

Enhanced Human Rights Due Diligence in Conflict Affected and High-Risk Areas

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Publisher

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Cover picture

Visualization of enhanced due diligence process.
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Summary

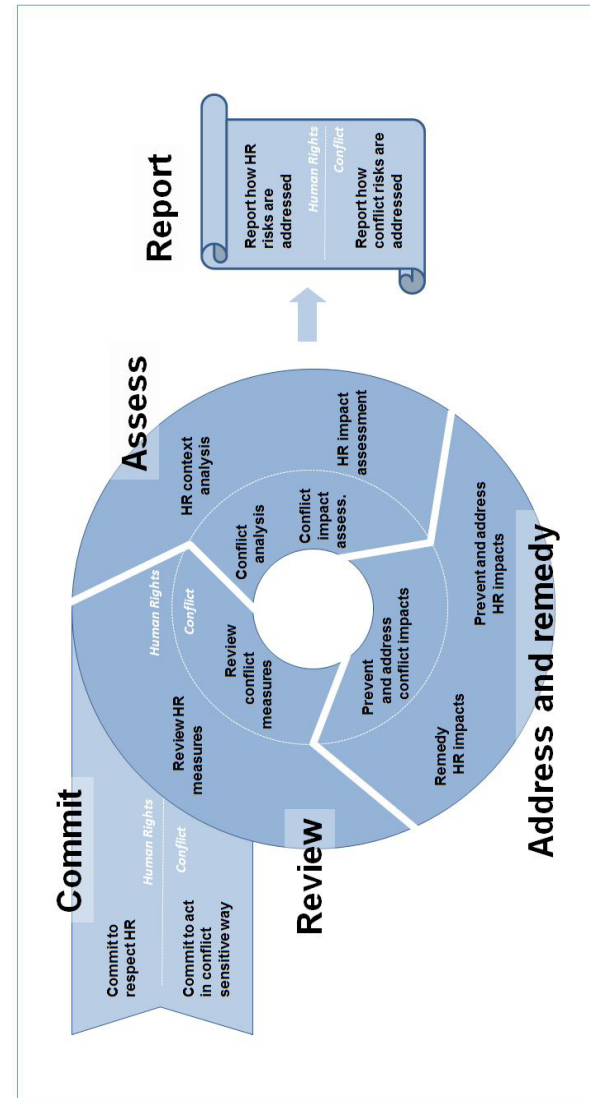
This Essential introduces a novel approach for companies to ensure respect for human rights when operating in conflict-affected and high-risk areas. In such contexts, the risks of companies to become involved in grave human rights violations are particularly high. Such heightened risks call for enhanced due diligence procedures in order to meet international standards on business and human rights such as the UN Guiding Principles on Business and Human Rights, the OECD Guidelines for Multinational Enterprises, or related standards.

The proposed approach integrates conflict sensitive business practices into standard human rights due diligence procedures. Conflict sensitivity is a well-established approach which helps organizations minimizing their impacts on conflict and build on entry points to foster stable operational environments. First guidance on conflict sensitive business has been developed in the mid-2000s and has since been successfully implemented by various multinational enterprises.

A total of 17 steps are identified through which companies can enhance their standard human rights practice in order to meet the specific challenges in conflict-affected and high-risk areas. These steps complement all aspects of corporate human rights procedures including commitment, assessment, addressing and remedy, reviewing, and reporting.

The four main added values of an integrated approach are: (a) an increased understanding of the conflict context; (b) a more accurate identification of human rights risks; (c) the development of more effective measures to prevent and address potential and actual adverse impacts on human rights and conflict; as well as (d) an increased assurance that measures taken as part of the human rights procedures are not themselves unintentionally causing harm.

Summary



Overview of the integrated approach

1 Background

This publication introduces a novel approach to enhance human rights due diligence in conflict-affected and high-risk areas (CAHR areas).¹ It guides business enterprises in addressing the risk of becoming involved in conflict when operating in such challenging contexts. The guidance is designed to complement existing international standards based on the concept of human rights due diligence, introduced by John Ruggie in the UN Guiding Principles on Business and Human Rights and integrated into the OECD Guidelines for Multinational Enterprises and other issue- and sector-specific standards. It thereby provides a way to conduct heightened human rights due diligence in conflict affected areas such as required by the UNGPs.

1.1 The corporate responsibility to respect human rights

Business enterprises are the key building blocks of economic activity and thereby essential parts of any society. They impact on the lives of individuals and communities in manifold ways, like structuring the daily lives of employees, influencing macro-economic development of the overall country, or offering vital goods and services to consumers.

Such consequential impacts are paired with responsibilities. It has become a wide-ranging international consensus among business, government and civil society that the basic responsibility of business enterprises is to respect human rights. This means that companies should avoid infringing on the rights of others and should address adverse human rights impacts in which they are involved.² This consensus has been formalized and widely endorsed in the 2011 UN Guiding Principles on Business and Human Rights (UNGPs).³

- 1 swisspeace plans to further develop this initial conceptual guidance document in the coming years. The proposed approach will be piloted with companies in 2017 and 2018.
- 2 United Nations. 2011. *UN Guiding Principles on Business and Human Rights*. A/HRC/17/31. Principle 11.
- 3 For details see: Ruggie, J. 2013. *Just Business: Multinational Corporations and Human Rights*. WW Norton & Company.

According to the UNGPs, in order to know and show that companies fulfil their responsibility to respect human rights, they are required to have in place a *public policy commitment* to meet their responsibility to respect human rights, a *human rights due diligence process* to identify, prevent, mitigate and report on how the company addresses its impacts on human rights, and *processes to enable remediation* of adverse impacts a company causes or to which it contributes.⁴

1.2 Enhanced requirements in CAHR areas

The corporate responsibility to respect human rights extends throughout a company’s activities irrespective of the operational environment. CAHR areas are operational environments where the risks for companies to adversely impact on human rights are particularly high. In such contexts, human rights violations by various actors are endemic and state authorities tend to be unable or unwilling to ensure the protection of human rights and may themselves be involved in abuse of human rights. The due diligence procedures expected from companies hence require enhanced depth.

