



**BUSINESS AND HUMAN RIGHTS IN CONFLICT
AND POST-CONFLICT SETTINGS PROJECT**

**International Alert's Submission to the United Nations Working
Group on Business and Human Rights**

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INTRODUCTION

International Alert (hereinafter Alert) is an international peacebuilding organisation with over 30 years experience in building peace and reducing violence and working across all conflict lines and with all parties to conflict. Among its strategic goals¹ is harnessing private sector to support inclusive peace.

Alert has wide experience in Conflict Sensitive Business Practice (CSBP) and programming around fostering peace through private sector engagement. Its publications² in this regard have been widely referenced and continue to shape the discourse and practice on CSBP as well as business and human rights and peacebuilding more broadly. Further, since 1999, Alert has worked with private sector in more than 20 countries and over 15 companies, covering a wide range of sectors including extractives, agribusiness, renewables, construction/ infrastructure and transport. It is based on this experience and project matter expertise that Alerts makes this submission to the United Nations Working on Business and Human Rights (hereinafter UNWG).

STATE'S DUTY TO PROTECT HUMAN RIGHTS IN CONFLICT-AFFECTED SETTINGS

a) Scope of Conflict-Affected Settings

Under Pillar 1 of the United Nations Guiding Principles (UNGPs), as part of the state's duty to protect human rights, specific focus is made to the duty of the state in supporting business respect for human rights in conflict-affected areas. This is elaborated in Guiding Principle 7 (an operational principle) which addresses the particular challenge posed by conflict-affected areas, providing that, "because the risk of gross human rights abuses is heightened in conflict-affected areas, states should help ensure that business enterprises operating in those contexts are not involved with such abuses"³. The UNGPs go further to provide guidance on measures that the state should take in this regard, namely:

- Engaging at the earliest stage possible with business enterprises to help them identify, prevent and mitigate the human rights-related risks of their activities and business relationships;
- Providing adequate assistance to business enterprises to assess and address the heightened risks of abuses, paying special attention to both gender-based and sexual violence;
- Denying access to public support and services for a business enterprise that is involved with gross human rights abuses and refuses to cooperate in addressing the situation;
- Ensuring that their current policies, legislation, regulations and enforcement measures are effective in addressing the risk of business involvement in gross human rights abuses.

¹ International Alert's Strategy (2019-2023), *Breaking cycles of violence, building cycles of peace*

² These include *Human Rights Due Diligence in Conflict-Affected Settings* (2018) and *Conflict Sensitive Business Practice: Guidance for Extractives Industries* (2005)

³ https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf

Further guidance is provided in the commentary under Guiding Principle 7. However, this guiding Principle does not render a definition for, or specify, the scope of “conflict-affected settings”. Without a clear definition, it becomes difficult to ascertain the applicability of Guiding Principle 7.

Recommendation 1:

Provide a clear definition and scope of conflict-affected settings to enhance the applicability of Guiding Principle 7.

Input

Alert conceptualises ‘conflict-affected settings’ as a broad concept that can apply to a wide range of situations, from intrastate war to situations of social unrest or instability. It identifies four types of conflict, namely, social unrest, post-conflict, armed violence and armed conflict⁴. Each of these situations presents different challenges and thus portend differently for human rights due diligence and corresponding measures that the state should put in place to protect human rights.

Conflict-affected settings include a much wider range of contexts than might initially be assumed. Conflicts are dynamic by nature, with multiple interconnected actors, drivers and motivations. They are complex to understand as they develop, evolve and can change rapidly. Under the surface, less visible social, political and economic tensions manifest in social unrest or cycles of violence that can destabilise development and bring major economic projects to a standstill.

Conflict is sometimes viewed as a separate ‘issue’ that can be addressed in isolation from other ‘issues’ such as human rights, the environment or sustainable development. However, conflict is a cross-cutting theme or context – a violent manifestation of tensions that may have arisen for a variety of reasons (e.g. human rights abuses, environmental scarcity or degradation, unjust governance and economic insecurity). Equally, in conflict-affected settings the [likelihood and severity of human rights violations is considerably higher](#), and the most vulnerable members of society are likely to disproportionately experience more negative impacts and be less resilient to external shocks.

