



April 2020

Office of the High Commissioner for Human Rights:

**UN Working Group in Business and Human Rights: Report on business in
conflict and post-conflict contexts**

Inputs by the Finnish Government

The Finnish Government thanks the Office of the High Commissioner for Human Rights and the UN Working Group in Business and Human Rights for its work on the issue of human rights and transnational corporations and other business enterprises.

The Government welcomes the opportunity to comment the draft recommendations relating the project to promote the UN Guiding Principles on Business and Human Rights.

Question 1: What policies, measures and adjudication measures to protect against corporate related-human rights abuses and promote conflict-sensitive responsible business in conflict and post-conflict situations does you State have or should have in place?

Prime Minister Sanna Marin's Government Programme 2019 promotes a human rights based foreign and security policy and emphasizes corporate responsibility and policies related to improving corporate accountability.¹ Finland has currently started a national review with the aim to assess its due diligence regulations. At European level, Finland has been active in the discussion to legislate on corporate social responsibility based on due diligence, which takes into account companies of different sizes and international value chains.² These measures are particularly important to address the adverse human rights impacts that can occur by companies operating in conflict and post-conflict situations.

Finland is a Member State of the European Union, the OECD and the United Nations and relies primarily on existing the guidelines and regulations drafted and adopted by these - and other relevant - international organizations. The key merit of such internationally drafted guidelines and regulations is that they are often the result of a broad stakeholder engagement and consultation. Some of the key standards and guidance that Finland

1 Prime Minister Sanna Marin's Government Programme 2019:

http://julkaisut.valtioneuvosto.fi/bitstream/handle/10024/161935/VN_2019_33.pdf?sequence=1&isAllowed=y

2 Agenda for Action on Business and Human Rights 2.12.2019:

<https://um.fi/documents/35732/0/Agenda+for+Action+on+Business+and+Human+Rights+02122019.pdf/54eb2f6f-04a5-3060-7377-e6fcd4847121?t=1575292990419>

promotes and strives to advance the implementation of include the following: UN Guiding Principles on Business and Human Rights, OECD MNE guidelines, OECD Due Diligence Guidance for Responsible Business Conduct, OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas, EU conflict minerals regulation (entry into force Jan 2021); EU Timber Regulation and The EU Forest Law Enforcement, Governance and Trade Action Plan; Guidance by the UN Global Compact such as Guidance on Responsible Business in Conflict-Affected & High-Risk Areas: A Resource for Companies and Investors.

Also Finland's own policies, regulation and adjudication to protect against corporate-related human rights abuses in conflict and post-conflict situations are in line with the International Bill of Human Rights and the principles concerning fundamental rights set out in, for instance, the International Labour Organization's Declaration on Fundamental Principles and Rights at Work. In situations of armed conflict, Finland also expects corporations to comply the standards of international humanitarian law.

A key component in protecting against corporate-related human rights abuses is the further development of risk management assessments of companies. A national network of the UN Global Compact has recently started its operations in Finland. The organisation's input to due diligence process of political risk management is important. The UN Global Compact also contributes to the ongoing investment-divestment debate. Working with a wide network of experts from the investment community, business, civil society, academia, the public policy community, governments, and the UN System, the objective is to develop policy guidance to clarify what constitutes Responsible Investment in Conflict-Affected Countries. (For more information, see: <https://www.unglobalcompact.org/engage-locally/europe/finland>)

In 2015, the Ministry of Foreign Affairs adopted a Guidance Note on 'Human Rights Based Approach in Finland's Development Cooperation', which introduces the Finnish perspective on the human rights based approach (HRBA) to development and provides guidance on how the HRBA is operationalized in Finnish development cooperation. The guidance sets minimum criteria for all development interventions funded by the Finnish government. This includes conducting a human rights assessment, which aims to ensure that no intervention further exacerbates or contributes to further discrimination or human rights violations. In addition, all interventions should be guided by the human rights principles of non-discrimination and inclusion, participation, transparency and accountability. The guidance also applies to development cooperation instruments of the government targeted at the private sector. The minimum expectation is that a company funded by MFA has conducted an assessment of the impact of its business operations on human rights, and that the findings have been taken into account to avoid or mitigate negative effects on human rights. The assessment should be conducted in a manner and scale appropriate to the sector and to the volume and type of the business' operations.

