

Working Group on Business and Human Rights – Call for Submissions

The Voluntary Principles Initiative submits the following in response to the call from the UN Working Group on Business and Human Rights for inputs on business in conflict & post-conflict context.¹

The Voluntary Principles on Security and Human Rights

In December 2000, the United States and United Kingdom governments, along with a group of extractive companies and non-governmental organizations, agreed on a set of principles, known as the Voluntary Principles on Security and Human Rights (“Voluntary Principles”), to guide companies on security and human rights. The Voluntary Principles provide an outline of actions companies should take to assess risks and implement public and private security measures in a manner that respects human rights. Along with this standard, there is also a Voluntary Principles Initiative (VPI), comprised of 56 members representing governments, corporations, and NGOs. The Initiative seeks to promote universal respect for human rights in the provision of security for business activities in a manner guided by the Voluntary Principles; strengthen implementation and accountability; improve human rights collaboration between government, companies and NGOs; and increase the number of Initiative participants. The text of the Voluntary Principles on Security and Human Rights as well as more information on the VPI and implementation of the standard can be found at our website, www.voluntaryprinciples.org

Relationship between Conflict, Security and Human Rights

Many of the places where companies operate are at risk of or experiencing an ongoing period of armed conflict, violence, or social unrest, or may have recently emerged from such periods. Understanding the existing and potential sources of tension and conflict in society is essential to accurately identifying and assessing security and human rights risks associated with company operations, and understanding how a company’s presence and security activities in particular might affect conflict drivers and dynamics. As violent conflict is a major driver of security-related human rights abuses and violations, this is critical to implementing the Voluntary Principles.

Human rights abuses can be both a cause and consequence of conflict. International Alert – a VPI member – writes:

The complexity and volatility of conflict affected states requires companies to understand the conflict and the two-way dynamics between the project and the context, including how a company’s relation to conflict can create human rights impacts as well as risks to the company. For example, in areas of armed conflict, a company is likely to have security risks due to the presence of armed groups, but the introduction of public security into a marginalised area can

¹ Business and Human Rights Resource Centre, “UN Working Group calls for inputs on business in conflict & post-conflict contexts”, available at: <https://www.business-humanrights.org/en/un-working-group-calls-for-inputs-on-business-in-conflict-post-conflict-contexts-due-10-apr>

affect the local or regional balance of power and lead to an escalation of violence as actors seek to reassert their control.²

The VPs Risk Assessment and Conflict Analysis

Risk assessment is a key component of the Voluntary Principles regardless of where a company is operating. The Voluntary Principles state that effective risk assessments should consider: an identification of security risks; the potential for violence; human rights records (including the available human rights records of public security forces, paramilitaries, local and national law enforcement, as well as the reputation of private security); conflict analysis with identification of the root causes of conflicts and level of adherence to human rights standards; and the risks associated with equipment transfers to public or private security providers.³

As part of an initial risk assessment, a company should consider the following questions to determine the risk of conflict and whether further detailed conflict analysis is required:

- Is there a recent history of, or potential for, violent conflict in the country?
- Is there the potential for a recurrence of such violence?
- Is the potential for international conflict a concern?
- Is drug trafficking, human trafficking, smuggling or other illicit activity a problem in the country?
- Are there high levels of criminal activity?
- Is there any insurgency, armed separatist, guerrilla or paramilitary groups operating in the country?
- Are there unsettled territorial or political claims in the country from previous conflicts?
- Will the company be relying on public security providers?
- Is there a high proliferation of firearms and other weapons?
- Is there potential for violence against vulnerable groups (e.g. women, minorities, indigenous peoples)⁴

Where a more detailed conflict analysis is required, this analysis should answer some of the following key questions:

- What are the root causes of tensions and potential triggers?
- Who are the main actors in the conflict? What are their motives, capacities, and opportunities to inflict violence?
- Is conflict likely to re-emerge and/or are certain geographical areas not controlled by the State?
- What are the roles played by the security sector in the conflict?