Against this background, a key element for understanding enhanced human rights risks in CAHR areas is that companies may themselves become involved in conflict.⁵ We call this effect the ‘conflict spiral’ of corporate human rights risks in CAHR areas.⁶ The conflict spiral describes situations where companies unwillingly or unknowingly cause or exacerbate conflict and consequently face new and largely unforeseeable human rights risks.

4 United Nations, note 2. Principle 15.

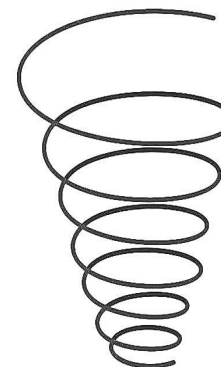
5 Two kinds of conflicts need to be differentiated in this regard: conflicts which exist independently of company’s operations and company-community conflicts which emerge as a consequence of business operations. The guidance intends to be relevant for both kinds of conflicts.

6 The concept of the conflict spiral is further elaborated on in: Graf, Andreas and Andrea Iff. 2016. *Respecting human rights in conflict regions: How to avoid the ‘conflict spiral’*. In: Business and Human Rights Journal.

Company does not identify and address the risks of becoming involved in conflict.

Company becomes involved in conflict and faces unforeseen and escalating human rights risks.

Company ceases to be seen as a legitimate actor in the region.



Company disproportionately employs participants from one societal group.

Company becomes seen as partisan in conflict, protests arise, violence is used by protesters and company security services.

People are harmed and company has to cease its operations in that region.

Figure 1: The conflict spiral of escalating corporate human rights risks

Three elements make the conflict spiral particularly vicious:

- > First, activities through which companies may become involved in conflict are often not perceived as salient human rights issues and risk to be ignored or under-prioritized in standard human rights impact assessments.
- > Second, companies which become involved in conflict face escalating human rights risks which are very difficult, and oftentimes virtually impossible, to foresee at an earlier stage.
- > Third, once a company is involved in conflict, it becomes very difficult for it to be seen as a legitimate actor in that operating context again.

Companies which strive to respect human rights in CAHR areas therefore not only need to enhance the depth of standard human rights instruments. The complexity of the operational environment requires them to complement standard human rights processes with specific procedures through which the company identifies and addresses the risks of becoming involved in conflict.

1.3 Why this publication?

This publication presents an approach to enhance human rights due diligence when exposed to risks of corporate involvement in conflict. It proposes to integrate aspects of the well-established approach of conflict sensitive business practice (CSBP) into standard business and human rights approaches.

The overarching goal of the publication is to contribute to the better enjoyment of human rights by individuals affected by business operations in CAHR areas. More specifically, it shall:

- > Provide guidance to company representatives tasked to design and implement human rights due diligence processes in CAHR areas.
- > Generate food for thought for those involved in developing procedural requirements for companies as part of international standards, multi-stakeholder initiatives, or legal regulations.
- > Serve as a basis for discussion among experts from various stakeholder groups and help swisspeace refine its own methodology used when working with and for companies.

The methodology outlined in this Essential is the result of reflections by staff of the Business and Peace Unit at swisspeace. Further inputs were provided by the swisspeace Business Advisory Board and a series of international experts from business, academia and civil society.

1.4 Structure

The following chapter two provides some additional background to the concepts of human rights due diligence and conflict sensitivity and briefly discusses the complementarity of the two conceptual approaches. Chapter three outlines the integrated approach of human rights due diligence in conflict-affected areas. It is sub-divided into sections on commitment, impact assessment, addressing and remedying, review of performance, and reporting. The publication ends with concluding remarks and a summary of the value added of the introduced integrated approach of human rights due diligence and conflict-sensitivity.

2 Human Rights Due Diligence and Conflict Sensitive Business Practice

This chapter introduces the approaches of human rights due diligence and CSBP which are at the heart of the proposed integrated methodology. Further, it highlights the complementarity of the two approaches.

2.1 Human Rights Due Diligence

Human rights due diligence describes the steps a company must take to become aware of, prevent, and address adverse human rights impacts. In the understanding of the UNGPs, a company can adversely impact on human rights through its own operations by causing or contributing to adverse impacts, or by being directly linked to adverse impacts through its business relationships, even if it has not contributed directly to those impacts.⁷ The responsibility to respect extends across the whole operations and value chains of businesses and refers to all internationally recognized human rights.⁸

⁷ United Nations, note 2. Principle 13.

⁸ The internationally recognized human rights encompass the International Bill of Human Rights including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights, and the Fundamental Principles and Rights at Work of the International Labour Organization encompassing the eight core ILO conventions. See: United Nations, note 2. Commentary to Principle 12.

Kind of involvement	Example	Expected actions
Cause	Water pollution where company is sole or main source of pollution; inadequate pay of workers; routine racial discrimination of restaurant clients	<ul style="list-style-type: none"> > Prevent or cease harm > Provide for or cooperate in remedy
Contribution	Putting undue pressure on suppliers, pushing them to breach labour standards; performing construction in illegal settlements; providing surveillance equipment to government without ensuring it is not used for repressive purposes	<ul style="list-style-type: none"> > Prevent or cease contribution to harm > Use leverage to reduce harm by others > Help provide for or cooperate in remedy
Link through business relationship	Provide insurance to dam project involving eviction of communities; sub-contracting of recruitment to agency acting in disregard of labor rights; buying products from suppliers using child labor	<ul style="list-style-type: none"> > Use leverage to reduce risks that harm occurs > If little leverage, take steps to increase leverage > If not possible, consider terminating the relationship

