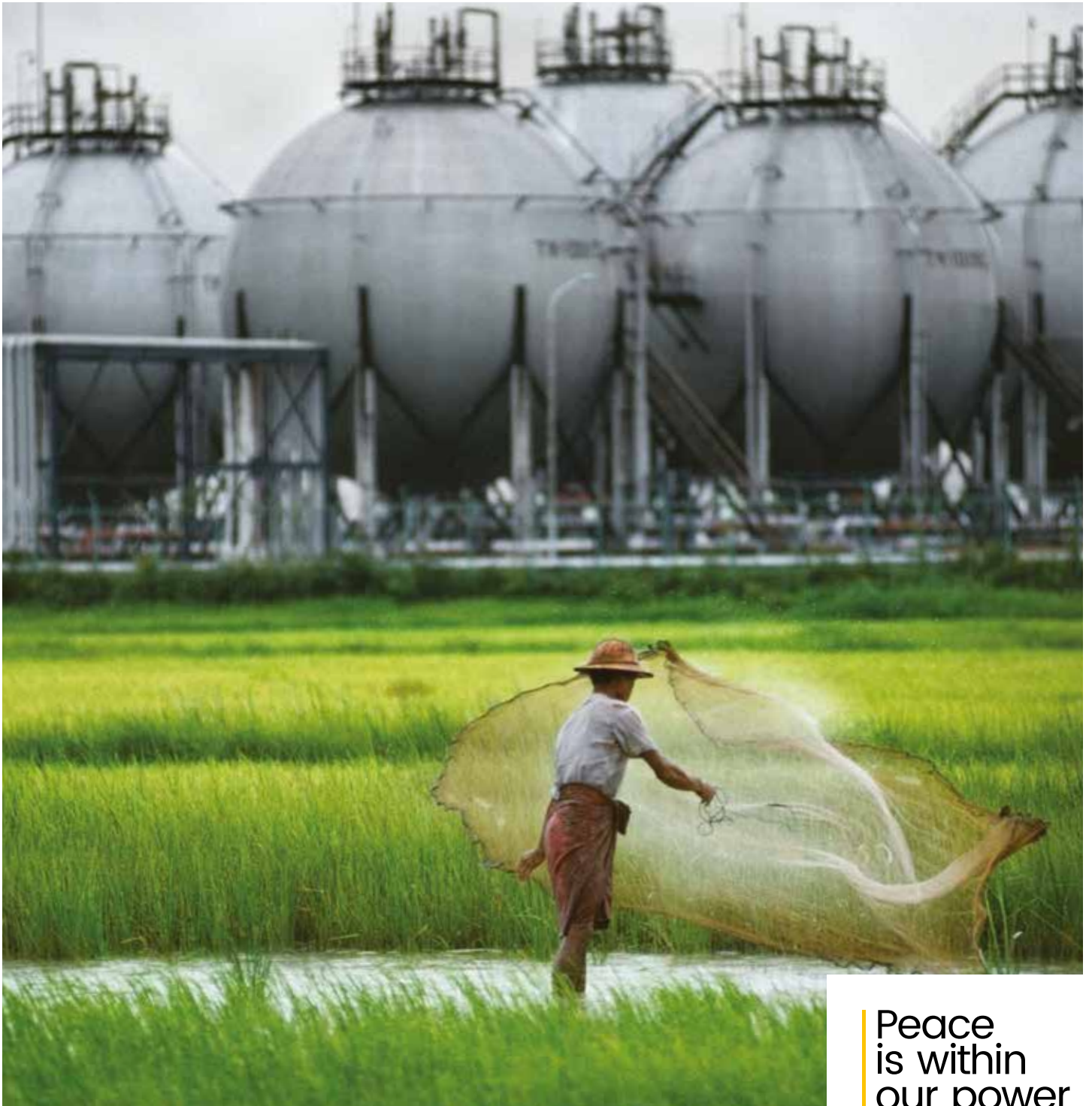# Human rights due diligence in conflict-affected settings

Guidance for extractives industries

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is within
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International Alert works with people directly affected by conflict to build lasting peace. Together, we believe peace is within our power. We focus on solving the root causes of conflict, bringing together people from across divides. From the grassroots to policy level, we come together to build everyday peace.

Peace is just as much about communities living together, side by side, and resolving their differences without resorting to violence as it is about people signing a treaty or laying down their arms. That is why we believe that we all have a role to play in building a more peaceful future.

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Human rights due diligence in conflict-affected settings

Guidance for extractives industries

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2018

Contents

Abbreviations

CAS	Conflict-affected settings
CHRIA	Conflict and human rights impact assessment
CSBP	Conflict-sensitive business practice
CSR	Corporate social responsibility
DRC	Democratic Republic of Congo
ESHIA	Environmental, social and health impact assessment
HRDD	Human rights due diligence
HRIA	Human rights impact assessment
IFC	International Finance Corporation
NGO	Non-governmental organisation
OECD	Organisation for Economic Co-operation and Development
UN	United Nations
UNGPs	United Nations Guiding Principles on Business and Human Rights
VPs	Voluntary Principles on Security and Human Rights

Preface

A decade of conflict-sensitive business practice

Over ten years ago, the relationship between business, human rights, conflict and peace was less well-understood by companies and practitioners than it is today. Although the Voluntary Principles on Security and Human Rights (VPs)[1] had been launched and had helped to progress a better understanding of business and human rights, the Global Compact's Business for Peace platform, the United Nations Guiding Principles on Business and Human Rights (UNGPs), and the Sustainable Development Goals did not yet exist. There was little common understanding about the responsibilities and challenges for companies operating in contexts affected by conflict. It certainly was not common practice for a non-governmental organisation (NGO) to work closely with companies operating in a conflict-affected setting, much less with those from the extractive sector. Yet, "International Alert took its mandate to heart, in that peacebuilding is not just done with people you're sympathetic to, but rather with those that have a stake in conflict and peace contexts – and multinationals are one of them. So we took the step to work with a challenging and much-criticised actor, at least according to the sector we work with (NGOs), to develop a technical methodology to engage with companies on their own terms".[2]

And so Alert's Conflict-Sensitive Business Practice (CSBP) was developed in 2005 as an approach for companies operating in conflict-affected settings (CAS) that seeks to mitigate business risk, reduce negative impacts on stakeholders and the contexts in which they operate, and enhance positive opportunities for peace.[3] The core principles of CSBP are as valid now as they were then: companies operating in conflict areas must be mindful of the two-way dynamic between a company and its context; they must also recognise that business activities should be carried out in a manner that prevents conflict and promotes peace; and finally, special attention must be paid to flashpoints that are likely to drive conflict, such as access to land, distribution of benefits, employment opportunities or security arrangements.

A decade of implementation has allowed Alert to better understand the private sector and how business decisions are made. Alert has learned about company motivations for adopting CSBP, and what success looks like. It has also shaped the way Alert engages with the private sector, builds trust, breaks down perceptions and paradigms, and even deals with the reputational risks of the work. Today, CSBP is much more than just a toolkit: it has permeated the organisation's work and is the premise for our corporate engagement (with extractives and non-extractives alike), our political economy analysis, and much of our programming and advocacy.

We look forward to the next ten years as we continue to work with companies, governments and communities in ensuring extractive operations are conflict sensitive and deliver benefits to all.

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1   See http://www.voluntaryprinciples.org

2   Former Alert employee, telephone interview with authors, London, 10 February 2015

3   The CSBP framework is laid out in International Alert's manual: Conflict-sensitive business practice: Guidance for extractive industries, London: International Alert, 2005, http://www.international-alert.org/publications/conflict-sensitive-business-practice-guidance-extractive-industries-en

Overview

Objectives of the guidance

This guidance aims to enhance human rights due diligence (HRDD) in CAS by drawing on knowledge and lessons learned in the field of peace, conflict and human rights, and providing additional considerations for companies and practitioners.

Drawing extensively on Alert's experience working with companies in a range of conflict settings, as well as the knowledge and experience of the companies, the guidance will help companies understand how a specific conflict environment affects their impacts on human rights, and the ways in which the type of conflict informs how they conduct their human rights due diligence.

More specifically, the guidance will do the following:

- Help companies from the extractive sector understand any conflicts in their operating context and identify the implications these have for HRDD.

- Provide tools, case studies and recommendations to help companies and other practitioners conducting HRDD in CAS.

- Contribute to ongoing debates on business, human rights and conflict sensitivity.

The guidance is based on lessons learned over ten years of working with more than 18 companies across 15 countries, spanning four continents, and draws heavily from examples of places where Alert and others have worked.

Audience

The primary audiences of the guidance are those involved in overseeing or undertaking due diligence activities, including staff from extractive companies or practitioners, advisors and consultants working with extractives companies. The guidance seeks to raise awareness about the linkages between business, human rights, conflict and peace while guiding companies through the implementation of HRDD in CAS.

The following are among the audiences for whom the guidance is intended:

- Both large and junior companies, each of which face somewhat different challenges and require different considerations.

- Senior managers who need to make the business case for meaningful and effective due diligence in CAS.

- Civil society practitioners from the fields of human rights and conflict sensitivity, and others working with companies and communities that wish to influence or support implementation of HRDD in CAS.

We also see this guidance as helpful to companies in agribusiness, energy, renewables, consumer goods or other companies that may be facing similar challenges to extractives in CAS.

Scope

This guidance intends to enhance rather than replicate existing human rights due diligence guidance by considering what is different or additional for HRDD in CAS. It will do the following:

- *Focus on the most relevant due diligence stages from a conflict-sensitive perspective*: The guidance is structured to address the stages of the due diligence cycle where conflict sensitivity can add the most value. As such, it focuses on:

  - *design* as the initial stage of due diligence, as it will help highlight issues that should be anticipated, along with the decisions that need to be made early on;

  - *identify and assess* as the stage in which conflict analysis is incorporated; and

  - *integrate and act upon findings* as the point at which responses are taken.

- For the remaining stages (*tracking responses* and *communicating*), the guidance provides some considerations and recommendations.

- *Focus on project level*: The guidance is mainly intended for use at the project level, though it provides some considerations for corporate level, including senior management.

- *Consider different types of conflict*: Although all conflicts share some common traits, certain conflicts have more salience for human rights, therefore the guidance gives attention to different kinds of conflicts.

- *Consider the project lifecycle*: Conflict and human rights issues also differ according to the particular phase of a project. Where relevant, the guidance explores how issues emerge, develop and evolve across the lifecycle of an extractives project, and the corresponding considerations for due diligence.

- *Consider additional flashpoints driving conflict*: The guidance will also reference separate briefings on 'flashpoints', which are subjects that have been identified as particularly challenging and that warrant individual attention. These flashpoint briefings are not intended to solve the issues, but will help in unpacking them and offer some suggestions on how they might be addressed. The topics of the flashpoint briefings are:

  - conflict sensitivity and the pre-investment stage; and

  - conflict sensitivity and supply chain due diligence.

Finally, while the guidance raises sensitive issues related to companies' operations in CAS, such as corruption or dealing with armed actors, the aim is not to provide solutions, but rather address their significance for the HRDD process. It can also be approached as a discussion paper to explore issues that have not been discussed widely enough, and challenge practices and approaches if they are not conflict sensitive.

How to use the guidance

The guidance consists of the following chapters:

1. Why conflict sensitivity matters for human rights due diligence

2. Getting started: Designing HRDD in conflict-affected settings

3. Identifying and assessing conflict risks and human rights impacts

4. What happens now? Acting upon findings

5. Considerations for tracking and communicating

Appendices

Flashpoint briefing 1: Conflict sensitivity and the pre-investment stage[4]

Flashpoint briefing 2: Conflict sensitivity and supply chain due diligence[5]

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4   Available at http://www.international-alert.org/publications/human-rights-due-diligence-conflict-affected-settings
5   Ibid.

The first chapter explores the theory behind the guidance and introduces the four types of conflict referred to throughout.

The subsequent chapters are structured on the stages of the due diligence cycle. The chapters consider human rights due diligence from a conflict-sensitive perspective providing recommendations, illustrating points with practical examples, case studies and perspectives from the field, and offering points for business cases. In addition, chapters 2, 3 and 4 (designing, identifying, acting) end with practical considerations for operationalising conflict-sensitivity principles with prompts, questions and signposts.

The guidance also uses a case study on indigenous peoples, conflict and cultural rights[6] to demonstrate and apply the conflict and human rights impact assessment (CHRIA) tool. Appendix 4 re-introduces the case study to demonstrate in full the considerations and decisions made at each due diligence step, and to apply the tools provided throughout the guidance.

The guidance also pays particular attention to two flashpoints,[7] on which there are accompanying briefings:

- *Conflict sensitivity and pre-investment*[8] recognises that incorporating conflict sensitivity and human rights considerations during the pre-investment phase is an opportunity to create a more comprehensive picture of risk. By anticipating issues at an earlier stage, companies can factor in costs and begin to identify ways to address some of these issues early on, saving themselves from potential problems during a later phase of the project.

- *Conflict sensitivity and due diligence in the supply chain*[9] recognises that in CAS, risks related to the supply chain are greater, and if not well understood, likely to only be identified once conflict occurs – making management of the situation much more difficult. This means paying attention to the dynamic between supply chains and the conflict. The flashpoint briefing offers some key conflict risks related to business relationships and questions for hiring companies to ask themselves as they identify critical business relationships from this perspective.

In recognition that companies are at different stages of evolution in relation to human rights implementation, and that the scale, scope and amount of resources available also vary, the guidance is not intended to provide 'one-size-fits-all' solutions. Readers are encouraged to adapt to their needs and experience.

Finally, this guidance builds on concepts from the fields of business and human rights, and conflict sensitivity. For readers starting out in one or both areas, or who need more introduction, the following are useful:

- The UN *Guiding Principles Reporting Framework* provides a glossary of key human rights terms.[10]

- Alert's original resource, *Conflict-sensitive business practice: Guidance for extractive industries*, which provides a full explanation of conflict sensitivity.[11]

- Where the guidance draws on the UNGPs or other principle reference points, explanations are provided in the footnotes.

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6   The case study is based on a 2015 Alert assignment for a company.

7   Available at http://www.international-alert.org/publications/human-rights-due-diligence-conflict-affected-settings

8   International Alert, Human rights due diligence in conflict-affected settings: Flashpoint 1 – Conflict sensitivity and pre-investment, London: International Alert, 2018, http://www.international-alert.org/publications/human-rights-due-diligence-conflict-affected-settings

9   International Alert, Human rights due diligence in conflict-affected settings: Flashpoint 2 – Conflict sensitivity and due diligence in the supply chain, London: International Alert, 2018, http://www.international-alert.org/publications/human-rights-due-diligence-conflict-affected-settings

10   Shift and Mazars, UN Guiding Principles Reporting Framework, 2015, https://www.ungpreporting.org/wp-content/uploads/UNGPReportingFramework_withguidance2017.pdf

11   International Alert, 2005, Op. cit.

Chapter 1

Why conflict sensitivity matters for human rights due diligence

Human rights in conflict-affected settings

Over the last decade, the study of the links between business and human rights has emerged as a highly influential area of theory and practice. While there has been substantial uptake of the UNGPs, particularly around company efforts to undertake more rigorous HRDD, there is little available guidance on what this means for companies operating in CAS.[12] Yet in CAS, the likelihood and severity of human rights violations is considerably higher, the most vulnerable members of society are likely to disproportionately experience more negative impacts, and the operating context is highly complex. Therefore, companies and practitioners require specific guidance on enhancing HRDD and incorporating key principles of conflict sensitivity.[13]

1

How does HRDD in CAS differ?

Many companies and practitioners have pointed out that the volatility of CAS requires a robust, rapid and flexible response in relation to HRDD.[14] This is certainly true, and makes HRDD more of a priority. However, 'more of the same' is not enough: HRDD in CAS also requires different and additional considerations.

Firstly, when conducting HRDD in CAS, understanding the conflicts is essential. CAS is a broad concept that can apply to a wide range of settings, from intrastate war to situations of social unrest or instability. Dynamic by nature, with multiple interconnected actors, drivers and motivations, not only are conflicts complex to understand, they develop, evolve and can change rapidly. And in many of these contexts, the absence of armed conflict is only the illusion of peace. 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.

For example, in South Africa there are cycles of widespread labour unrest linked to workers' dissatisfaction with wages and rising costs of living. Conflict between unions complicates the situation, generating further hostility between and within communities. And when security forces have responded to protests, it has often been with excessive force resulting in clashes, injuries and fatalities; in 2012, 34 mining workers were killed by security forces at a protest over wages in the Marikana region. Instances of xenophobic violence occurred again in 2015, when immigrants were blamed for a lack of employment opportunities.[15]

In some countries in Latin America, such as Peru, Bolivia and Brazil, community-company conflict around extractive projects is closely connected to broader social unrest. Often, conflict stems from perceptions of unfair treatment, misinformation, lack of consultation, political manipulation and irresponsible company practices. Community leaders sometimes bypass the government and approach companies directly, creating a space in which state actors can avoid what is under their responsibility or jurisdiction in a regulating environment that is, in some instances, contradictory to international human rights standards, as there are limited ways for communities to air their grievances and access remedy. In these circumstances, resorting to violent confrontation is common.

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12   Even though the UNGPs recognise the complexities of CAS, they do so primarily by addressing state responsibility. However, in doing so, Principle 7 also alludes to expectations for business: "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."

13   The UNGPs highlight what is expected, indicating that HRDD "will vary in complexity with the size of the enterprise, the risk of severe human rights impacts, and the nature and context of operations" (Principle 17).

14   L. Engberg-Pedersen et al, Fragile situations background papers, Copenhagen: Danish Institute for International Studies, 2008, p.48

15   South Africa's xenophobic attacks: Are migrants really stealing jobs?, BBC News, 20 April 2015, http://www.theguardian.com/world/2015/apr/20/south-africa-xenophobic-violence-migrants-workforce

As the *World Development Report 2011* notes, while civil wars are still relevant to some areas, over the past 20 years, conventional forms of armed conflict have been in decline. "21st-century violence does not fit the 20th-century mould (...) because of the successes in reducing interstate war, the remaining forms of conflict and violence do not fit neatly either into 'war' or 'peace', or into 'criminal violence' or 'political violence'. Many countries and subnational areas now face cycles of repeated violence, weak governance, and instability".[16] Violence and conflict have not been banished: one in four people on the planet – more than 1.5 billion – live in fragile and conflict-affected states or in countries with very high levels of criminal violence.[17]

Therefore, CAS include a much wider range of contexts[18] than might initially be assumed. In this guidance, we use four main categories (see Figure 1).

Figure 1: Four types of conflict

In addition to the contexts of social unrest explored above, CAS can include nominally peaceful yet conflict-prone countries such as Brazil or Kyrgyzstan. Other conflict contexts are those in which armed violence is present, such as in parts of Mali or Pakistan. Countries with high levels of armed violence relating to criminal organisations or networks, such as those in Central America's northern triangle, also fall within this group. A third category includes post-conflict countries such as Myanmar or Bosnia and Herzegovina, which are undergoing the long and difficult process of transition out of armed conflict and also require specific considerations.

These situations present different challenges to those of our fourth category, the more conventional armed conflict, where protracted confrontations occur between government armed forces and the forces of one or more armed groups, or between such groups,[19] such as in Colombia, the Philippines, the Democratic Republic of Congo (DRC), Syria or the Central African Republic, or between states.[20]

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16   World Bank, World Development Report 2011, Washington DC: World Bank, 2011, p.xvi

17   Ibid., p.2

18   These contexts are based on Alert's work with companies and other actors over the last 15 years. As such, they are not intended as academic categories or legal definitions, but as a representation and coming together of practical experience.

19   As defined by the International Committee of the Red Cross.

20   Whether conditions trigger specific and different considerations under international humanitarian law is an important but separate consideration that requires targeted legal and expert advice.

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Table 1: Some characteristics of four types of conflict

Armed conflict (intrastate)	Armed violence	Post-conflict	Social unrest
Ongoing conflict between two or more armed actors, usually including state forces and non-state armed groups.	*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.*	*A context in which previous armed conflict has recently ended or is undergoing transition, following a peace agreement or political settlement.*	*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.*
In an armed conflict, common traits include the following: • 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	In a context of armed violence, common traits include the following: • 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	In a post-conflict environment, common traits include the following: • 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)	In these environments, common traits include the following: • 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

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Consider this – contexts can be more than one 'conflict type'

Each context is both unique and dynamic, and some contexts may have characteristics of more than one 'conflict type'. Therefore, categories are fluid, and not meant to be prescriptive; rather they are intended to guide companies in identifying some of the characteristics of their environment and the conflict issues on which to focus as a starting point for a more in-depth analysis.

Conflicts and patterns of violence will continue to evolve and emerge. For example, businesses are increasingly required to consider what it means to be operating in an era of rising violent extremism in many parts of the world, as well as their business role and responsibility in relation to refugee situations and humanitarian crises – such as that Europe is experiencing, for example. There are also challenging issues to consider when returning to or resuming operations in areas previously vacated due to conflict or regime change.

What this means for many extractives companies is that conflict-affected situations are almost unavoidable, and in such contexts, the risk of harm to other stakeholders and to the business itself are considerably increased. That is why enhanced due diligence is required for companies to fully understand the challenges and risks, maintain respect for human rights and avoid creating or exacerbating conflict.

1

Perspectives from the field: Broader and changing conflict contexts

An infrastructure company in southern Europe committed to implementing the Voluntary Principles on Security and Human Rights. Given operations were in a relatively stable region with democratic governance, this initially raised some questions internally about its relevance. However, the company found that while there were different levels and types of risk than in contexts more traditionally associated with security and human rights issues (such as armed conflict or post-conflict settings), there were still risks, such as those relating to social protests. The company also found that the context was rapidly changing, and they needed to return to their original risk assessments to consider the situation, in particular, the humanitarian crisis associated with the influx of refugees into Europe since 2015. With the accompaniment of Alert, the company developed a set of scenarios, each more serious than the last, and developed measures that would correspond to the level and type of risk identified. Fully understanding the conflict and human rights context helped them to be more responsive to the situation.
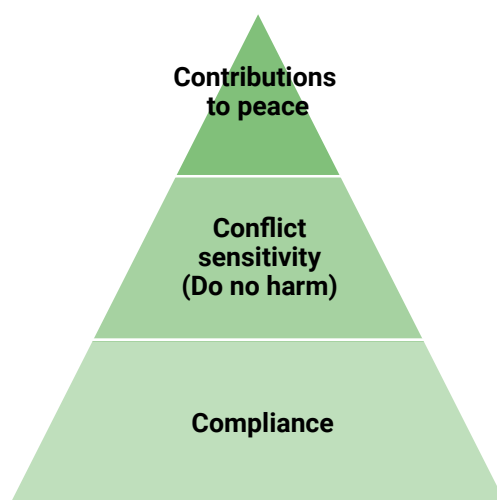
Conflict sensitivity is based on the recognition that any person or entity operating in a conflict-affected context will inevitably interact with the conflicts there, and may thereby cause harm to others, to themselves or to their own project. They therefore need to operate conflict sensitively to minimise harm ('do no harm'), and maximise their impact on peace. Alert's background paper *Why conflict sensitivity matters for business and human rights* identifies where conflict sensitivity can complement and enhance due diligence in CAS, and shares learnings from the field of conflict sensitivity to highlight the additional considerations for companies conducting HRDD in conflict-affected settings.[21] The aim of this guidance is to incorporate the principles from the background paper into practical considerations.

