

Cambridge, MA  
April 10, 2020

Dear Members of the United Nations Working Group on Business and Human Rights,

We wish to extend our thanks to the Members for the opportunity to contribute to the **project on business in conflict and post-conflict contexts**.<sup>1</sup>

The recommendations put forward in this letter are based on [CDA Collaborative Learning's](#) (CDA) 20 years of experience working with private sector companies in contexts of fragility and conflict. In that time, we have 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. Our 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.<sup>2</sup>

On the basis of this experience, we urge the members of the UN Working Group on Business and Human Rights (UNWG) to consider several critical aspects of business operations in conflict contexts<sup>3</sup> and the connection between those and the persistent nature of human rights abuses associated with business. Each point is further developed below:

1. ***Conflict drives the number and seriousness of human rights abuses.*** In contexts of conflict, companies seeking to respect human rights will achieve better outcomes if they work in ways that address or account for conflict.
2. When companies operate in conflict contexts, their presence and activities in fact become elements of the conflict. They may adopt neutral formal positions with respect to conflict, but ***a company's presence and activities, and other actors' responses to the company, are never neutral with respect to conflict issues.***
3. Conflict settings are characterized by complex patterns of competing interests and historical grievances and animosities among actors. An ***in-depth understanding of the interplay amongst those elements*** and the ways they motivate and inform interactions among actors are a necessary foundation for effective operations in those contexts.<sup>4</sup>

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<sup>1</sup> Under separate cover, CDA is submitting additional documents as input into the project on business in conflict and post-conflict contexts.

<sup>2</sup> For more see: [www.cdacollaborative.org](http://www.cdacollaborative.org)

<sup>3</sup> For the purposes of this memorandum, we are using the term "contexts of conflict" and variants in a relatively narrow sense, to denote contexts in which there is ongoing armed conflict, pervasive insecurity and violence, or a high risk of either or both.

<sup>4</sup> CDA will discuss effective conflict analysis in a separate brief.

4. ***Conflict sensitive approaches to business operations exist and can reduce rights-holders' exposure to risks*** by mitigating adverse company impacts on conflict. While few companies currently operate in a conflict sensitive manner, most, if not all companies, have options for doing so.<sup>5</sup>

#### ***Conflict drives the number and seriousness of human rights abuses***

In conflict-affected operational contexts, serious violations of human rights can be best understood as elements of conflict dynamics and governance failures that are broader and more fundamental than individual rights violations. It is well established that, for companies operating in those contexts, conditions of conflict create a range of impediments to implementing the UN Guiding Principles (UNGP)<sup>6</sup>. More importantly, however, ***conflict in a company's operational area drives human rights risks in those locations, irrespective of even the most comprehensive and well-resourced efforts by the company to implement the UNGP.*** Further, our experience working with companies indicates that, if companies do not deliberately and proactively manage their impacts on conflict, their business activities themselves are likely to intensify tensions.

#### ***Company impacts are never neutral when it comes to conflict***

When companies operate in contexts of conflict, their presence and activities become elements of the conflict. The evidence is clear that routine business processes such as hiring, engagement with local representatives, land acquisition and use of other resources, corporate social responsibility and local development activities, security operations, relations with the host state, and other routine activities all create, or threaten to create, "winners" and "losers" among local actors. Local actors respond by positioning themselves to take advantage of the resources and opportunities arising from the company's activities, and compete with each other to capture them.<sup>7</sup> In fragile and conflict-affected states, where institutions are unable to effectively balance the interests of different actors and where significant tensions and conflict already exist, even mundane business processes can intensify conflict. Companies are often observed positioning themselves as politically neutral actors as a way to avoid entanglement in local political issues. But while companies may formally (and earnestly) profess neutrality with respect to conflict issues or conflict parties, the impacts of a company's presence and activities *can never be neutral*<sup>8</sup> with respect to conflict.

#### ***Conflict analysis is essential***

Experience working with companies indicates that, while companies operating in conflict settings sometimes have rich and detailed understandings of the context, they rarely analyze conflict itself in a systematic way. Specifically, they rarely utilize tools and analytical models that would enable them to identify:

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<sup>5</sup> CDA will present a separate brief on stakeholder engagement as the foundation of conflict sensitive practice and the identification of management options for companies operating in conflict.

<sup>6</sup> See, for instance, Miller, Ben, and Dost Bardouille, with Sarah Cechvala. "Business and Armed Non-State Actors: Dilemmas, Challenges and a Way Forward." Cambridge, MA: CDA Collaborative Learning Projects, 2014.

<sup>7</sup> See Anderson, Mary B., and Luc Zandvliet. *Getting it Right: Making Corporate-Community Relations Work*. Sheffield: Greenleaf Publishing.

