suited to a business context.
- » The current guidance is too general, and guidance that is specific to industry, country/region, or point of the value chain (e.g., sourcing, operations, end use) is needed.

As such, BSR recommends that guidance designed to support companies to respect human rights in conflict- and post-conflict settings aligns with the following principles:

For the United Nations: Address the challenges that businesses face in implementing the UNGPs:

- » **Challenges associated with avoiding, preventing, and mitigating impacts (principle 18):**
 - Provide guidance that defines how to unify the multiple and complementary approaches to enhanced human rights due diligence, “do no harm”, and conflict-sensitive business practices.
 - Ensure that this guidance articulates the responsibilities for businesses at different points in the value chain (upstream, direct operations, downstream), as well as for businesses that contribute to drivers of conflict.
 - Within this guidance, provide information on how businesses should assess their attribution to conflict-related human rights impacts that are indirect consequences of their direct human rights impacts.
 - Consider defining the nexus areas and emerging areas of human rights and conflict risk (e.g. corruption, climate change), and encouraging businesses, investors, governments, and civil society organizations to generate data that supports the business case for addressing these risks (e.g. financial, operational, strategic, reputational, compliance risks and opportunities).

- » **Challenges associated with assessing impacts (principle 18):** Encourage companies to undertake business and human rights due diligence in highly complex, high risk settings collaboratively, using models of data collection that can assuage anonymity and confidentiality concerns and improve company participation.¹³ Provide additional guidance on how to integrate intersectional concerns, such as applying a gender lens to human rights due diligence in conflict- and post-conflict settings. Align this guidance to the guidance produced other projects that related to the interpretation of the UNGPs.¹⁴ Ensure that the guidance can be used to make rapid decisions and support companies to react in real-time to human rights crises.

- » **Challenges associated with integration (principle 19):** Provide more specific guidance on the different obligations for businesses who are connected to conflict at different points in their value chain (i.e. (upstream, direct operations, downstream), or through different product/service delivery models.

¹³ This model has been used successfully to improve transparency and risk assessments in other industries. For example, the [Clean Cargo Working Group](#) and the [Maritime Anti-Corruption Network](#) both utilize anonymous collective information sharing to address common problems, including corruption and environmental sustainability.

¹⁴ The UN B-Tech project, for example, seeks to provide authoritative guidance and resources to enhance the quality of implementation of the United National Guiding Principles on Business and Human rights with respect to a selected number of strategic focus areas in the technology space: <https://www.ohchr.org/EN/Issues/Business/Pages/B-TechProject.aspx>

» **Challenges associated with remedy (principle 22):**

Provide guidance on when and how specific pathways to remedy are appropriate for businesses who are implicated in the human rights impacts of conflict because they contributed towards that conflict. This guidance may differentiate between different industry contexts or where the company is in a value chain. Promote collaborative non-judicial access to remedy, either through private or public sector means, and report on the effectiveness of these pathways (e.g. how many businesses voluntarily contribute to funds set up for victims).

The UN Fact Finding Mission to Myanmar report in August 2018 recommended that all businesses who had business relationships with the Myanmar military contribute towards a fund that is designed to provide financial support to victims of gross human rights abuses associated with conflict in the country.¹⁵ BSR has subsequently recommended that businesses operating in conflict-affected areas of Myanmar contribute to this fund, as it provides an alternative model for non-judicial access to remedy for businesses who are unable to support access to remedy by themselves. However, there is limited information available on how effective this fund has been in the Myanmar case, or whether the model is itself a viable pathway to remedy for systemic business and human rights impacts that are not necessarily attributable to any single actor.

For investors, governments, and other organizations:

Align specific recommendations or requirements for business action with business management and governance frameworks.

There is significant value in aligning business and human rights recommendations with existing business functions and processes. This is because it can enhance the latent human rights relevance of non-human rights systems at low/no extra cost (e.g. a compliance mechanism can also be used to monitor adjacent human rights risks), and it reduces the barriers to entry like the lack of a business case, or the lack of internal capacity to adopt and implement the recommendations. This will potentially improve overall uptake.