1. *Understanding the conflict context is essential.* As mentioned previously, Alert has identified four broad categories of conflict that are particularly challenging for companies: armed conflict, armed violence, post conflict and social unrest (see Table 1). Although all conflicts share some common traits, certain conflict and human rights issues are likely to be more salient in some contexts (and phases of the project). In addition, the kind of human rights impacts that a project can have can also vary depending on the scale and nature of the project. Therefore, companies need to be aware of the type of conflict they are operating in, the relation of the conflict to the project, and what this means for their human rights impacts.

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21   International Alert, Why conflict sensitivity matters for business and human rights, London: International Alert, 2016,
      http://www.international-alert.org/publications/why-conflict-sensitivity-matters-business-and-human-rights

2. *Human rights impact assessments and conflict analyses address different but complementary subject matters.* Integrating conflict analyses and human rights impact assessments produces a more balanced approach than either on its own allows, as conflict analysis can highlight additional risks and impacts that may not be captured by a traditional human rights impact assessment (HRIA). Conflict analysis can also enhance HRIA by building in more responsiveness and identifying the triggers to revisit due diligence, which is required more often than in more stable operating contexts. Therefore, the identification and assessment of human rights impacts in CAS needs to be underpinned by a conflict analysis.

3. *In CAS, companies that wish to act responsibly and demonstrate leadership should aim to go beyond 'do no harm' and make positive contributions to peace and stability.*[22] Although some areas of peacebuilding are naturally out of scope for private-sector actors,[23] there are many ways in which companies can actively support peace; this will be context-specific, but could include initiatives supporting access to justice, humanitarian responses or the reintegration of ex-combatants. Indeed, many large companies were actively involved in the development of the Sustainable Development Goals, which include in Goal 16 a commitment to reduce all forms of violence and find lasting solutions to conflict. Figure 2 shows the most common strategies to manage conflict risk, starting with basic compliance, moving on to conflict sensitivity and 'do no harm', and ending with contributions to peace or peacebuilding.

Figure 2: Strategies for managing company/conflict risk

Contributions to peace

Conflict sensitivity (Do no harm)

Compliance

Source: International Alert, Conflict-sensitive business practice: Guidance for extractive industries, London: International Alert, 2005

Therefore, this guidance offers practical considerations on how to apply conflict-sensitivity principles to enhance human rights due diligence, with a focus on considering the conflict context, underpinning human rights impact assessment with conflict analysis, and identifying opportunities for positive contributions to peace (see Table 2).

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22   The UNGPs stress that negative human rights impacts cannot be offset by project benefits or efforts towards positive impacts, however, this does not preclude leveraging the complete due diligence cycle to understand the potential for both positive and negative impacts, including the potential to contribute towards peace and stability.

23   Companies are not expected to be the only solution to conflict, nor to bring about a full realisation of positive peace. Peacebuilding is about making a contribution, sometimes in collaboration with other actors, by strengthening and enhancing the factors for positive peace.

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

1

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24   The International Petroleum Industry Environmental Conservation Association and the Danish Institute for Human Rights, Integrating human rights into environmental, social and health impact assessments: A practical guide for the oil and gas industry, London/Copenhagen: IPIECA/DIHR, 2013, p.6

25   The International Council on Mining and Metals, Integrating human rights due diligence into corporate risk management processes, London: ICMM, 2012, p.6

Chapter 2

Getting started: Designing human rights due diligence in conflict-affected settings

Overview

What does design involve?

- In the design stage, decisions are made on how the process will be developed and implemented, including the methodology, timelines, procedures, responsibilities and resources for due diligence.

- Especially for companies just starting out on HRDD procedures, or with fewer resources, design is an opportunity to plan for internal capacity-building needs, decide where and how to focus efforts, and determine when it may be appropriate to bring in third parties. At this stage, it is also valuable to consider and articulate the business case for resourcing HRDD.

What is different or additional in CAS?

- The design of the due diligence process is crucial to getting HRDD right,[26] and even more so in CAS. This is for practical reasons: any due diligence process requires planning and design, and this is even more important in volatile and unstable environments, in which it is more challenging to identify, assess, prevent and mitigate human rights.

- The scope of HRIA is enlarged in CAS, to ensure it is designed to identify and act on conflict risks and human rights impacts (CHRIA), and understand their interrelationship. (Chapter 3 provides a framework for conducting the CHRIA analysis.)

- The design stage is an opportunity to start to identify and map stakeholders, and anticipate barriers to their engagement and other challenges.

- Attention to design also helps to ensure that the due diligence process is itself sensitive to the local conflict dynamics.

Specifically, the design stage entails the following:

- Step 1: Define the scope of the HRDD process, including level of effort and resources required and how it will be structured differently to take account of conflict.

- Step 2: Identify and map stakeholders.

- Step 3: Anticipate challenges and barriers to engagement.

The design phase is also an opportunity to give some initial consideration to which suppliers or commodities need more attention in relation to how they may affect conflict dynamics or be affected by them. This is explored in more detail in the accompanying flashpoint on conflict sensitivity and supply chain due diligence.[27]

Step 1: Define the scope of the HRDD process

Scoping is the process by which the parameters for human rights due diligence are defined, with attention usually given to human rights impact assessments. It is an essential aspect of design, as it is done by gathering information in relation to business activities and the human rights and conflict context. It will help companies assess the issues on which they will need to focus depending on the conflict setting and the phase of the project lifecycle, as well as the level of effort, resources and preparation required to undertake HRDD in CAS. It will also help companies identify and assign roles and responsibilities for the process, including accountability. At this stage, companies can also consider what existing processes or

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26   Design is not included as a stage in the human rights due diligence in the UNGPs, nor is it precluded.

27   Available at http://www.international-alert.org/publications/human-rights-due-diligence-conflict-affected-settings

procedures they have in place that they can leverage, whether for identifying impacts, acting upon its findings, or monitoring progress.

Self-assessment tool

The self-assessment tool (see Table 3) is designed to help companies and practitioners inform the decision-making process when designing or supporting a HRDD process. Completing the tool will help to:

1. start to identify conflicts and issues driving them to be explored in the analysis and that will require company action;

2. identify policies, procedures, and other existing efforts that can be leveraged for the process; and

3. determine the overall level of effort, resources and detail required.

2

Table 3: Self-assessment tool

A. Identify conflicts in the context
In CAS, the kinds of human rights impacts associated with company activities are likely to differ depending on the conflict context in which activities are taking place. Identifying the nature of any conflicts therefore helps to inform the issues to which a company will need to give particular consideration.
Please select which of the conflict types below best describes the operating environment, referring to Table 1: Some characteristics of four types of conflict. Appendix 1 elaborates and provides examples on conflict contexts. In addition to political risk indexes, drawing on trusted external sources such as peace, fragility or conflict indexes, such as the Global Peace Index[27] or the Failed States Index,[28] as well as relevant reports from recognised civil society organisations will assist in identifying the conflict context and analysing its dynamics.

Armed conflict ☐	Armed violence ☐	Post-conflict ☐	Social unrest ☐

B. Identify the most important conflict issues	
These can be related to the broader conflict context or more specifically to the company operations. Identifying the most important conflict issues will determine where a deeper analysis is required.	
Please select the most *important* conflict issues in your context.	
☐ Land access/use	☐ Unequal distribution of benefits
☐ Ethnic, religious, or other identity-related tensions	☐ Negative economic impacts (destruction of livelihoods, inflation)
☐ Weak/ineffective governance/institutions	☐ Resettlement-related
☐ The presence of illegal armed groups	☐ Impact on water sources
☐ The presence of criminal actors	☐ Inadequate/lack of consultation
☐ High unemployment/poverty/inequality	☐ Resettlement
☐ Marginalisation or discrimination of certain groups	☐ Lack of employment opportunities
☐ Unequal distribution of benefits	☐ Cultural heritage-related
☐ Labour-related	☐ Union-related
☐ Environmental impacts	☐ Contractor behaviour/performance
☐ Unresolved historical enmities	☐ High levels of endemic violence
☐ Unfulfilled commitments	☐ Others: please list

C. Identify the stage of the project lifecycle	
This is important because it allows for the analysis to consider how conflict issues change and develop across the project lifecycle.	
Please select the stage of the project lifecycle that applies to the project.	
☐ Geological investigations	☐ Construction and development
☐ Pre-feasibility	☐ Production
☐ Feasibility	☐ Closure and decommissioning

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28   Compiled annually by the Institute of Economics and Peace, http://visionofhumanity.org/indexes/global-peace-index

29   Compiled by the Fund for Peace, http://fundforpeace.org/fsi

D. Identify what existing procedures and processes are in place – either within the company or from secondary sources – that can be used for HRDD	
☐ Grievance mechanisms	☐ Political risk analysis
☐ Security risk analysis	☐ Corruption assessments
☐ Compliance assessments/audits	☐ Environmental, social and health impact assessments
☐ Human rights, corporate social responsibility (CSR) or sustainability policies	☐ VPs assessments
☐ HRIAs and human rights risk assessments	☐ HR, CSR or social clauses in contracts
☐ Social baseline studies	☐ Conflict analysis (stand-alone or integrated)
☐ Social incident reporting	☐ Training programmes on HR, VPs, CSR, conflict sensitivity or sustainability-related
☐ Collective bargaining agreements	☐ Resettlement action plans
☐ Stakeholder mapping	☐ Stakeholder engagement procedures
☐ Communication plans or strategies on HR, CSR or sustainability themes	☐ Human rights, social or CSR committees/working groups
☐ Social investment plans	☐ Code of conduct
☐ Key performance indicators	☐ HRIA procedures
☐ Self-assessment tools	☐ Gap analysis on related topics
☐ Internal company standards, procedures or requirements on related topics	☐ Others

What this means for design – options for consideration

After assessing: 1) type of conflict and issues in the context; 2) the stage in the project lifecycle; and 3) the existing procedures and processes that are in place, it is possible to make further decisions about design, in particular, whether to use a stand-alone or integrated process for impact assessment, and whether to hire a third party to support the HRDD process.

Building the business case

Particularly in the early stages of a project, when the commercial viability is unclear, it may be challenging to justify using resources on HRDD. However, there are certain risks if human rights and conflict issues are not identified and addressed as early as possible, and there are thus ethical reasons that can also legitimately contribute to a business case for HRDD:

- Their impact will be even higher at a later stage.

- Destabilisation related to company presence can exacerbate the conflict.

- Security measures may have social consequences.

Benefits of an early HRDD assessment and action include the following:

- From a timing perspective, there can be a window of opportunity before production contracts are agreed, and an assessment can inform decisions about infrastructure, facilities and site locations before resources are committed. It is also an opportunity to proactively demonstrate commitment to operating responsibly, especially given the company may be under high-profile scrutiny for initiating activities in complex regions.

- It can align with other processes such as ESHIAs (environmental, social and health impact assessments).

- It can help meet investor requirements.

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When building the business case for early assessment and action, it is helpful to highlight the costs of operating in conflict. This can be done in the following ways:

- Identifying the conflict issues and articulating why the operational setting is conflict-affected: it may be more 'obvious' in some environments (such as those of armed conflict) but not necessarily in others (such as a context that is nominally peaceful yet experiences cycles of social unrest).

- Highlighting research on the cost of conflict for companies,[30] which outline:

  - the most frequent costs were those related to lost productivity due to temporary shutdowns or delays;

  - the greatest costs were the opportunity costs in terms of the lost value of future projects, expansion plans, or sales that did not take place; and

  - the most overlooked costs were indirect costs resulting from staff time being diverted to managing conflict.

A good example of costs of conflict comes from research on the Colombian conflict, which identifies and quantifies the direct costs of attacks, theft, kidnappings and protection payments for private companies. Moreover, Colombian businesses have experienced indirect costs such as loss of business opportunities, delays in merchandise distribution, opportunity costs, attacks on investments in security and insurance losses. The agricultural and extractive sectors have been the most affected since there are more opportunities for illegal and criminal actors in remote regions where business activities are based. This also speaks to how Colombian businesses have recognised the value of peace: recently, businesses and business leaders facilitated and paid for costs associated with the peace negotiation process in Havana.[31]

How to identify and assess impacts: general, issue-specific or hybrid?

The self-assessment tool guides decisions on the most suitable approach to assessing impacts for the context and project. This can also guide considerations on the most efficient use of existing resources.

- A *general assessment* is useful when an overview is required, for example, in environments where there is concern over a wide range of human rights. However, this approach will provide less detail on specific issues.

- An *issue-specific assessment* allows for greater detail when key human rights impacts (such as those linked to access to land) are identified. This approach requires less time and resources and is most relevant when other assessments have provided information on some issues already. It is also relevant for those situations where an incident has triggered conflict and the company wants to focus its resources in understanding and managing this from a human rights perspective.

- A *hybrid approach* – which combines the general and issue-specific approaches to HRIAs – gives a company a general sense of its human rights impacts while focusing in-depth on certain specific issues that have been flagged. This approach might prove more useful for companies operating in an area where conflict is sporadic and not always violent, but where there are still some overarching concerns.

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30   R. Davis and D. Franks, Costs of company-community conflicts in the extractives sector, Boston: CSR Initiative at the Harvard Kennedy School, 2014

31   A. Camacho and C. Rodriguez, Firm exit and armed conflict in Colombia, Journal of Conflict Resolution, Peace Science Society (International), 57(1), April 2013, pp.89–116; A. Rettberg, Learning from the past: The Colombian private sector in Colombia's transition to peace, Josef Korbel School of International Studies' Project on Non-Violent Action in Violent Settings, University of Denver, 2016; A. Rettberg and A. Rivas, Sector privado y construcción de paz en Colombia: Entre el optimismo y el desencanto, Construcción de paz en Colombia [Private sector and peacebuilding in Colombia: Between optimism and disenchantment, peacebuilding in Colombia], Bogotá: Ediciones Uniandes, 2012, pp.305–346; A. Rettberg, Explorando el dividendo de la paz: Impactos del conflicto armado en el sector privado colombiano [Exploring the peace dividend, perceptions of armed conflict impacts on the Colombian private sector], Resultados de una encuesta nacional, Spanish report with English executive summary, Bogotá: Universidad de los Andes and International Alert, 2008

Consider this – how to treat salient issues

While noting that any human right can potentially be impacted, it may not be practical to conduct an in-depth human rights analysis for each business unit and/or project site. Therefore, to focus resources and efforts, companies can identify the most salient human rights issues, or in other words, the human rights at risk of the most severe negative impact through the company's activities and business relationships, using the lens of risk to people as the starting point.[32] Identifying conflict issues can be a valuable source of information when making decisions about how to treat salient human rights.

As salient human rights issues (like conflict issues) are dynamic and can evolve over time, it is prudent to require periodic reassessment of what these are as the project progresses or changes in the context, to avoid any 'blind spots' in relation to human rights and conflict dynamics.

One company's approach has been to conduct a gap analysis at the corporate level that identifies ten areas of potential human rights impacts (environment; health and safety; labour rights; land and resettlement; local economic development; potentially vulnerable groups; supply chain management; security; transparency and governance; and water). At an operational level, due diligence is then conducted to identify if and how these generate potential human rights impacts.

Stand-alone or integrated?[33]

The self-assessment tool guides decisions on whether to undertake a stand-alone or integrated human rights impact assessment. There are advantages and disadvantages of each approach, detailed in Table 4.

Building the business case

Alert's experience working with companies in complex environments suggests that a stand-alone and issue-specific process brings the level of understanding and attention to conflict and human rights issues that is required in this environment, which can be inadvertently masked in a more integrated approach.

One company commissioned a stand-alone assessment by a third party with local knowledge and expertise in conflict analysis during seismic activities in the Great Lakes region of Africa, in recognition that the company's presence could exacerbate complex conflict dynamics involving armed groups, access to land, weak governance/lack of institutions and ethnic tensions, and that a delay due to contractual renegotiations created a 'window of opportunity'. As a result, findings were incorporated into decision-making processes about infrastructure location before the start of the next phase.

Appendix 4 uses a conflict and human rights impact assessment (CHRIA) case study to demonstrate how the self-assessment tool could assist a company in responding to a company-community conflict relating to cultural heritage in the construction and development phase. There was a lack of consensus within certain areas of the company on the value of addressing social issues in a timely manner, so the team coordinating the process decided to undertake a stand-alone assessment to manage the situation while helping position the social function better and raise the visibility of the issues at stake.

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32   This aligns with the definition set out in the UN Guiding Principles Reporting Framework. For further information, see
       http://www.ungpreporting.org/key-concepts/salient-human-rights-issues

33   An analysis of further advantages and disadvantages of integrated versus dedicated approaches can be found in IPIECA and DIHR's
       Integrating human rights into environmental, social and health impact assessments (Table 2, p.14) and DIHR's guidance: Human rights
       impact assessment guidance and toolbox (pp.20–22).

Table 4: Stand-alone or integrated human rights impact assessments

	Stand-alone *Conducted as a separate impact assessment process focusing only on the identification and assessment of human rights impacts*	**Integrated** *Integrates the identification and assessment of human rights impacts into other impact assessment processes, such as ESHIAs*
Advantages	• helps to raise awareness internally on issues, build internal capacity to understand and manage them and promote ownership and buy-in • helps to probe a key issue • helps companies to bring partners or contractors on board who might have less buy-in, have different operating standards or less exposure to the issues • helps highlight and address specific concerns (for example, safety concerns on key stakeholders like human rights defenders) • most recommended for when there are fewer budget or time constraints • simpler to manage than an integrated approach • can result in a detailed and high-quality analysis and understanding of a situation, especially if the company has support from external parties • is consistent with a human rights framework whereby impacts are prioritised based on their severity	• can be conducted in-house more easily but risks missing detailed or appropriate analysis • can be more cost-effective • can be easier to coordinate internally and more easily embedded • can be easier to gain internal buy-in and less daunting for a company starting out on human rights • can more easily demonstrate the linkages between subject areas, including areas already being managed, such as the human rights consequences of unmitigated environmental impacts • can avoid 'consultation fatigue' and the risk that, if not managed well, multiple consultations creates tensions with communities (e.g. "the company always asks us questions, but nothing ever changes for us") • when there are no serious conflicts or concerns, an integrated approach can help companies get a general overview of their potential human rights impacts • can create 'competing' or even contradicting categories to prioritise impacts (if only using health, safety and environment criteria)[34]
Disadvantages	• requires significant time and resources • if not done in a conflict-sensitive manner, a stand-alone and issue-specific assessment (like those triggered by a conflict incident) could further exacerbate the situation it was meant to analyse (for example, by raising further expectations, or by making public certain aspects of the process that are best kept confidential) • may be more challenging to incorporate findings and action plans into existing systems and processes	• often linked to certain project phases or regulatory requirements • timing might not coincide with other assessment processes like ESHIAs if there is not one taking place or being reviewed • some human rights issues may be less visible, as they are competing for space and attention with other factors • if information comes from processes that have already taken place, it can easily become outdated (especially in volatile and dynamic contexts); review points also may not take place at the frequency required in more volatile contexts • if it is done as part of an ESHIA, capacity building might be needed to ensure enough human rights expertise

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34   For more information, please see Chapter 3, Part III: Assessing the severity of human rights impacts.

Conducting HRDD in-house versus hiring a third party

This section provides some considerations for companies looking at bringing in third parties, such as consultants, to support human rights due diligence (see Table 5). Some requirements or conditions better lend themselves to outsourcing, and some are best led by the company directly.

Table 5: In-house versus third-party HRDD

When can hiring a third party be considered?	• When there isn't sufficient capacity or expertise on conflict and human rights internally, and a third party can help build this.
	• When there is a need for more local knowledge than is available internally.
	• When the company does not have a permanent presence on the ground yet.
	• When a respected third party is better positioned to help make the business case for conflict sensitivity and/or human rights.
	• When there is a need to act upon findings in a collaborative manner.
	• When due to conflict dynamics, an independent third party is needed because:
	   - there is a generalised sense of distrust between key actors;
	   - for historical reasons, the company itself is mistrusted; and/or
	   - there are concerns about corruption, discrimination/bias, or reliability of information.

When is it better to do it internally?	• When there is existing capacity and expertise to conduct it in-house. • When there is a need to increase ownership on conflict and human rights issues internally. • When there is a need to improve coordination and integration of issues. • When there are limited resources. • When an investment decision is still confidential and the company can't yet make it public.

What aspects can't be outsourced?	• When hiring a third party, it is still encouraged to consider what aspects of HRDD can't be outsourced, for example:
	   - obtaining senior management buy-in;
	   - leading public restitutions or other communication efforts;
	   - developing relationships with communities and other stakeholders; and/or
	   - handling grievances and/or making commitments on behalf of the business.

Step 2: Identify and map stakeholders

Stakeholder mapping from a HRDD perspective puts most emphasis on engaging and prioritising stakeholders whose rights are likely to be affected, whether employees, workers or community members.[35] In the field of human rights, these would be considered the rights-holders. In conflict sensitivity, and for the purposes of this guidance, 'affected stakeholders' is used to refer to those identified to be most impacted or vulnerable to the conflict, as well as any other actor that the conflict may affect. Whichever approach or terminology is used, it is essential that stakeholders are at the centre of the analysis.

Undertaking this as early as possible, ideally in design, creates an opportunity to consider challenges and barriers related to stakeholder mapping and engagement ahead of time, and take measures to ensure engagement is constructive and conflict sensitive (explored further in Step 3). Additionally, the number of identified stakeholders is likely to increase as there are more stakeholders with real or perceived interests in business operations (for example, criminal or armed groups), and an ability to affect business operations and people's rights.

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35   This aligns with the definition set out in the UN Guiding Principles Reporting Framework, which defines an affected stakeholder as an individual whose human rights have been or may be affected by a company's operations, products or services.

Given the prevalence of legacy issues and other complex issues in CAS, stakeholder mapping is also important for anticipating when and how to exercise leverage with government and other stakeholders, such as employing light-touch diplomacy. When mapping stakeholders, it is important to be as inclusive as possible (for instance, as mentioned previously, considering those that are less visible or more marginalised because of the conflict). For a more comprehensive list of recommendations and issues to consider on identifying stakeholders, see Table 6 under Step 3.

2

Consider this – outsourcing stakeholder engagement?

Sometimes companies consider outsourcing stakeholder engagement when there are barriers to direct engagement or there is no presence on the ground. While in specific cases there may be some utility in this, it will lose the essential element of stakeholder engagement – which is to build a strong relationship based on trust.

If direct engagement is not possible, companies should be cautious about whom they hire to do this. For example, it is common practice for junior companies, or companies during their feasibility stages, to hire communications firms to conduct consultations with stakeholders on the ground. This can create risks as communications firms may take a marketing or PR approach rather than a conflict-sensitive or rights-based one, and this may not be best for engaging stakeholders like communities or workers.

Step 3: Anticipate challenges and barriers to engagement

Engaging stakeholders in due diligence processes in CAS presents practical challenges, and there are likely to be barriers to this engagement. For this reason, it is important to anticipate issues as early as possible. It is not expected that all these issues will be fully addressed at the design stage, but considering them at this stage will help to design more robust due diligence.

