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Business in Conflict-Affected and High-Risk Contexts

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Introduction

Businesses in conflict-affected and high-risk contexts ("high-risk contexts" in this brief) face heightened risks of involvement in serious human rights violations. This can lead to severe harm–including loss of life, liberty, and livelihoods–to community members, employees, suppliers, contractors, and customers, as well as reputational damage, operational interruptions, legal liability, and financial penalties for the business.

To prevent and mitigate human rights risks in high-risk contexts, companies should conduct "heightened" human rights due diligence. Heightened human rights due diligence goes beyond what is required by the UN Guiding Principles on Business and Human Rights (UNGPs) by accounting for context and the business's impact on that context. It requires ongoing stakeholder engagement, forward-looking trend analysis, proactive mitigation measures, and localized decision-making.

Defining High-Risk Contexts

High-risk contexts include situations of armed conflict and mass violence as well as areas with weak governance or rule of law; extensive corruption or criminality; significant social, political, or economic instability; historical conflicts linked to ethnic, religious, or other identities; closure of civic space; and a record of previous violations of international human rights and humanitarian law.[1]

No one factor drives the conflict and instability seen in these contexts. Rather, a complex interplay of social, political, environmental, and economic factors fosters an environment where violence, oppression, poverty, human rights abuses, and state failure are more likely to occur. These factors include social divisions; governance grievances like political exclusion, weak state accountability, corruption, and inadequate service provision; economic grievances like limited economic opportunity and economic inequality between groups; and environmental factors, including climatic shocks and stresses and natural resource scarcity and degradation.[2]

Risks of Doing Business in High-Risk Contexts

High-risk contexts are inherently challenging operating environments for business. Businesses typically have low leverage over government actors, lack reliable data to inform decisions, and must deal with significant safety risks for their employees. While companies may face restrictive domestic legislation on some issues, they often operate within regulatory environments that are inconsistent with international human rights standards and provide insufficient guardrails to prevent human rights abuses. High levels of corruption increase the likelihood that businesses may engage in corruption themselves (e.g., payment of bribes, nepotism, money laundering). A

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[1] See for example: OECD Due Diligence Guidance; the EC recommendations on the identification of conflict-affected and high-risk areas; the UNWG report on business in conflict; and the Fragile States Index.
[2] See for example: OECD States of Fragility Framework; the World Bank Classification of Fragile and Conflict-Affected Situations; the Institute of Economics and Peace Positive Peace Framework; and DFID's Building Stability Framework.

country with weak rule of law may also have a low-functioning or corrupt judicial system, undermining the effectiveness of operational grievance mechanisms and blocking affected stakeholders from access to remedy. These challenges expose businesses and their investors to financial and reputational risks while increasing the likelihood of business complicity in human rights abuses.

Business activity in high-risk contexts is more likely to cause or contribute to human rights abuses or enable harm through business relationships.[4] Corporate human rights abuses in such contexts may include land grabs and displacement, loss of jobs and livelihoods, environmental pollution and health impacts, excessive use of force by security personnel, and restrictions on speech and privacy. While these human rights impacts may occur at any point in the value chain, including supply chains, direct operations, and the use of products and services, the likelihood and severity of human rights impacts is likely to be greater in high-risk contexts, with many of the most severe impacts felt in the developing world.[5]

Business activity in high-risk contexts may exacerbate conflict, corruption, and instability. Conflict and human rights are closely linked: grievances over human rights violations can drive conflict, while violent conflict creates risks for additional human rights abuses. Business activity can exacerbate preexisting conflict and sociopolitical instability through various pathways, such as business model decisions,[6] hiring and procurement practices,[7] and partnerships with local entities. Business corruption may also lead to human rights abuses[8] while weakening rule of law, enabling kleptocracy, and undermining economic development.

Despite these challenges, **private sector investment in high-risk contexts is critical to peace, poverty alleviation, and the achievement of the Sustainable Development Goals**,[9] if done in a way that takes local political and social dynamics into account and respects internationally recognized human rights.[10] Businesses that integrate human rights management into strategic decision-making and day-to-day operations will be more resilient to today's global challenges[11] while addressing some of the social, economic, and environmental drivers of conflict. Private sector investment that reinforces "the attitudes, institutions and structures that create and sustain peaceful societies"[12] will help to prevent future conflicts and will contribute to an environment that enables both business success and protection of human rights.

