
Memorandum on Stakeholder Engagement in Conflict Contexts
*For the United Nations Working Group on Business and Human Rights
Project on Business in Conflict and Post-Conflict Contexts*

April 10, 2020

This memorandum is intended to contribute to the work of the UN Working Group on Business and Human Rights (henceforth UNWG). It is an element of CDA Collaborative Learning's (CDA) response to the UNWG's call for input into the Project on Business in Conflict and Post-Conflict Contexts.

The recommendations put forward in this memorandum are based on [CDA's](#) 20 years of experience working with private sector companies in contexts of fragility and conflict. In that time, CDA has performed more than 50 asset-level assessments of corporate operations in more than 25 countries, including conflict-affected contexts such as Colombia, Sudan, Nigeria, Myanmar, and Burundi. CDA's work also spans a number of sectors including mining, oil and gas, hydropower, renewable energy, commercial agriculture, and the food and beverage industry. Lessons from our work can be found in practical tools, frameworks, policy-level guidance, corporate policies, public assessment reports, peer reviewed articles, and books.¹

Overview

This memorandum expands upon the recommendations provided in CDA's separate letter to the United Nations Working Group on Business and Human Rights (UNWG), also submitted in response to the UNWG's open call for input². The memorandum has two parts:

- **Section I** describes some of the characteristics of conflict contexts that make them distinctive operational settings; in particular, ***features of conflict contexts that typically create practical challenges for companies.***
- **Section II** describes ways in which companies that operate effectively in conflict adapt their practices to the conditions described in Section I. The memorandum focuses specifically on stakeholder engagement, noting that stakeholder engagement and the social dimensions of company projects are the foundation of effective operations in conflict; and that ***effective approaches to operating in conflict demand approaches to stakeholder engagement that differ fundamentally from conventional practices.***

¹ See: www.cdacollaborative.org

² Letter submitted on April 10, 2020.

Relatedly, CDA has noted that many companies that are committed to implementing the UN Guiding Principles on Business and Human Rights (UNGP) engage stakeholders relatively ineffectively. The recommendations in this memorandum for more robust stakeholder engagement in conflict settings are consistent with the aims of the UNGP and with enhanced human rights due diligence, and may in some cases be necessary to implement those successfully.

Section I: Conflict-Affected Contexts are Distinctive

Contexts that are defined by conflict – latent or active – differ significantly from peaceful and stable operating environments in several ways that create challenges for companies. These characteristics of conflict-affected contexts also contribute to human rights risks. In order to operate effectively in such contexts, companies have to adapt their operations to them. Standard approaches to operations are likely to have adverse impacts on local conflicts and tensions.

Aspects of conflict-affected contexts that most impact corporations include:³

- **Polarization and Lack of Trust:** Conflict contexts are defined by competing interests, perceived and real historical grievances and inequalities, and distrust and suspicion among actors and social groups. Different groupings of a company’s stakeholders (and other actors) are likely to perceive each other as “good” or “bad”, but rarely as something in between. Local actors tend to perceive the company in light of these divisions and tensions, and therefore may see the company as a part of the conflict. ***Being, or being seen to be, on any of the “sides” of the conflict will create substantial risks for the company.*** This includes risks to reputation, assets, and personnel. Companies may also become targets or means to an end for local actors, including potentially members of local communities, who may be willing to use violence and the threat of violence in pursuit of their objectives.

- **Weak or “Captured” States:** Conflict and state fragility often go hand-in-hand. Persistent conflict, even in sub-regions of a country (as in Nigeria, Myanmar, Mali, and Uganda), tends to weaken state institutions, and weak governance institutions are rarely able to contain or resolve conflicts effectively. Several aspects of state fragility bear upon corporate operations in conflict settings.
 - ***The host state may be unable to maintain stability or ensure the rule of law.*** Areas of the host country may be effectively outside of the state’s influence or control. There may be areas of the country where the state cannot guarantee the security of citizens, protect their human rights, or provide them with access to justice. As a result, there may be areas where violence is prevalent, armed groups are active, or where powerful local actors operate outside of the law. In such circumstances, companies may find that security risks are high and

³ This is not a complete list; rather, these are the elements CDA notes are most critical. See, for instance, B. Ganson (ed.) (2013). [Management in Complex Environments: Questions for Leaders](#). Stockholm: International Council of Swedish Industry, especially Chapter 1.

government counter-parties are absent, contested, or unable to perform their roles in ways that local people find credible and legitimate.