- It can be challenging to engage with women in a way that is inclusive as well as conflict sensitive, especially in contexts with discriminatory or even violent gender norms. Consideration also needs to be taken in relation to engaging with ethnic or minority groups, especially those that are not officially or sufficiently recognised or represented. Some social groups are not easily visible to outsiders, so it is important to gather information on what kinds of social and economic groups exist from valued informants and third-party sources.

- Many company-community conflicts arise over management of expectations, information sharing and communication. Therefore, it is important to recognise that a common barrier for groups (especially vulnerable groups) is related to a lack of knowledge, or misinformation – of the industry and operational practices as well as human rights. Moreover, this can undermine their ability to anticipate or identify adverse impacts and ways they will be affected, advocate for their rights, and hold companies and authorities accountable.

- The conflict context will have a bearing on barriers to engagement. For instance, in cases of social unrest, 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.

Perspectives from the field: Overcoming barriers

When engaging women in consultation processes

- A women's organisation in Myanmar has institutionalised a 'vouching system', for cases where women are reluctant to join community consultations, or are prevented from doing so. The vouching system consists of identifying a first group of women who have participated in consultations and tasking them to reach out to other women by 'vouching' for the process. This way, women who feel they cannot trust a particular process or who are scared to join can gradually integrate into the process by having someone they trust vouch for it.

- Similarly, organisations in Brazil conducting a HRIA established women 'focal points' in each community as a way to improve outreach to female participation in community consultations.[36]

Engaging with less visible and organised, but more vulnerable groups

Alert was commissioned to conduct a CHRIA by an oil company operating in an area of an African country affected by armed conflict. Ethnic tensions and discrimination were an aspect of the conflict, with tension existing between two ethnic groups that had been at war prior to one of the country's many failed peace agreements. During the field work, a third group emerged that had not been identified by the researchers, or in discussions with national or regional actors.

The group was a pygmy community living deep in the forest. They had few connections to the external world and they had no formal status or official representation with the government. The other two ethnic groups considered the pygmy community to be ignorant ("You can't talk to them because they can't even speak our tongue") and physically weak. These geographic, political and social circumstances created such significant barriers for the pygmy community that none of the actors that had previously been engaged at national and regional levels thought it relevant to mention them as stakeholders.

This represented a significant challenge for the researchers; not only were there barriers in terms of language and geography, but there also existed significant local discrimination. The challenge was exacerbated by the fact that the pygmy community lacked any system of representation. In the end, after extensive research and networking, the researchers found a small local organisation that worked specifically with the pygmy community. The organisation's staff were able to speak with the community and obtain information necessary to understanding their expectations of the project (for instance, that they wanted employment opportunities), and identify potential ways in which the project could impact them.

36   Oxfam America, Community voice in human rights impact assessments, Boston: Oxfam America, 2015, p.23

Table 6: Questions for steps 2 and 3

Issue	Questions to consider
Identifying and mapping stakeholders	

Identification and inclusion of affected stakeholders	• Does existing stakeholder mapping focus on who has power or who is affected from a human rights/conflict perspective?
	 • How can/should actors related to the conflict (ex-combatants, victims, refugees, human rights defenders, illegal armed groups) be involved in the HRDD process? Can the company access them?
	 • Are some of the stakeholders:
	    - Not organised formally?
	    - Excluded from political, social or economic life?
	    - Discriminated against?
	    - Likely to be scared to speak up?
	    - Not represented?
	 • What other sources (e.g. respected third parties, local experts) can be consulted to ensure all affected stakeholders are engaged?
	 • Is it a matter of practice to ask existing stakeholders who else to consider?

Stakeholders who are likely to experience significant impacts can be the least visible	• Are there vulnerable groups in the area, such as indigenous peoples, women and children, victims of conflict, ex- combatants, sexual minorities, human rights defenders, refugees or internally displaced people? • Is there a chance that due to cultural norms, history or a lack of representation, minorities or vulnerable groups may not be very visible, or may be unwilling to speak out? • Are there any taboos that may keep some groups or individuals hidden from view, for example women and girls that have experienced sexual violence by armed or criminal groups? • Is this knowledge available in the company? Can it be complemented (or even challenged) by third parties?
It is challenging to ascertain who legitimately represents the interests of different parts of the community, particularly for processes like consultations or distribution of benefits	• Is it a context where democratic processes are weak or absent, and/or it can't be assumed that government officials or community leaders speak for those they represent? • Have community members complained or expressed concerns that they are not represented by their leaders? • Is there a risk that the company will be caught in an intra- or inter-community conflict not only over who truly represents their interests, but also over access to resources (whether it is land, employment or social projects)? • Acknowledging that engagement with elected officials and community leaders is still required, can broader consultation measures be put in place to counterbalance the above risks?
How to address the issue of illegal armed groups?	• Is it legal to engage with illegal armed groups? • If illegal armed groups are engaged privately rather than publicly, will this create legal, complicity or reputational risks? • Will there be any 'moments' where it is possible to engage, for example, after the signing of a peace agreement? • How are communities being impacted by illegal armed groups? Are they being consulted by the company about this? • To what degree do public institutions have the capacity and willingness to engage with illegal armed groups? • If operating in area with illegal armed groups, and after consulting with all necessary parties internally and externally, what are the risks of either engaging or not engaging? Where are the company's red lines with regard to engaging armed groups or militias?
What are the considerations related to workers? How far is the company expected to engage with the supply chain?	• Are workers in the supply chain exposed to conflict risks (e.g. extortion and kidnapping in contexts with illegal armed or criminal groups, threats)? • Are there existing processes for identification of critical contractors? If so, are human rights and conflict risks considered as part of the criteria? • How can contractors that are most likely to affect the conflict or be affected by it be identified? • For further discussion, please see the accompanying flashpoint on conflict sensitivity and supply chain due diligence.[37]

37   Available at http://www.international-alert.org/publications/human-rights-due-diligence-conflict-affected-settings

Issue	Questions to consider
Engaging with stakeholders	
Lack of willingness of stakeholders to engage	• Are all the project stakeholders willing to engage with the company? • If some are unwilling, who else can help complement information or provide insights into their perspectives? • Can the government or a respected third party help bridge the relationship?
Risks related to illegal armed groups and criminal groups	• What does national legislation say about engaging illegal armed groups? • What should/could be the engagement with illegal armed/criminal groups, who often have a very real interest and influence in relation to the project? • What are the relationships between project stakeholders or partners and illegal/armed groups?
Risks for stakeholders by engaging	• Is there a risk that informants (either illegal armed groups or state authorities) could infiltrate stakeholder meetings or consultations? • Can publicly airing positions or grievances lead to security risks for those involved in the conversation? • Can having (or not having) a relationship with the company create a security risk for anyone? • Can stakeholders (including workers) be put at risk by engaging with the company? How? • Has trust within or between communities eroded due to tensions or divisions, leading to reticence to speak openly in front of others? • Are there cultural norms that inhibit certain groups (such as women or ethnic/religious minorities) from voicing their views, or put them at risk if they do so? • Do any of the risks above, or others, mean it is better to cease the engagement and return to it at a different time, or review how it is done? Is it possible to engage with others (experts or others close to the stakeholders) to help consider the options?
Conflict sensitivity in language used	• Are terms like conflict, peace and human rights politically charged? • In some contexts, there may be sensitivities in using certain terminology. In these circumstances, it is advisable to consult with experts or third parties in-country on what the most suitable language is. • Can the internal framing of issues create negative perceptions in employees, and how they respond to risks and impacts? • For example, one company referred to illegal actions by one NGO as "NGO activism", which inadvertently condoned negative perceptions of all NGO activities and gave legitimacy to anti-NGO views internally.
Stakeholders might need capacity building to be able to engage	• Are operations in an area new to resource development, or where communities have not been consulted in previous resource developments? • Do stakeholders need support gaining a technical understanding so they know what to expect from company operations? • Do they need to be made aware of their rights before they can advocate for themselves? • Do circumstances allow this directly or is external help required? Can it be part of an existing process? • If either/all above are the case, how much time and resources will it take to address? • Is using third parties to support this process an option that the company could consider?
Legitimate project stakeholders are at risk of being co-opted by political motivations and individual agendas	• Is it a context (such as social unrest) where there is a risk that stakeholders are co-opted? • Are there upcoming elections or political processes? • How prominent are local politicians or influential individuals? How much are they supported by other project stakeholders? • Is it better – where possible – to reconsider the timing of certain activities like consultations due to political events such as elections?
Security escorts may be required when engaging stakeholders	• Is the presence of security personnel likely to hinder communities from engaging openly? • Is the presence of security personnel likely to lead to cases of profiling or threats? Has this happened before? Where these issues cannot be avoided, can the engagement be postponed or extra measures be put in place (such as holding separate meetings, inviting security representatives for a specific time in the meeting, etc.)? Can this be raised openly with public security?

2

Issue	Questions to consider
It is early in the project lifecycle and there is reluctance to engage at this stage	• Do initial teams on the ground lack the resources or expertise for stakeholder engagement? • Is there an internal concern that engaging at this stage will raise expectations? • Recognising that any gap in communication can create suspicions and distrust, and it is better to be proactive rather than reactive, what can be done to support on-the-ground teams or make the business case for resources to engage at this stage? • Can the company consider providing trainings or inductions to staff on the ground on principles or rules for community engagement?
Some stakeholders have more than one agenda	• Is it a context where stakeholders may have more than one remit, for example, as a politician who also owns a business and is seeking to obtain company contracts? • Given engagement still must occur, what extra precautions can be put in place on how information is shared? How can contractors be engaged at this point?

What if violence in the area disrupts activities or the ability to engage?	• How will potential events disrupt the ability to conduct engagement? What is the plan for response in these cases?
	  - Are there opportunities to work through trusted intermediaries who remain on the ground (such as local civil society)?
	  - Is it possible to wait until the situation 'cools down'?
	  - What if the situation doesn't improve in the short term? Are other options on the table for the project?
	• Recognising the need to balance the reality of operating in areas of violence with project timelines, to what degree is the company prepared to put processes on hold?

2

Perspectives from the field: Stakeholder engagement and illegal armed groups in Colombia

In a consultation Alert held with companies in Colombia one month after the signing of the final peace deal in May 2016, participants were asking questions about what the prospect of a peace agreement meant for stakeholder engagement and how they deal with the Revolutionary Armed Forces of Colombia – FARC:

What does the FARC's transition from an illegal armed group to a legitimate political actor mean for companies' engagement with them and the communities in which they have support? Will this mean a decrease in risk because the FARC will have to abide by the law, or does it bring about a different set of challenges for companies to manage, many of which are still yet to be seen?

How will the demobilisation of the FARC impact on companies' relationships and engagement with communities? Does it open space for engagement by reducing the role that armed groups play in community engagement – or is the FARC likely to step up its involvement as a legitimate political actor that needs to gain electoral support?

Although these questions are specific to the Colombian context, they raise issues that may resonate with the kinds of experiences companies might face when considering how the presence of armed groups may affect their stakeholder engagement, particularly in a transitional or post-conflict context. There were no hard and fast answers to these questions, but they illustrate very well the need for companies to maintain a finger on the pulse in such situations, and be ready to review their human rights due diligence process as necessary.
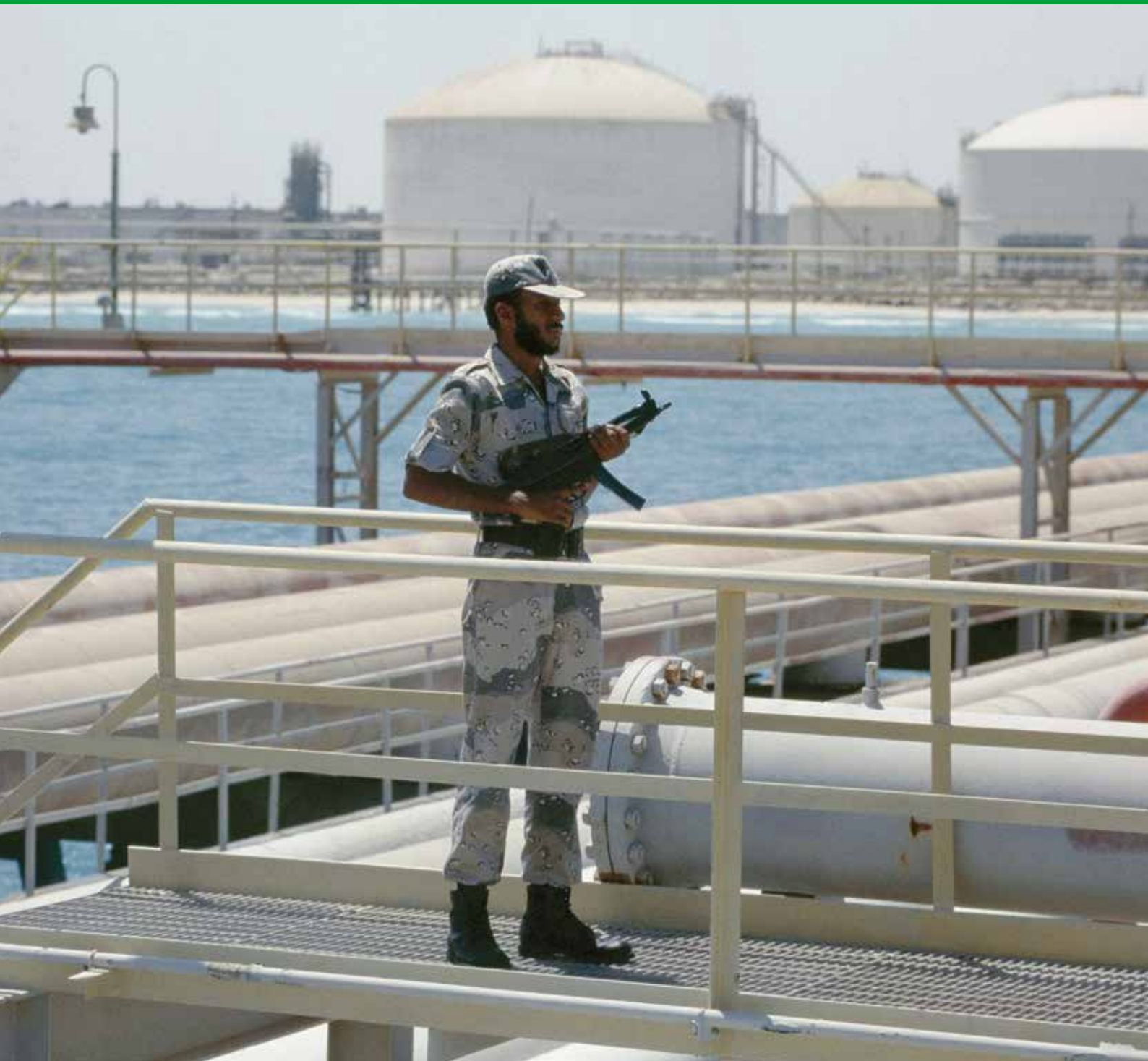
Conflict–sensitivity principles checklist

This checklist can be used as a prompt for the key conflict-sensitivity principles introduced in this chapter. A similar checklist is included at the end of Chapter 3.

Conflict-sensitivity principle	Questions to ask	Tools/measures/further information
The type of conflict will determine what is feasible	• What contextual factors and conflict issues will determine the scope of HRDD, and HRIA in particular? • What conflict issues are most salient in the context? • What policies and procedures are in place that provide valuable information or that can be leveraged for HRDD? • Where does internal capacity need building or strengthening? • Who are the internal champions, or potential champions? • What else can be done to build the business case for HRDD?	Self-assessment tool Decision matrix (see Appendix 4 for an example)
Engaging stakeholders requires considerations on access, willingness, capacity, risks involved and language used	• What are the reasons stakeholders may not be willing or able to engage? • Are these reasons related to access, willingness and/or risks involved? • Are there sensitivities related to language and terminology used when engaging?	Table 6
It is essential to anticipate barriers to engagement for some stakeholders	• How can barriers and challenges to stakeholder engagement be anticipated? • Of the list presented here, which ones are most relevant for your operation? • What other challenges might need consideration early on?	Table 6

Chapter 3

Identifying and assessing conflict risks and human rights impacts

Overview

What does human rights impact identification and assessment involve?

- Impact assessments can help to get a better picture of the interaction between business activities, impacts on others and risks to the business.

- Typically, a great deal of attention is paid to the identification and assessment stage of HRDD – as it is the essential foundation to acting on impacts.

- While weighted towards understanding negative impacts, impact assessments are also an opportunity to identify opportunities to strengthen and enhance positive impacts.

What are the different or additional considerations in CAS?

- The complexity and volatility of CAS 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 affect the local or regional balance of power and lead to an escalation of violence as actors seek to reassert their control.

- By integrating a conflict analysis into the HRIA process, additional conflict risks and their resulting human rights implications can be identified. These would not necessarily be captured otherwise: while existing guidance and tools mention conflict and political instability as indicators to consider in the assessment process,[38] none define how, or draw links between conflict and human rights impacts.

How is a conflict and human rights impact assessment (CHRIA) conducted?

The conflict and human rights impact assessment (CHRIA) tool enables companies to better understand the connection between business operations, conflict dynamics (manifesting as conflict risks) and human rights impacts by providing an additional lens of analysis to complement and enhance standard human rights impact assessments. The tool demonstrates how to conduct a conflict analysis as part of, or in addition to, HRIAs to identify conflict risks, and supports the identification of any actual or potential human rights impacts associated with these risks. It also intentionally draws on a framework that allows for enhancing the opportunities for positive impacts, for example, through looking at positive resilience factors to help stakeholders better respond and adapt to changes or shocks resulting from the conflict.

A few practical considerations before starting:

- *Addressing the past*: While HRIAs have been described as forward-looking processes,[39] a conflict-sensitive approach requires looking at the past, as past conflicts are a good predictor of future conflicts, and because issues of legacy are key in understanding many of the conflicts that companies and communities face. This includes legacies from previous or current companies operating in the area, previous operators of an acquisition, and legacies of past actions by governments (common to most CAS). By looking at contextual factors, a conflict analysis can bring the past to the forefront of

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38   Shift and The Institute for Human Rights and Business, Oil and Gas Sector guide on implementing the UN Guiding Principles on Business and Human Rights, Brussels: European Commission, 2013, p.26

39   Ibid.

the discussion to highlight legacy issues, as failure to do so means conflicts are likely to continue to arise. This is particularly relevant when companies are acting upon the findings of a CHRIA.

• *What about gender*? Much has been said about the need to ensure women's participation in human rights due diligence processes, and understand the different ways in which women can be affected by operations. While there is agreement with this analysis, integrating this approach into an assessment is not always straightforward. To do this, Alert adopts a 'gender-relational approach'. This means understanding how gender roles are constructed through societal relations between and among men and women in any given conflict context, and how those roles relate to other factors such as age, social class, ethnicity, sexual orientation and geography. This also allows for an improved understanding of gender roles in conflict, beyond simplistic understandings such as those of men as perpetrators and women as victims.

A gender-relational analysis involves asking open questions about how identities (of men, women, boys, girls, etc.) interact with each other, and how they influence, and are influenced by, conflict. This can provide new and different perspectives on how business activities may have an impact on stakeholders, gender dynamics and the conflict context. Companies should consider what additional considerations a gender-relational approach would provide when conducting their conflict analysis.[40]

The conflict and human rights impact assessment (CHRIA) tool

How to use the CHRIA tool

The CHRIA tool can be used in two different ways:

1. The tool can be used as a stand-alone to identify the human rights implications of conflict risks generated by company activities in CAS.

2. Alternatively, for companies conducting a general human rights impact assessment in CAS, the section on conflict analysis can be lifted from the CHRIA and used separately to complement the assessment. In this way, the tool will enhance the human rights due diligence process by enabling companies to identify the full range of actual or potential human rights impacts associated with their operations and their conflict environment.

When to use this tool

There are certain triggers that should prompt companies into conducting a more detailed analysis of conflict risks and their actual or potential human rights impacts. Triggers for such an assessment include the following:

• When operating in any of the four conflict settings described in Chapter 1.

• When the project moves into a new phase of the lifecycle.

• When there is a change in the conflict dynamics (e.g. underlying tensions escalate into violence; a peace agreement is signed; a political transition takes place).

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40   Alert's report *Gender in peacebuilding: Taking stock* provides useful considerations and suggestions for gender-relational analysis: J. El-Bushra, Gender in peacebuilding: Taking stock, London: International Alert, 2012, http://www.international-alert.org/publications/gender-in-peacebuilding-taking-stock

- When an incident with one or more stakeholders (e.g. employees, communities, local authorities, contractors) results in a stable operating environment becoming conflict affected.

- When conflict dynamics and business operations result in incidents or concerns over the safety of human rights defenders or other stakeholders.

Using the CHRIA tool

Figure 3: The process

The tool is divided into three parts (see Figure 3) – Part I presents a method for conducting a conflict analysis, Part II focuses on identifying the human rights impacts associated with the conflict risks, and Part III provides guidance on how to assess the severity of impacts. At the end of the chapter, a CHRIA case study demonstrates how the tool is intended to work in practice.

Part I: Conducting a conflict analysis

There are many ways to conduct a conflict analysis. Methods include, but are not limited to, identification of root causes, proximate causes and triggers; analysis of dividers and connectors; and actor mapping, or assessment of actors' positions, interests and needs.[41] While there are many tools and approaches (see Appendix 3), these are commonly structured around four lines of enquiry: *Profile*, *Causes*, *Actors* and *Dynamics*, each with a set of sub-questions that should be answered by the information collected.[42] Through the understanding of the elements mentioned above, ultimately companies should use this information to identify conflict risks in relation to their business activities.

This guidance uses an approach that focuses on identifying conflict risks at the project level which result from the interplay of *business operations* with *contextual factors*, *grievances* (both those caused by company operations and those already present in the environment), *affected stakeholders*, and *mobilisers*, understood as actors who mobilise people or resources to engage in confrontations or violence on the basis of grievances.[43] The analysis also includes an assessment of *resilience factors*, as these are important in understanding which levers could help in managing or preventing conflict.

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41   For more information, consult International Alert, 2005, Op. cit., pp.37–41 and International Alert, Supporting conflict sensitivity: Guidance for International Alert staff, London: International Alert, 2015b, p.13 (unpublished but available on request)

42   International Alert, 2015b, Op. cit., p.13 (unpublished but available on request)

43   United States Agency for International Development, Conflict Assessment Framework – CAF, Washington DC: USAID, 2012, p.15

Consider this – analysis will be ongoing

No analysis will ever be exhaustive, particularly in complex and dynamic environments. A 'good enough' approach to conflict analysis is therefore what is required, as well as a process that is ongoing and iterative. There is also no one definitive methodology. Appendix 3 analyses some of the tools and approaches that can be used.

This method fits well with a human rights approach for the following reasons:

- By framing conflict issues as linked to grievances, there is consistency with the human rights language and understanding.

- There is a convergence between *rights-holders* from the human rights perspective, with *affected stakeholders* from a conflict-analysis perspective.

- By analysing the role of mobilisers (people or institutions that actively mobilise people and resources) such as political leaders and parties, religious actors, military and security forces, non-state armed groups, and/or local elites, companies can better understand and anticipate when conflicts have a higher likelihood of turning violent, or when there are possibilities for enhancing peace and stability.

- By considering positive resilience factors, companies are encouraged to think about ways in which they can prevent and peacefully manage conflicts or contribute to positive impacts through these, including peace and stability.