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[4] UNGPs Principle 23.
[5] Corporate Human Rights Benchmark 2020
[6] A business model is composed of a business's value proposition, value chain, and revenue model. Some business model decisions introduce specific human rights risks into a business's value chain. For example, the monetization of customer data can lead to privacy rights violations, and the leasing of infrastructure to criminal governments could lead to atrocity crimes. Further information can be found in the B-Tech Addressing Business Model Related Human Rights Risks paper, as well as Shift's Business Model Red Flags framework.
[7] For example, a company may have a global policy which addresses diversity and inclusion, but in a conflict setting, the company should also assess whether the policy takes local ethnic conflicts into account and whether employing one person rather than another might exacerbate ethnic tensions.
[8] UN Working Group report on connecting the business and human rights and anti-corruption agendas, June 2020.
[9] OECD States of Fragility 2020.
[10] The Universal Declaration of Human Rights (UDHR), the International Convention on Civil and Political Rights (ICCPR), the International Convention on Economic, Social, and Cultural Rights (ICESCR), and other relevant international human rights instruments, such as the Convention on the Rights of the Child (CRC) and the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW).
[11] BSR, 2021. Resilient Business Strategies: Decisive Action for a Transformed World.
[12] Institute of Economics and Peace, Positive Peace Report 2020.

What Should Companies Do Differently in High-Risk Contexts?

The UNGPs state that businesses should conduct human rights due diligence in order to "identify, prevent, mitigate, and account for how they address their impacts on human rights."[13] This responsibility is heightened in high-risk contexts, where human rights impacts are both more likely and more severe and where business activities could drive further conflict or impede peace. **Businesses should therefore conduct heightened human rights due diligence in these contexts**.

Heightened human rights due diligence incorporates conflict sensitivity, atrocity prevention, transitional justice, and peacebuilding frameworks into due diligence processes, going beyond what is required by the UNGPs by accounting for context and business impact on that context. In practice, this requires ongoing, iterative, and localized due diligence. It also requires additional analysis to understand local social, political, environmental, and economic dynamics and how business activity might exacerbate conflict and tensions.

Companies can meet their human rights obligations in high-risk contexts by implementing the following components of heightened human rights due diligence:

Identify and monitor high-risk contexts

» **Identify high-risk contexts, with a focus on countries where the company has a presence**, whether that presence is manifested through the supply chain, operations, or sale or use of products and services (e.g., sale of heavy equipment, use of social media). This will guide the prioritization of resources for prevention and mitigation of harm toward the geographies where human rights violations are most severe and likely. Companies can build a risk matrix that can be updated annually to flag areas where heightened due diligence should be conducted in partnership with local teams.[14] Several composite indices identifying fragile and conflict-affected areas, as well as those ranking countries on specific issues and rights, exist to guide this.[15] BSR has a tool available to enable members to identify high-risk contexts where they have a footprint and works regularly with companies to help them effectively and efficiently utilize the tool.

» **Assess the context**. This includes assessing the human rights landscape (e.g., human rights trends, local legal framework, impacts on vulnerable populations) as well as assessing local conflict dynamics, including the root causes and potential triggers for conflict, violence, or state-led oppression as well as key actors and their ability and opportunity to inflict violence or oppression.[16] This analysis lays the foundations for a conflict-sensitive assessment of the actual and potential human rights impacts of company business activities.

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[13] UNGPs, Principle 17
[14] See for example Cisco's supplier risk assessment framework on their website and on pg. 94 of their 2020 CSR report.
[15] See for example the Global Peace Index, the OECD States of Fragility, the World Bank classification of fragile and conflict-affected situations.
[16] The UN's conflict and development analysis tool provides a step-by-step methodology for conducting a stand-alone conflict analysis. The UN's framework for the prevention of atrocity crimes (e.g., war crimes, genocide) lists 14 risk factors for these crimes (e.g., motives or incentives, intergroup tensions).

» **Monitor target countries for warning signs of instability and violence**. The framework for this may vary across contexts depending on localized risks (e.g., ethnic inequality and violence vs. authoritarianism and surveillance), but it should combine planned monitoring of known risks with the establishment of channels for identifying and learning about unanticipated issues as the context evolves. Monitoring mechanisms may include regular media monitoring and desk research; collaborative information sharing with local and regional private, public, and civil sector actors; and local stakeholder engagement. In practice, ongoing monitoring will require the establishment of mechanisms for continuous, decentralized, and localized information collection and analysis.

Identify and prioritize human rights risks

» **Assess human rights risks in a conflict-sensitive way**. Companies should identify and anticipate the ways in which its supply chains, operations, products, or services impact human rights, including the ways in which business activities impact existing tensions, conflicts, and power dynamics.