Table 1: Corporate responsibilities under the UNGPs

The actions companies are expected to take depend on the kind of their involvement with human rights abuse. In cases where companies may cause harm, they are expected to take steps to prevent potential human rights abuse. Moreover, where harm occurs, companies should cease causing human rights abuse and provide for or cooperate in remedy. Where companies may *contribute* to harm, they should take steps to prevent or cease doing so, use their influence to reduce the risk of other parties contributing to the harm, and help provide for or cooperate in remedy. And finally, in situations where companies *may be linked* to human rights abuse through their business relationships, but without cause or contribution on their part, they are expected to use their influence to seek to reduce the risks that the harm occurs.⁹

The UNGPs not only define the responsibilities of companies, but also provide operational guidance. Companies are expected to have in place three basic elements (see Figure 2):¹⁰

- 1 A policy commitment that is publicly available and embedded into the institutional culture.
- 2 An ongoing human rights due diligence process which is composed of four parts:¹¹
 - > processes through which businesses *identify and assess* any actual or potential adverse human rights impact with which they may be involved;
 - > appropriate action in order to *prevent and mitigate* adverse impacts by integrating the findings from the impact assessments across relevant internal functions and processes;
 - > measures to *track and verify* the effectiveness of their responses to potential and actual human rights abuse; and
 - > regular *external communication* on how human rights impacts are addressed.¹²

3 Processes which provide for or contribute to remediation for individuals harmed as a result of the activities of the companies.¹³

Moreover, the UNGPs require companies to engage with stakeholders throughout their efforts to ensure respect for human rights.¹⁴

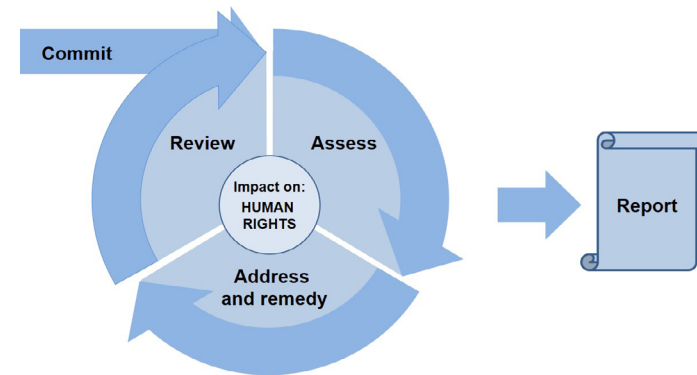


Figure 2: Overview on the measures required to ensure respect for human rights

As indicated above, the scale and complexity of the means through which companies meet their responsibility to respect human rights varies according to their size, sector, operational context, ownership and structure.¹⁵ As the risk of particularly severe human rights abuse is heightened in CAHR areas, companies are expected to enhance their due diligence processes.¹⁶

9 If a company has little leverage over those causing the adverse human rights impact, it should take steps to increase its leverage. Where this is not possible, it should consider terminating the relationship. See United Nations, note 1. Commentary to Principle 19.

10 In this publication, when referring to integrating conflict sensitivity into human rights due diligence, we also include the policy commitment and access to remedy, although – strictly speaking – they are not part of the due diligence process such as outlined in the UNGPs.

11 United Nations, note 2. Principles 17-21.

12 In Figure 2, reporting is not considered part of the core process of assessing, addressing, remedy, and review. This reflects the expectation that reporting includes information on all previous aspects, including commitment and remediation.

13 It should be noted that the remedy element is treated separately in both the UNGPs and the OECD Guidelines (see: United Nations, note 2. Principle 22). Figure 2 and the proposed integrated approach (see Figure 4) add the remedial measures to those taken on prevention and mitigation. This reflects the reality where companies take remedial actions as part of their overall action plans to address the human rights impacts identified in the assessment stage.

14 Resources for meaningful stakeholder engagement include: Shift. 2013. *Bringing a human rights lens to stakeholder engagement*; BSR. 2012. *Back to basics: How to make stakeholder engagement meaningful for your company*; AccountAbility. 2015. *AA1000 Stakeholder Engagement Standard*.

15 United Nations, note 2. Principle 14.

16 While the UNGPs remain unspecific on how exactly companies should enhance their due diligence processes in conflict affected areas, they state that, wherever they operate, the risk of causing or contributing to gross human rights abuses should be treated as a legal compliance issue. See: United Nations, note 2. Principle 23 (c).

2.2 Conflict sensitive business practice

Conflict sensitive business practice (CSBP) refers to processes through which companies aim at minimizing negative and maximizing positive impacts on conflict. In other words, it encompasses instruments which are designed to allow companies to avoid becoming involved in violent conflicts. Moreover, it provides guidance on how companies can build on opportunities to help strengthening social cohesion and peaceful relationships among people, within communities, and between the company and those affected by its operations.

Conflict sensitivity as a general approach to increase the responsibility and effectiveness of operations in CAHR areas has been established by developmental and humanitarian organizations in the 1990s.¹⁷ It was a response to the increasing recognition that their operations, despite all their good intentions, were at times fuelling conflict. In the early 2000s, organizations and companies increasingly started to strategically analyse and address corporate impacts on conflict, and tools and instruments of conflict sensitivity have been adapted to businesses.¹⁸ In recent years, an increasing number of companies have engaged in CSBP.¹⁹

At the operational level, CSBP refers to a three-step process (Figure 3). It includes:

- > Measures to understand the context in which a company operates, i.e. a thorough analysis of actual or potential conflicts.
- > An analysis to understand how business operations interact with the context, i.e. factors driving conflict or social cohesion.
- > The definition and implementation of mitigation measures to address potential and actual adverse impacts and to capitalize on opportunities to strengthen social cohesion and peace.