Perspectives from the field: How companies use conflict analysis

Companies conduct conflict analysis for multiple purposes, whether to take a deep dive into a particular conflict issue that affects them (either proactively or reactively), to help inform the design and implementation of policies and procedures, or to obtain a robust study of a broader conflict context and understand their relation to it.

One oil and gas company used a conflict analysis prior to their seismic operations when they anticipated security would be a key conflict risk due to the presence of armed groups in the area of operation. Their concerns over a potential destabilisation of the area motivated the analysis. In another case, conflict analysis was used following an incident that triggered a deterioration in company-community relations, leading to a situation of social unrest. The company is also planning to undertake a broad conflict analysis as they enter a country characterised by high levels of intra- and inter-community violence and the presence of numerous indigenous groups. The company has now included conflict analysis as part of its HRIA procedure for all operations.

Another company has included a tool for conflict assessment and management in its toolbox for assessing social and economic impacts. The tool draws heavily on Alert's CSBP methodology and leverages existing company processes (such as stakeholder engagement and mapping), emphasising that if these processes are rigorous then operations should be able to identify conflicts and conflict actors. The company explicitly recognises that conflict may not be immediately obvious, and that even in places of relative stability, large-scale industrial developments can sometimes trigger or create it. Therefore, operational managers are encouraged to use the tool in a range of contexts, including those where human rights are a concern either

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implicitly (dominance of economic opportunities by one social group; appropriation of land without consent) or explicitly (oppression of fundamental freedoms). Human rights considerations are also embedded in the analysis as both a cause of conflict (e.g. lack of access to justice) and a consequence (e.g. inability to participate in political life).

A mining company operating in a country experiencing significant levels of social unrest used Alert's CSBP to gain insight into the pre-existing conflict and understand how the company might exacerbate or create new tensions. This spoke well to company management as it recognised that while company actions had a bearing on the conflict, there were also pre-existing factors at play beyond their control. The company also undertook a human rights study at the same time and found that the two processes naturally complemented and enhanced one another. As stated by a company employee at the time, "When conducting a human rights study in an area of social unrest, it was unavoidable to address conflict; just as it was impossible to ignore human rights when understanding conflict dynamics in this context." For example, much of the conflict the company experienced with the community was related to issues around benefit sharing, which also raised human rights concerns. The results of the two assessments were integrated into a management plan which outlined each key conflict risk, how the company could potentially influence it, the impact on the company and the community, and the mitigating control. The company practitioner observed that the process "naturally adapted itself to company risk procedures".

Step 1: Context analysis

The starting point is to understand the context, particularly those factors that are more closely connected to the conflict dynamics. Context refers to the permanent or long-standing elements of a country/region such as geography, history, socio-economic traits, institutions and laws. It includes domestic characteristics as well as external factors that can affect conflict dynamics (for instance, the 'spill-over' effects experienced in regions surrounded by countries affected by armed conflict or facing political or economic instability). Contextual factors can increase or decrease the probability of conflict, but these are not the only cause. It is therefore useful to understand contextual factors as risk factors, much as family history is used to explain the risk of diseases.[44]

Although an understanding of context is crucial to conflict analysis, not all contextual factors are equally relevant. The key is to identify those elements from the context that play a key role in how conflicts may erupt or evolve. For example, poverty can be a cause of conflict, yet poverty does not always lead to violent conflict. Therefore, it is important to understand the aspects of poverty that drive conflict and violence in certain contexts, such as the combination of extreme inequality, poor access to income or credit and/or a sense of exclusion and unfairness linked to identity.[45]

The context analysis is therefore designed to capture information related to four spheres relevant to the analysis of conflict in any context (see Figure 4):

- geography and physical characteristics of a region;
- history;
- socio-economic and demographic characteristics; and
- institutions and legal frameworks.

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44   Ibid., p.19
45   Ibid., p.17

Figure 4: The four spheres of conflict analysis

It is difficult to be categorical about the factors, or combination thereof, that are likely to contribute to conflict. The following table therefore provides an indicative list of factors to consider for each of the spheres presented here (see Table 7). These include issues that are generally acknowledged to have the potential to drive conflict (such as the availability of natural resources), as well as other factors that require a case-by-case look (e.g. laws and political systems). It is designed to support companies in identifying a range of issues at the onset, and then determining which of those are more relevant to their conflict setting.

Companies are encouraged to use existing knowledge and resources – both internal and external – to support the identification of those contextual factors which may have an influence on conflict dynamics in their area of operations. ESHIAs, HRIAs, political analyses, or other due diligence processes (see Table 3: Self-assessment tool), provide valuable information. It is then possible to determine which of those contextual factors have a direct link with the current conflict.

Table 7: Contextual factors to assess

Geographic and physical characteristics	History
• physical location of operations • geographic traits (e.g. whether it is a relatively isolated mountainous area or dense urban area) • climate (e.g. susceptibility to droughts, floods or natural disasters) • availability of natural resources, quality of soils, etc. • geopolitical importance • existence and quality of infrastructure and services • proximity to markets	• historical narratives (e.g. when past injustices are used to explain present conflicts) • legacies from state-formation processes (e.g. legacies of colonialism or post-colonialism) • fears, anger and other perceptions influenced by history of human rights abuses, repression or discrimination • legacies from previous industry/company activity

Socio-economic and demographic characteristics	Institutions and legal frameworks
• size and regional distribution of the population (and other characteristics such as disproportionate numbers of youth)	• laws and judicial systems
• ethnic and religious make-up of the population	• political system and structure, including traditional structures and systems
• status of women	• shared beliefs
• importance of religion(s) in society	• state and non-state organisations
• levels of socio-economic inequality and mass poverty	• formal and informal rules
• access to economic and social opportunities (e.g. access to jobs, education, credit)	• public security forces
• social norms (e.g. the existence of a 'macho' culture)	• presence and types of corruption

Step 2: Identifying conflict risks

CHRIAs identify conflict risks – the risk that companies will either create new or exacerbate existing conflicts through their business activities in a particular context. In order to identify these, the conflict analysis tool used here looks at the following factors:

- *Contextual factors* – the characteristics of a country or region that can affect conflict.

- *Grievances* or *conflict issues* – issues or feelings of dissatisfaction that can drive conflict.

- *Affected stakeholders* – groups or individuals affected by the grievances.

- *Mobilisers* – people or institutions using grievances and resources to mobilise others, either for violence or for peaceful conflict resolution.

- *Resilience factors* – mechanisms or conditions in societies and communities allowing them to resolve or manage conflicts and adapt to changes in the context (i.e. social capital).

The outcome of this step is a matrix which identifies the conflict risks resulting from the interaction of these factors with business activities. This framework intentionally does not frame the elements as normatively 'good' or 'bad'. For example, grievances can be resolved peacefully – and lead to positive changes or outcomes – when political, social, economic and security mechanisms enable peaceful conflict management and dispute resolution[46] (i.e. resilience factors). This allows the analysis to identify how conflict can exacerbated or, conversely, resolved or managed.

Each step is explained in more depth below. Working through the CHRIA case study in the next section provides a concrete example and helps to bring the process to life.

Grievances

Grievances are understood as deep feelings of dissatisfaction among different members of society with how their society or community is organised, and how this affects their lives.[47] Grievances can be caused either by contextual factors, by company operations/business relations, and/or by the interaction between the two. It is important to differentiate between grievances caused by contextual factors and by the company, as this has a bearing on the response; those grievances caused by or associated with company operations will fall within the obligation of companies to address. Addressing those grievances resulting from the context is more difficult – but not impossible (the next chapter provides recommendations on how to act upon grievances identified as arising from the context as well as from company activities).

It is well known that not all conflicts are driven by the grievances of those most excluded or marginalised, and 'greed' is routinely named as an equal driver of conflict alongside grievance, e.g. the desire of members of the elite to have more power and the access to resources that power brings. But for the purposes of

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46   Ibid., p.20
47   Ibid., p.20

this guidance, one can also view this as a grievance, as in such people being aggrieved at their insufficient slice of the pie. And of course they, as mobilisers in our framework, will typically leverage the more obvious grievances of others who are more genuinely excluded from the benefits others in society enjoy.

Affected stakeholders and mobilisers

For the purposes of a conflict analysis, companies do not need to invest great effort into mapping and analysing all actors, but rather focus on identifying the following:

- The affected stakeholders – those that have been negatively affected by business activities or the conflict, seeking to understand their grievances, and how they are affected or vulnerable.

- The key mobilisers, defined as the individuals or groups with the capacity and motivation to mobilise people or resources to engage in political action (like opposition to a project) or violence, or conversely, mitigate conflict. A general understanding of the interests, objectives and capacities of the key actors is what is required for this analysis. For example, in Nigeria, the Movement for Emancipation of the Niger Delta (MEND) has mobilised its own resources from kidnapping to buy weapons and has mobilised community members by appealing to grievances related to poor government performance around the use of oil resources and the allocation of revenues.[48]

Resilience

Conflict analysis also requires considering what *resilience* mechanisms exist within society, as conflict is less likely to occur when people, communities and institutions are resilient (able to mitigate, adapt to and recover from external shocks).[49] Resilience mechanisms are institutions, relationships or social structures that can support the management of conflicts without resorting to violence. These mechanisms can take many different shapes. For example, in some communities, the role of elders can be a resilience factor when they act as a conflict-resolution mechanism that plays a role in maintaining peace and security at the community level. Other communities may find resilience in a strong sense of socio-cultural belonging which is able to withstand the potentially divisive rhetoric of politicians or armed groups.

However, resiliencies are not all normatively 'good', just as not all grievances are normatively 'bad', as some resiliencies can sustain or increase the likelihood of conflict. At times, resilience can support a socio-economic or political system that benefits only a small portion of the population, while simultaneously keeping the status quo and therefore maintaining a level of stability. Equally, the resilience of criminal networks or armed groups can allow them to withstand attempts to weaken or disrupt their operations. Some resiliencies can sustain violent structures, and these need to be identified as part of the conflict analysis.

For a company, identification of resilience factors is important as they may be able to 'pull on' or enhance some positive resilience factors as a way of supporting management or resolution of conflict in their area of operations. On the other hand, identifying which resilience factors sustain conflicts is also important to ensure that the company is operating in a conflict-sensitive manner by not inadvertently strengthening those factors.

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48   Ibid., p.28

49   USAID definition: see USAID, Resilience at USAID: 2016 progress report, USAID, 2016 – fact sheet, available at https://www.usaid.gov/resilience

Part II: Identifying the human rights implications of conflict risks

An adverse human rights impact takes place when an action or omission reduces the ability of an individual to enjoy his or her human rights. Conflict dynamics can generate, exacerbate or change the character of human rights impacts. For example, in situations of armed violence or social unrest, governments can set curfews which restrict people's right to freedom of movement. People's right to work can be put at risk in the context of labour unrest, which can also result in impacts on human rights connected to safety and security in situations when union members threaten non-union workers who still wish to attend work.

At this stage, companies need to consider whether any of the conflict risks identified in Step 2 can result in any actual or potential human rights impacts for the stakeholders affected. When identifying the human rights implications of conflict risks, it is important to consider the following:

- Human rights abuses can be both a cause *and* consequence of conflict.

- A conflict situation can impact in *different ways* a human right that has already been identified by the company in previous assessments.

- A conflict situation can negatively impact *additional* human rights that may not have been considered by the company in previous assessments.

As with a standard HRIA, the business responsibility to respect human rights refers to internationally recognised human rights – understood, at a minimum, as those expressed in the International Bill of Human Rights and the principles concerning fundamental rights set out in the International Labour Organization's Declaration on Fundamental Principles and Rights at Work. The responsibility of business enterprises to respect human rights is distinct from issues of legal liability and enforcement, which remain defined largely by national law provisions in relevant jurisdictions, and exists over and above compliance with national laws and regulations protecting human rights.[50]

Part III: Assessing the severity from a conflict sensitivity lens

The next step in identifying and assessing is to plan how impacts will be addressed. According to the UNGPs, the order in which impacts are addressed should be based on their severity, which consists of:

- scale: the gravity of the impact;

- scope: the number of individuals affected; and

- 'irremediability': the limits on ability to restore those affected to a situation at least the same as, or equivalent to, their situation before the adverse impact.[51]

There are also some notable accompanying principles to assessing severity:

- It is not necessary for an impact to have more than one of the above characteristics to be severe. However, the greater the scale or scope, the more likely it is to be irremediable.[52]

- Delays in provision of remedy can make an impact more severe by making them irremediable – this should be considered during prioritisation.[53]

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50   United Nations Guiding Principles on Business and Human Rights, Implementing the UN 'Respect, Protect, and Remedy' framework, 2011, Guiding Principles 11–12

51   Ibid., Guiding Principle 14

52   UN Refugee Agency (UNHCR), The corporate responsibility to respect: An interpretive guide, Geneva and New York: UNHCR, 2012, p.83

53   Ibid., p.84

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> ### Consider this – conflict as criteria for prioritising
>
> In CAS, prioritising also requires companies to think about the likelihood and consequences of conflict as criteria. In doing so, companies are encouraged to think about the following:
>
> • How likely is this issue to create or exacerbate conflict? Between whom? Around what?
>
> • How serious can the conflict get? Is increasing violence likely? Who has an interest in this being the case?
>
> • Is the management of a particular impact likely to interact with broader conflict dynamics? How?
>
> • How severe are the human rights implications of the conflict risks identified?

In CAS, two further principles can be considered:

• The severity of human rights impacts is likely to be greater; for example, where there are limited resilience factors, impacts are likely to be greater in scale, and where there are weak institutions, be less remediable.

• There is a high risk that impacts that are not remedied or mitigated drive conflict. This may in turn generate further human rights impacts, contributing to a vicious circle.

Therefore, in CAS it is important to build conflict considerations into prioritisation by also assessing where impacts are more likely to drive conflict. In some cases, an impact may be categorised as less severe by the scale-scope-irremediability criteria, but still likely to drive conflict (for example, where the impact can be leveraged as a grievance by conflict mobilisers such as illegal armed groups or political agendas).

> ### Building the business case
>
> Under the encouragement of their joint venture partners, an oil company operating in Africa invited Alert to undertake a human rights gap analysis. They were upfront and honest that, as a company originating from a jurisdiction which in the past had not demanded high human rights standards from its companies operating abroad, human rights had not historically been considered relevant to company values or operating standards. Therefore, the gap analysis was an exercise to better understand their relevance to the business.
>
> There were challenges relating to internal buy-in for the resulting recommendations. The company indicated that business relationships, including with the government, contractors and subcontractors, was based on mutual respect for boundaries, i.e. "it is not for us to tell you how to do your job or run your business". Alert then re-framed the issues around the point that contractor behaviour (for example, poor labour conditions) reflected on the company reputation, and that the impact on communities would ultimately harm the business and be of negative consequence to all partners. This was better understood and helped the company to act on the concerns. It was important to ultimately take the issues back to the human rights principles, however the pragmatic reframing to the business risk and the risk to others helped to overcome the initial reluctance.

As a final note, it is encouraged that companies consult with stakeholders to understand severity from their perspective, and what they consider the thresholds for severity to be. Depending on the conflict context and dynamics, this needs to be thoroughly planned to avoid unintended consequences (see more in Chapter 2, Getting started: Designing HRDD in conflict-affected setttings).

Perspectives from the field: Prioritising the potential for conflict

A mining company in Brazil was receiving complaints from a neighbouring community about vibrations from the construction of a mine duct. In parallel, a human rights impact assessment was triggered by labour concerns involving contractors. While the HRIA picked up the vibration complaints, it did not prioritise the issue as the vibrations were not permanent and didn't last long. However, when a conflict analysis was conducted,[54] the issue came up as a priority as community members were already considering blocking property access if the situation was not addressed. Therefore, the issue was prioritised given the high likelihood of it driving company-community conflict, and the consequences of no or delayed mitigation (such as increasing costs or harming relationships with communities).

A word of caution on integrated approaches

While integration of processes as part of HRDD can be a good way to identify and act upon findings,[55] there are some caveats to consider.

In particular, this relates to integrating HRIAs into ESHIAs, as HRIAs and ESHIAs make an important conceptual distinction. ESHIAs use the concept of *significance* which considers probability as one of the criteria for prioritising. HRIA, on the other hand, frame it around *severity*, which does not consider probability, but rather the human rights consequences of the impact.[56]

(For a more thorough exploration of the advantages and disadvantages of stand-alone versus integrated, and the business case for integrated, see Table 4.)

Perspectives from the field: Significance vs. severity in security and human rights risks

In the interest of mainstreaming, large companies usually integrate processes to drive efficiencies and facilitate consistency across the organisation. On many occasions, companies use well-established systems, such as those in health, safety and environment (HSE), as umbrellas for other processes such as CSR or risk management. While conceptually this can be disputed (shouldn't it be the other way around?), these decisions follow more pragmatic rationales.

For example, a multinational oil company conducting a security and human rights impact assessment in the Middle East used the established HSE risk management matrix. However, unlike HSE incidents or risks which the company had more control over, security risks were more difficult to assess due to their unpredictability. Evaluating the probability of a security risk materialising is not the same as evaluating the risk of an HSE incident (which usually determines probability on whether the incident has taken place before). Because a security risk had not materialised in the past, security staff were struggling with how to bring the two approaches together.

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54   Based on Alert field work conducted in Brazil, November 2016.

55   For example, see Oil and Gas Sector Guide on implementing the UN Guiding Principles on Business and Human Rights (p.26); or Conducting an effective human rights impact assessment (p.20), op. cit.

56   For more information on the two concepts, see DIHR's guidance: Human rights impact assessment: Guidance and toolbox, 2016, Phase 3, pp.11–12.

From a human rights perspective, past or current impacts are one important indicator of future risks, but not the only one.[57] Therefore, the company conducted a separate assessment using the VPs Implementation Guidance Tools (IGT). This methodology highlighted the human rights implications of the security risks, and enabled a precise and informed way of understanding and assessing the severity of risks, even if they had never taken place. This also allowed an assessment of the different levels of severity according to the different human rights that could be affected, while ultimately still recording risk in the HSE matrix.

An example using the CHRIA tool

The following case study provides an example of the CHRIA tool being used in a real-life example, demonstrating each step of the tool using the description of events below.[58]

Case study 1: Indigenous peoples, conflict and cultural rights

In an oil-rich region of strategic national importance that is also inhabited by indigenous communities, a national oil company (NOC) and an international oil company set up a joint venture, with the NOC as the operating partner. The NOC had considerably less familiarity and experience implementing human rights or conflict-sensitivity frameworks, and in the past had weighed commerciality and production efficiency over such considerations.

Many of the country's indigenous communities live in extreme poverty and neglect. Active social movements include protests related to extraction of hydrocarbon resources. Protests have escalated into violence, with unresolved allegations of excessive use of force by the police.

Previously, members of the community near the operation worked under forced labour conditions for private landowners, and women and girls experienced high levels of sexual violence, while gender-based violence remains a social norm. The region is also known for its archaeological potential.

In a historic move, the government expropriated the private landowners' land and returned it to the indigenous community. It also legally recognised it as an independent community that is part of a larger ethnic group. However, recent legislation changes mean that royalties and compensation are allocated by a central government agency, as opposed to local committees and authorities (as had been the case).

As it limits community participation in decision-making over allocation of compensation funds, and disempowers local traditional leaders as decision-makers, the community claims the legislative change has negatively impacted their rights. Because the NOC was unwilling to adequately engage and share information with the community (due to concerns about meeting project timelines), this situation remained unresolved and triggered company-community conflict. It even led some community members to compare the extractive activities to their colonial past.

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57   SHIFT and IHRB, Oil and Gas Sector guide on implementing the UN Guiding Principles on Business and Human Rights, 2013, p.26

58   At the time of writing this guidance, the prioritisation of impacts had not taken place, which is why this example only goes until Part II.

During construction, the company undertook earth-removing activities on a culturally significant site of which they had not been aware, and some archaeological material was found. The company halted operations, engaged community leaders and adhered to the required legal procedures. However, the communication efforts were insufficient as leaders did not pass on the information to their constituencies in a timely or detailed manner, leading to high levels of misinformation, anger and frustration in the community. The communities appealed to the regional and national government authorities (who were at opposing ends of the political spectrum) as well as their representative national-level indigenous organisation. National and international media picked up the incident, with the community asserting that the company had destroyed their cultural heritage and violated their cultural rights.

In accordance with national law, the company provided financial compensation. However, the community and their national organisation did not have experience of managing large sums of money, nor could they reach an agreement over allocation of the compensation package. This resulted in a conflict that escalated to the point of confrontation between communities. In addition, the national organisation wanted to pursue legal action against the company and the government, while the community preferred to come to an agreement.

Eventually, the community decided to leave the national organisation as they felt that it did not represent their best interests.

Part I: Conflict analysis

Step 1: Context analysis

Geographic and physical characteristics	History
• project located in an area of strategic importance for national government • area known for its archaeological potential • area includes flatlands and highlands • land suitable for agriculture	• recent history of human rights abuses carried out against the community by private landowners (forced labour and sexual abuse of women) • colonial history of indigenous people is used as a metaphor for the injustices due to the oil industry
Socio-economic and demographic characteristics	**Institutions and legal frameworks**
• majority presence of indigenous people, although other rural communities also live in the area • extreme poverty, particularly of indigenous peoples • discrimination against women common • principal economic activity is agriculture; oil production increasingly important	• recent changes in legislation on royalty distribution and compensation • political tensions between regional and national government • social norms in the community tolerate gender-based violence • indigenous communities lack trust in national government • existence of indigenous representation system which is dysfunctional in governance and representation

Step 2: Identifying grievances, affected stakeholders, key mobilisers, and resilience factors and the resulting conflict risks

Grievances	Affected stakeholders	Key mobilisers	Resilience factors
Dissatisfaction over new legislation on royalties and compensation	• community in project area • national-level indigenous organisation	The national organisation was lobbying members of the community to take legal action	The indigenous community trusted in regional authorities. At the start, the community was able to voice its grievances and engage with the government through the national organisation
The archaeological incident was mismanaged and poorly communicated by the company	• community in project area • national-level indigenous organisation	Regional authorities used this incident to gain political leverage in their longstanding disagreement with the national government by mobilising community members against the government	The community's history of abuse created strong bonds between its members, enabling a unified position and voice
Disagreement and subsequent confrontation between the community and the national organisation	• community in project area • national-level indigenous organisation • the company	Community leaders mobilised its members to leave the national-level organisation	The community's history of abuse created strong bonds between its members, enabling a unified position and voice

Based on this information, the following conflict risks were identified:

- Potential for conflict between the company and the community (and its national representative organisation) over the amount and scope of compensation to be received over the incident.

- Conflict between the community (and its national representative organisation) and the national government over what are perceived to be disempowering measures that undermine indigenous authority. The company was perceived to be aligned with the national government.

- The compensation scheme designed by the company led to conflict and a rupture of relations between the community and the national representative organisation.

Part II: Human rights implications of conflict risks

Conflict risks	Human rights adversely impacted[59]
Potential for conflict between the company and the community (and its national representative organisation) over the amount and scope of compensation to be received over the archaeological incident	• Should the amount and scope of compensation not be satisfactory for the community and its national body with regard to the extent of the damage perceived to be caused, this could constitute a breach of their *right to remedy and right to appropriate compensation* (as a form of remedy) • The community's dissatisfaction over the company's management of the unearthed materials is underpinned by allegations that their cultural heritage was damaged, resulting in a negative impact on their *right to maintain, control, protect and develop their cultural heritage*

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59   The rights mentioned in this table refer to internationally recognised human rights enshrined in the International Bill of Human Rights and the UN Declaration on the Rights of Indigenous People.