- ***The host state may have weak or non-existent capacity to deliver services or regulate industry.*** Companies may find that local lands are untitled and that cadastration and transfer processes can be influenced easily by self-interested actors; that workforces are not skilled or educated in ways that would allow the company to employ them; and that public infrastructure and state services are sub-standard or non-existent in the company's operational area. States may be unable to provide accurate and complete information about the company's activities to the public, to manage consultations and disclosures effectively, or to monopolize the means of violence. Local government institutions, in particular, tend to have relatively little administrative capacity in such contexts, and may be unable to organize labor recruitment, contribute to the management of grievances, or effectively disseminate information to local populations.
- In some cases, ***the state itself, or state institutions, is a conflict actor.*** The state, individual officials, or specific government institutions may directly foster or drive conflict, or directly exacerbate conflict by their inaction. "State capture" by groups of elites can lead to the use of public institutions to advance the personal interests of powerful people, often at the expense of the public or of less powerful groups. Officials may not represent the interests of their constituents, or may themselves be partial with respect to conflict issues or connected to armed groups, and the government may not be seen as legitimate by the company's stakeholders or by other groups in the host society. Companies may find that officials manipulate company processes such as land acquisition (for instance) to punish rivals or advance personal interests; that the company's ties to particular government officials or offices are cause for animosity amongst some groups of stakeholders; and that taxes and royalty payments provide no demonstrable benefits for populations living in the vicinity of company sites.
- ***Incomplete, Insufficient, or Unreliable Data:*** Due to the weakness of state institutions and the politicized nature of public information, complete, reliable, and timely information is rarely available for analysis and decision-making. In an environment of corruption, weak rule of law, and distrust among local actors, rumors proliferate, and demonstrable facts are scarce. As such, companies may find it difficult to gather information for decision-making, to understand the impacts of their own actions upon affected populations, or to know which local actors derive benefits from their presence and activities. Companies may also find it difficult to know how to position themselves in relation to conflict issues such as historical grievances among ethnic groups or between regions of the country and the central government.
- ***Armed Non-State Actors⁴:*** The presence of armed groups poses immediate dangers to companies, suppliers and contractors, local communities, and other stakeholders. It also

⁴ CDA submitted a separate memorandum about operations in the presence of armed non-state actors.

significantly complicates companies' relationships with those stakeholders and companies' efforts to operate in ways that meet their human rights duties⁵. Small arms may also be readily available to community members, directly impacting the personal safety and security of company personnel.

Section II: Working effectively in conflict requires a fundamentally different approach to stakeholder engagement and community relations.

In conditions of conflict and fragility, as described in Section I of this memorandum, routine operational activities can easily exacerbate conflict and provoke violence and human rights abuses. Operating in ways that account for conflict and fragility and contain the risks associated with them in most cases requires negotiation and collaboration between companies and other actors that are present in the local context. Companies typically have to interact intensively with and build social capital among local people. For example, companies may need to identify representatives in whom local communities have confidence and whom they trust to negotiate on their behalf; to work out equitable ways to compensate for communally-held or 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 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.

CDA's evidence indicates that companies that operate effectively in these environments employ stakeholder engagement practices that have rationales, processes, and scopes different than those that companies typically employ in stable contexts. CDA has observed several practices in particular to be effective:

1) Community engagement should be broad enough to include communities outside of the company's immediate "zone of influence." Many companies engage their stakeholders in the narrowest way in order to maintain low profiles in conflict settings. Companies have asserted to CDA that this approach reduces their exposure to security risks while limiting their level of effort, community demands and expectations, and labor costs. CDA's evidence suggests, however, that the challenges of operating in conflict can be mitigated more effectively by engaging more with more people, instead of engaging less with fewer people. One company with operations in Iraq and Libya indicated to CDA that community engagement in such settings should be "as broad as possible." There are three reasons for this.

1. First, in the absence of reliable, objective information, **companies may have to base decisions on triangulation among different perspectives.** A greater degree of diversity among stakeholders engaged by the company provides a broader basis for confidence in corporate decision-making.
2. Second, companies can mitigate risks associated with conflict by understanding both **local conflict issues and the ways that their own operational activities may impact**

⁵ Miller, Ben, Dost Bardouille, and Sarah Cechvala. 2014. "Business and Armed Non-State Actors: Dilemmas, Challenges and a Way Forward". *Business, Peace and Sustainable Development*. 2014 (4): 7-40.

upon conflict. This includes understanding how the company's presence and activities impact upon relationships between and among different groups of stakeholders.

Though they may not be defined as stakeholders by the company or the host-state, actors and social groups that neighbor the "zone of influence" often have a strong interest in events within the zone of influence and ties to stakeholders living there. To avoid engaging those actors or including their perspectives in stakeholder analysis may result in actions by the company that enflame conflict, introduce new human rights challenges, or overlook important aspects of local human rights and conflict dynamics.