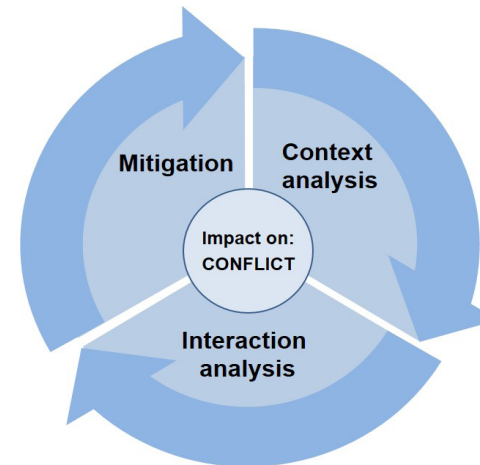


Figure 3: Overview conflict sensitivity

2.3 The benefits of an integrated approach

The instruments, tools and best practices of CSBP are ideally placed to complement standard human rights due diligence processes in order to meet the enhanced risks in CAHR areas. A central reason for human rights risks to be particularly high in CAHR areas is that companies may become involved in conflict. CSBP is all about helping businesses to avoid causing or exacerbating conflict. Enhancing human rights due diligence through the integration of CSBP is thus a most promising way for companies to avoid being caught in the conflict

17 For a recent Working Paper compiling insights by conflict sensitivity experts, see: Handschin, Sabina et al. 2016. *Conflict Sensitivity: Taking it to the Next Level*. swisspeace Working Paper 2/2016.

18 The driving force of this development was the London-based peacebuilding organization International Alert with its 2005 publication entitled *Conflict-Sensitive Business Practice: Guidance for Extractive Industries* and the UN Global Compact and PRI publication of 2009 entitled *Enabling Economies of Peace: Public Policy for Conflict-Sensitive Business*.

19 Oftentimes companies thereby collaborate with expert institutions specializing on CSBP, such as International Alert, the CDE corporate engagement program, Saferworld, the American Friends Service Committee, or swisspeace.

3 Enhanced Human Rights Due Diligence

This section introduces the integrated approach through which companies enhance their human rights due diligence with CSBP. The proposed approach follows closely the operational principles of pillar two of the UNGPs and the respective chapter IV of the OECD Guidelines on Multinational Enterprises.²⁰

3.1 Overall Process

The overall process visualized in Figure 4 is composed of five elements: commit, assess, address and remedy, review and report. The assessment, address and remedy and review stages constitute the core of the ongoing due diligence process and focus on companies' impact on *human rights (outer circle)*. Jointly during these steps, CSPB procedures focus in parallel on corporate impacts on *conflict (inner circle)*. The measures taken and key insights thereof are regularly publicly reported.

3.2 Operational steps

This section introduces the operational steps of the integrated approach. It focuses on the conflict-related aspects (inner circle) which complement and inform the overall human rights due diligence process (outer circle). It identifies a total of five key elements of an integrated approach: commitment, assessment, addressing and remedying adverse impact, reviewing performance, and reporting. These key elements include a total of 17 steps which guide companies in enhancing their standard human rights due diligence processes with CSBP in order to address the heightened human rights risks in CAHR areas.

3.2.1 Commitment

According to the UNGPs, companies should have in place a public policy commitment to respect human rights, approved by the most senior level of the company.²¹ The policy commitment should be informed by stakeholder consultations and stipulate the company's human rights

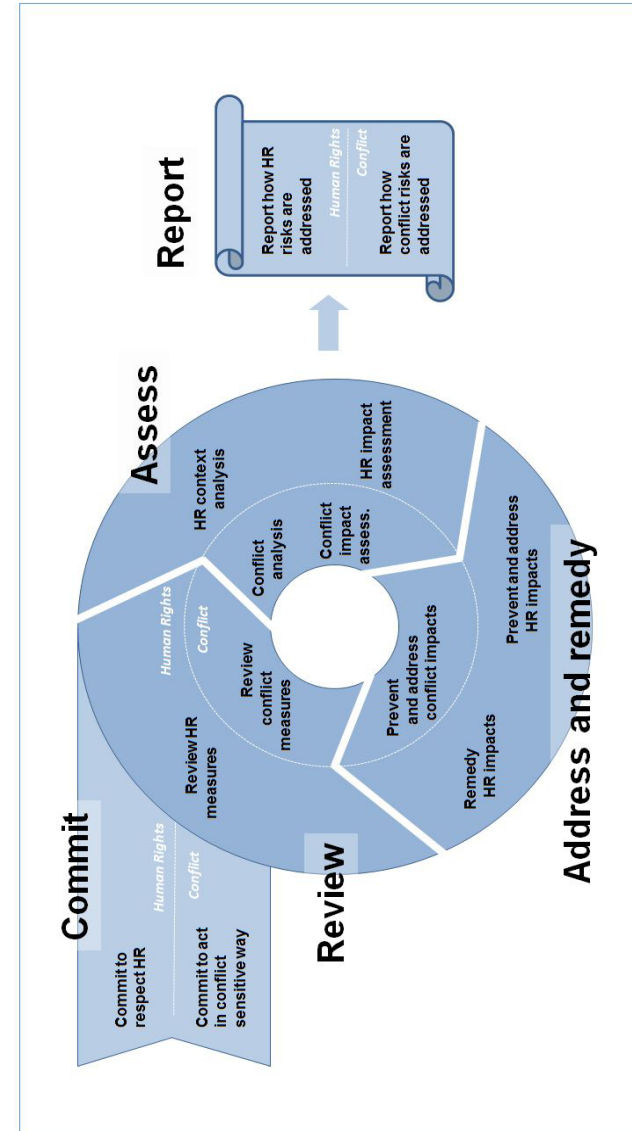


Figure 4: Overview of the integrated process

²⁰ Moreover, the methodology is also in line with, and draws on concepts of, the UN Guiding Principles Reporting Framework developed by the Shift Project and Mazars in 2015. See: <http://www.ungpreporting.org/>

²¹ United Nations, note 2. Principle 16.