» **Enterprise risk management frameworks:** Businesses may undertake human rights due diligence but not prioritize human rights impacts that have the potential to act as conflict drivers, because the link is unclear, or the business case is weak. This is especially the case for remote impacts (far upstream or downstream of the business), and emerging/anticipated impacts like resource scarcity and migration as a result of climate change. It may be more effective to frame these impacts in the language used by businesses in their existing risk management processes, like reputational, strategic, operational, financial, and compliance risks.

» **The value chain framework:** Business attribution to the human rights impacts of conflict varies significantly depending on where that business is in the value chain. A components manufacturer, for example, has limited leverage over which customers the product manufacturer sells the final product to. Their approach to enhanced human rights due diligence will necessarily differ from an extractives company who is contracting directly with a security services provider, or a manufacturer sourcing conflict minerals from the DRC.

End-use human rights due diligence is an investigation into the human rights impacts that occur downstream of a business's value chain: during or after the point-of-sale for a business's products or services. The due diligence supports an understanding of a number of different things: the human rights impacts of the product/service; the human rights impacts associated with the behaviour of the customer (distributor/intermediary or end-user); the leverage that a business has over mitigating potential negative downstream human rights impacts. There are a number of situations in which companies need to undertake enhanced end-use human rights due diligence to address conflict-related human rights risks, including:

- Products that can be used for dual purposes (e.g. by both civilian and military entities). For example, heavy construction equipment like diggers may be used with the intent of causing physical damage to individuals or their properties, in acts of war or forced displacement against minority groups.

¹⁵ UNOHCHR (2018). Report of the Independent International Fact-Finding Mission on Myanmar. <https://www.ohchr.org/EN/HRBodies/HRC/MyanmarFFM/Pages/ReportoftheMyanmarFFM.aspx>

- Products that are sold into conflict- or post-conflict settings, or sold directly to armed actors. For example, a business may provide heavy machinery components to an energy infrastructure project located in an area with a large ethnic minority population, but the customers/end-users of this machinery include military entities who are known to violently oppress, displace, and kill these ethnic minority communities in order to secure land for their infrastructure projects.
- Products or services that have a track record of contributing towards conflict drivers. For example, telecommunications infrastructure, social media platforms, and artificial intelligence technologies can be co-opted by military or armed actors.

While there are significant gaps in practice for end-use human rights due diligence, a small number of companies are beginning to integrate human rights considerations into their existing export controls and sales compliance processes. The below mitigation measures do not address all of the challenges associated with end-use HRDD, but are promising first steps:

- **Customer/Market Review:** Companies should focus on the distinguishing features of the highest risk use cases:
 - Who the product is being sold to / who the end user is.
 - The intended use of the product and how it could be misused.
 - The geography – i.e. the human rights context of the market the product is being sold to / used in.
- **Contracts:** There is a contract in place between the customer and the company (such as an acceptable use policy or end user agreement) setting out how that product or solution is intended to be used, and / or placing restrictions on how the product or solution is allowed to be used.
- **Acceptable Use:** The contract states that the product or solution should not be deployed in a manner that contravenes international human rights standards.
- **Enforcement:** Companies should have effective mechanisms in place to identify and address product misuse cases, for example by securing commitments to non-repetition or by suspending a product license.
- **Guidance and training:** The company defines human rights best practices for its context and shares these standards with its business partners, customers, and end-users proactively.
- **Collective action:** Companies collaborate to map their collective value chains and identify points of leverage based on their position in the value chain.

What specific measures should business take in conflict and post-conflict situations?

What does "enhanced" human rights due diligence look like in practice?

This has been described at length by a number of civil society organizations.¹⁶ In sum, “enhanced” human rights due diligence should involve the application of a conflict-sensitivity lens to existing human rights due diligence practices, aligned to the UNGPs and recognizing the limitations or challenges posed by the operating contexts (e.g. conflict and human rights impact assessments, conflict-sensitive human rights policies and processes, tracking and reporting on the nexus between conflict and human rights, etc.), as well as deeper rightsholder and stakeholder engagement.