Conflict risks	Human rights adversely impacted[59]

Conflict between the community and its national body and the national government over what are perceived to be disempowering measures that undermine the indigenous authority; the company is thus perceived to be aligned with the national government	• By not being involved throughout the process of decision-making on the scope and amount of compensation and oil royalties to be distributed, the community considered the following rights were being undermined:
	
	  - *the right to self-determination;*[60]
	
	  - *the right to participate fully in political, economic, social and cultural life;*
	
	  - *the right to participate in decision-making in matters which would affect their rights; and*
	
	  - *the right to determine and develop priorities and strategies for exercising their right to development*

Inadvertently, the compensation scheme suggested by the company led to a rupture of relations between the community and the national representative organisation	• By leaving the national-level indigenous organisation that served as their representing body, the community became unrepresented, resulting in a negative impact on their *right to representation*, and increasing the community's vulnerability considering their recent formal and legal creation (and lack of experience) following the systematic violation of their rights • The lack of representation meant an inability to participate in broader discussions with other indigenous communities, resulting in a negative impact on their *right to participate fully in political, economic, social and cultural life*

While a standard HRIA could have touched upon some of the elements presented here, the conflict analysis brings to light more nuanced impacts. For instance, identifying that the right to representation of the community was negatively affected by what became a conflict over company compensation policy would have been difficult to identify by looking solely at compensation practices, as would the fact that changes in legislation regarding distribution of oil royalties would impact rights related to self-determination and participation in public life.

Conflict-sensitivity principles checklist

This checklist can be used as a prompt for the key conflict-sensitivity principles introduced in this chapter, and builds on the checklist at the end of Chapter 2.

Conflict-sensitivity principle	Questions to ask	Tools/measures/further information
Contextual factors can increase or decrease the probability of conflict. It is essential to understand these as risk factors for conflict	• Which contextual factors help explain the causes of the conflict situation in the setting? • What existing analysis or assessments are available to help identify the relevant contextual factors?	Companies will have information useful to identify contextual factors in: • country profiles and political risk assessments; • other risk assessments; • social baseline studies; • ESHIAs; and • external human rights reports

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60   See the UN Declaration on the Rights of Indigenous Peoples, Articles 3 and 4, for full text on self-determination in relation to Indigenous Peoples.

Conflict-sensitivity principle	Questions to ask	Tools/measures/further information
A *gender-relational approach* provides important perspectives on how different stakeholders are affected differently	• How do men, women, boys and girls experience conflict and how are they impacted differently by it? • How are gender identities affected by conflict and vice versa?	Companies need to ensure that stakeholder mapping and community engagement is structured to enable perspectives from different gender identities (e.g. so that women, girls, etc. are enabled to share their perspectives) and that impact assessments capture the differentiated impacts on men and women
Grievances reveal conflict issues. Affected stakeholders are central to a conflict analysis, however, mapping should be focused on actors and mobilisers directly involved in promoting and/or mitigating conflict	• What are the main grievances and who is being affected by them? Are those grievances caused or related to the company (and/or its business relations)? • Is there potential for violence or political action on the basis of the identified grievances? • Who is likely to drive such mobilisations?	Grievances and actors'/mobilisers' positions can be derived from: • grievance mechanism and its monitoring reports, and any other complaints mechanisms; • community engagements and stakeholder mappings; • consultations with community leaders, civil society, other experts or academia; • media coverage; and • conflict monitoring systems
Resilience factors can help communities prevent or manage conflicts in a peaceful manner. Identifying resilience factors allows companies to act upon those that are more likely to support peaceful resolution of conflicts	• What factors can help those affected to better withstand the effects of the identified grievances? • Which are 'good' resilience factors and which are 'bad' ones? • How can the company help enhance the 'good' resilience factors?	Companies will have information that helps understand resilience factors from: • social baseline studies; • community engagements and stakeholder mappings; • ESHIAs; and • consultations with community leaders, legal aid organisations or community paralegals, civil society, other experts or academia
Conflict risks result from the interplay of business activities, contextual factors, grievances, and affected stakeholders (including mobilisers) They consist of the risk that companies can create or exacerbate existing conflicts through their business activities	• Is there a risk of creating conflict in the area of operations? • Are these conflicts caused or related to the company, or are there other conflicts going on that do not involve the company? • Is there a risk of making an existing conflict even worse because of business activities?	Conflict risks can be derived from: • conflict analysis or assessments; • stakeholder mapping and/or actor mapping; and • risk assessments
Conflict risks have human rights implications of their own	• Has the conflict situation led to human rights abuses in the area of operations? • Which human rights can be negatively affected by the conflict dynamics? Are these rights already being affected by other business activities? Does the company play a role (knowingly or not) in how these turn out?	Companies can understand human rights implications from: • existing HRIAs and conflict analysis or assessments; • risk assessments; and • external human rights reports and human rights watchdogs

Chapter 4

What happens now? Acting upon findings

Overview

What does acting upon findings involve?

- Effective HRDD is not just about identifying and understanding impacts, but also being prepared to act on them, including preventing or remedying adverse effects on rights.

- Sometimes this requires being innovative or prepared to do things differently.

- It also requires senior-level support and championing when it comes to more challenging or difficult decisions. Therefore, this chapter demonstrates the possibility of acting upon complex issues, and the value of doing so.

What are the different or additional considerations in CAS?

- Conflict sensitivity applies as much to the identification of risks and impacts as to the responses taken to address such a situation.

- This chapter unpacks some of the most important principles of conflict sensitivity and applies them to the integration and management of the assessment findings:

  1. Being mindful of unintended consequences

  2. Making changes and difficult decisions

  3. Understanding and using leverage

  4. Collaborating, working in partnerships and developing relationships

  5. Acting upon opportunities to have positive impacts

  6. Acting upon opportunities to address causes and consequences of conflict

  7. Considering ceasing operations or divestment if the situation is untenable

Each of these areas is explored in more detail with short illustrative case studies provided. In addition, Appendix 2 presents longer case studies. The applicability will depend on the risk or impact, as well as the operational and conflict context.

In order to draw on a breadth of best practices, the case studies do not necessarily relate to cases where companies have conducted HRIAs and acted upon their findings, but rather when they have responded to situations relevant for the conflict-sensitivity principles. The case studies also demonstrate how companies have acted on some complicated issues and scenarios, indicating what is possible when companies are prepared to think creatively, 'go further' and exercise leadership.

The chapter closes with a section on challenges companies may face when attempting to act upon findings, including issues such as responding to perceived impacts and access to remedy. It is beyond the scope of this guidance to fully consider remedy in CAS (i.e. its legal considerations), however it is important to stress the relationship between HRDD and remedy: not only in terms of processes feeding into and informing each other, but where there are legacy issues or actual impacts, ensuring appropriate redress occurs.

Being mindful of unintended consequences

Companies can unintentionally aggravate existing tensions or create new ones, especially when the underlying tensions, relationships, history or power balances (or imbalances) in an area are not well understood. As the real-life examples show (see Table 8) – whether a company, humanitarian organisation, or government – good intentions are sometimes not enough, and it is important to anticipate issues to the extent possible.

Table 8: Good intentions gone wrong – Examples of unintended negative impacts of company actions on other stakeholders

Conflict and/or human rights risk and impacts identified	Response	Negative unintended consequences
Women's livelihoods were affected by the location of the project. National law does not allow women to work without the permission of the husband.	In a commitment to women's economic empowerment, the company created a programme with job opportunities exclusively for women, such as in catering and kitchens, cleaning and laundry services.	By not involving husbands in the discussions, the company inadvertently caused marital disputes, including a reported case of gender-based violence. In addition, a local women's rights organisation accused the company of reproducing the traditional gender roles that sustain gender imbalance, and even gender-based violence. As a result, many women chose not to participate in the programme.
In a country where freedom of association is not recognised by law, workers protesting for better working conditions met with a violent response from local police; some workers were injured and others imprisoned.	To fill the gap created by the lack of legislation, the company created internal 'workers committees' to create a space for addressing workers' grievances.	When the committees became public knowledge, police identified the more outspoken members, and harassed and pressured them to stop participating. The national labour authorities also asked the company to explain the situation, adding strain on an already fragile relationship with the government.
A Resettlement Action Plan (RAP) triggered a conflict around contested leadership within a community (traditional chief no longer being recognised by the community and emergence of a new leader); this halted the compensation activities due to a lack of agreement within the community.	As part of the RAP, the company and the national government created a committee implementing and overlooking the process, which was led by a community member with participation from different parts of the community.	The RAP implementing committee acquired power quickly, creating a parallel leadership structure within the community. This created further conflicts between the chief contestants and the director of the committee.

These examples of unintended consequences are not intended to detract from the necessity of acting upon impacts, or applying creative thinking to complex issues, but rather to fully consider how approaches need to be conflict sensitive.

Making changes and/or difficult decisions

The volatility of CAS requires companies to be more flexible and able to adapt to changing dynamics. This can mean making difficult or unpopular decisions, particularly with operational and financial teams who

many times are focused on project timelines and cost efficiencies in the immediate term. Case study 2 highlights the importance and need for including these considerations as early on as possible, possibly even during the pre-investment phase (see also the accompanying flashpoint on conflict sensitivity and the pre-investment stage).[61]

When conflicts have already erupted and operations have come to a halt, companies need to 'think big' and innovatively. This may mean ensuring key actors – especially sceptics – are on board and supportive, potentially increasing costs, and having a higher profile and exposure in the media. The following case study is perhaps one of the best examples of a company applying conflict sensitivity to inform decision-making at the operational level and as early as possible.

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Case study 2: Conducting social and conflict evaluations to inform potential site locations

At a corporate level, an oil company designed an evaluation procedure to identify infrastructure locations (e.g. major installations, well pads, on-shore pipeline routs) that would cause the least social impacts and prevent conflicts with communities. Three screening criteria were used: potential interactions between the communities and future project facilities; sensitivity of the receiving environment; and the capacity of the community to accommodate to changes driven by project facilities. These criteria were then divided into further subcategories and subsequently ranked.

The procedure was piloted in two locations, one a post-conflict situation, and the other affected by internal armed conflict. As a result, "it was possible to demonstrate social impacts [were] leading to more significant social disruption and the risk of social disarticulation linked with certain sites compared to others".[62] Recommendations focused on "impact reduction most notably minimizing physical and economic displacement, reducing the risks of generating conflict (...), reducing impacts on social organization and social security of the communities, and the minimization of cumulative impacts".[63] As a result, the company modified the location of a central processing facility and adjusted the placement of several well pads in one project. In the other case, the screening informed the location of the gas plant and the design of the central processing facility and pipeline corridor.

This case shows that by spending more time and resources to better understand an operating environment affected by conflict early on, it is possible to anticipate risks and prevent conflicts. In both cases, the timing was right as it was still part of the project design phase. Normally companies either wait or are asked to wait by regulating bodies until ESHIAs to assess similar criteria, which can be too late for any changes to be considered at that point, as projects are already designed. As the company acknowledges, it was not an easy process to negotiate internally, but in the end all parties recognised its value. "Although the recommendations could not always be accepted as made, the reasoning behind the recommendations and alternative options for adjustment that still respected the social screening criteria and analysis were quickly integrated into the discussion. Most well pad sites were adjusted as a result of the social screening and the multidisciplinary discussions."[64]

Furthermore, "The outcomes of the exercises have reinforced the importance of integrating social and environmental expertise very early in the design process and allocating sufficient time and resources for this kind of screening exercise. In the exploration and production branch, there is current consideration

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61   Available at http://www.international-alert.org/publications/human-rights-due-diligence-conflict-affected-settings

62   J.K. Lennock, Evaluating possible site locations from a social perspective: Reducing risks and impacts, Paper presented at Society of Petroleum Engineers International Conference and Exhibition on Health, Safety, Security, Environment and Social Responsibility, Stavanger, Norway, 11–13 April 2016

63   Ibid.

64   Ibid.

of the option to develop an internal standard on the routine screening of potential sites against social and environmental criteria prior to final selection."[65]
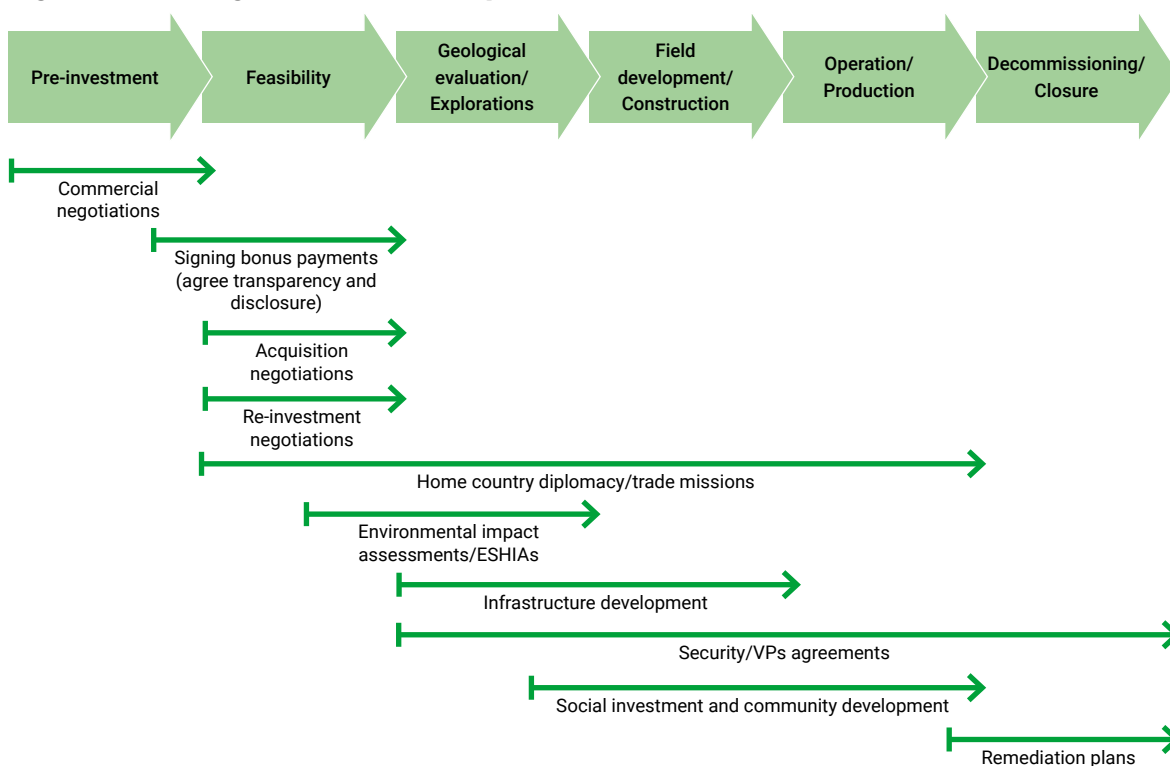
In another, and more radical, example (only feasible under certain circumstances) a Colombian energy company indefinitely suspended the construction of a hydropower plant due to threats of extortion by an armed group. Recognising that if the project proceeded, the risk of extortion would only get worse – with contractors disproportionately suffering the consequences – the company decided to postpone the construction for eight years, after many difficult internal conversations.

Understanding and using leverage

Given the governance challenges in CAS, companies will need to consider how to use their leverage (i.e. ability to effect change) with governments.[66] As leverage can also be negative and undermine good governance and human rights (for example, through bribery), it is important to be clear this is about *positive* leverage.

Civil society and business often have differing interpretations of how much leverage companies have and of when, i.e. at what stage in a project cycle, businesses have more or less leverage. Companies often assume that they have less leverage, and civil society often assume more. Civil society also tends to see the issues and timing of leverage as a constant and consistent entity. In practice, leverage is finite and time-bound, with more at certain moments in the project lifecycle, depending on the issue. It is also important to be realistic about the level at which leverage can effect change; it is easier at the project or operational level, unless the project is of national interest. Figure 5 illustrates some of the opportunities for leverage at points in the project lifecycle.

Figure 5: Leverage across the lifecycle

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65   Ibid.

66   There are other relationships in which companies may want to exercise leverage, such as joint venture partners or other business relationships, but given the governance challenges faced in CAS, this guidance focuses on leverage with governments.

More leverage will exist before an investment decision is made, as it is harder to walk away after the investment of significant resources and finalisation of commercial agreements. Particularly in CAS, governments are often seeking the capital, market credibility and political legitimacy, and as a result they may be more predisposed to discussing human rights if a company indicates it is a priority for them. It is also about *how* issues are raised. Keeping language neutral is important: if an issue is sensitive, it may be about being clear that the company is not asking the government to agree or disagree, only stating what is done in adherence to international standards or corporate values – and that any follow up on the matter is done from this perspective. Additional leverage can also be built, often through regional associations, chambers of commerce or other collaborations – such as working with other companies, home state governments and/or civil society in support and implementation of common purposes, for example, human rights national action plans.

Companies can be concerned that if they exert too much leverage, or at the wrong moment, the negotiation may fall through, or they may lose a license. There are mixed views on how likely this is, with some business leaders consulted indicating that discussing sensitive issues may delay processes, but is unlikely to derail them entirely. Indeed, some point to the value of the trade-off between speed and long-term success. What issues can be raised, and how they are framed, also depends on the context.

What is agreed, particularly prior to investment, should be formally captured – while also not assuming that including considerations in the contract or licensing agreement will be sufficient. Instead, formal agreements should be approached as the platform for ongoing discussion and dialogue throughout the business relationship and for when human rights issues become more material. To be taken seriously when it comes to leverage, a company also has to be able to demonstrate they are indeed willing to rethink the opportunity if certain conditions are not met. Further, a company that has demonstrated its willingness to put ethical issues above commercial considerations has greater influence when such issues are at stake.

Building the business case

Although there may be concerns that raising sensitive issues and having difficult conversations delay processes, there are long-term benefits to doing so. It can help lessen the risks of disputes between parties at later stages in the project, or perceptions that the company was receiving undue benefit under certain conditions – particularly if there is a political change or transition. This can be hard to directly attribute to any action or inaction, but certainly establishing a strong foundation is advisable, particularly in volatile contexts.

For example, following regime change in a particular country, an oil company found that it no longer had community support, and protests about their facility were escalating into violence – whereas before the regime change the community had seemingly been behind the project. Although the triggers for the change remained unclear, the result was that the company had to move the facility at significant cost to budgets and project timelines.

This case is a good example of relying too much on leverage with the government and not enough on relations with the community, pointing to the additional conclusion that leverage can also be misused or 'misplaced'.

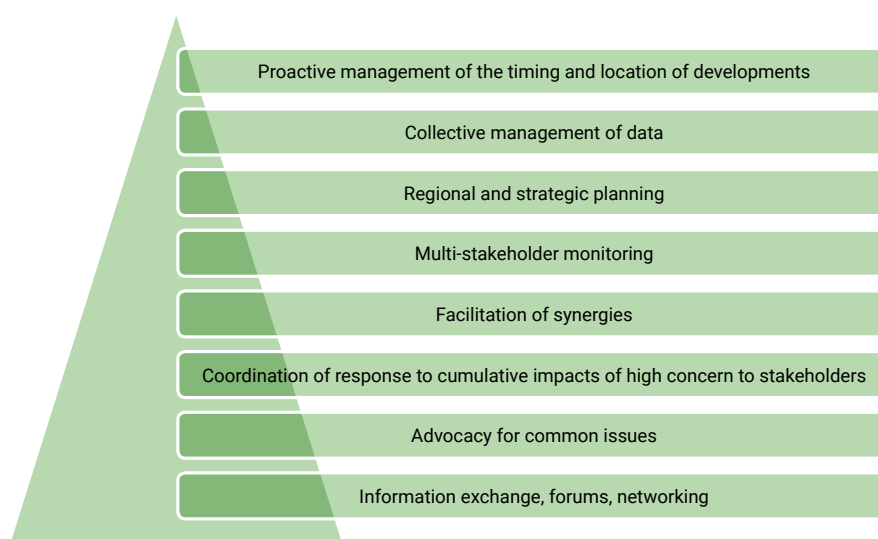### Collaborating with national actors to create sectoral norms

A company in Ghana took a leadership role in working with the national Chamber of Mines to develop a memorandum of understanding for security provided by the army. As a member of the Voluntary Principles Initiative, and one of the more established mining companies in the country, the company realised it had to do so. Additionally, it recognised the opportunity to build on efforts by individual champions within the army, and to minimise the risk that with high levels of rotation, this would be lost. The process involved working in close collaboration with other members of the chamber so that the MOU could become chamber policy, and therefore be applicable to all mining companies for any of their engagements with the army. It is now being used as a model by NGOs to establish a similar agreement for oil companies in the country.

Collaborations, partnerships, and relationships

The most complex problems driving conflict and generating adverse impacts are often hard for any one actor to address alone. If the right relationships are established, and mature enough, collaboration and partnerships can improve outcomes and efficiencies. Hence, "the success of collaborative efforts depends on the maturity of collaborative relationships and it is therefore important to progressively develop partnerships".[67]

The cumulative impacts theory (impacts that result from the successive, incremental and/or combined effects of an action, project, or activity when added to other existing, planned and/or reasonably anticipated future ones),[68] offers some ideas on collaborative management. Figure 6 presents different strategies companies can use to avoid, mitigate or enhance cumulative impacts, increasing in complexity, effort and coordination as companies move up the scale. These examples, though far from exhaustive, indicate some of the different strategies companies can use for collaboration on addressing conflict risks.

Figure 6: Examples of collaborative management efforts for cumulative impacts

Proactive management of the timing and location of developments

Collective management of data

Regional and strategic planning

Multi-stakeholder monitoring

Facilitation of synergies

Coordination of response to cumulative impacts of high concern to stakeholders

Advocacy for common issues

Information exchange, forums, networking

Source: D. Brereton and D. Franks, Cumulative social impacts, in F. Vanclay and AM Esteves (eds), New directions in social impact assessment, London: Edward Elgar Publishing, 2011

67   D. Brereton and D. Franks, Cumulative social impacts, in F. Vanclay and AM Esteves (eds), New directions in social impact assessment, London: Edward Elgar Publishing, 2011, p.218

68   As defined in International Finance Corporation (IFC), Cumulative impact assessment and management: Guidance for the private sector in emerging markets, Washington DC: IFC, 2013, p.19

Collaboration is also useful for when companies lack control over a situation, need to share political and economic costs or need better bargaining power, or where it didn't necessarily cause or contribute to adverse impacts yet is forced by the circumstances to address them. This is particularly relevant for dealing with root causes of conflicts or legacies (from other companies and/or the state). Drawing further parallels with cumulative impacts, "there may be greater opportunities to avoid, mitigate or enhance cumulative impacts by focusing management on past, existing or future developments that may be the responsibility of other parties".[69]

Acting upon opportunities to have positive impacts

Human rights specialists advise against identifying opportunities for positive contributions during the assessment process because of the risk that they may be used to offset harm and that this blurs the lines between government duties and company responsibilities, and can draw attention away from the need for prevention and remedy.[70] However, this creates dilemmas for peacebuilding or development practitioners, as in CAS there is an immense opportunity to leverage the HRDD process for conflict prevention and contributions to peace and stability at a local and regional level. For this reason, the methodology in this guidance deliberately emphasises resilience factors and positive impacts.