The Government of Finland also plays an important role in the governing bodies of the institutions managing the private sector finance instruments.³ The various Ministries use

³ New Strategy adopted 8.4.2020 (in Finnish) :

<https://vnk.fi/documents/10616/339493/omistajapolittinen+periaatep%C3%A4%C3%A4t%C3%B6s+2020>

their role as an owner to strengthen the application of the human rights based approach in strategies, policies, guidance and operations. In 2018, the MFA embarked a new initiative in order to strengthen the human rights based approach in all of its funding instruments for the private sector, namely, a two-year 'Human Rights Capacity Building'-project. Later the Government extended the project to the end of 2021. The project provides tailored support with regard to strengthening the human rights based approach for numerous (currently more than 7) private sector financial instruments or actors. This has included a needs analysis to determine how the instruments could further strengthen their implementation of UN Guiding Principles. Based on the analysis, tailor made recommendations for action have been set for each instrument accompanied by the needed technical support to implement the recommendations. In addition, the project has offered training on the UN Guiding Principles to various stakeholders such as businesses. The Government published an interim report of the project in fall 2019.⁴ As a part of this initiative, there has been a special focus on operations in conflict and post-conflict contexts, in particular on Myanmar. This is particularly relevant to meet the expectations stated in the Government Programme regarding funds channeled with State support: "Companies that receive development cooperation funds will be obligated to meet tax responsibility and transparency criteria, promote human rights and advance Finland's development policy goals."

On trade promotion and in the "economic diplomacy" context, the Finnish National Action Plan on Business and Human Rights outlines that the government will provide training on business and human rights through its Team Finland network. Further, it states that human rights are to be taken into consideration in export promotion by the Finnish Foreign Service. The Finnish government has recognized the need to also deploy supplementary outside expertise to strengthen systematically the stakeholders' awareness of the UN Guiding Principles and their implementation through training, for instance in trade/export promotion. This needs stems in particular from the understanding of the challenges in conflict and post-conflict situations.

The Government has also issued a study on the business and human rights performance of Finnish business, based on the methodology of Corporate Human Rights Benchmark. This study, aimed to be completed in 2020, will shed light on the preparedness of Finnish business to manage human rights and risks related to those.

Of relevance are also Finland's and EU's Human Rights Defenders guidelines. These guidelines apply in all situations, also in conflict and post-conflict situations, and are aimed at protecting human rights defenders, inter alia in the context of corporate abuse. In relation to the above-mentioned 'Agenda to Action' Finland stressed that: "Human rights defenders can have a key role in advocacy on the state duty to protect, the corporate responsibility to respect and the need for access to effective remedy and in enabling private sector actors to understand the concerns of affected stakeholders, including in fragile contexts."

[/1b357655-3c9b-9743-24d2-fe9bb6ce042b/omistajapolittinen+periaatep%C3%A4%C3%A4t%C3%B6s+2020.pdf](#)

⁴ Aligning Finland's State Financing for Private Sector Activity Abroad with the UN Guiding Principles on Business and Human Rights. A Program Report: <https://bit.ly/3czQI7F>.

In addition, Finland's Guidelines for Civil Society in Development Policy (2017) state that responsible business conduct requires a free society and the participation of all. The policy also emphasizes that both civil society and businesses benefit from a foreseeable, democratically governed and open environment. Such an environment should be upheld to the extent possible also in conflicts, and be prioritised in post-conflict settings. Guided by this policy and Finland's and EU's guidance on human rights defenders, Finland financially supports CSOs that work to strengthen local civil society and community organisations in the context of business operations in conflict and post-conflict settings especially in Africa. The aim of this work is to strengthen the local community's capacity to engage in dialogue with companies and claim their rights.