These manifestations are summarised in the table below developed by Alert in its publication on Human Rights Due Diligence in Conflict-Affected Settings⁵.

⁴ International Alert (2018) [Human Rights Due Diligence in Conflict-Affected Settings](#)

⁵ *ibid*

Table 1: Some characteristics of four types of conflict

Armed conflict (intrastate)	Armed violence	Post-conflict	Social unrest
<p><i>Ongoing conflict between two or more armed actors, usually including state forces and non-state armed groups.</i></p> <p>In an armed conflict, common traits include the following:</p> <ul style="list-style-type: none"> • the presence of highly organised armed actors with territorial control • violence against civilians • forced displacement • looting/destruction of assets • sexual/gender-based violence as an act of war • lack of or weak governance • illicit or war economies • need to attract foreign direct investment • systematic human rights violations • heightened risk of kidnap, extortion, and attacks on infrastructure • concerns over safety of human rights defenders 	<p><i>A context that is relatively stable but with high violence rates. There is localised armed violence but it does not meet the criteria required for categorisation as an armed conflict under international humanitarian law.</i></p> <p>In a context of armed violence, common traits include the following:</p> <ul style="list-style-type: none"> • the presence of organised armed or criminal actors • violence against civilians • relatively stable political systems • looting/destruction of assets • high incidence of human rights violations • lack of or weak governance in certain areas • regional imbalance in security and development • illicit economic activity • high homicide rates • heightened risk of kidnap, extortion, and attacks on infrastructure • concerns over safety of human rights defenders 	<p><i>A context in which previous armed conflict has recently ended or is undergoing transition, following a peace agreement or political settlement.</i></p> <p>In a post-conflict environment, common traits include the following:</p> <ul style="list-style-type: none"> • ongoing peace processes or negotiations, or implementation of peace deals • presence of different rights holders (for example, ex-combatants and victims) • concerns over safety of human rights defenders • ongoing transitional justice processes • agrarian reform or land redistribution programmes • investment in reconstruction and development • enduring pockets of violence • reconciliation efforts • need to attract foreign direct investment • illicit economic activity • legal uncertainty (due to ongoing reforms) 	<p><i>A context in which there is, or is risk of, violence and/or unrest despite the absence of armed conflict (or in addition to). These can also be relatively stable environments but very volatile, whereby an event can trigger conflict and/or violence.</i></p> <p>In these environments, common traits include the following:</p> <ul style="list-style-type: none"> • high level of unmet basic needs despite many countries under this category being classified as 'middle income' • social, labour or environmental grievances from business activities can result in violent protest or instability • conflicts usually start locally and can escalate to national levels. Media and social media usually play a key role in this • role of opposition leaders, politicians or individuals in mobilising communities' or citizens' grievances • in the case of unrest associated with community-company conflicts, most common manifestations include protests, blockades, damage to equipment or infrastructure, or strikes • weak governance (can be manifested at either local/ regional or national levels) • concerns over safety of human rights defenders

Alert has further analysed and compared what the scope of Human Rights Due Diligence in stable environments and conflict-affected settings should be. This is illustrated in the table below which is an excerpt from the Human Rights Due Diligence in Conflict Affected Settings publication⁶.

⁶ International Alert (2018) [Human Rights Due Diligence in Conflict-Affected Settings](#)

Table 2: Considerations for human rights due diligence in stable and conflict-affected settings