There is also a practical dilemma. While the UNGPs emphasise addressing adverse impacts first and any positive contributions to be considered separately, HRIA processes can be very time-consuming and labour-intensive to the degree that there is little appetite for companies to undergo a separate process afterwards. The question of "when else?" becomes extremely relevant.

Being transparent in decision-making processes and rationale for leveraging positive benefits, clarifying that the intent is not to offset, or circumvent responsibilities, can help address the dilemmas. The first step is to explicitly address this rationale and expectation in companies' systems (for instance, in human rights due diligence policies and procedures, codes of conduct, social or community investment procedures, and risk and impact mitigation standards). Awareness raising is also required as company staff need to understand that social investment and any activity aimed at achieving what some still call "community goodwill" does not equal compensation or access to remedy. Including an independent third party, preferably an NGO, in the process can help ensure that there is no reversion to this mentality.

Perspectives from the field: Responding to the issue of cracked houses

In consultations Alert held in South Africa,[71] civil society members suggested that mining companies help to repair cracks in houses, a common problem in the communities near mines where the quality of housing is poor. Participants recognised that the cracks may not have been caused by company activities, but emphasised it would be a welcome "goodwill gesture" to support the repairs, and possibly employ youth in the communities to undertake them. Civil society also stressed the significant difference in living conditions between neighbouring communities and mine sites, and the responsibility the mines bore "to do something more" because of this.

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69   D. Brereton and D. Franks, 2011, Op. cit., p.212

70   Danish Institute for Human Rights, Human rights impact assessment guidance and toolbox, Copenhagen: Danish Institute for Human Rights, 2016, pp.67–68

71   Consultations held in Johannesburg, 30 August–1 September 2016

Companies however expressed the concern that if they were to repair the cracks, it would be interpreted as responding to negative impacts they had not caused or contributed to, and therefore setting a precedent and expectation. While from the civil society perspective, communities generally appreciate when companies are "doing something more", it is important to recognise that from the company perspective, it is often more complicated and not as straightforward as civil society may expect. This speaks to the importance of being transparent about the decision-making process and rationale for leveraging positive benefits, and clarifying that the company does not consider this to be off-setting negative impacts.

Acting upon the causes and consequences of conflict

Identifying opportunities for positive contributions thus becomes a good segue for businesses operating in CAS to not only advance human rights and build a more robust human rights strategy,[72] but also identify ways to contribute to peace and stability. This is because there is also a conflict prevention and management dimension when addressing the causes and consequences of conflict, whether the conflict is linked to the company's operations or broader dynamics.

The examples below show companies acting upon causes and consequences of conflicts, specifically by supporting *institutional strengthening, addressing land disputes, and working with those affected by conflict.* These are only a few of the areas where companies have taken a proactive role, whether as part of HRDD processes or risk mitigation and management in CAS.

Institutional strengthening

Weak or inadequate governance is one of the main causes underlying all four types of CAS, as highlighted in all the consultations for the guidance, across all geographies. There was also a call for companies to contribute to the strengthening of state capacity; however, there are important nuances to consider. For instance, some civil society organisations do not think companies should do this as it risks leaving community voices out and narrows the role for civil society.[73] While in some cases in CAS, companies may have no choice but to fulfil some state responsibilities, this can have the perverse effect of further undermining the state. In such cases, the best solution is to try to bring in and work alongside the authorities, supporting them where needed.

Case study 3: Strengthening justice, law and order

A company in an Asia-Pacific country was concerned about the dynamic between in-migration related to the development of a mining project, high unemployment, population growth and an escalation in crime. This was also having an impact on the community's livelihoods as many people – particularly women – felt too unsafe to leave accommodation compounds. The company was concerned that the decline in law and order increased their vulnerability to other problems – such as criminality, fraud and corruption. The state authorities were largely absent in the region.

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72   Business for Social Responsibility, Conducting an effective human rights impact assessment, 2013, p.13, https://www.bsr.org/reports/BSR_Human_Rights_Impact_Assessments.pdf

73   Perceptions varied according to our consultations: while in Colombia, the narrative shared by companies and considerable sectors within civil society is that companies should contribute to institutional strengthening, while others in civil society in South Africa thought this was a role for civil society.

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Recognising the issues had to be addressed, but were under the state's remit, the company worked with district and provincial authorities, central government and civil society to develop a plan for public-sector spending prioritising law and order. The plan was financed using a tax credit scheme which allowed the local government to retain a portion of the company's taxable income for local projects. The scheme also meant that the company could undertake the infrastructure projects itself, rather than bringing in an external actor, saving the government costs.

Projects aimed to strengthen human resources, infrastructure, equipment and training for the legal and justice system, improve coordination between police, courts and correctional services, enhance local capacity to deal with law and justice, and reconnect police and government services with communities. This included support for strengthening existing court systems as well as training village board magistrates on use of traditional methods dispute resolution.

Coordination between the company, the government, the justice sector, the national police and the community reduced duplication, streamlined funding objectives, and allowed for better monitoring and evaluation of programme outcomes. The company also set up a steering committee of civil society organisations, companies and government representatives to oversee the development and implementation of the plans.

The project supported civil society groups that helped to defuse tribal conflict and violence in the area. It also established a Family and Sexual Violence Unit and a specialised police unit trained to respond to sexual and gender-based violence.

Case study 4: Helping to build skills on project design and management

A company in Colombia identified that the regional authorities were unable to deliver basic services because they lacked project design and implementation skills – rather than lacking the resources (given substantial royalty payments). To enhance their capacities, the company designed a programme to provide trainings and technical assistance on issues such as planning, implementation, monitoring and oversight and accountability of public projects and investments. Through its foundation, the company invested close to US$1,000,000 in the programme and trained over 300 public officials on planning and monitoring of projects and public resources. The company worked with the foundation, donors, and a UN agency in programme delivery and in pursuit of the mutual goals of improving government performance, transparency and accountability.

Case study 5: Linking with local development plans

Communities with grievances about revenue distribution from extractive operations were opposing a company's operations in Chile. They expected the company to ensure that tax and royalty revenues were allocated to the zones in which the operations were located, even though the state held responsibility for revenue distribution. In response, the company initiated a public-private partnership focused on developing an urban development plan for the local municipality. The development of the plan involved intensive dialogue and consultations with community organisations to ensure that their interests were reflected. Although this initiative went beyond the bounds of the project, the company recognised that managing grievances that were largely beyond its control meant working collaboratively on issues beyond the project itself.

In another example, a company in Venezuela designed a methodology for working with local authorities and communities to build a common vision for local development. The company created a territorial development department to move away from a philanthropy approach. The methodology drew on participatory planning processes, integrating the authorities' local development plans and projects with the company's programmes and resources and communities' needs. The resulting development plans drove efficiencies and had a greater impact on local development, drawing from the needs and interests of all stakeholders.

Contributing to address root causes of land disputes

Land is often a key conflict issue, especially in the extractives and agribusiness sectors.[74] Land tenure systems and land titling are among the most problematic areas. Many companies have started to address this issue by working with the authorities to support land titling for communities. While there are cases of extractives doing this (for example, a mining company in Australia supporting land titling of indigenous communities in their areas of operation), it is mainly agribusiness companies leading the efforts.

Case study 6: Agribusiness in Gabon

A large agribusiness company in Gabon entered into a public-private partnership with the government, establishing village cooperatives for smallholder staple crops and palm production, and in doing so, helped the government reduce its 60% reliance on imported food.[75] The government identifies, allocates and transfers parcels of land (along with their respective land titles) to the cooperatives, which have been screened to ensure they meet environmental and social requirements for plantation development. The company then provides a support package, including training and technical assistance for modernising methods and improving yields of palm plantations, introducing cash and food crops like cassava, tomatoes, banana, and pepper, and facilitating access to markets. Each cooperative joining the project must adhere to the company's Sustainable Palm Oil Policy.[76] This project has allowed more than 6,000 smallholders to improve their livelihoods and become landowners for the first time.[77]

Working with those affected by conflict

There are abundant examples of more traditional approaches, for instance, companies supporting the reintegration of ex-combatants. Other companies have chosen different avenues, depending on how the conflict manifests in their areas of operation.

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74   A. Iff and U. Joras, Agribusiness: Risks and impacts in conflict-affected areas, London: International Alert, 2015a, p.2, http://www.international-alert.org/publications/agribusiness-risks-and-impacts-conflict-affected-areas

75   Olam, Building a sustainable palm oil business, Shanghai: Olam, 2016, p.9, http://49tmko49h46b4e0czy3rlqaye1b.wpengine.netdna-cdn.com/wp-content/uploads/2016/12/Building-a-sustainable-Palm-Oil-business-Web-version-with-links.pdf

76   Ibid.

77   Ibid., p.3

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Case study 7: Youth recruitment to armed groups

An energy company in Colombia partnered with a foundation to identify risks to communities stemming from the armed conflict, and how the company could act on such findings. Two main risks were identified: contamination by antipersonnel mines and forced recruitment of minors by armed groups in the region. The company decided to focus on the second issue, and thus designed with the foundation a plan based on education and permanent community outreach addressing the risk of forced recruitment of minors.

The project had two phases. In the first phase, it focused on increasing awareness in at-risk communities of the existing government mechanisms available for them. This also required working with the local authorities to ensure they had the capacity and resources to respond, and that there was institutional clarity on roles and responsibilities. Through the partner, the company supported dialogue between the authorities and the community to explore concrete actions such as supporting community and/or family mediation centres, cultural centres, and other institutions working with at-risk youth.

The second phase focused on an educational awareness-raising programme with youth groups and teachers in schools. Teachers were trained on supporting at-risk youth, identifying cases, and working with the relevant institutions. Cultural and sports activities were also used to help prevent recruitment.

Although it was difficult to establish causation, security improved in the area of operations in correlation to the programme. The company hypothesised that this was because fewer young men and women were engaging with armed groups, and in the cases of those who were engaging, the programme had still deterred them from violent actions against the company. In addition, the participating youth organisations started to take ownership of further implementation of the programme. The local authorities were also better aligned and in a stronger position to fulfil their role to protect.

Case study 8: Providing shelter for refugees

In another case**,** a company foundation and the UN Refugee Agency (UNHCR) established a strategic partnership to provide shelter, care, education and energy to refugees and their host communities in 13 countries across Africa, Asia and the Middle East.

The programme takes a tripartite approach:

- It provides large-scale cash and in-kind donations (to the value of $198 million since its inception).
- It leverages company design and technical expertise to develop safer and stronger shelters for refugees and internally displaced people.
- It undertakes a cause-related marketing campaign to raise money and awareness with employees and customer base (to the value of an additional $30 million).

Additionally, the 'Better Shelter' design was developed in a collaboration between the company foundation, UNHCR and the Better Shelter social enterprise, and tested by refugees during the prototype phase. The resulting flat-pack structure (designed to be built quickly), has been rolled out for use by displaced families in Greece, Iraq, Djibouti, Chad and Serbia. In 2016, it won both the architectural category and overall prize for the Beazley Designs of the Year, an annual programme celebrating design that "promotes or delivers change, enables access, extends design practice or captures the spirit of the year".

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In addition, the company, which is a homeware retailer, donated €1 to UNHCR's operations for every LED lightbulb sold at participating stores during a certain time period. The donated funds directly contributed to UNHCR's 'Brighter Lives for Refugees' programme to bring sustainable lighting to improve safety and security, quality of life, and access to education and income-generating activities in refugee camps.

Although these projects involved the company's foundation, they deliberately draw on the core competencies of the corporate group as well as its customer base, and complements UNHCR's ability to shape policy and implement programmes at scale. It also demonstrates how new global dynamics call for companies to think about how to respond and contribute in different and evolving conflict contexts. For instance, what can and should the role of companies be when dealing with the global refugee crisis reaching 21.3 million in 2015?[78] This case study demonstrates ways of contributing, raising wider questions about the roles and responsibilities of business in supporting humanitarian responses.

Divesting or ending business relationships

When conducting HRDD, companies are expected to assess and address impacts associated with business partners' activities. If all alternatives have been exhausted and the impact remains unaddressed, companies are encouraged to consider the option of disengaging. Guidance is available on the decision-making process of whether to disengage, and consideration of factors such as severity of the impact, previous attempts at mitigation, and whether it is a crucial relationship, among others.[79]

In practice, the costs, logistics and practicalities of ending a business relationship are enough to de-incentivise companies from even considering it. High-risk appetites mean companies – as well as investors – rarely make these decisions unless the situation leaves no other alternatives, and critical action is required due to the degree of consequences and severity of impacts. For example, in the Sudan a strong civil society lobby argued that Talisman royalties to the Sudanese government were exacerbating the conflict. A class-action lawsuit followed, charging the company with aiding the government in the commission of genocide, war crimes and crimes against humanity. Talisman sold its shares in 2003 – five years after it entered the country and despite five billion barrels of proven oil reserves.

From a conflict-sensitive approach, this question is even more relevant as there are other dimensions to consider. The relation between the conflict dynamics and the business partner should also be examined. If the adverse impact is creating or exacerbating conflicts with stakeholders, or exacerbating conflict dynamics more broadly, this should be prioritised because of the consequences it can have (a disruption in operations, a damaged relationship with key stakeholders or an escalation into violence). For example, if a contractor is paying criminal groups, or if criminal groups have gained control of allocation of employment or contract opportunities (as commonly occurs in armed conflict or violence), this exacerbates criminality in the area and denies community members employment opportunities. This in turn can lead to protests, blockages or destruction of equipment against the hiring company (not necessarily the contractor).

In CAS, companies also need to be very careful not to create risks of complicity with gross human rights violations committed by business partners. This is particularly relevant in armed conflict or violence, where violations of rights or involvement in conflict dynamics can lead to breaches of international law

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78   Figures at a glance, UNHCR, http://www.unhcr.org/uk/figures-at-a-glance.html, accessed 7 April 2017

79   See United Nations, Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' framework, New York: United Nations, 2011; and Organisation for Economic Co-operation and Development (OECD), OECD guidelines for multinational enterprises, Paris: OECD Publishing, 2011

(and sometimes even war crimes), creating legal liabilities along with public allegations of complicity. This is again illustrated in the example of Talisman in the Sudan: although eventually the case was dismissed, Talisman fought an expensive and protracted nine-year legal battle to demonstrate that the company was not complicit in government human rights abuses against civilians in the concession.

It is expected that more severe impacts, as commonly found in CAS, will be dealt with more quickly, particularly when rights have been repeatedly violated or when continued engagement risks exacerbating the adverse impact.[80] Conflict dynamics should also trigger a more expeditious and robust response. For example, if the conflict analysis indicates a high likelihood of key mobilisers resorting to violence if the impact isn't addressed, this should be reason enough to 'fast track' a discussion contemplating disengagement.

Conflict sensitivity also calls upon considering how disengagement can have adverse impacts or unintended consequences. Companies are thus encouraged to think about workers' and community livelihoods, including existing commitments that may not be honoured by the succeeding company; nor may the succeeding company have the same commitment to human rights and conflict sensitivity. This however should not be used as an excuse "to justify a self-serving decision (not) to disengage".[81]

Ideally, companies should consider divestment as a proactive decision rather than when the situation has deteriorated into one of conflict and human rights abuses – while recognising that to date most cases have been reactive in nature. Additionally, affected stakeholders should be part of the decision-making process when considering disengagement. However, there are practical questions at stake and not enough experiences to draw lessons from. For example, how could this take place? In cases of severe impacts, or where legal processes are triggered, can information be publicly shared? Besides those directly affected, who else needs to be involved (is it easier to involve workers, but less easy to involve communities)? Can bringing in others fuel or create conflicts? Will the post-divestment scenario be better or worse from a human rights and conflict perspective?

These are questions aimed at 'opening up' the decision-making process, and for companies to consider in addressing expectations of participation, transparency and credibility.

Some final considerations

There are some final considerations to help in acting upon conflict risks and human rights impacts.

Do what works best practically
While guidance and tools are available, ultimately it is up to the company to adapt them and develop ownership.

Create the space internally
Often companies are eager to create plans, standards and procedures, which is to be encouraged, but space is also needed to discuss, agree and monitor issues, as companies frequently lack the time and space to bring all relevant functions to the table, unless it is deliberately planned.

Some companies have integrated such conversations to other existing spaces, at the risk of deprioritising these issues. Others have created cross-functional committees for social or human rights issues. For example, an oil company in Colombia formed a human rights committee to ensure commitments on

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80　　Centre for Research on Multinational Corporations (SOMO), Should I stay or should I go? Exploring the role of disengagement in human rights due diligence, SOMO discussion paper, Amsterdam: SOMO, 2016, p.5, https://www.somo.nl/should-i-stay-or-should-i-go-2

81　　Ibid., p.6

human rights and the Global Compact principles are discussed and achieved. Legal, community, security, supply chain, communications and operations functions participate, as well as key senior management, with the responsibility of overseeing the company's 'Tactical Plan on Human Rights Due Diligence' and meeting its compliance indicators. The committee meets monthly and produces a confidential report identifying potential human rights impacts and monitoring the response to any incidents.

In a similar approach, an oil joint venture in Colombia created a committee to monitor social and human rights risks and impacts in a very complex environment (social unrest combined with the presence of criminal organisations). After a risk and impact assessment using International Alert's original *Conflict-sensitive business practice: Guidance for extractive industries*,[82] the committee endeavoured to understand how the risks and impacts connected to broader conflict dynamics. They convened all risk managers and other relevant functions every three months to monitor progress against activities, including whether the actions were decreasing (or increasing) the level of risk or severity of the impacts.

Other companies have found different ways of creating ownership of the process, mainly by creating their own approach and systems[83] or by developing specific HRIA procedures that outline principles, actions and roles of those involved. There are many other examples of companies doing this, and it is slowly becoming a shared practice in the extractives sector and beyond.[84]

What's in a name?
When integrating conflict risks and human rights impacts into company systems, some companies have turned human rights impacts into *risks to the business and stakeholders* – as this allows other company staff to understand and own the impact management. While some human rights experts stress the importance of using precise terminology so that actors cannot avoid their human rights responsibilities, some practitioners take a more pragmatic understanding. This is in recognition that some companies (especially, but not limited to, those who are newer to the conversation or organisational culture) revert to 'looping back' impacts as risks to the company as well as risks to rights holders and others. However, companies should not use this as a way to only address the risks to their business. This is first and foremost about the risks to others. Those functions responsible for leading HRDD should be clear and emphatic to others within the company about this.

In the example of a mining company helping to strengthen law and order (see Case study 3), if the company had not looped back impacts associated to in-migration of workers as a risk to the company, perhaps senior management would not have been supportive of going beyond to promote the development and implementation of the law-and-order plan. The same could be said for the examples where companies took it upon themselves to help authorities with land titling for communities: had it not been for the high level of conflict risks associated with land, combined with the weakness of institutions in this matter, companies most likely would not have undertaken actions contributing to addressing land tenure.

82   International Alert, 2005, Op. cit.

83   For instance, Nestlé developed an eight-pillar HRDD programme, covering the following issues: 1) integrating human rights into new and existing policies; 2) engaging with stakeholders on a wide range of issues; 3) training employees on human rights and developing their capacity on human rights; 4) evaluating risk assessments across its activities; 5) assessing human rights impacts in high-risk environments; 6) coordinating human rights activities through the Nestlé Human Rights Working Group; 7) partnering with leading organisations to implement its human rights activities; and 8) monitoring and reporting on its performance. In: Nestlé and the Danish Institute for Human Rights, Talking the human rights walk: Nestlé's experience assessing human rights impacts in its business activities, Copenhagen: DIHR, 2013, p.11, http://www.nestle.com/asset-library/documents/library/documents/corporate_social_responsibility/nestle-hria-white-paper.pdf

84   Ibid. p.14

Challenges for acting upon findings

While there are numerous challenges that can arise when acting upon findings, this section focuses on those related to perceived impacts, incentives for collaboration and access to remedy.

Responding to perceived impacts

This is especially pertinent to environmental issues, where a community may perceive impacts of climate change, or broader environmental degradation, as directly linked to industry presence even if no direct correlation can be established. If the company does not respond to this perception, or only provides a highly technical response, communities are likely to develop their own alternative narratives. Particularly in areas of social unrest, these narratives are vulnerable to co-option by conflict mobilisers. Participatory monitoring, coupled with frequent and transparent communication, can help to address the issue.

Multi-stakeholder collaboration

While there is broad recognition of the mutual gains of collaboration, in practice it doesn't happen as frequently as it could due to certain challenges and barriers, outlined below.

Challenge	Considerations and incentives
Commercial disincentives: Collaborating with other companies means working with competitors, which creates the fear of losing competitive advantage and falling foul of anti-trust laws. While this should not be an impediment for collaboration on shared social, environmental or human rights issues, it sometimes calls for a cultural shift or change in mindset – as well as sign-off from functions such as legal or senior management.	• Involve and consult with legal teams as soon as possible to address any concerns (including anti-trust) upfront. Ensure that agendas and minutes of any project meetings are maintained for transparency and to meet anti-trust requirements. • Include sufficient time for relationship-building into the planning process. • Engage with/participate in peer-to-peer forums and platforms, for example, those organised by industry associations or chambers of commerce. These create safe spaces to share experiences, without commercial concerns.
Reputation: Participants may have reputational concerns, especially if involvement is considered a risky decision or if endorsement took significant internal influencing. Particularly for civil society actors, there may be concerns about maintaining neutrality, or being perceived as neutral, if collaborating with companies – especially if there is historically a high level of distrust or legacy issues.	• Be sensitive to reputational concerns. For civil society, this may mean keeping a visibly independent presence even on practical and logistical matters, such as arranging different travel logistics when conducting joint work. • Aim for maximum transparency in MOUs, project documentation and reports; ensure clarity in accountabilities (e.g. companies to shareholders, civil society to communities). Consider restitutions and other public feedback mechanisms. • Establish indicators of impact (not just process) so that the positive impacts of collaboration can be effectively demonstrated.
Pace of collaboration: Multi-stakeholder initiatives can progress at a slower pace than individually owned ones – as it takes time in the initial stages to build relationships, agree on parameters, establish clear roles and objectives, and build consensus.	• Clarify the business case: acknowledge that while pace can be slow, a coordinated effort creates efficiencies by avoiding duplicating efforts (for example, companies working together to provide training to public security on VPs, rather than all undertaking individual training efforts). • Ensure there is an 'owner' of the collaboration to serve as a main point of contact and to keep the momentum going.

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Remedy in CAS

Given the depth and breadth of guidance available on judicial and non-judicial remedy, this guidance does not aim to repeat it. However, there are some important considerations in relation to the barriers and challenges for remedy in CAS.