Question 2: What specific measures should business be required to take in conflict and post-conflict situations either by its home or host State and what does 'enhanced' human rights due diligence look like in practice? 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?

Human rights due diligence is and should be integrated into corporations' Political Risk Management Assessment. Somewhat similar human rights risks exist in conflict, post-conflict and non-conflictual contexts. However, conflict and post-conflict situations increase the existence and severity of these risks remarkably.

The extent to which a due diligence process should be conducted always depends on the contexts, also in conflict and post-conflict situations. 'Enhanced' human rights due diligence is critical in high-risk contexts, such as conflict /post-conflict situations. In such contexts, a human rights assessment should be complemented by a conflict assessment. Critical aspects to consider are the nature of the conflict, its broader context, the industry sector in which one wishes to operate and the nature and size of the company in question. The conflict assessment should also pay close attention, for instance, to those conflict and power dynamics, which may possess a threat to the realization of human rights either short- or long-term. In these contexts, the realization of human rights principles in the project interventions is vital: the minimum requirement of 'do no harm' can only be reached by including all sectors and segments of the society in the planning - without any discrimination - and by ensuring that the project/intervention is implemented transparently and that it contributes to increasing accountability. The need to pay special attention to ensuring the participation of the persons and groups that are most at risk of the actual or potential negative human rights correlates with the focus of the UN Guiding Principles on the most at-risk segments of society. Civil society and local communities should be meaningfully involved in the human rights impact assessment process, in order to help identify, prevent, mitigate and account for actual and potential impacts in conflict and post-conflict settings. This is of crucial importance in conflict and post-conflict settings, as groups at risk might already live in aggravated circumstances due to the conflict/post-conflict situation.

In Finland, the key role of participation is also recognized in the current Government Programme, which emphasises the rights of persons and groups in vulnerable situations,

as well as in the above-mentioned (question 1) Guidelines for Civil Society in Development Policy (2017). A results report on Finnish development cooperation presented to the Finnish parliament in 2018 demonstrates that civil society organisations are best placed to identify persons and groups that face discrimination at community level and thus are at risk of being left behind. Finland prioritises development cooperation support to CSOs that operate in fragile countries and LDCs, of which a significant number are carried out in conflict or post-conflict situations.

Also the UN Global Compact outlines how companies can embed human rights into their corporate Risk Management strategies and advance people-centered solutions to growing global challenges. In addition, the Compact offers a list of principles that can be used as indicators, which should be carefully examined by corporations.

According to UN Guiding Principle 3 (c) States should provide effective guidance to business enterprises on how to respect human rights throughout their operations. This will be increasingly important in conflict and post-conflict situations. Especially up-to-date, accurate and comprehensive information on the local context, as well as advice on how to consider the specific challenges faced by women, children, indigenous peoples, persons with disabilities, national or ethnic minorities, religious and linguistic minorities and migrant workers and their families in conflict and in post-conflict situations is of importance considering in particular the multiple and intersecting forms of discrimination. In this regard, also the human rights defenders have a key role to play. Moreover, meaningful consultation by business enterprises with all relevant stakeholders in conflict and post-conflict situation is essential.

According to the Council of Europe Recommendation on Human Rights and Business ((CM/Rec(2016)3), states should be in a position to inform business enterprises on the potential human rights consequences of carrying out operations in conflict-affected areas, and in other sectors or areas that involve a high risk or a negative impact on human rights. In addition, states should provide assistance to business enterprises, in line with relevant international instruments, such as the OECD Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones or the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas.