<sup>8</sup> Anderson, Mary B., and Luc Zandvliet. *Getting it Right: Making Corporate-Community Relations Work*. Sheffield: Greenleaf Publishing, 2009, p. 9.

- 1) the factors that drive and mitigate conflict;
- 2) the positions and interests of different local actors with respect to conflict dynamics; and
- 3) the ways in which the companies' own practices impact upon existing social tensions and relationships between social groups.<sup>9</sup>

As a consequence, companies consistently overlook or misrecognize their own impacts on conflict. This leads companies to discount the options that they have for mitigating conflict and to operate in ways that do not sustain a “social license to operate” (SLtO). When they do, they enflame conflict within and among communities, and between communities and themselves. **Companies operating in conflict settings should perform and maintain up-to-date conflict analyses, and should use those analyses to inform all of their operational activities**, and not only their social investment, corporate social responsibility (CSR), and government relations strategies.

The Voluntary Principles on Security and Human Rights (VPSHR) recognizes conflict analysis as a practice that may help companies to reduce human rights risks associated with their security operations. As a member organization of the Voluntary Principles Initiative (VPI), CDA notes that the 2019-2022 strategy of the VPI goes beyond the VPSHR to recognize explicitly that effective implementation of the VPSHR in situations of conflict requires conflict analysis. **Should the UNWG also endorse the conflict analysis as a best practice for businesses operating in conflict, it would align with the VPI and send a strong and unambiguous signal to businesses about conflict analysis as a fundamental feature of responsible business operations.**

#### **Conflict-sensitive operations reduce human rights risks**

There is compelling evidence that companies can significantly reduce risks to rights-holders (and to themselves) by operating in ways that address conflict in their operational areas. There is a substantial body evidence and guidance that identifies and explains approaches to business operations that are appropriate for conflict settings.<sup>10</sup> A good number of operations-level analyses form part of this body of work, and good practices are identified and discussed in some detail therein. Companies articulate a range of reasons for not adapting their practices to these settings, and therefore not taking on much of this practical guidance, but their adverse impacts on conflict remain both predictable and avoidable. **Our experience<sup>11</sup> indicates that companies consistently overlook and underestimate the degree of influence that they have over conflicts in their operational environments.** Companies should be encouraged to adopt conflict sensitive approaches to business operations as a default in contexts affected by conflict.

The principles elucidated in this letter apply equally to investment in conflict-affected contexts. There is overwhelming evidence to indicate that “the introduction of new resources into a resource-scarce society that is also in conflict rarely (if ever) leads to people sharing these

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<sup>9</sup> Bardouille, Dost, Chloe Berwind-Dart, Sarah Cechvala, and Anita Ernstorfer. 2014. “Business for Peace: Understanding and Assessing Corporate Contributions to Peace.” Discussion Paper, Cambridge, MA: CDA Collaborative Learning Projects.

<sup>10</sup> See, for instance, [Conflict-Sensitive Business Practice: Guidance for Extractive Industries](#) (2005) by International Alert, or [Getting it Right: Making Corporate-Community Relations Work](#), (2009) by Mary Anderson and Luc Zandvliet.

<sup>11</sup> CDA's numerous assessment reports and case studies are available on CDA's [website](#).

resources and living happily together. Rather, resources brought into a conflict environment always become a part of the conflict.”<sup>12</sup> **Without accompanying measures to ensure that investors have a nuanced understanding of local conflicts and invest in ways that account for those conflicts, new investment into conflict-affected settings can be predicted to intensify those conflicts and drive human rights risk.**<sup>13</sup>

The United Nations Working Group on Business and Human Rights remains an influential platform for reaching the business community and defining standards of responsible business. CDA believes that the UNWG currently has an opportunity to influence business practices for the better, and to set a meaningful standard for responsible business operations in contexts of conflict. **We urge the UNWG to encourage businesses to adopt conflict sensitive approaches – including conflict analysis – to their business operations in these complex settings.** CDA is confident that doing so will provide a foundation for improved outcomes for people who live with the human rights risks associated with business operations.

In closing, we hope that the UNWG takes on the principles outlined in this letter and accompanying memos about the critical features for effective and responsible business operations in contexts of conflict. The recommendations will enhance businesses’ ability to uphold their responsibilities to respect human rights in their areas of operations.

With our kindest regards,



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<sup>12</sup> Mary Anderson, “False Promises and Premises? The Challenge of Peace Building for Corporations”, in Oliver S. Williams (ed.), Peace through Commerce: Responsible Corporate Citizenship and the Ideals of the United National Global Compact, pages 124-125.

<sup>13</sup> Miller, Ben and Sarah Cechvala. Chapter 6: *Practicing Business and Peace? Current Discussions as Overheard from the Field*. In *Business, Peacebuilding and Sustainable Development*. Ed. Miklian, Jason, Alluri, Rina M. and John Elias Katsos. 2019.