Further to the above, BSR believes that there is a need to recognize and integrate business and human rights frameworks into existing business risk management strategies, to improve cohesion and reduce the “siloeing” of different business functions. The table below illustrates some examples of this:

¹⁶ See “Resources” at the end of this document, In particular, the publications by IHRB, International Alert, Swisspeace, and Shift.

Business Process	Examples of how to apply a conflict-sensitive lens to existing business processes
Supplier Management	<ul style="list-style-type: none"> » Conduct enhanced due diligence with suppliers into conflict drivers like land rights, ownership, and dispute legacies. Ensure the inclusion of a variety of stakeholders, to avoid favoring one side of a conflict over another. » Conduct enhanced due diligence into the joint venture partnerships and beneficial ownership arrangements of suppliers and their key business relationships (e.g. the owner of the land on which their factory is located), to assess potential criminal or military ties. » Provide capacity building to suppliers to mitigate potential conflict drivers in their operational context, like anti-corruption, diversity and inclusion, and natural resources management.
Sustainability and Human Rights Governance	<ul style="list-style-type: none"> » Ensure that the implementation of the UNGPs is done with a conflict lens (e.g. conflict-sensitive human rights policy, provision of conflict-sensitive human rights training to staff). » Assess the impact of conflict on human rights at all parts of the value chain (upstream, direct operations, downstream). Consider the links between conflict and high-risk commodities or raw materials, corruption, climate change, water and land rights, civil and political rights, and end-use cases. » Adopt business practices that promote and support peace and conflict resolution (e.g. inclusive hiring, promoting local economies, creating space for dialogue, water-conflict and land-conflict sensitivity).¹⁷
Anti-Corruption/ Compliance	<ul style="list-style-type: none"> » Acknowledge the link between corruption, human rights, and conflict in high-risk settings, and explore this link through human rights impact assessments. Cascade this throughout the organization through conflict-sensitive human rights training and integration into the company code of conduct. » Integrate enhanced human rights due diligence checks into existing compliance checks. For example, assess potential high-risk business relationships for both their SDN status as well as their connection to human rights abuses in the country.
Public Affairs	<ul style="list-style-type: none"> » Acknowledge the business case for human rights, peace, and security, and explore this link through human rights impact assessments. » Engage with host governments on human rights issues that are salient for business, including security issues. To the greatest possible extent, incentivize conflict-resolution through conditions on foreign investment. Consider working collaboratively with multilateral institutions and foreign embassies on a shared human rights agenda. » Engage with local communities to understand historical grievances and other legacy issues that may be acting as conflict drivers. Ensure the inclusion of vulnerable groups. Design community investment programs carefully to avoid exacerbating tensions. Work with trusted third-party organizations to do so.
Grievance Mechanisms	<ul style="list-style-type: none"> » Utilize operational grievance mechanisms to support human rights due diligence in challenging contexts where security concerns may impede direct stakeholder engagement, particularly the inclusion of groups who might otherwise be 'unseen' (e.g. oppressed minorities, women, children).

¹⁷ Peace Nexus (2019). Peacebuilding Business Criteria. <https://peacenexus.org/wp-content/uploads/2019/05/PBBC-final-revision.pdf>