Challenge	Considerations and incentives
Victims of human rights abuses in CAS face a dilemma when it comes to redress. There is not much widely available evidence of outcomes of non-judicial remedy, particularly national or international mechanisms (Organisation for Economic Co-operation and Development (OECD) National Contact Points, International Finance Corporation (IFC) Ombudsman), and these are also limited in scope. This generates a lack of trust and incentivises victims to seek remedy through judicial means; yet in CAS, access to efficient, fair and transparent judicial remedy is usually limited, and such processes can take many years in any jurisdiction, even when they may be fairer and more transparent.	First and foremost, companies should provide timely remedy when it is their responsibility, or use their influence to secure it for victims if it is the responsibility of others such as partner firms or governments. In addition, they can consider ways of strengthening systems for judicial remedy, and the role for companies as well as policy-makers and practitioners. There are a few examples of companies supporting judicial strengthening through contributions to judicial reform and strengthening initiatives, and using their influence with government authorities. This aligns with thought leadership on the subject. A 2016 Human Rights Council resolution on business and human rights and access to remedy included a call to business to improve access. Actors such as the Global Business Initiative also have indicated that business has a role in "encouraging States to lower barriers to accessing remedy through reforms."[85]
There are likely to be expectations that the company will provide remedy for victims of conflict, especially in contexts of armed conflict or a post-conflict/transition to democracy. Victims of human rights violations will see the company as more responsive, and if the company is seen to be profiting in a conflict environment, expect them to assume some obligation of remedy – regardless of whether they caused or contributed to or are linked to the violation.	In addition to judicial strengthening through processes outlined above, companies can also consider measures that support the victims without interfering with judicial processes or suggesting complicity. For example, the company can consider creating specific projects to address specific populations (whether it is displaced populations, ex-combatants, child soldiers, etc.) or contribute to funds or government initiatives aimed at them.
Concerns that by building the capacity of citizens to engage in remedy, they are more likely to put in unfounded claims against the company.	The reality is that when communities don't have the capacity to engage, they are more vulnerable to manipulation, for example, by unprincipled legal professionals who convince them to put in unfounded claims for their own self gain. Therefore, it is in the company's interests to support capacity building.

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85   R. Lindsay, Access to remedy: the new frontier? Client briefing, Clifford Chance, March 2017, p.2, https://www.cliffordchance.com/briefings/2017/03/access_to_remedythenextfrontier.html

Conflict–sensitivity principles checklist

This checklist can be used as a prompt for the key conflict-sensitivity principles introduced in this chapter, and builds on similar tables in previous chapters.

Conflict-sensitivity principle	Questions to ask	Tools/measures/further information
The importance of recognising unintended consequences	• Who are the winners and losers in the situation? • Who has power officially and unofficially? • Are these factors affecting others or creating grievances elsewhere? • Who is more vulnerable to conflict or potential conflict? • When there is a gap in national law, does operating to a company or higher standard create any risks?	• Conflict analysis tools (e.g. actor mapping) are used to assess unintended consequences of mitigation measures and social investment programming • Stakeholders are included in the design of mitigation measures and social investment programming • Grievance mechanisms are tested against UNGP effectiveness criteria • Consultation with academics and NGOs on measures to operate to a higher standard
The importance of being open to changes and willing to make difficult decisions	• What are the opportunities in the project lifecycle to evaluate conflict risk? • Who are the internal decision-makers and how are they involved in re-evaluations? • At what level and who in the business is accountable for grievances and community concerns?	• Provisions and criteria for re-evaluation are included in company standard operating procedure, and due diligence policies and procedures • Clear lines of authority and accountability are aligned with grievance and community engagement procedures
Companies' responsibility to use their influence on others	• What are the moments of leverage in the project? • For civil society and practitioners, what can be done to help inform and engage with communities during moments of leverage, helping them to voice specifically when and where they would like to see the exercise of leverage? • Are there opportunities to build leverage? • Who can raise issues on behalf of the company and how will they do so? • Has what was formally agreed been captured? • Is the company prepared to rethink an opportunity if certain agreements are not met?	• Touchpoints where leverage exists or can be built are mapped across the lifecycle (see Figure 5). • Stakeholder mapping has anticipated when and how to exercise leverage with government and other stakeholders, such as employing light-touch diplomacy on a pressing issue or concern • Accountability for issues (business ethics, human rights sustainability) is held at senior management or board level to ensure there is scope and authority to raise issues in negotiations and investment discussions • Agreements are formally captured in contracts, clauses or other legal documents
The importance of collaboration and partnerships	• Is the challenge or problem one shared by other companies or stakeholders? • Is there a case for pooling resources or cost-sharing to address an issue? • Does the company need to build influence or greater control over an issue?	• MOUs or TORs are in place for partnership agreements • There is clear value for money for financial contributions to collaborations • Indicators are established to measure the outcomes and impact of collaboration
The responsibility to consider making deliberate positive impacts on peace	• Could this activity be interpreted as offsetting? If unsure, have human rights experts been consulted? • Has off-setting been explicitly addressed in company systems? • Are staff across the organisation aware that social investment or other activity designed to achieve goodwill does not equate to mitigation or remedy?	• Provisions are clear in due diligence policies and procedures, social or community investment procedures and risk and impact mitigation strategies • Training and awareness-raising procedures are in place • Appropriate expertise is leveraged

Conflict-sensitivity principle	Questions to ask	Tools/measures/further information
The need to identify causes and consequences	• Have the causes and consequences of conflict been identified through a conflict analysis? • Have areas to focus efforts been identified in consultation with internal and external stakeholders?	• Conflict analyses are undertaken when operating in an area affected by conflict • Funds and resources are allocated for 'going beyond' in responses to conflict analyses • Stakeholders are included in programme design
The responsibilities inherent in divesting or ending business relationships	• Have there been previous attempts to mitigate? • How feasible is the mitigation of the impact? • How severe is the impact? • Which relationships are considered crucial for the business? • Does the business partner conduct have any relation to conflict risks or dynamics? • How can affected stakeholders be involved in the decision-making process? • Have the potential adverse impacts or unintended consequences of disengaging been identified? • Does the company contemplate immediate disengagement? If so, under what conditions? • Is there a risk of complicity if the relationship is not terminated? • What is the likelihood of violence if impacts are not addressed expeditiously?	• Provisions in contracts for identifying, addressing and monitoring adverse impacts with clear provisions for disengagement if impacts are not addressed • Disengagement terms in contracts • Criteria for incremental disengagement, including temporary suspension of contracts • A timeframe is defined for addressing more severe impacts

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Chapter 5

Considerations for tracking and communicating

What does tracking and communicating involve?

- The final steps of the human rights due diligence process involve tracking the effectiveness of responses to due diligence, and communicating how human rights impacts have been addressed.

- This guidance considers them together, given they are interrelated in nature: companies are expected to communicate on what they track, including through internal and external reporting.

- Tracking effectiveness of responses to impacts on the most vulnerable, and communicating on actions taken are both important aspects of HRDD in CAS.[86]

Tracking: What is different or additional in CAS?

- The greater volatility in CAS creates practical challenges for monitoring, such as restricted access to certain areas, or greater likelihood of external events such as elections interfering with scheduled tracking activities.

- Measures will also need to be taken to ensure stakeholders are not put at risk by engaging in processes (e.g. viewed as informants), or expected to provide sensitive or culturally inappropriate information.

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Conflict-monitoring systems

Effectively tracking changes in a complex or volatile environment requires drawing on a wide range of information sources, including affected stakeholders. Although not yet widespread, conflict and GIS monitoring mapping systems are a growing trend, and often provide publicly available data valuable for companies and other stakeholders. For example, International Alert has supported the development of conflict-monitoring and mapping mechanisms in the Philippines and Uganda. The conflict-monitoring system in Uganda allows for data to be captured and uploaded via smartphones, and the system in the Philippines collates and categorises data from public sources to create reliable conflict data. Other systems also exist, such as the Environmental Justice Atlas, an open-source platform that documents and catalogues social conflict around environmental issues based on moderated data collected from hundreds of collaborators including academics, concerned citizens, NGOs and environmental activists.

Participatory monitoring

Human rights literature notes the importance of including stakeholders in monitoring processes as this promotes more inclusive, collaborative solutions. This also has advantages from a conflict-sensitivity perspective: involving stakeholders in monitoring can increase community buy-in in projects, and minimise the risk of company–community conflicts. Additionally, it can open space for stakeholders to understand their own position and interactions with conflict dynamics.[87]

However, participatory monitoring also has some limitations that should be carefully considered, especially in situations of ongoing conflicts, where it can inadvertently create or exacerbate tensions within communities and between the company and communities.

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86   UNGPs 20 and 21

87   International Alert et al, Conflict-sensitive approaches to development, humanitarian assistance and peacebuilding: A resource pack, Colombo, Kampala, London and Nairobi: International Alert et al, 2004, Chapter 3, Module 3, p.6, http://www.international-alert.org/publications/conflict-sensitive-approaches-development-humanitarian-assistance-and-peacebuilding

These include but are not limited to the following:

- If companies fund participatory monitoring, communities can be suspicious of its degree of objectivity and independence. However, given that other sources of funding (like home governments) are uncommon, companies are faced with communities asking for independent monitoring but without anyone else willing to fund it.

- There can be discrepancies between community monitors and environmental functions in the company, with the consequence that community monitors are dismissed or discounted. There have been cases where the environmental teams disregard findings by monitors because they are 'not technical' or because they fail to provide sufficient evidence.

- It is not uncommon for community monitors to face opposition or exclusion from their communities (for example, when the results of the monitoring are not what communities expected). Their credibility can also be affected if companies fail to respond to issues raised by them.

- There are risks of companies involved in conflicts with the community using participatory monitoring to "silence and co-opt dissenting voices", particularly if it is designed in a reactive way.[88]

Anticipating for these issues early on can help to put in place measures to address them; however, it is sometimes difficult for companies to know in advance whether such processes will be appropriate or called for, or if communities will ultimately agree to it. Nevertheless, when used appropriately and sensitively, from a conflict-management perspective, participatory monitoring can help de-escalate tensions and potentially even prevent violence. It can also address conflict issues and grievances around lack of participation.

Communicating: What is different or additional?

- While essential, a public report on its own is not enough to ensure information is accessible at a community level. Yet, as with tracking, restricted access to certain areas can create additional barriers to external communication and dissemination.[89]

- There are also likely to be sensitivities in information sharing (e.g. ensuring anonymity where required; security-related information that can't be shared).

- Despite these challenges, poorly managed communications, or indeed no communication, creates the space for rumours and misinformation, and a climate conducive for the mobilisation of grievances. Therefore, companies need to think of different and innovative ways to communicate efforts and findings from their due diligence. Furthermore, in CAS frequent and repeated communication using different media and styles is particularly important as it helps reduce rumours. The following are some examples of approaches and trends in relation to communications.

Being creative about communications

When public security forces first started protecting their installations, one company worked with an NGO and the military to develop a comic book series. Drawing from real life experience, the comic books reinforced messages about the behaviour expected from the forces. This approach was developed in

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88   The Danish Institute for Human Rights, Phase 4: Impact mitigation and management, Copenhagen: DIHR, 2016, p.12

89   In areas with a risk of severe human rights impacts – such as CAS – the UNGPs also indicate formal reporting on human rights due diligence (as one type of communication) is expected as per the UN Guiding Principles Reporting Framework. Companies are thus expected to report on their salient human rights issues, the process that was used to identify them, and the measures taken to respond. This usually happens through public CSR or sustainability reports and, more recently, through human rights reports.

recognition that previous programmes had conveyed expectations to adhere to abstract human rights principles "in lecture-style format", and comic books were a graphic and engaging way to encourage forces to examine familiar situations and discuss how they could be appropriately handled.[90]

Using a two-tier reporting system

A two-tier system can be an effective and practical way of balancing the need for confidentiality with the need for transparency and accountability. This system involves two parallel reports: one for the company only that includes confidential or sensitive information (such as commercial sensitivities), and one for an external audience that has removed or anonymised information. Central to this approach is also a public restitution on the findings of the report in which all stakeholders that participate in the impact assessment, or with an interest in the assessment, are invited to participate and engage in dialogue. This also promotes accountability, as the restitution serves as a public commitment to how the company will handle or respond to certain issues.

Using SMS and technology

With 95% of the world's population now living in an area covered by mobile cellular networks,[91] SMS is increasingly being employed by companies as an effective communication and engagement tool. There are a growing number of technology platforms designed to engage stakeholders, receive anonymous feedback, undertake surveys, send mass broadcasts and provide early warning systems. In the Philippines, Alert has developed the Resource Use and Management Plan (RUMP), a platform that enables communities to interactively map and define land use, and exercise collective decision-making over disputed areas. It is important to stress that, as with any technology, the context of an intervention should always be the primary consideration, and any use of it must consider levels of digital literacy and accessibility.

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> ### Perspectives from the field: Communicating on conflict incidents[92]
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> If operating in an area with difficult or protracted conflict issues, a company is likely to be expected to communicate on how it is responding or addressing it. While recognising that this can create apprehension within the company and raise questions about how much to communicate or disclose on sensitive issues, some corporate members of the Voluntary Principles Initiative have demonstrated the value of releasing and circulating a public statement when an incident of public interest occurs. An analysis of the statements shared by two Voluntary Principles Initiative member companies in 2016 indicates that communication is usually triggered by an incident related to non-security grievances, which ends up having security consequences such as use of force. While statements are mostly descriptive, it does allow anyone with an interest in the situation to ask questions as it allows the company to be more proactive in its communication. Though far from perfect, this is an example of how communicating when incidents occur can trigger wider processes and dialogues, serving as a platform for the company to engage with other stakeholders that have an interest in the company or the situation.

90   J.J. Messner, Human rights training for security forces in the extractive industry, Fund for Peace, 18 October 2013, http://library. fundforpeace.org/20131018-cameroon, accessed 11 April 2017. Although this was a methodology used for a training programme, rather than a company communication per se, there is a lot that can be applied for other purposes.

91   ITU Facts and Figures 2016, http://www.itu.int/en/ITU-D/Statistics/Documents/facts/ICTFactsFigures2016.pdf, accessed 2 September 2016

92   From communications circulated to VPI members by VPI Secretariat, February–October 2016

Appendices

Appendix 1: Conflict contexts

This guidance provides a framework of analysis built around four broad categories of 'conflict contexts': *armed conflict*, *armed violence*, *post conflict* and *social unrest*.

1. Armed conflict

Armed conflict can involve international armed conflict between two or more opposing states, non-international armed conflict between governmental forces and non-state armed actors, or between such groups themselves. Under international humanitarian law, the existence of non-international armed conflict is determined by the intensity of the violence and the level of organisation of the non-state armed groups.[93]

In an armed conflict, common traits include:

- the presence of highly organised armed actors with territorial control;
- high levels of violence against civilians including displacement;
- systematic human rights violations;
- sexual and gender-based violence as an act of war; and
- illicit economic activity.

Examples of armed conflict

The Democratic Republic of Congo (DRC)
Between 1998 and 2002, the DRC experienced an armed conflict that involved a number of non-state armed actors in confrontation with Congolese government forces as well as each other. The conflict became a proxy war that involved several African nations giving support to militia groups or government forces. It involved systematic violence against citizens. Human rights abuses and violations of international humanitarian law were widespread, including sexual violence as an act of war and use of child soldiers.[94] The conflict displaced an estimated three million people and created growth in the illegal exploitation of the country's substantial natural resources, used to sustain the conflict.[95]

Somalia
Since the late 1980s, a variety of actors in Somalia have been engaged in cycles of armed conflict between armed groups.[96] Following a failed international intervention in the mid-1990s, the country remained stateless until 2000, by which time two of the country's northern regions had seceded and declared themselves independent. The instability and lack of governance allowed organised groups to engage in criminal economic activity off Somalia's coast. Much of the country remains under the control of armed non-state actors while displacement continues to add to Somalia's estimated 1.1 million internally-

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93   Internal conflicts or other situations of violence – what is the difference for victims?, International Committee of the Red Cross (ICRC), 10 December 2012, https://www.icrc.org/eng/resources/documents/interview/2012/12-10-niac-non-international-armed-conflict.htm; S. Vité, Typology of armed conflicts in international humanitarian law: Legal concepts and actual situations, International Review of the Red Cross, 91(873), Geneva: ICRC, 2009, https://www.icrc.org/eng/assets/files/other/irrc-873-vite.pdf; ICRC, How is the term 'armed conflict' defined in international humanitarian law?, ICRC Opinion Paper, Geneva: ICRC, 2008, https://www.icrc.org/eng/assets/files/other/opinion-paper-armed-conflict.pdf

94   Democratic Republic of the Congo profile, Peace Insight, Peace Direct, http://www.insightonconflict.org/conflicts/dr-congo/conflict-profile, accessed 17 April 2017

95   Conflict causes state of permanent displacement, IRIN, 13 June 2007, http://www.irinnews.org/report/72700/drc-conflict-causes-state-permanent-displacement, accessed 17 April 2017

96   M. Bradbury and S. Healy, Endless war: A brief history of the Somali conflict, Accord, Issue 21, pp.10–14, http://www.c-r.org/downloads/Accord%2021_3Endless%20war_a%20brief%20history_2010_ENG.pdf

displaced persons.[97] Human rights abuses and violations of international humanitarian law remain frequent, including sexual violence and use of child soldiers.[98]

2. Armed violence

In these contexts, cycles of violence and insecurity may have political, economic or criminal dimensions. Organised violence can include local violence between militias, gang violence, resource-related violence, terrorism and violence related to criminal activity, in forms that are often interlinked. In many places, violence is localised and exists alongside situations of relative stability elsewhere. Killing, displacement, human rights violations and sexual violence can be widespread, and in some cases, can reach levels comparable to those of armed conflicts.

Common traits of armed violence include:

- the presence of less organised armed or criminal actors;
- violence against civilians including displacement;
- a high incidence of human rights violations;
- lack of or weak governance in certain areas;
- illicit economic activity; and
- regional imbalance in security and development.

Examples of armed violence

Nigeria
Although Nigeria has not been engaged in an armed conflict since an amnesty in 2009 ended the three-year insurgency in the Niger Delta, it continues to experience violence and instability across several regions. In the north-east, more than 10,000 people have been killed and over 1.5 million displaced by the violent Islamist group Boko Haram.[99] The delta region also continues to experience instability and violence, with oil infrastructure increasingly targeted as disputes over the distribution of oil revenues escalate.[100] Alongside such forms of organised armed violence, Nigeria also experiences cycles of intercommunal violence between Muslims and Christians.

Mexico
Violence in Mexico is driven by sophisticated and organised criminal organisations profiting from trafficking in illegal drugs, contraband, arms and people. These organisations are increasingly transnational, with the largest organisation thought to have links with organisations from Central America to the US and beyond. Violence in Mexico is localised, with the highest incidences in areas connected to international trade flows and border areas. Between 2006 and 2012, violence surged in response to the government's adoption of a militarised campaign against the drug-trafficking organisations, resulting in almost 50,000 drug-related deaths in five years.[101]

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97   Somalia: Events of 2015, Human Rights Watch, https://www.hrw.org/world-report/2016/country-chapters/somalia, accessed 17 April 2017; Al Shabaab, Mapping militant organizations, Stanford University, https://web.stanford.edu/group/mappingmilitants/cgi-bin/groups/view/61, accessed 17 April 2017

98   Somalia 2016/2017, Amnesty International, https://www.amnesty.org/en/countries/africa/somalia/report-somalia, accessed 17 April 2017

99   See http://www.cfr.org/nigeria/boko-haram/p25739, accessed 17 April 2017

100 M. Fick, Renewed Delta violence reignites fears for Nigeria oil production, Financial Times, 29 February 2016

101 C.M. Valenzuela, The 'War on Drugs' and the 'New Strategy': Identity constructions of the United States, US drug users and Mexico, Mexican Law Review, 5(2), 2013, pp.245–275, http://www.sciencedirect.com/science/article/pii/S1870057816300257

3. Post conflict

A post-conflict context is one that has recently transitioned out of armed conflict, or is in the process of doing so. For the purposes of this guidance, post conflict is understood as a period of time following the signing of a peace agreement. Examples of these include a formal cessation of hostilities, peace processes, institution building, democratisation and economic recovery. Violence can continue at significant levels, either in localised forms or through sporadic bouts of unrest. Many post-conflict contexts will also exhibit characteristics of armed violence.

Common traits of post conflict include:

- ongoing peace processes or negotiations;

- the presence of ex-combatants;

- the presence of victims;

- ongoing transitional justice processes;

- agrarian reform or land redistribution programmes; and

- reconciliation efforts.

Examples of post conflict

Liberia

In 2003, a peace agreement between the Liberian government and two non-state armed actors established a power-sharing agreement and created a transitional government that ruled until democratic elections in 2005. This process was accompanied by the UN Mission in Liberia, which was established with a mandate to maintain peace, protect human rights and assist the Liberian government in its process of post-conflict security sector reform.[102] In 2006, the Truth and Reconciliation Commission of Liberia was established to promote peace and reconciliation by, among other things, determining the truth about the origins and impact of the armed conflict. Since the end of the conflict, Liberia has been a major beneficiary of international development aid as it attempts to overcome the legacy of a conflict which left it with serious development needs.[103]

Myanmar

In 2015, Myanmar held its first national elections in over five decades, with the National League for Democracy winning a comprehensive victory that marked a landmark moment in Myanmar's transition to democracy. However, the country continues to experience localised instability and conflict between government forces and armed groups in a number of states, despite a ceasefire and peace agreements elsewhere. The conflict has generated significant displacement, and there are an estimated one million people in need of humanitarian assistance. Despite these problems, Myanmar has one of the highest GDP growths for the region, as it has capitalised on its abundant natural resources by opening its doors to international investment.

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102   UNMIL Mandate, UN Mission in Liberia, https://unmil.unmissions.org/mandate, accessed 17 April 2017
103   Liberia profile, Peace Insight, Peace Direct, http://www.insightonconflict.org/conflicts/liberia/conflict-profile, accessed 17 April 2017

4. Social unrest

Contexts of social unrest are characterised by potentially violent instability, despite the absence of armed violence or armed conflict. Violence in these contexts often derives from civil or political unrest or conflict between groups. Even where such forms of violence and instability are not present or visible, other underlying factors make these contexts vulnerable to destabilising shocks or changes that can result in violence. These stresses that increase vulnerability typically include a combination of social, environmental or political factors. The most common manifestations of social unrest include community-company conflicts, protests, blockades or worker strikes.

Common traits of social unrest include:

- a high level of unmet basic needs;

- social, labour or environmental grievances from business activities;

- localised grievances due to political or socio-economic exclusion of certain groups;

- political actors engaged in mobilising or instigating community violence; and

- lack of effective governance.

The category of social unrest is based on Alert's experience of working with companies across a range of settings. These situations can appear relatively stable, but if conflict factors are not well understood, companies can underestimate operating challenges.