22 Guidance documents on the development of a human rights policy commitment include: UN Global Compact and OHCHR. 2011. A Guide for Business: How to develop a human rights policy; UNICEF and Save the Children. 2013. Children's rights in policies and codes of conduct.

expectations of personnel, business partners, and other parties directly linked to its operations, products or services. The policy should further be embedded throughout the company through operational policies and procedures, as well as through the sensitization and training of relevant personnel.²²

In order to enhance their human rights due diligence process through the integration of CSBP, companies develop and embed a commitment to act in a conflict sensitive way. This commitment complements the standard commitment to respect human rights (see Figure 5).

Commit

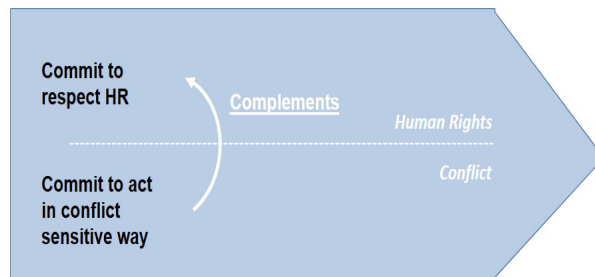


Figure 5: Overview on the commitment stage of the integrated approach

Companies which enhance their human rights policies through CSBP hence take a number of concrete steps. They:

1. Develop and publish a commitment to act in a conflict sensitive way:

As part of their overall commitment to respect human rights, companies recognize that their operations in CAHR areas may enhance their human rights risks.

They commit to strive for CSBP as a means to ensure effective respect for human rights. In developing the aspects of the commitment related to conflict sensitivity, they include internal and external stakeholders from CAHR areas.

2. Develop procedures to embed conflict sensitivity:

Companies introduce conflict sensitivity and the respective enhanced due diligence process into internal policies and procedures governing their business activities and relationships in CAHR areas. This includes for instance relevant internal policies and governance instruments, reporting lines up to the highest levels of the company, structures of cross-departmental exchange and collaboration, the functional specifications of employees, performance incentives for personnel, or standardized contractual terms with business partners.

The added value of integrating CSBP into the commitment to respect human rights is:

- > Expectations from the top leadership to take enhanced measures in CAHR areas are clearly communicated internally and externally
 - > Coherence of corporate activities on human rights through CSBP is enhanced
 - > Personnel and business partners are empowered to act upon the commitment
-

3. Sensitize and train relevant staff and business partners:

In order to embed conflict sensitive operations throughout the relevant branches of the company, relevant personnel and business partners are sensitized and trained on CSBP. This includes staff and partners operating in CAHR areas as well as those managing activities or business relationships with links to CAHR areas. Specific trainings on the integration of CSBP into human rights due diligence are developed and carried out.

4. Allocate additional financial and personal resources:

Embedding enhanced human rights due diligence into the company requires additional resources. Companies therefore designate a specific staff member at the HQ level and identify focal personnel embedded in local operations in CAHR areas. Moreover, funds to pay for support by external experts are made available.

3.2.2 Assessment

The basis of any human rights due diligence is the identification of the company's impacts on human rights. According to the UNGPs,²³ companies should identify and assess any actual or potential adverse human rights impacts with which they may be involved either through their own activities or as a result of their business relationships. Business relationships are understood as business partners, businesses in the value chain, and any other business, government or other entity that is directly linked to its operations, products or services. Human rights impact assessments lead to the identification of so called salient human rights issues²⁴ which the company addresses as part of the due diligence process.

23 United Nations, note 2. Principle 18.

24 The term salient human rights issue has mainly been put forward by Shift and Mazars in their UNGP Reporting Framework (see Shift and Mazars, note 18). The term salient human rights issue refers to "the human rights at risk of the most severe negative impact through the company's activities and business relationships." The concept differs from the classical risk assessment logic or the concept of 'materiality' used in corporate responsibility practice which stresses the impact of the context on the company.

Impact assessments related to human rights are generally divided into an assessment of the context and subsequently the impacts of the company on the rights of individuals. In CAHR areas, the context analysis requires particular attention, given the complex social realities which shape the company's human rights impacts. Companies hence conduct a conflict analysis which informs the human rights context analysis. When it comes to identifying and assessing impacts, companies conduct a conflict impact assessment which complements and informs the standard human rights impact assessment (see Figure 6).

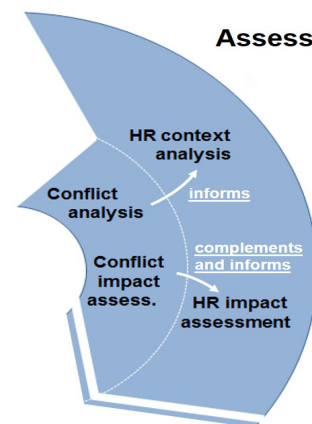


Figure 6: Overview on the assessment stage of the integrated approach

Context Assessment

Human rights impact assessments start with an overall assessment scoping the human rights situation in the country or region of interest. In standard human rights assessment methodologies, this assessment tends to be limited to draw on information which is publicly available or which is generated through company internal sources.²⁵ In CAHR areas, this is not sufficient. CSBP therefore puts strong emphasis on an in-depth understanding of the context in general, and on the conflict in particular.

Companies which enhance their human rights context assessment through CSBP hence take a number of additional steps in their context analysis. They:

5. Identify all operations or business relationships in CAHR areas

The first step of assessing the human rights risks related to CAHR areas consists in identifying the activities of concern. This includes operations of the company itself which take place in CAHR areas. Moreover, it comprises linkages to business operations in CAHR areas through business relationships. This is an exercise which mainly draws on internal sources, but may, depending on the complexity of the business operations, also involve additional research and local expert advice. Such additional support may be required with regards to conflict issues in complex value chains.