	<ul style="list-style-type: none"> » Contribute towards collective remedy funds for victims if a security situation precludes the establishment of operational grievance mechanism and access to remedy. Ensure that this occurs as part of an exit strategy, if the decision to end operations is taken.
Collective Action	<ul style="list-style-type: none"> » Prioritize collective action for human rights and conflict impacts that are too complex for a single actor to address on their own: supporting human rights due diligence in highly complex settings; policy advocacy for host governments; supplier transparency initiatives for conflict-affected supply chains and commodities; industry-wide sales bans or moratoriums of specific products, customers, markets, and end-uses.
Research & Development	<ul style="list-style-type: none"> » Utilize product-use phase human rights impact assessments to support the identification of both adverse and positive impacts, including dual use cases where products could be used to commit gross human rights abuses. Product-use phase due diligence can also involve a 'know-your-customer' assessment of a consumer-base at large (compared to a KYC assessment that is specific to one customer), to assess potential cumulative human rights impacts.
Market Evaluation	<ul style="list-style-type: none"> » Integrate indicators into market evaluation criteria that identify the presence of conflict, as well as the status of civil and political rights in the country.
Sales/Partner Approval and Control Processes	<ul style="list-style-type: none"> » Integrate human rights indicators into partner selection criteria, including awareness, performance, and governance of human rights, government relations, grievance mechanisms, and escalation procedures. » Integrate human rights and conflict issues into existing export control processes. Consider potential dual-use scenarios. Develop "block lists" and "allow lists" that clearly define who the company will or will not sell to. » Engage in collective action to conduct enhanced due diligence into downstream business relationships (customers, resellers, distributors) to build a shared database of intelligence, transparency, and consensus on high-risk and no-go sales. » Build in acceptable use policies and other contractual leverage over the end-use. Utilize ongoing product service cycles to conduct due diligence on the human rights impacts of the end-use of the product post-sale.

How does/should the process to identify, prevent, mitigate and account for actual and potential impacts in conflict and post-conflict situations differ from "non-conflictual" contexts?

Additional methodologies to assess the impact of conflict on human rights should be applied for companies who are operating in conflict-affected or high-risk areas. These account for the possibility that business human rights impacts may act as conflict drivers, and result in further human rights impacts that may not, at a first assessment, be judged as salient for the business. BSR's approach—which is based on the UNGPs as well as a review of relevant third-party literature—is described below:

- » An additional assessment of local conflict dynamics should be used to complement and inform the contextual analysis that is already being undertaken for a traditional human rights due diligence. This additional research supports an understanding of drivers of conflict, including contextual factors, pre-existing

grievances, affected stakeholders, mobilizers, and resilience factors.

- » A "do no harm" analysis should be used to understand how business actions may exacerbate conflict, and whether that conflict could result in any actual or potential human rights impacts for the rightsholders. This should involve the participation of additional company staff, rightsholders, and other stakeholders.
- » Additional measures must be taken to ensure that stakeholder and community engagement in conflict- and post-conflict settings for the purposes of human rights due diligence adheres to "do no harm" principles. Certain groups are more vulnerable and less visible in situations of conflict.¹⁸ Risks may stem from both company operations and the situations of conflict themselves, and could include physical security risks, cybersecurity risks, sexual and gender-based violence risks, and political co-option. Per the UNGPs,¹⁹ alternative methods should be employed to ensure the input of rightsholders who cannot participate in stakeholder engagement due to security risks.
- » Prioritization of human rights impacts should consider two additional principles specific to conflict risk: that the severity of human rights impacts is amplified by the presence of conflict, and that some impacts may be categorized as less severe (using the scope-scale-remediability criteria) but still be likely to drive conflict.²⁰
- » Management and mitigation of human rights impacts should additionally consider that the likelihood of actual and potential impacts is amplified by the presence of conflict, and that a business may be directly linked to the human rights consequences of conflict via third-party business relationships. Special care should be taken to build leverage within these business relationships. In some cases—particularly if the business relationships are government entities—this may require collective action. Prevention/mitigation strategies should address the wider human rights ecosystem ("system wide change" and civic space), particularly if identified human rights impacts have the potential to act as conflict drivers. Issues that are salient for both human rights and conflict should be prioritized for action first, as they could spiral out of control and amplify the company's human rights risks.
- » Non-judicial pathways to remedy may be particularly critical in conflict- and post-conflict settings, where there may be no rule of law to guarantee remedy to victims of human rights abuses. To ensure that these pathways exist in fragile contexts, businesses may need to explore alternative models of accountability, like collective funds and rehabilitation programs for victims.

¹⁸ BSR applies a vulnerable groups lens to stakeholder engagement, in accordance with the UNGPs. This approach is described in detail in our assessment of access to remedy in the Porgera mine in Papua New Guinea (BSR, 2018).

¹⁹ UNOHCHR (2011), page 20. https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf

²⁰ International Alert (2018). Enhanced Human Rights Due Diligence in Conflict-Affected Settings: Guidance for Extractives Industries.

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