HRDD in more stable environments	HRDD considerations in CAS
Likelihood of human rights violations influenced largely by the local context and the project's specific activities ²³	Likelihood and severity of human rights violations greater
Risks to business influenced largely by how effectively human rights issues are managed ²⁴	Risks to business greater because of inherent risk due to conflict, and because managing human rights in conflicts is harder
Stakeholder engagement essential component (across all steps)	Greater barriers and challenges to stakeholder engagement (across all steps)
Human rights impact assessment	Integration of conflict analysis into HRIA
HRIA can be stand-alone or integrated	If HRIA is triggered by a conflict situation or incident, then the preference is towards stand-alone and issue-specific
Business has (relatively) more control over outcomes	Greater chance of – and wider array of – unintended consequences
Stakeholder expectations vary	Stakeholder expectations may be higher and broader in scope
Primarily forward-looking: past impact as predictor of potential impacts	Addressing legacy issues and root causes of conflict as a key step to take
Primarily focused on mitigating negative impacts	Also considers how to enhance positive impacts

b) Fragility and Efficacy of Guiding Principle 7

Recommendation 2:

Expand the focus and scope of conflict-affected settings to include fragile areas and provide clear guidelines on the duty of states with regard to gross business-related abuses that occur in fragile contexts as well as post-conflict transitions. Such cases are not addressed under the Guiding Principle 7 and elsewhere in the UNGPs.

Input

As noted by John Ruggie⁷:

“The most egregious business-related human rights abuses take place in conflict-affected areas and other situations of widespread violence. Human rights abuses may spark or intensify conflict, and conflict may in turn lead to further human rights abuses. The gravity of the human rights abuses demands a response, yet in conflict zones, the international human rights regime cannot possibly be expected to function as intended. Such situations require that States take action as a matter of urgency, but there remains a lack of clarity among states with regard to what innovative, proactive and, above all, practical policies and tools have the greatest potential for preventing or mitigating business-related abuses in situations of conflict.”

Granted, the egregiousness of business-related human rights abuses in conflict-affected settings is compounded by the inability of states or their lack of capacity or goodwill to effectively regulate business conduct. This brings the issue of fragility to the fore. Fragility is associated with governments’ failure to fulfil the basic needs of their citizens—whether through lack of capacity or lack of goodwill/desire. The concept of fragility refers to the potential for adverse

⁷ Business and Human Rights in Conflict-Affected Regions: Challenges and Options for State Responses, UN Doc. A/HRC/17/32, 27 May 2011.

outcomes due to the absence of fundamental structures that ensure stability. Thus, in providing further guidance on conflict-affected settings, it is critical that the UNWG addresses the question of fragility as fragility provides a good breeding ground for violent conflict.

It is important to note that gross business-related abuses do not only take place and flourish in conflict-affected settings. Some of them occur in the absence of visible conflict, such as is in authoritarian and repressive regimes and dictatorships. Others are localised in territories where the state still has control, for example, areas adjacent to large business premises and in which conflict over benefit sharing may arise e.g plantations and mining sites. Elaboration of such cases under Guiding Principle 7 and within Pillar 2 of the UNGPs is critical for purposes of preventing poor governance and/or business activity from driving conflict.

In addition to aspects of inadequate governance in conflict-affected or fragile contexts, the duty of the state is even more critical for preventing or managing conflict and its escalation into violence. When states or institutions lack the capacity, accountability or legitimacy to mediate relations between citizen groups, between citizens and the state, and between citizens and business, it makes citizens vulnerable to violence.

Case Study

A weak negotiating position of fragile countries in relation to multinational companies have often led them to compromise community and national interests and even take a passive approach to regulation of such companies. Such has been witnessed in the cobalt and copper mines in the Democratic Republic of Congo where water pollution, forced evictions and other violations were occasioned by a multinational company called by Ruashi with the full knowledge of the government of the Democratic Republic of Congo. The same government has granted concessions to mining companies in protected natural areas.

c) Proposed Policy, Regulation and Adjudication Measures for States

Recommendation 3:

Provide guidance on conflict sensitivity for states as a core measure to prevent conflict and escalation of existing conflicts.

Input

There is no single definition for conflict sensitivity but in essence, the concept builds on the recognition that whenever anyone or anything is introduced into a context, including companies' operations, it will affect that context and be affected by that context and the context will change because of that resource/operation (see also input under recommendation 4). In fragile and unstable places, this understanding is of heightened importance if one wants to make positive long-term change. Significant social and economic changes can cause or exacerbate conflict dynamics. Such conflicts can be triggered or exacerbated if risks are not identified, managed and mitigated well.