6. Conduct conflict analyses of substantial depth

Having identified the operations or relationships in CAHR areas, companies analyse the contexts in question. Conflict analyses focus on conflictual relationships between actors in the overall region, in dependency of whether they seem at first glance to relate to corporate activities. Such conflictual relationships may be carried out through violent or non-violent means and tend to

have local, regional, national and sometimes international dimensions. Two kinds of conflicts need to be differentiated: First are conflicts which occur independently from a company's operations, but in which it may become involved. And second are conflicts which were caused or which turn violent because of the presence or activities of the company.²⁶

Key elements of a conflict analysis are (1) a mapping of relevant actors and their interests and relationships among each other, (2) the identification of conflict dynamics, (3) the identification of causes and drivers for conflict, and (4) the identification of connecting actors and issues which are a source for social cohesion and peace. The analysis of conflicts needs to be done with the support of local stakeholders and experts with a particular expertise on conflict-related issues in the country and includes the collection of in-depth data in the respective region.²⁷ It requires careful preparation to allow for the generation of relevant and valid data as well as to ensure the security of those carrying out the analysis and of those providing information.

- ²⁶ Examples of business involvement in conflicts of the first kind include business operations in Eastern DRC or in certain areas of Iraq. Situations of the second kind may include company-community conflicts around mines in Peru or South Africa.
- ²⁷ This is an important difference the human rights impact assessments where the context assessment is based on desktop research and gathering data through internal company resources. When integrating CSBP into HRDD, additional resources and time for a field mission in the context assessment stage ('scoping' in HRIA terms) need to be factored in.

Guidance on how to do a conflict analysis:

- > [CDA \(2015\): Conflict Analysis Framework: Field Guidelines and Procedures](#)
 - > [USAID \(2012\): Conflict Assessment Framework](#)
 - > [Conciliation Resources \(2015\): Gender & Conflict Analysis Toolkit](#)
-

²⁵ See e.g.: DIHR. 2016. *Human Rights Guidance and Toolbox*. International Business Leaders Forum and IFC. 2011. *Guide to HRIAM*; Danish Institute for Human Rights. 2013. *Human rights compliance assessment*; Nestle and DIHR. 2013. *Talking the Human Rights Walk: Nestlé's Experience Assessing Human Rights Impacts in its Business Activities*.

7. Assess how the conflict influences the human rights situation and vice versa

The conflict analysis is then put in relation to the human rights-oriented context assessment. Companies analyse how the identified conflict dynamics are already influencing the human rights situation and how they may do so in future. This includes for instance an assessment of how actors involved in conflict are also involved in actual or potential human rights violations. Moreover, it comprises an assessment of how the human rights situation fuels tensions among stakeholders and whether it may lead to an escalation of currently non-violent conflicts.

Impact Identification and Assessment

In the second part of the human rights impact assessment stage the actual or potential human rights impacts are identified and assessed. This also includes the identification of particularly vulnerable groups and individuals such as for instance women, children, migrants, or indigenous peoples. The assessment draws on internal and independent external human rights expertise and involves consultation with rights-holders and other relevant stakeholders. In CAHR areas, this process requires particular attention. In order to accurately understand the full scope of human rights risks, companies need not only to understand their impacts on human rights, but also on conflict.

Companies which enhance their human rights impact assessment through CSBP hence take a number of concrete steps. They:

8. Identify salient conflict issues at local level

Companies enhancing their human rights due diligence through conflict sensitivity, conduct a conflict impact analysis which complements and informs the standard human rights impact analysis.²⁸

²⁸ Drawing on the understanding of salient human rights issues developed by Shift and Mazars in their UNGPs Reporting Framework (see note 18), we understand salient conflict issues as issues through which the company has the most far-reaching actual or potential impact on conflict dynamics.

Companies may contribute to conflicts which exist independently of the company's operations. Moreover, they may themselves cause conflicts which are the direct result of corporate activities. The identification of salient conflict issues includes expert advice and stakeholder inputs. The process of gathering information locally requires careful preparation. In many cases the collaboration with an independent local organization is sought to lead or accompany the process. As part of the identification of salient conflict issues, companies will also identify groups and individuals which are at particular risk of being adversely affected by the conflict.

Guidance on how to identify salient conflict issues:

- > [Conflict Sensitivity Consortium \(2012\): How to guide to conflict sensitivity](#)
 - > [International Alert \(2005\): Conflict Sensitive Business Practices: Guidance for Extractive Industries](#)
-

9. Assess how the salient conflict issues influence human rights risks

In a further step, the companies assess how the identified salient conflict issues relate to the salient human rights issues. Three categories of issues can be differentiated (see Table 2): (a) issues which are identified as salient in both, human rights and conflict terms (category 1); (b) salient conflict issues which are not identified as salient in terms of human rights (category 2); and (c) salient human rights issues which are considered unlikely to cause or exacerbate conflict (category 3).

		Conflict salient	
		Yes	No
Human Rights salient	Yes	<p>Category 1</p> <p>e.g.: serious pollution of water; business relationships with conflict actors; employment of weakly trained security personnel</p>	<p>Category 3</p> <p>e.g.: equal pay between man and women; minor labour rights issues</p>
	No	<p>Category 2</p> <p>e.g.: tensions through weak expectation management; tensions through unequal hiring policies along conflict lines; tensions between those favouring economic development and those aiming to protect traditional ways of living</p>	

Table 2: Categorization of adverse corporate impacts on human rights and conflict

This categorization of salient issues further clarifies how the conflict assessment enhances the validity of the human rights impact assessment and serves as a basis to identify targeted measures:

- > With regards to category 1 issues, the conflict impact analysis informs the standard human rights impact assessment in that it shows the actual scope of risks involved. Category 1 issues tend to require specific attention as they risk to spiral out of control and amplify the company’s human rights risks.
- > For category 2 issues, the conflict perspective complements the human rights impact assessment in that it highlights those issues which tend to be overlooked or under-prioritized in standard human rights impact assessments. As category 2 issues risk leading to corporate involvement in conflict, they are central to understanding the human rights risks of a company. A company which follows an integrated approach to enhance its human rights due diligence will subsequently strive to identify the human rights risks resulting from conflict involvement due to category 2 issues.
- > Finally, the conflict analysis may also provide additional background regarding category 3 issues. While in these cases the conflict perspective is of less direct relevance, the conflict analysis can still be of value to provide better understanding of the human rights issue in question.