» **Consider salient risks in terms of both human rights and conflict**. In conflict situations, prioritization of risks requires businesses to think about the likelihood and consequence of conflict: How likely is the issue to create or exacerbate conflict? How severe are the human rights implications of the conflict risks identified? Companies should prioritize conflict and human rights risks in the following order: (1) issues salient for both conflict and human rights; (2) issues salient for conflict but not human rights; and (3) human rights issues which are unlikely to cause or exacerbate conflict.[17]

Engage

» **Engage early, broadly, regularly, and securely with local stakeholders**. Stakeholder engagement is crucial to monitoring the context in real time, identifying actual and potential human rights harms due to business activities, and developing effective prevention and mitigation measures. In high-risk contexts, stakeholder engagement should happen earlier and with more types of stakeholders to mitigate the lack of information, polarization, and mistrust which usually exist among groups in such areas. It must also be ongoing and have regular touchpoints to ensure that company teams are positioned to track contextual changes. Additional measures must be taken to ensure that stakeholder engagement in high-risk contexts does not expose participating stakeholders to risk of violence or retaliation, including alternative methods such as consulting independent experts, working through NGOs or embassies, and encrypted email and phone communication.

» **Collaborate with peer businesses and diplomatic actors**. The most severe and persistent human rights issues tend to be systemic and linked to large-scale problems like conflict, corruption, and inequality. These issues are too vast and complex for one actor to address alone. Companies' home governments have a duty under the UNGPs to support companies in identifying and responding to heightened human rights risks in high-risk contexts. Companies should therefore collaborate with their governments through their embassies and other relevant offices as well as with peer businesses, trade associations, and the wider diplomatic and aid community to: (1) *share information and analysis* about the evolving context, impacts on both business and people, and appropriate response measures; (2) *conduct joint human rights due diligence*, including sector-

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[17] UNWG report on business in conflict. For more explicit guidance on prioritizing salient human rights and conflict issues, refer to the Swisspeace's report on enhanced human rights due diligence, pg. 23-27

wide assessments of cumulative impacts across key sectors, due diligence of common high-risk business partners (e.g., those with government or military affiliations), or supplier transparency initiatives; (3) *develop minimum standards and build capacity* in partnership with business partners and industry peers, for example where there are common challenges (e.g., security risks) or where infrastructure is shared; (4) *take collective action* where one actor's leverage alone is insufficient to prevent or mitigate human rights abuses (e.g., building leverage with business partners who are government entities; driving consensus on high-risk and no-go sales). This can include collective action on anti-corruption efforts, which are often frontline defenses for major conflict drivers like the plundering of resources and government impunity for crimes against its citizens; and (5) *advocate collectively* for regulatory reforms, rule of law, and respect for human rights.

Anticipating and responding to crisis

» **Strengthen contingency procedures for responding to crises**. The risk of abrupt crises, such as the outbreak of violent conflict, is significant in high-risk contexts. During these crises, businesses may be targets of violence or find themselves complicit in human rights violations perpetrated by the State or armed actors. Drawing on futures methodologies[18] and case studies (e.g., consequences of Internet shutdowns, government requests for customer data in conflict contexts), companies should conduct scenario planning exercises and develop a playbook of response protocols for both likely and high-risk events designed to prevent and mitigate potential harms. This should be done collaboratively with country teams, fund managers, and select portfolio companies to raise awareness of risks and co-create prevention and response measures.

» **Prioritize the safety and security of employees and contractors**. This includes establishing evacuation plans for moving staff from dangerous areas, ensuring that workplaces have adequate security protections, and ensuring that employees have access to ongoing health care, including mental health care.

» **Maintain operational-level grievance mechanisms during crises**. Breakdown of rule of law and the judicial system may transform an operational grievance mechanism, like an ethics hotlines or complaint box, into the sole channel of communication for employees, customers, or community members during emergencies. These mechanisms can also improve the transparency of the human rights situation, support ongoing human rights due diligence, and enable documentation of abuses.

» **Assess the credible human rights impacts associated with staying in the market or disengaging from the market**. Businesses may disengage as an option for addressing adverse human rights impacts by a business relationship. However, businesses who are considering disengaging should map a clear exit strategy in advance, assess and mitigate the human rights impacts associated with disengagement, and ensure that staff, community members, and other stakeholders are supported throughout the transition.

Responsible private sector investment is crucial to fostering inclusive economic development, equitably developing human capital, advancing sustainable natural resource use, strengthening effective and accountable institutions, and supporting rule of law. These factors are the building blocks of peace and stability and are foundational to realizing the promise of the private sector to create value for all stakeholders, from shareholders to customers and employees to society at large. While business cannot achieve these goals alone, neither can

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[18] https://www.bsr.org/en/sustainability-consulting/futures-thinking-sustainable-futures-lab

these goals be achieved without a business sector that is committed to ensuring respect for human rights throughout their business activity.

ABOUT BSR

BSR™ is an organization of sustainable business experts that works with its global network of the world's leading companies to build a just and sustainable world. With offices in Asia, Europe, and North America, BSR™ provides insight, advice, and collaborative initiatives to help you see a changing world more clearly, create long-term business value, and scale impact.

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