In providing guidance to states on conflict sensitivity, the UNWG should focus on both preventive and curative measures. This can be done through requiring states to proactively engage businesses to keep abreast with issues on the ground that could trigger or escalate conflict and advice and provide support to companies to address such issues. Some of the actions that states could undertake in this regard include, gathering and sharing of relevant information with businesses; actively monitoring conflict and human rights and recommending

caution or imposing sanctions on businesses where necessary; and collaborating with other actors, e.g embassies and business associations, to provide advisory services to businesses.

States should also establish mediation and other dispute resolution services in situations where conflicts involve businesses and communities. From Alert's experience, the act of solely setting up grievance mechanisms through which communities can report infractions and abuses by the company, as witnessed in some countries, does not work to restore peace and ultimately limit human rights violations. This is because, such grievance mechanisms are not geared towards peacebuilding but receiving and hopefully settling complaints. Additionally, remedies are sometimes not satisfactory and just, a situation that can potentially further escalate tension and conflict.

CORPORATE RESPONSIBILITY TO RESPECT HUMAN RIGHTS IN CONFLICT-AFFECTED SETTINGS

a) Measures that Businesses should take in conflict and post-conflict situations

According to Guiding Principle 7 on conflict-affected settings, the responsibility of businesses when operating in conflict-affected settings is limited to “seeking guidance from states about how to avoid contributing to human rights harm in these difficult contexts.”⁸ This is not sufficient as it fails to recognise that business can play an active role in peacebuilding thereby reducing the potential of causing human rights abuses. This is the premise upon which the CSBP, which Alert is a big proponent of, is built upon. This approach benefits host communities, as well as the wider regional and international contexts, by ensuring that company investments avoid exacerbating violent conflict.⁹

International Alert has documented numerous case studies on the role of domestic businesses in peacebuilding, namely, their role in formal peace negotiations, economic growth and prosperity, re-building relationships across divides, among other issues.¹⁰ These cases have been drawn from across several countries and help shed light on the proactive role that businesses can play in conflict and post-conflict settings. International Alert makes the following recommendations to the UN Working Group.

Recommendation 4:

Embed conflict-sensitive business practice (CSBP) as a mandatory undertaking for businesses in all steps in the human rights due diligence process

Input:

Violent conflict clearly represents a threat to life, security, growth and prosperity for affected communities. It undermines decades of development and destroys the social fabric of a locality, country or region. CSBP, an approach advanced by Alert¹¹, can help companies avoid causing, triggering or accelerating these destructive dynamics to the mutual benefit of themselves and

⁸ Commentary on Guiding Principle 7

⁹ International Alert, (2005), [Conflict Sensitive Business Practice: Guidance for Extractive Industries](#).

¹⁰ International Alert (2006) [Local Business, Local Peace: the Peacebuilding Potential of the Domestic Private Sector](#)

¹¹ International Alert (2005) [Conflict-Sensitive Business Practice: Guidance for Extractive Industries](#)

communities. It can also help them develop legitimate steps towards contributing to peace and stability in unstable states.

The basic elements of CSBP are that a business:

- Understands the context in which it operates, including legacy issues, existing intergroup tensions and divisive factors that could potential cause conflict
- Understands the interaction between its intervention and the context and any underlying drivers of conflict; and more importantly, the possibility of its operations causing or fuelling conflict; and its ability to act upon this understanding - by designing, implementing and monitoring its intervention – taking steps to avoid unintentionally or intentionally feeding into existing tensions and division, or doing any harm
- Undertakes early, consistent, meaningful and empowering stakeholder engagement processes
- Develops mechanisms that help to avoid worsening conflict - conflict that could harm the community or place the intervention in peril – as well as mechanisms that help actively reduce tensions and contribute to peace and security

For deeper reference in developing guidance on embedding CSBP in human rights due diligence processes, refer to [Conflict-Sensitive Business Practice: Guidance for Extractive Industries](#). This guidance is for companies doing business in societies at risk of conflict, for field managers working across a range of business activities, as well as headquarters staff in political risk, security, external relations and social performance departments. It provides information on understanding conflict risk through a series of practical documents, including:

- Introduction to conflict-sensitive business practice, including an overview of the regulatory environment for doing business in conflict-risk states
- Screening Tool for early identification of conflict risk
- Macro-level Conflict Risk and Impact Assessment tool
- Project-level Conflict Risk and Impact Assessment tool
- Special guidance on key issues where conflict could arise at any point during a company's operation

For further reading on CSBP, please refer to the resources below.