The added value of integrating CSBP into the impact assessment is:

- > The actions which result from the assessment become better informed as the (conflict) context is better understood
 - > The human rights risks are more accurately defined as the risk of escalating human rights risks is systematically identified and assessed
 - > Assessment measures are carried out in a conflict sensitive way
-

3.2.3 Address and remedy

The third element of the overall due diligence process is the measures companies take to act upon the conflict and human rights impacts. According to the UNGPs, companies need to take appropriate preventative measures to avoid involvement in potential human rights abuse. Moreover, where harm has occurred, companies need to take measures to mitigate or cease adverse impacts and contribute to remediation.²⁹

In CAHR areas, this requires taking a set of specific measures to address conflict impacts. Companies following an integrated approach hence draw on CSBP to complement and inform their measures to prevent and address human rights impacts. Moreover, CSBP-type procedures can inform the measures taken to provide access to remedy for victims of adverse human rights impacts (see Figure 7).

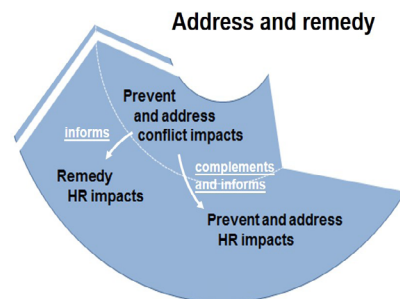


Figure 7: Overview on the address and remedy stage of the integrated approach

More specifically, companies which enhance their human rights due diligence through CSBP, develop and implement a plan of action in which they:

10. Prioritize salient human rights and conflict impacts

A first step in the development of an action plan is the prioritization of the human rights and conflict impacts identified in the assessment stage. The central criterion in this regard is the severity of the human rights abuse related to a certain issue.³⁰ Companies thereby draw on the insights from the conflict impact assessment. First, they take into account the heightened risks linked to issues which are salient in both human rights and conflict terms (category 1). Second, they also include the potential human rights risks resulting from issues which have been considered as salient in conflict but not human rights terms (category 2). The result of the prioritization hence is a set of the most severe potential or actual human rights and conflict impacts which the company chooses to address or which require remediation.

11. Take measures to prevent adverse conflict and human rights impacts

As part of their actions to address adverse impacts, companies define preventative measures. For the issues which are considered salient in conflict terms (category 1 and 2), specific complementary measures are taken which directly address the potential adverse impacts on conflict. These measures build directly on the insights gained in the conflict analysis, particularly the four key elements of a conflict analysis (key stakeholders, dynamics, causes, connectors).

In addition to that, insights from the conflict analysis and conflict impact assessment will inform the measures designed to prevent adverse human rights impacts (category 1 and 3). For instance, supporting peaceful relations in the communities can be critical for

29 United Nations, note 2. Principle 19.

30 See: United Nations, note 2. Principle 24. Severity according to the UNGPs is the result of three factors: First is the scale of the impact, characterized by its gravity. Second is the scope, hence the number of people affected. And third is the degree to which the impact is irreparable in character, which refers to limits on the ability to restore those affected to a situation at least the same as, or equivalent to, their situation before the adverse impact. When identifying the severity of impacts, companies should also consider that certain issues may become irreparable if a response is delayed. For further elaboration on the concept of severity in the UNGPs see: OHCHR. 2012. *The Corporate Responsibility to Respect Human Rights: An Interpretive Guide*. p.19. For a practical guide on how to determine severity, see: DIHR. 2016. *Human Rights Impact Assessment: Guidance and Toolbox*. p. 69.

successful prevention of human rights abuse. Companies will therefore also draw on insights from CSBP-style measures which contribute to social cohesion.

Guidance on how to develop a CSBP action plan:

- > [Conflict Sensitivity Consortium \(2012\): How to guide to conflict sensitivity](#)
 - > [International Alert \(2005\): Conflict Sensitive Business Practices: Guidance for Extractive Industries](#)
-

12. Take measures to address adverse conflict and human rights impacts

Companies which enhance their human rights due diligence through CSBP also take measures to specifically address actual impacts on conflict (category 1 and 2). These measures are complementary to the measures taken to address salient human rights issues. Moreover, insights from the conflict analysis and conflict impact assessment will inform the measures taken to address salient human rights issues (category 1 and 3).

13. Take measures to remedy adverse human rights impacts

The concept of remediation is not explicitly part of CSBP.³¹ However, as adverse impacts on human rights oftentimes are conflict risks, acting in a conflict sensitive way in many cases requires taking measures to right wrongdoing. Thus, many of the activities and techniques used as standard practice in CSBP, such as mediation or processes towards non-judicial reconciliation, can inform operational-level grievance mechanisms. Moreover, insights from the conflict analysis provide valuable contextual knowledge for operational-level grievance mechanisms.

14. Ensure that all measures taken are conflict sensitive

Company measures taken to address conflict and human rights impacts are a potential source of conflict and human rights risks themselves. Companies which enhance their human rights due diligence with CSBP ensure that all of their activities resulting from the assessments are conflict sensitive. This includes identifying and preventing potential adverse impacts of the measures itself.

3.2.4 Review

According to the UNGPs, companies are required to track the effectiveness of their response to human rights risks based on qualitative and quantitative indicators.³² This includes the integration of human rights-related indicators into performance contracts and review, as well as surveys and audits. The review should be based on internal and external sources, including affected stakeholders as well as on insights from cases gathered through operational grievance mechanisms.