² International Alert, "Human rights due diligence in conflict affected settings" available at: https://www.international-alert.org/sites/default/files/Economy_HumanRightsDueDiligenceGuidance_EN_2018.pdf

³ The Voluntary Principles for Security and Human Rights available at: <http://www.voluntaryprinciples.org/wp-content/uploads/2019/12/TheVoluntaryPrinciples.pdf>

⁴ "Voluntary Principles on Security and Human Rights Implementation Guidance Tools" available at: https://docs.wixstatic.com/ugd/f623ce_087e0c0d878c4576800779c69dcb60a1.pdf

- Has the security sector contributed to, or been among the root causes of, the conflict?
- Which are the most prevalent conflict dynamics among regional stakeholders?⁵

A variety of stakeholders including the government, NGOs, community members, and trade associations can act as sources of information on security and conflict risks. In relation to information gathering, the Addressing Security and Human Rights Challenges in Complex Environments (ASHRC) Toolkit notes that, “Not all cultures are open to talking about conflict issues with outsiders. In a politically sensitive area, it can be very risky to talk openly about conflict.” Accordingly, it is advisable to rely on a conflict expert or someone practiced in community consultation.⁶ Such experts can also help to identify particularly vulnerable stakeholders who are likely to experience significant impacts but may be less visible to outsiders and less likely to speak out.⁷

International Alert has developed detailed guidance for conducting a conflict, human rights and impacts assessment, which can form a key part of a broader risk assessment under the Voluntary Principles. This approach involves conflict mapping and identifying conflict risks and their related potential human rights impacts. Additionally, this approach encourages companies to consider gender roles in conflict by taking a ‘gender-relational approach’ to conflict analysis and to consider which resilience factors and mechanisms can contribute to peace and stability.⁸ By integrating conflict analysis and human rights risk assessment, companies are able to have a fuller picture of the operational human rights and security risks and respond accordingly.

As a best practice, companies should undertake and update their risk assessment at regular intervals throughout the project, but also when there are major changes in circumstances including the outbreak of conflict, which can impact human rights differently than during times of peace and stability.

Understanding Conflict Drivers

A strong conflict analysis will go beyond assessing the risk of company-community conflict and seek to understand underlying conflict drivers and tensions rooted in systemic inequalities and deep-seated grievances. Along with understanding existing conflict dynamics, this analysis can help predict potential conflicts and identify underlying tensions that if unaddressed, may produce social unrest, violence, or even armed conflict.

Some examples of conflict drivers and sources of social tension include:

- Political, social and economic exclusion and lack of opportunity, for example, systematic discrimination on the basis of gender or sexual orientation, or against particular ethnic, racial, or religious groups
- Poverty and resource scarcity, possibly exacerbated by climate change or environmental degradation

⁵ DCAF and ICRC, “Addressing Security and Human Rights Challenges in Complex Environments Toolkit” available at: http://www.securityhumanrightshub.org/sites/default/files/publications/ASHRC_Toolkit_V3.pdf

⁶ See above.

⁷ See note 2.

⁸ See note 2.

- Inequality and unequal distribution of a country's wealth
- Endemic corruption and absence of the rule of law
- Repression of dissent against the government and insufficient civic space and ability to dialogue, and persecution of human right defenders

These drivers may in turn be exacerbated by company activities, for example:

- Environmental degradation or water contamination related to company activities might harm livelihoods or further reduce available resources where competition between groups already exists
- The provision of benefits to one group over another in the form of taxation benefits and revenue sharing, preferential treatment surrounding relocation, employment, or other benefits.
- Company hiring policies viewed as favouring one ethnic group may fuel existing ethnic or religious tensions and associated human rights abuses.
- Company hiring policies that lead to the staffing of individuals that were accused of human rights abuses during a current or prior conflict
- A failure to remedy human rights impacts occurring in conflict can itself fuel further tension and conflict.

As part of its 2019-2022 Strategic Plan, the Voluntary Principles Initiative is seeking to further address conflict prevention through the compilation and sharing of best practices, the development of guidance on identifying and addressing conflict drivers in risk assessments, and on identifying and using opportunities to promote the creation of an enabling environment for human rights. Members are considering how they can have a positive impact on local governance, peace and stability and playing a proactive role in preventing conflict, rather than reacting to it is essential for effective implementation.