Why Conflict Sensitivity Matters for Business and Human Rights

This publication explores how the principles of conflict sensitivity can enhance and provide additional considerations for companies conducting human rights due diligence in conflict-affected settings.

https://www.international-alert.org/sites/default/files/Economy_ConflictSensitivityBusinessHumanRights_EN_2016.pdf

Recommendation 5:

Provide guidance to companies on integrating conflict analysis and human rights (HRIA) impact assessments.

Input

A HRIA assesses the effects of business activity on human rights of local/impacted communities. The UNGPs advance HRIA as part of the human rights due diligence process. However, HRIA tools are deficient in so far as conflict analysis is concerned given their exclusive focus on human rights impacts. As such, issues pertaining to conflict hardly arise in a HRIA report. Incorporating conflict analysis within HRIA tools would give businesses a more holistic and balanced picture of their actual and potential impacts thereby enabling them to put in place requisite measures to mitigate not only negative human rights impacts but also conflict. Conflict analysis can also enhance HRIA by building in more responsiveness and identifying the triggers to revisit due diligence, which is required more often in conflict-affected settings than in more stable operating contexts. Therefore, the identification and assessment of human rights impacts in conflict-affected settings needs to be underpinned by a conflict analysis.

Case study

Find here a case study on [using the conflict and human rights impact assessment CHRIA tool](#).

Recommendation 6:

Encourage companies to go beyond ‘do no harm’ and make positive contributions to peace and stability.

Input

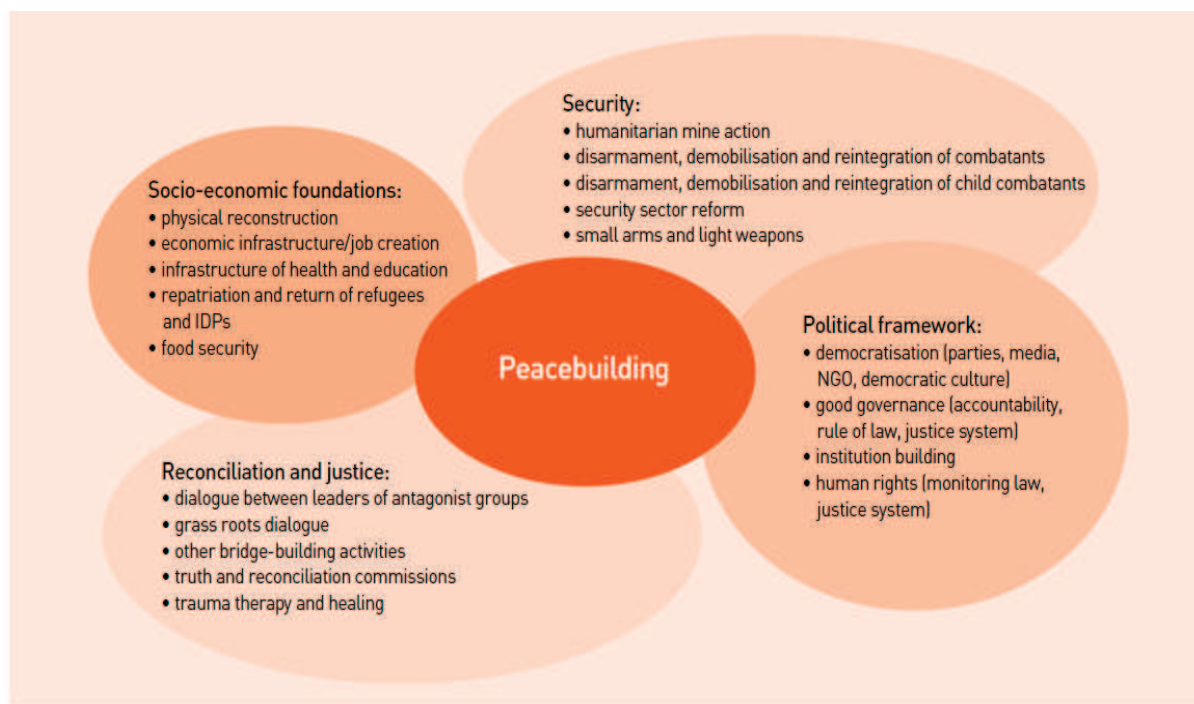
A step by step approach of, and tools for implementing the above recommendations is elaborated in the Alert’s Human Rights Due Diligence Toolkit (2018).¹²