The added value of integrating CSBP into measures taken to address and remedy adverse human rights impacts is:

- > The human rights risks are more accurately prioritized given that the risks of conflict are factored in.
 - > The prevention of adverse impacts is enhanced as conflict impacts are strategically addressed, some of which may fall under the radar in standard human rights processes.
 - > Grievance mechanisms are sensitive to the context and draw on established measures of conflict mediation and reconciliation.
 - > The actions taken are designed in a way that they are not themselves causing or fuelling further tensions.
-

³¹ This may be due to the fact that conflict sensitivity is concerned with impacts on conflict, i.e. societal developments, as opposed to the rights of individuals. See: Graf and Iff, note 6.
³² United Nations, note 2. Principle 20.

In CAHR areas, companies not only take measures to address salient human rights, but also salient conflict issues. The review of these measures complements and informs the overall review of measures taken to address human rights risks (see Figure 8).

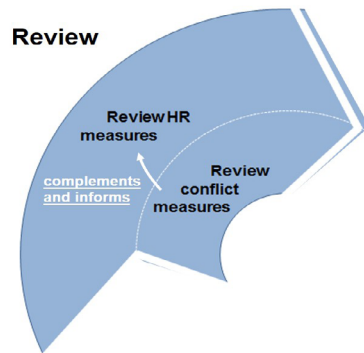


Figure 8: Overview on the review stage of the integrated approach

Companies enhancing their human rights due diligence through conflict sensitivity hence:

15. Track impact on conflict of all corporate activities

Besides tracking the effectiveness of measures taken to address salient human rights issues, companies also track the effectiveness of the measures taken to prevent or mitigate adverse impact on conflict. Moreover, they evaluate to what extent the measures taken to address salient human rights issues were conflict sensitive. This requires (a) an update of the conflict analysis which allows understanding the evolution

of conflict dynamics, and (b) an assessment of how corporate measures and operations influenced those dynamics.

3.2.5 Reporting

The UNGPs require companies to regularly report about how they address their human rights risks.³³ This is particularly the case when it comes to companies whose operations or operating contexts pose risks of severe human rights impacts like in CAHRs. At the same time, companies should make sure that their communications do not pose risks to affected stakeholders or personnel.

In order to covering all measures taken as part of the human rights due diligence, companies also report on the measures taken to specifically address conflict impacts. Moreover, as the danger of harming persons through transparency becomes particularly relevant for operations in CAHR areas where the overall protection of human rights is particularly weak, companies use CSBP to ensure conflict sensitive reporting on all measures taken (see Figure 9).

The added value of integrating CSBP at the review stage is:

- > The full range of measures are reviewed, including those specifically addressing conflict impacts
 - > Adverse impacts on conflict through measures taken to address human rights impacts are identified
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³³ United Nations, note 2. Principle 21. For further guidance on human rights reporting, see: GRI. 2014. *Guidance on human rights reporting*; Shift. 2016. *UNGP Reporting Framework*; DIHR. 2016. *Human Rights impact assessment: Guidance and Toolbox*. p. 84-90.



Figure 9: Overview on the reporting stage of the integrated approach

Companies which enhance their reporting through CSBP:

16. Report on the measures taken to address conflict salient issues

Companies complement their reporting on how they address salient human rights issues with information on their measures to avoid adverse impacts on conflict. This information is made available in formal reports. In order to increase the validity of the information provided, companies consider an independent verification of the reporting.

17. Ensure that communications do not cause harm to people

Gathering and publishing information may put people at risk. These risks tend to be particularly grave in CAHR areas. Companies hence draw on CSBP to take the necessary measures to make sure that increased transparency will not endanger people or fuel conflicts.

The added value of integrating CSBP in reporting is:

- > There is transparency on all measures taken, including those to address conflict impacts
 - > Potential adverse impacts on people through reporting are identified and prevented
-

This publication introduces a novel approach to enhancing human rights due diligence in conflict affected and high-risk areas. It outlines 17 concrete steps through which companies can draw on the well-established approach of conflict sensitive business practices to complement and inform their processes to ensure respect for human rights. The integrated approach hence provides a procedural guidance on how to implement the UN Guiding Principles on Business and Human Rights, the human rights aspects of the OECD Guidelines on MNEs, and other related standards in CAHR areas.

The overall added value of enhancing human rights due diligence through the integration of CSBP rests on four main elements:

- > Understanding of the context: A thorough understanding of the societal dynamic is central to any human rights due diligence process. CSBP provides the necessary guidance to understand context in CAHR areas.
- > Identification of human rights risks: Standard human rights due diligence practice risks to ignore or under-prioritize actions or issues which lead to corporate involvement in conflict. CSBP allows companies to specifically identify their impacts on conflict and thereby increase the validity of human rights impact assessments.
- > Development of effective measures: Addressing human rights risks in CAHR areas also requires taking measures to avoid becoming involved in conflict. CSBP provides guidance and best practice on effective strategies in that regard.
- > Conflict sensitivity of human rights-related measures: Measures taken by companies to address human rights risks may themselves cause or exacerbate conflict. CSBP provides the necessary instruments to avoid such unintended effects.

The approach presented in this Essential proposes a largely conceptual integration of CSBP into human rights due diligence. This publication shall invite feedback from experts from both, the human rights and conflict sensitivity fields and is subject to be piloted in collaboration with businesses.

About the Authors

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swisspeace is a practice-oriented peace research institute. It analyses the causes of violent conflicts and develops strategies for their peaceful transformation. swisspeace aims to contribute to the improvement of conflict prevention and conflict transformation by producing innovative research, shaping discourses on international peace policy, developing and applying new peacebuilding tools and methodologies, supporting and advising other peace actors, as well as by providing and facilitating spaces for analysis, discussion, critical reflection and learning.

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