In the Commentary to UN Guiding Principle 7, it is noted that it is particularly important to pay attention to the risk of sexual and gender-based violence, which is especially prevalent during times of conflict. Children can also be affected by violence, including sexual abuse or exploitation, child trafficking and gender-based violence in conflict zones. Therefore, it would also be important to recognize the vulnerability of children in conflict and post-conflict situations. In these situations, there may also be a greater risk of child labour being used by business enterprises (including within supply chains and subsidiaries), of child soldiers being used or of corruption and tax evasion occurring as is noted in the General Comment No. 16 by the Committee on the Rights of the Child. The aforementioned General Comment on state obligations regarding the impact of the business sector on children's rights also suggests that given the heightened risks, home States should require business enterprises operating in situations of emergency and

conflict to undertake stringent child-rights due diligence tailored to their size and activities. This could be elaborated further in the report.

As of 2019, Finland is funding an initiative called 'Valuing Respect'⁵, which aims at understanding the real human rights implication of business activities, including in fragile contexts. It builds on the notion that reporting alone is rarely enough to disclose the real implications of business activities in a given setting. The Government of Finland recognizes a need for the further development and harmonization of global indicators and for gathering disaggregated data on business impact on groups and individuals in most vulnerable positions in particular in conflict and post conflict contexts.

Question 3: What does responsible and sustainable investment in post-conflict and reconstruction contexts look like in practical terms? What actions should be taken (and avoided by actors in the financial sector – both public financial institutions and private investors – to meet their responsibilities under the Guiding Principles, and to use their leverage to support outcomes that do not undermine human rights and sustainable peace? What should recipient and donor States require from relevant international institutions?

An analysis of the drivers of conflict is necessary to ensure investments do not aggravate tensions that have shown signs of easing. Depending on the context, donors may also set specific targets related to, for example, job creation, social services infrastructure, etc. Investments that have technical assistance components attached to them to address specific constraints in local markets (e.g. information, skills) have shown some positive results, and can have an impact in promoting the rights and capacities of local employees and suppliers.

An investor can both have a positive impact and influence the practices in their investment portfolios through ensuring that human rights due diligence is embedded in the portfolio companies' operations. Investment in structures that support the reconstruction agenda can support positive outcomes. The level of human rights due diligence may vary, and in a post-conflict setting understanding the grievances and underlying causes of conflict will be important to ensure an investment does not undermine the reconstruction efforts.

Transparency is a crucial requirement in various phases of an investment. This applies to transparency regarding sources of funds, investments, repatriation of profits and investment exits. Especially in post-conflict and reconstruction phases, it is important to ensure that exit strategies are well thought through to ensure that any negative impact is minimized.

The requirement of transparency concerns the financial sector as well. Commercial banks and finance institutions on their part, follow the Basel Committee's principles for transparency of financial flows to prevent human rights abuses linked to money laundering.

⁵ <https://www.shiftproject.org/valuing-respect/the-conversation/>

The European Bank for Reconstruction and Development's (EBRD) Procurement Policies and Rules (PP&R) are based on the fundamental principles of non-discrimination, fairness and transparency. The rules are designed to promote access to finance of an individual entrepreneur, especially female entrepreneur, in a Host State under transition.

In Finland, Human Rights situation in a Host State is one of the key variables when the stock listed corporations make their Political Risk Assessments concerning foreign market entry. Political Risk Management in Africa and the Middle East Region's Conflict and Post-conflict Host States is a challenging task especially when taking in to consideration that trade and investments are key for technology transfer, creation of sustainable jobs as well as for launching and supporting the reconstruction process.

Finland promotes international co-operation in the EU, the OECD and the UN to curb illicit financial flows and supports solutions that can combat and hinder the operation of tax havens both in the EU and in the rest of the world, so that corporate profits and other income become taxable once in a transparent manner. The aim is to strengthen and expand tax bases to combat aggressive tax planning and tax evasion by multinational companies and harmful tax competition between states. This is one of the priorities in the Government's new Taxation and Development programme (2020-2024). Conflict affected areas are often those where high value raw materials are found, and state capacity is weak, calling for increased focus on transparency of financial flows. Finland funds global initiatives that aim at increasing the transparency and traceability of financial flows and taxation, including in the extractives sector.