Examples of social unrest

Brazil
In early 2016, a series of protests began in Brazil in response to a slowing economy and a corruption scandal that ultimately resulted in the president's impeachment. Many instances of violence have been recorded during the demonstrations, mirroring the violence of protests in 2015.[104] The situation was exacerbated when a dam burst at a mine in the mineral-rich state of Minas Gerais in late 2015, creating wide-scale displacement and destruction of livelihoods.[105] Controversy around natural resource development in Brazil is not contained to environmental disasters. A report by Global Witness found that Brazil is one of the most dangerous places in the world for communities living in areas of natural resource wealth, with over 448 recorded killings of environmental campaigners since 2002.[106]

Papua New Guinea
Economic, social and environmental stresses make Papua New Guinea particularly vulnerable to the destabilising effects of natural resource development projects. Home to over 800 distinct cultural groups that together speak almost 12% of the world's languages, it is also a country of significant natural resource

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104   Bus fare protest in Brazil's biggest city turns violent, Reuters, 9 January 2016, http://www.reuters.com/article/us-brazil-protest-idUSKBN0UM2HY20160109, accessed 17 April 2017; D. Flynn and A. Soto, Record Brazil protests put Rousseff's future in doubt, Reuters, 13 March 2016, http://www.reuters.com/article/us-brazil-rousseff-protests-idUSKCN0WF0IX, accessed 17 April 2017

105   Deadly dam burst in Brazil prompts calls for stricter mining regulations, Guardian/Reuters, 10 November 2015, http://www.theguardian.com/world/2015/nov/10/brazil-dam-burst-mining-rules, accessed 17 April 2017; B. Douglas, Anger rises as Brazilian mine disaster threatens river and sea with toxic mud, Guardian, 22 November 2015, https://www.theguardian.com/business/2015/nov/22/anger-rises-as-brazilian-mine-disaster-threatens-river-and-sea-with-toxic-mud, accessed 17 April 2017

106   Global Witness, Deadly environment: The dramatic rise in killings of environmental and land defenders, London: Global Witness, 2014, https://www.globalwitness.org/en/campaigns/environmental-activists/deadly-environment

wealth, including large natural gas reserves.[107] Yet exploitation of these resources has failed to generate improvements in human development, for which Papua New Guinea consistently ranks amongst the lowest in the world.[108] This failure to generate an improvement in local conditions, as well as accusations of corruption, mismanagement of environmental impacts and human rights abuses perpetrated by security personnel, has led to disputes and conflict over natural resource projects. Protests over the social and environmental impacts of the Bougainville mine sparked a violent armed conflict that claimed up to 10,000 lives in 1989.[109]

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107   Fears major gas project could spark social unrest, IRIN, 2 February 2011, http://www.irinnews.org/report/91810/papua-new-guinea-fears-major-gas-project-could-spark-social-unrest, accessed 17 April 2017; United Nations Development Programme (UNDP), 2014 National Human Development Report: Papua New Guinea, Port Moresby: UNDP, 2014, http://hdr.undp.org/sites/default/files/2014_png_national_human_development_report.pdf

108   IRIN, 2011, Op. cit.

109   UNDP, 2014, Op. cit.

Appendix 2: Further case studies on how to act upon findings

1. No water, no project

Theme

Making changes and difficult decisions

Problem/challenge

A company operating in a country faced significant opposition from communities over the likely impacts of the company's operations on their water sources. Despite revising the ESHIA three times (with significant costs and delivery implications), the communities rejected each proposal over alternative water access. This opposition generated such pressure on the authorities that the government suspended the company's water permit in response.

Response

With the project's viability on the line, the company established a dialogue roundtable lasting 18 months and involving 30 stakeholders including community representatives, local municipalities, various NGOs, and different government agencies. The initiative was structured around three objectives related to the use of water resources, environmental commitments and CSR projects. The company's representatives were a multi-disciplinary team involving both technical and non-technical functions.

Outcomes

As a result of the dialogue, the mine received broad support from communities and politicians, resulting in its water permit reinstated as well as the community's consent to undertake project activities. The company made 26 commitments related to water, environment and social responsibility.

Why it worked

The company brought a wide variety of actors to the table, including those opposed to the mine, and kept everyone committed throughout the process. This was not a minor issue: the inclusive nature of the dialogue (in addition to the fixed participants of the roundtable, each theme discussed in the roundtable brought in additional experts or interested parties as well as relevant local authorities as needed) meant that a critical mass was created to surround and protect the process from potential 'spoilers'. Individuals with a more critical agenda soon recognised that if they wanted their voices to be heard, they needed to join the dialogue. This did not mean discussions were easy, with members of the dialogue recalling initial meetings where participants even came close to using physical violence.

The initiative had a clear structure and focus, and was led by strong, knowledgeable, and empathetic leadership within the company. Involving the technical team in the dialogue roundtable meant that concerns could be incorporated directly into the design and decision-making of the project set up.

2. Mindanao Indigenous Peoples' Desk

Theme

Collaborating, working in partnerships and developing relationships

Problem/challenge

While there is a need for wealth creation in the Mindanao region of the Philippines, it needs to be done in a way that protects and promotes the rights of indigenous peoples (IPs). In the past, conflict has arisen when businesses fail to comply with free, prior and informed consent (FPIC), or undertake resettlement, royalty payments, and benefit sharing in a way that is not conflict sensitive.

There also challenges relating to community engagement, as trust has been severely eroded due to past human rights violations, environmental degradation and circumvention of FPIC. Companies and investors continue to require education about indigenous traditions, knowledge systems and cultural practices – for example, investors may provide resettlement in a way that complies with legal requirements, but undermines traditional practices and ways of life.

Response

The Mindanao Business Council, the National Commission on Indigenous Peoples (NCIP) and International Alert established the IPs desk in 2016. The tripartite platform and forum aims to shift away from an adversarial engagement model in relation to business investment in ancestral lands.

The IPs desk recognises the challenges faced by business, particularly around land and investments in Ancestral Domain.[110] Overlapping tenure instruments and different government agencies involved in different aspects of land issues, as well as inconsistencies between national and local government ordinances, create uncertainties for investors. It is difficult to access reliable information about land ownership, creating opportunities for exploitation and misrepresentation.

It can be hard for business to ascertain who represents the community, and create royalty-sharing agreements that reach the intended beneficiaries, or have appropriate governance systems. Moreover, there is the question of the impacts of providing relatively large sums of money to relatively non-cash-based communities.

Outcomes

The IPs desk has facilitated referrals to government agencies in relation to Ancestral Domain investments and provided guidance and advice on conflict-sensitive approaches, particularly for FPIC, community engagement, and the development and management of royalty funds. Through the IPs desk, a database has been created on regulatory requirements and development plans. GIS mapping is also utilised by the IPs desk, as sometimes it is hard to ascertain the boundaries of Ancestral Domain.

Also functioning as a forum, the IPs desk has convened dialogues on economic governance, government regulations, protection of human rights and community participation, with the aim of influencing government policy, promoting improved business practices and increasing IPs participation in investment decisions.

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110   Ancestral Domain refers to indigenous peoples' land rights under Filipino law.

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Why it worked

The IPs desk attributes its early successes to selecting individuals who have a wide sphere of influence and represent key voices, including those that are critical. As noted by Nikki Philline C. de la Rosa, Deputy Country Manager at International Alert, "We discuss the issues. Members of the group do not agree for the non-renewable source of energy, but they were there knowing they need to regulate the company's behaviour. Because there was an interaction, businesses understand civil society organisations, academia and community. And the others understand the business." Given the complexity of the challenges faced in relation to business investment in ancestral lands, the IPs desk recognises that it will be a process of continuous improvement. For this reason, the principles of openness and transparency are at the centre of their approach.

3. Collaboration to address security issues in South Africa

Theme

Collaborating, working in partnerships and developing relationships

Problem/challenge

The violent incident at the Marikana mine, South Africa, in 2012 unveiled a complex web of grievances and political factors creating conflict and instability in the sector. Post-Marikana, while labour issues relating to the incident were being addressed, companies realised that the security risks and human rights impacts brought to the forefront by Marikana also needed addressing, and that social unrest could escalate into crime and violence quickly. It was clear that all companies (to different degrees) faced similar risks, not one company could resolve it on its own, and that the government needed to be part of these discussions.

Response

To collectively respond to these challenges, companies used their leverage to create the Forum to Fight Mine Crime (FFMC) in 2013 to safeguard against further such incidents.

As a multi-stakeholder platform, the FFMC brings together the South African police, mining companies and labour unions to address crime and civil unrest, as well as to share information and intelligence – including from unions on when they are planning labour unrest. The Department of Home Affairs, Justice, Labour and Mineral Resources, as well as traditional leaders, sit on the board. The FFMC activity is a standing agenda point for the Chamber of Mines' Standing Security Committee meetings.

Outcomes

Because of the FFMC, the following has been achieved:

- A joint statement of practice (SOP) for crowd control during civil unrest at mine sites, signed off by the government. The SOP includes provisions on use of force and expectations for when company security act as first responders to civil unrest, and protocols for handing over to the South African Police Service.

- Joint planning based on the shared information and intelligence, in recognition that when labour unrest occurs, police are likely to be stretched thin across different company sites.

- Collective mitigation measures for key issues driving conflict, including informal settlements, in-migration, and criminality.

Why it worked

According to one participant, in the past companies tended to engage at the national level and then messaging was filtered down to the relevant mayors or District Commissioners, leading to local government feeling imposed upon. But when they are included from the start, it is appreciated and it builds good relationships. Therefore, according to one of its participants, in addition to addressing issues at a broader scale than just the mine site or company, the success of the FFMC is that it also bridges the national with the regional level.

4. Companies coming together to support the amnesty programme in the Niger Delta[111]

Theme

Collaborating, working in partnerships and developing relationships

Problem/challenge

In 2009, the Government of Nigeria launched an amnesty programme designed to disarm and reintegrate active militants in the Niger Delta. With a target population of approximately 20,000 militants, the federal government approached the international oil companies for support. However, according to the companies, the amnesty programme did not have any form of control or accountability.

Response

The companies decided to create their own strategy, moving from "individual unilateral corporate intervention to collaborative corporate intervention". Through the Lagos Chamber of Commerce, they created the Post-amnesty Oil and Gas Industry Foundation (OGIF), which was tasked to contribute to the reintegration of 3,000 ex-militants.

The two main programmes, Community Outreach Programme and Skills Acquisition Programme, were implemented by development NGOs. In addition to drawing on the skills and experience of the NGOs, this optimised costs, created a sense of ownership by beneficiaries, established long-term relationships between sectors, and helped the international oil companies deal with reputational issues associated with the industry in the Niger Delta.

Outcomes

Considering the government's programme placed "more emphasis on appeasing the participants with cash rather than training and skills acquisition", there were challenges in terms of attracting ex-militants to the company-led initiative instead. However, there has been 70% retention after two years of starting the programme. For many, this is an achievement on its own.

Why it worked

Among the many advantages of collaborating, members of the OGIF have pointed out the following advantages:

- Synergy and cost efficiency: "It was easier for each company to pay its share of the cost as obviously the cost on each company would be reduced compared to when each company does it on its own."

- Varied expertise coming together: "These experiences became handy for every decision. Best practices were deployed on the processes."

- Dis-incentivising competition: "This programme removed the usual unhealthy competition between oil companies in Nigeria. It was usually a race to impress the industry regulators (…)"

- Strength and unity: "We were able to negotiate the programme with one voice rather than the usual divide-and-rule approaches from industry regulators."

- Furthermore, from one of the participating companies, "It is abundantly clear from the results that pooling resources together for a common purpose within the oil industry adds far greater value than the sum of individual companies' development efforts."

Appendix 3: Different ways to analyse conflicts[112]

Conflict-analysis tool/ approach	What it does	What is it most useful for
Analysis of context, causes, dynamics and actors	Provides companies with a systematic study of the context (including history of conflict), issues and stakeholders that shape an existing or potential conflict, as well as dynamics in the interaction between the three.	It is the most basic form of conflict analysis, encompassing the main factors that allow companies to have a comprehensive picture of the conflict. It also helps differentiate root causes from proximate ones (those that feed or perpetuate conflict rather than create it); and affected stakeholders from conflict mobilisers, among others.
Actor mapping	This tool involves drawing a map that shows all actors in a conflict situation represented by differently sized circles (whereby the size represents the level of power) and the relations between them, using conventions that represent different types of relationships.	It is a visual tool that allows users to picture all the actors and their respective levels of influence and power. It also allows users to map out the relationships and dynamics between the actors and identify the conflict issues driving certain relationships. It also allows users to visually identify relationships that either don't exist or need mending, possible alliances and opportunities for collaboration.
Positions, interests, needs (or 'the onion of conflict')	Typically used as a deep-dive analysis of a stakeholder group, the tool unpacks people's positions (what people say they want), interest (what people want to have), and needs (basic elements that are usually non-negotiable). Like peeling an onion, users are encouraged to 'peel down' the layers and ultimately act upon the needs of stakeholders as opposed to their positions or interests.	It helps companies to have a more complex and nuanced understanding of how stakeholders behave. For example, it helps understand a stakeholder's position (such as opposition to a project), but then moves on to identify what the interest is behind such a position, to ultimately identify the core of the issue, usually expressed in terms of a need. This could be particularly useful when conducting negotiations or mediation processes. It also helps users differentiate between causes of conflict and conflict issues: positions usually show conflict issues while interests and needs point to causes of conflict.
The conflict or problem tree	This tool highlights cause-and-consequence relationships of multiple factors in a complex situation. It involves drawing a tree, where the roots represent the root causes/structural factors of the problem (e.g. poverty, ethnic prejudice, corruption). The trunk represents the name and nature of the problem (this may be the converged expression of many different roots, e.g. tensions between fishing community and pastoralists) and the leaves or branches are manifestations/effects of the problems (e.g. conflicts between ex-combatants and host communities, land disputes of returning refugees).	Companies often focus on the consequences of a problem (as opposed to the causes of it), which leads to frustrations from those affected as issues are not properly addressed and grievances continue to emerge. It differentiates causes from consequences when it comes to responses and raises awareness on the need to act upon both to reach peaceful solutions.

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112   For further information, materials and tools on how to undertake a conflict analysis, please refer to International Alert, 2005, Op. cit.; and International Alert et al, 2004, Op. cit. Other useful materials include: S. Fisher et al, Working with conflict: Skills and strategies for action, Chicago: Zed Books, 2000

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Conflict-analysis tool/ approach	What it does	What is it most useful for
Grievances and resilience factors	Presented as part of USAID's Conflict Assessment Framework, this approach focuses on identifying contextual factors, grievances, mobilisers, resilience factors and conflict trends, or what the framework calls trajectories.	It is particularly useful for analysing violent conflict and associated trends. By looking at resilience factors, users are encouraged to think about conflict prevention and transformation, as well as the possibility to enhance positive resilience factors to make contributions to peace and stability.
Dividers and connectors	The dividers and connectors tool explores factors that divide (they maintain the polarisation of the population, such as unequal access to power, language barriers) and factors that connect (they maintain bonds between sections of society, such as shared harvest, common memories of former peaceful coexistence) across groups.	When exploring what opportunities for positive impacts or peacebuilding there are, a company's project can be reviewed by staff and partners, or collectively with stakeholders, to establish whether it will increase or decrease the dividers and connectors in society.

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Appendix 4: Using the complete guidance – An example

The following uses the CHRIA example on indigenous peoples, conflict and cultural rights (see Case study 1) to illustrate the decision points and different components and considerations of the main steps of the due diligence.

Design

The following is a 'decision matrix' that is used to show the main design considerations that Alert had for this assignment. It brings together the decision points highlighted throughout Chapter 2 to show how certain decisions were made with regard to issues like the type and severity of conflict, stage of the project lifecycle, and availability of resources, among others.

Chapter 2	
Step 1: Defining the scope of the HRDD process, including level of effort and resources	
Decision point	**Considerations**
General, hybrid or issue-specific?	The motivation to conduct a CHRIA was triggered by the company-community conflict; the company requested that Alert undertake a deep-dive on this issue as well as a general assessment considering all potential human rights impacts. Therefore, a hybrid approach was used.
Stand-alone or integrated?	Considering the severity of the conflict with the community, the company requested a stand-alone assessment. In addition, there was a lack of consensus within certain areas of the company on the value of addressing social issues in a timely manner, so the team coordinating the process decided a stand-alone assessment would help position the social function better and raise the visibility of the issues at stake.
In-house or third party?	The company decided to hire a third party (Alert) to conduct this assessment because of the following: • Alert brought expertise on understanding company-community conflicts and their human rights implications. • Trust had eroded between the company and community to the point where bringing in a third party was advisable. When negotiating the contract, it was agreed that the company would lead the public restitutions and publicly make commitments, as aspects of the process that couldn't be outsourced.
Step 2: Identifying and mapping stakeholders	
After identifying an initial group of stakeholders in collaboration with the company, more emerged as field research progressed. For instance, due to the political tensions between national and regional governments, the company was apprehensive about reaching out to regional authorities. Yet through the field research, the agency within the governor's office responsible for regional economic development was identified as a key actor, particularly in relation to recommendations on community livelihoods.	
Step 3: Anticipating challenges and barriers to engagement	
Access: There were no concerns over physical access to affected stakeholders (project area was geographically accessible as were neighbouring communities). There were also no weather restrictions at the time as it was not rainy season. However, when Alert tried to contact certain stakeholders to confirm or clarify information obtained in the field research, responses were much more limited. This translated into delays in terms of submitting a final report as well as in assessing the severity of the impacts and risks identified because the perspective of the communities was not sufficiently represented.	
Willingness: Given the prominence of the case, communities had already been approached on multiple occasions by national and international media, national government agencies, other NGOs and the IFC. This meant communities were experiencing consultation fatigue and were less willing to talk to Alert – especially as they had become unconvinced the situation would change for them after engaging in so many consultations.	

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Language: Though communities spoke their own dialects, they also shared a common language, enabling easier communications.

Additional barriers:

- Because Alert did not have an in-country field office, more time was required to understand the context and access stakeholders.
- At the initial stages, there were barriers related to the level of objectivity of information provided.
- The vulnerability of the community, prior to the expropriation by the government, as they had lived in bonded labour, endured abuse and lacked legal recognition as an indigenous community, meant Alert needed to take more time speaking to experts and institutions (like the UN) to orient on issues and plan how to sensitively conduct the engagement.

Conflict-sensitivity principles operationalised

The following *challenges* and risks were identified in the process of designing the due diligence:

- Information provided by stakeholders was highly politicised (each actor had his/her political agenda, which shaped the way they told their story). To counteract this, Alert needed to broaden engagement to as many stakeholders as possible, and actively check information with the company to ensure sufficient understanding of local context.
- Alert expected a degree of company resistance on some of the findings. This meant building in more time for discussions and reaching consensus with the company, and where consensus couldn't be met, being explicit about this.
- There was a risk of reputational damage with the communities if they perceived Alert – as acting on behalf of the company – as 'more of the same', whereby organisations would extract information and not return to the community with results or answers. Therefore, Alert decided to conduct the public restitution and communicate this to communities when initial interviews took place so they would know there was a follow-up process.
- However, the ongoing company-community conflict also raised the question of whether a public restitution could exacerbate conflict. Therefore, it was important to consider when and how to be transparent.
- Alert did not have a physical presence in-country, so it took longer to understand the context.

Chapter 3: Identify and assess

As a recap from the findings of Chapter 3: Identifying and assessing impacts, the following were the identified conflict risks and their human rights implications.

Conflict risks	Human rights adversely impacted[112]
Potential for conflict between the company and the community (and its national representative organisation) over the amount and scope of compensation to be received over the archaeological incident	Should the amount and scope of compensation not be satisfactory for the community and its national body with regards to the extent of the damage perceived to be caused, this could constitute a breach of their right to remedy and right to appropriate compensation. The community's dissatisfaction over the company's management of the unearthed materials is underpinned by allegations that their cultural heritage was damaged, resulting in a negative impact on their right to maintain, control, protect and develop their cultural heritage.
Conflict between the community and its national body and the national government over what are perceived to be disempowering measures that undermine the indigenous authority; the company is thus perceived to be aligned with the national government	By not being involved throughout the process of decision-making on the scope and amount of compensation and oil royalties to be distributed, the indigenous peoples considered their following rights were being undermined: • *the right to self-determination;* • *the right to participate fully in political, economic, social and cultural life;* • *the right to participate in decision-making in matters which would affect their rights; and* • *the right to determine and develop priorities and strategies for exercising their right to development.*

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113   The rights referenced in this table refer to internationally recognised human rights enshrined in the International Bill of Human Rights and the UN Declaration on the Rights of Indigenous People.

Inadvertently, the compensation scheme suggested by the company led to a rupture of relations between the community and the national representative organisation	By leaving the national-level indigenous organisation that served as their representing body, the community became unrepresented, resulting in a negative impact on their right to representation, and increasing the community's vulnerability considering their recent formal and legal creation (and lack of experience) following the systematic violation of their rights. The lack of representation also meant an inability to participate in broader discussions with other indigenous communities, resulting in a negative impact on their right to participate fully in political, economic, social and cultural life.

Chapter 4: Act upon findings

Although this is an ongoing engagement, the company took some early measures as outlined below – noting that further actions are required as the process continues.[113]

Conflict risk/human rights adversely impacted	Mitigation measure	Opportunity to do some good
Inadvertently, the compensation scheme suggested by the company led to a rupture of relations between the community and the national representative organisation	The company's response was to step back so that both organisations could deal with their issues without company interference. This continues to be the company position. Following the incident, the national organisation opposed a company project which planned to strengthen the community's organisational capacity, accusing the company of 'interfering' with intra-community processes. In response, the company broadened the initiative to what it called 'life projects', whereby the community was encouraged to think about its vision for the future, and the company would support them in realising it.	Given the sensitivity of the situation, and that any company efforts would be interpreted as interference, the opportunities for positive impacts on this issue were severely limited. At the time of the assessment, it was better to let the communities manage their own issues and re-establish communication later.
Potential for conflict between the company and the community (and its national representative organisation) over the amount and scope of compensation to be received over the archaeological incident	The original amount of compensation calculated by the company was rejected, as was the subsequent counter-offer. As a result, the company asked the community to decide on the amount to offer. In parallel, the company redesigned its communications plan to ensure inclusion of grassroots actors, as well as citizen representation groups (particularly for women and youth). This was in recognition that communication had not flowed between leaders of the community and its members, and that this had played a significant role in the escalation of the incident.	The company can consider opportunities for advocacy with the government.

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114   The actions were the result of a debriefing session held with company representatives following the field research and initial analysis, as well as ongoing processes the company had already started.

The community's dissatisfaction over the company's management of the unearthed materials is underpinned by allegations that their cultural heritage was damaged, resulting in a negative impact on their right to maintain, control, protect and develop their cultural heritage	As a response to the negative impact on cultural heritage, the company decided to co-sponsor a museum and a book on the community's culture and way of life. The company also revised its procedure on archaeological prospection (for example, by differentiating between prospection in highlands and lowlands), recognising that best practice was not followed at the time of the incident. In recognition that not all employees were sensitive to the vulnerability of the community due its recent past, the company worked with the UN to provide awareness-raising training specifically on the local communities' history.	In addition to the museum and book, the company has the opportunity to contribute to the preservation of the historical memory and cultural conservation of indigenous groups in the country. The company can also support the avoidance of human rights abuses by raising awareness on the history of the exploitation of the community. This would not create major risks for the company and could help consolidate community processes. Recognising the flaws in the ESHIA (for instance, failure to identify the bonded labour situation of communities), there is an opportunity to improve ESHIAs. This includes ensuring there are human rights and conflict provisions in consultant TORs and monitoring ESHIA recommendations more carefully. The company can use lessons learned from the incident to raise the human rights standards of the national oil company, particularly in relation to cultural rights and heritage.

Chapter 5: Tracking and communicating	
Formal restitutions	To undertake the assignment, Alert required a public restitution with all interviewed stakeholders, to check understanding, explain the findings and present the recommendations.
Using a two-tier reporting system	Linked to the above, Alert and the company agreed to a two-report system, whereby one confidential report was provided to the company (including commercially and legally sensitive information). The public report included the same information but was presented for wider audiences and without the sensitive information.

Appendix 5: Resource list

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Appendices

Acknowledgements

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