Further Best Practices and Lessons Learned

Implementing the Voluntary Principles can be particularly challenging for companies operating in areas where there is conflict or weak governance. The VPI website provides members and non-members with resources to support implementation of the Voluntary Principles, including guidance that specifically addresses some of the challenges and particular security and human rights risks common to fragile, conflict-affected, and post-conflict settings.⁹ Below are some examples of best practices and lessons learned for companies operating in such environments taken from these resources.

Exercise Elevated Caution when Engaging Public Security Providers

Companies should exercise caution when engaging public security providers in a location where there is ongoing tension and conflict as the use of company assets or transfer of equipment to public security providers may make the company facilities a target for violence.¹⁰ Where the state is a conflict actor,

⁹ Important tools and guidance for Voluntary Principles implementation include Addressing Security and Human Rights Challenges in Complex Environments (DCAF/ICRC); Use of Security Forces: Assessing and Managing Risks and Impacts (IFC); Human rights due diligence in conflict affected settings (International Alert); and the Implementation Guidance Tool (ICMM, ICRC, IFC, IPIECA).

¹⁰ See note 4.

companies should avoid having public security involved in operations if private security forces can legally and practically respond to company needs.¹¹ Where this is not possible, the company should carefully monitor the activities of the public security forces assigned to the protection of the company's staff, assets and operations to ensure they do not take part in operations related to conflict/armed violence.¹² It is a best practice for companies to use only security providers over which they have command and control.

Address Human Rights in Security Agreements

It is a longstanding best practice to include contractually binding human rights clauses in contracts with private security contractors that set out clear human rights expectations. The VPI has also adopted model clauses for use in security agreements such as memorandums of understanding between Government Security Forces and companies in the extractive and energy sectors. These clauses address elements such as the training of government security force personnel on security and human rights; investigation of security incidents; and use and control of weapons and equipment. The model clauses also require public security providers to agree that personnel who have faced credible allegations that they committed violent crimes or were involved in human rights abuses, will not be assigned duties in and around the project area.¹³

Vetting of Security Forces

Vetting of security providers, particularly for past human rights abuses, is an important part of conducting a human rights risk assessment. However, it may be very sensitive and difficult to conduct such vetting in fragile states and in post-conflict contexts. The lack of relevant information, such as personnel records, may make it impossible to conduct background checks as recommended in various Voluntary Principles guidance documents.¹⁴ An inability to properly vet security forces may produce a heightened risk of human rights abuses. Companies can mitigate this risk by providing security providers with training. They may also wish to rely on private security providers who are not direct parties to the conflict when choosing to operate in fragile and post-conflict settings.

Provide Training to Security Providers

In situations of armed conflict, companies are encouraged to liaise with the ICRC or another recognized provider with local knowledge and experience to provide international humanitarian law training to public security forces in the company's area of operations. Training should include: human rights, international humanitarian law, sexual and gender-based violence, differentiated treatment of children, vulnerable groups and human rights defenders, rules of engagement for the use of force, conflict

¹¹ See note 5.

¹² See note 5.

¹³ Voluntary Principles Initiative, "Model Clauses for Agreements Between Government Security Forces and Companies" available at: <http://www.voluntaryprinciples.org/wp-content/uploads/2019/12/ModelClausesforAgreementsbetweenGovernmentSecurityForcesandCompanies.pdf>

¹⁴ See note 5.

management, crowd control and public order. The content and frequency of any training should be agreed to with relevant authorities.¹⁵

Modify Approaches to Community Outreach

The ASHRC Toolkit and International Alert discuss the importance of understanding the local context to determine the best means of public outreach, particularly in fragile and conflict-affected areas. Vulnerable groups in a local community may require different and varied outreach strategies. Consideration also needs to be taken in relation to engaging with ethnic or minority groups, especially those that are not officially or sufficiently recognized or represented.¹⁶ International Alert explains how members of communities seen as engaging with a company can face rejection and even violence by other community members. In cases of armed conflict or armed violence, communities might face threats or pressure by armed actors.¹⁷

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¹⁵ See note 5.

¹⁶ See note 2.

¹⁷ See note 2.