The MFA has also supported the Finnish Development Finance Institution, Finnfund, to increase its capacity related to the UN Guiding Principles and extended financial resources for the support of its human rights-related work, including the development of Finnfund's human rights policy.⁶ According to the new policy published in 2019, Finnfund recognizes that in challenging geographical contexts, while there is great potential for positive development impact, human rights risks and impacts can be severe. Finnfund pays specific attention to local and country contexts before, during and after the investment particularly in contexts where there are specific human rights challenges. Finnfund also notes that building different forms of leverage is particularly important in contexts where there are human rights challenges. Where possible, Finnfund aims to increase its leverage by co-investing with other likeminded investors.

The MFA recognises that tackling the root causes of conflict requires a range of instruments and approaches, and also continues to invest also in peace building and strengthening of the state and civil society.

Question 4: What is the role of business in transitional justice? What are the implications of the Guiding Principles in a transitional justice context?

⁶ Finnfund's Human Rights Statement (2019): https://www.finnfund.fi/wp-content/uploads/2019/01/Finnfund-Human-Rights-Statement_Final-ENG_230119.pdf

The Guiding Principles have an important role in strengthening the rule of law in a transitional justice context. The Guiding Principles offer a tool to reaffirm the duty of the state to respect human rights as well as to enhance corporate responsibility to respect human rights. Part III of the Guiding Principles, access to remedy, is especially relevant in the context of transitional justice as it enhances the protection against business-related human rights violations. As there might not be capacity in post-conflict situations for a long accession or ratification process that a legally binding instrument would require, the Guiding Principles offer a flexible and practical tool to be used in a transitional justice context.

Currently, the accountability and role of international corporations in direct or indirect adverse human rights impacts, including in a transitional justice context, is to some degree easier to verify than before, due to electronically documented business transactions and increased expectations on corporations regarding transparency and disclosure. Companies may have operated in areas of conflict, and sometimes they are involved either directly or in complicity with Host States in human rights abuses.

When a Host State is proceeding a transition from conflict towards peace, democracy and a pluralist society, and the role of corporations in past human rights violations is examined by truth and reconciliation commissions, transitional justice offers a way to achieve accountability and justice, establish the truth, and provide for reparations and institutional reform.

Transitional justice contexts raise human rights considerations for corporations. The Guiding Principles are commonly included in Finnish corporations' Risk Management systems and processes, especially if a corporation is a stock listed company. More efforts are needed to support corporations in understanding specific challenges in transitional justice contexts. In relation to the Agenda for Action (2019), Finland suggested that "in order to support businesses, new initiatives should include providing issue and/or country specific capacity building and guidance. These initiatives should be elaborated and delivered, in close cooperation with key stakeholders and communities, including groups in a vulnerable position such as children, to ensure they address real areas of need and take advantage of existing resources." In practice, the Global Compact Network in Finland, alongside other corporate social networks and actors form important platforms for corporations to have an exchange on experiences in developing and transitional justice contexts but more support and guidance would be needed in this regard.

Also the Finnish government's development cooperation emphasises the importance of rule of law and aims to ensure that measures aimed at corporate accountability are grounded in international human rights law and standards relating to business and human rights. Research is an important part of this work; International Commission of Jurists' publication "Corporate Accountability for Abuses of Economic, Social & Cultural Rights in Conflict and Transition" (2020)⁷ is an example of such, presenting new findings on effective remedies in contexts of conflict, which also provides valuable insights for corporations engaging in such contexts.

7 Full publication: <https://www.icj.org/wp-content/uploads/2020/02/Universal-ESCR-accountability-guide-Publications-Reports-Thematic-report-2020-ENG.pdf> (Supported by the Government of Finland)

OFFICE
Snellmaninkatu 1
Helsinki

ADDRESS
PO Box 23
FI-00023 Government, Finland

TELEPHONE
+358 295 16001

FAX
+ 358 9 1602 2165

E-MAIL
kirjaamo@vnk.fi