3. Third, companies are more effective 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.

2) The primary objective of community and stakeholder relations should be to build and maintain constructive relationships. Under ordinary circumstances, companies understand community and stakeholder relations activities as support functions that make it possible for technical operations to go forward in a timely manner and without obstruction from stakeholders. Those activities may be driven by, say, the need to execute agreements with landowners, complete consultations, and ensure that community representatives receive information about the grievance mechanism, and the need to resolve disagreements with community members before they become crises.

In situations of conflict, however, a "social license to operate" is of far greater importance and is typically more difficult to maintain. Companies with track records of effective operations in these contexts **build and maintain the community's trust and confidence in the company.** Among other ways, they commonly engage local people in participatory development projects as their initial activity within communities. Some negotiate comprehensive impacts and benefits agreements (IBA) that include mechanisms for managing human rights impacts, prior to launching any technical project activities. Use of commitment registers⁶ is also a common practice.

3) Internally, community relations departments should ensure that operations meet the expectations of stakeholders. Maintaining good relations with the local community means managing the expectations of communities and operating in ways that meet the community's (realistic) expectations. For instance, if a company has signed an IBA with the local community, maintaining a constructive relationship with that community may mean ensuring that operational activities comply with the IBA with respect to issues such as water usage, vehicle circulation or traffic rules, informing communities in advance of major activities, land access protocols, and so on. As an assurance measure, a Community Relations (ComRel) department should have a consultative or greater role in operational decisions. Where the company makes

⁶ A commitment register is a comprehensive list of verbal and written commitments that a company makes to a community. It may also assign responsibility for meeting individual commitments to staff members or departments and contain progress updates on individual commitments.

significant changes to operational activities that have already been discussed and agreed with the community, new plans should be brought to the community for discussion and validation before they are implemented.

4) Relationships with external stakeholders have their own timelines. Typically, stakeholder relations activities and their objectives are tied to major milestones of a project’s technical timeline, such as technical surveys, land acquisition and resettlement, hiring and contracting for construction, and so on. The technical timelines predicate the social timelines. Effective operations in conflict do not follow this pattern. In conflict settings, communities should have an understanding of companies’ operational steps and processes and the way that they will unfold, and they should agree to those activities before they take place. This implies that certain Community Relations objectives should be considered to be on the project’s critical path, with certain technical activities as their dependencies.

A particular challenge for many companies in this connection is the timing of the final investment decision (FID), before which many companies consider non-technical activities to be immaterial. While CDA recognizes this dilemma and understands the rationales for companies’ reluctance to do too much before the FID, CDA’s evidence shows unambiguously that without allocating sufficient time and resources to building relationships of trust with stakeholders in their own time, the company can count on delays, costs, and possibly violence associated with disruptions of its operations as the project moves forward.

The Practical Value of Strong External Relationships

In Colombia during the civil war, an engineering and construction company and, separately, an energy company⁷ each managed to complete a major project in territory controlled by armed insurgent groups. Both companies spent two years negotiating IBAs with local communities and engaging in participatory community development projects prior to initiating technical operations. As a consequence of this approach, both companies maintained constructive relationships with local communities over the life of their projects. In both cases, the communities’ support for the projects motivated communities to help the companies to resolve challenges, including problems arising from the activities of the local armed groups.

Conclusion

Conflict-affected contexts are specific operating environments that exhibit a range of characteristics that often pose challenges to companies. In such contexts, standard approaches to operations have a track record of intensifying conflicts and driving human rights risks. Adapting to the challenges of conflict and fragility requires stronger- and broader-than-usual external relationships, and an ability to work constructively with a broad range of local actors; both require social capital that companies are unlikely to accumulate without fundamentally

⁷ See: Patiño, Simón and Ben Miller. 2016. *ISAGEN and the Construction of the Río Amoyá Hydroelectric Center – La Esperanza*. Cambridge, MA: CDA Collaborative Learning Projects and FIP; Patiño Simón, Ben Miller, y Dost Bardouille. 2017. “Oleoducto Central S.A. y el Plan de Mantenimiento Civil.” Cambridge, MA: CDA Collaborative Learning Projects y FIP; and Patiño, Simón y Ben Miller. 2016. *Tipiel y el Proyecto de Desarrollo Integral Ciudadela Educativa* Cambridge, MA: CDA y FIP.

altering their stakeholder and community engagement approaches. Effective engagement in such contexts is broad and inclusive, and early and ongoing; and it is focused on building constructive relationships.

The recommendations and practices described in this memorandum are consistent with the UN Guiding Principles, which call for consultation with stakeholders and, more specifically, affected groups as a vehicle for gauging human rights risks, identifying prevention and mitigation measures, and designing and implementing grievance mechanisms. CDA believes that the UNWG would serve the interests of improved human rights due diligence and operational effectiveness by asking companies to adapt their stakeholder engagement practices in conflict in the ways suggested in this memorandum.