Businesses can play a more proactive and direct role in conflict mitigation and peacebuilding due to the strong mutually reinforcing relationship between thriving of businesses and peace. This can be achieved through leveraging their power in terms of finances, expertise and influence for peacebuilding and promoting human security. In practical terms, this includes, delivery of basic services such as education, water and health as part of corporate social responsibility, conflict sensitive employment¹³ providing procurement opportunities to the community through a transparent and fair process, supporting access to justice through putting in place effective operational level grievance mechanisms that provide acceptable and just remedies, humanitarian responses, effective stakeholder mapping and dialogues, among other context-appropriate strategies.

Finally, the Peacebuilding palette from [Towards a Strategic Framework for Peacebuilding: Getting their Act Together](#) is useful.

¹² ibid

¹³ International Alert (2020) [Can more jobs bring peace?](#)



Recommendation 7:

Encourage businesses to be part of Corporate Social Responsibility processes and initiatives aimed at safeguarding human rights in conflict affected areas.

Input

Industry-driven as well as multi-stakeholder mechanisms have been pivotal in fostering self-regulation and collaboration between actors in different sectors in furtherance of safeguarding human rights. Indeed, these mechanisms play an important role in complementing human rights norms. They are particularly important in fragile and conflict affected settings where states may be unwilling or unable to regulate businesses. It is for this reason that we recommend that the UN Working Group encourages businesses to join and/or implement standards such as the Voluntary Principles on Security and Human Rights, the International Code of Conduct for Private Security Service Providers (ICoC), the OECD Guidelines for Responsible Supply Chains of Minerals from Conflict-Affected and Hire Risk Areas, Publish What You Pay, Extractive Industry Transparency Initiative (EITI) etc. With the right enforcement mechanisms, these voluntary mechanisms have the potential of limiting business-related human rights abuses.

b) Responsible Financing in Conflict and Post-Conflict Settings

Recommendation 8:

Provide guidance on conflict-sensitive financing

Input

Responsible financing is often limited to consumer protection, self-regulation, financial literacy and to a limited extent, ethical practices and human rights and freedoms. However, the

considerations throughout this document also bear relevance for financial actors funding, granting and/or lending to business actors. Such guidance would facilitate the mainstreaming of conflict sensitivity in financing policies and practices thus substantially influencing the behaviour of businesses at a wide scale.

To mainstream conflict sensitivity within lending policies and practices, the guidance to financing institutions should require financiers to, among other things:

- develop conflict sensitivity requirements/standards (conflict-sensitive environmental and social performance standards) to guide appraisal of projects/businesses seeking funding and monitoring of performance of such projects and businesses
- build the capacity of their staff to effectively conduct project and business appraisals and monitoring on conflict sensitivity practices
- build internal capacity for early warning and mediation of conflicts between their clients and communities if they occur or re-occur
- Provide advisory services on conflict sensitivity to companies and effective grievance mechanisms, should grievances arise from the conduct of the businesses or projects they fund.
- Adopt a fragility lens in financing so as to deeply and proactively understand ethnic divisions and regional disparities that could drive conflict in the operational contexts of the businesses/projects they finance.