

GEOPOLITICS AND CONFLICT: HOW TO NAVIGATE CHALLENGING HUMAN RIGHTS CONTEXTS



GOVERNANCE & SUSTAINABILITY
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One in six people globally are estimated to have been exposed to conflict so far this year, and 50 countries are currently in the midst of extreme, high or turbulent conflict situations.¹ As a result, more and more businesses are operating in areas affected by political instability and/or conflict, which poses several challenges and has recently made doing business in conflict situations a hot topic for the boards and management teams of many global businesses. Issues can include risks to employees, disrupted supply chains and uncertainty around local operations. There is often little time to make decisions about how to respond to changes in circumstances and any course of action may attract increased scrutiny, thus putting heightened emphasis on being equipped ahead of time to navigate these complex scenarios when they arise. Inadequate systems can leave businesses exposed to the risk of being connected with human rights violations and being accused of exacerbating the conflict. With legal requirements to conduct human rights due diligence on the horizon, this year is likely to be an important one, making a review of existing practices worthwhile. Throughout this article, we explore current corporate duties, where the law may be changing and provide practical tips to support businesses navigate the nuances.

CORPORATE DUTIES IN CONFLICT ZONES

Most businesses will be familiar with the United Nations Guiding Principles on Business and Human Rights (UNGPs), which were the first global framework for identifying, addressing and preventing adverse human rights impacts in business activities. Since 2018, the United Nations has published further guidance about what is expected of businesses seeking to comply with the UNGPs when operating in conflict settings and challenging human rights contexts, including on remaining in and exiting from challenging human rights contexts.² These pieces of guidance are not binding but do, together, constitute a framework that businesses can use to implement appropriate processes and safeguards:

- **Duties under the UNGPs:** Under the UNGPs, businesses have a responsibility to avoid infringing on the human rights of others and to address adverse human rights impacts with which they are involved. The same is true in conflict-settings and, “because the risk of gross human rights abuses is heightened in conflict-affected areas”, due diligence by businesses should be heightened accordingly.³
- **Triggers and indicators:** There is no universal definition of a ‘conflict affected area’. Instead, the publications set out triggers and indicators that suggest that an area might become ‘conflict affected’ or

¹ Source: the Armed Conflict Location & Event Data Project (“ACLED”), one of the leading sources of real-time data on political violence and related activity globally.

² See the United Nations Office of the High Commissioner for Human Rights’ project on business, human rights and conflict affected regions, (accessed 9 February 2024), UN Working Group report on Business, human rights and conflict-affected regions: towards heightened action, (Working Group Report), Heightened Human Rights Due Diligence for Business in Conflict-Affected Contexts: A Guide, (Heightened due diligence guide), Business and Human Rights in Challenging Contexts Considerations for Remaining and Exiting August 2023, (Remaining and Exiting Guide), (accessed 9 February 2024).

³ Working Group Report, p. 5.

a challenging human rights context.⁴ These include, for example, widespread armed violence, entrenched patterns of severe discrimination and military occupation.⁵

- Heightened due diligence: Under the UN guidance, where the indicators and triggers apply, a business should initiate heightened due diligence. Whereas traditional human rights due diligence involves gathering information about how businesses might be impacting risks to people's human rights, heightened due diligence additionally aims to review how business activities might be contributing to a conflict.⁶ This heightened due diligence will be broken down into efforts to understand the conflict and measures to assess the impact of the businesses' activities on the conflict.
- Identifying responsibility: A business can assess whether it is causing, contributing or directly linked to adverse human rights or conflict impacts by asking itself three questions:
 - is there an actual or potential adverse impact on human rights or the conflict connected to the company's activities?
 - if so, do the company's activities increase the risk of that impact?
 - if so, would the company's activities in and of themselves be sufficient to result in that impact?The answers to these questions will indicate the level of responsibility a business has for the adverse human rights impacts.⁷
- Action: According to the UN framework, businesses need to take action according to their level of responsibility for adverse human rights or conflict impacts.⁸ The exercise of measures and leverage will need to be tailored to the business, the adverse impact and the conflict. We have included some practical suggestions below.

The OECD has also set out its own voluntary due diligence framework, aligned with the UNGPs. In this context, the OECD's complaints procedure is especially notable. Governments adhering to the OECD Guidelines are obliged to set up a complaints procedure with National Contact Points (NCPs) that can investigate alleged violations of the Guidelines by companies and publish their findings. Companies that face claims have found themselves subject to such investigations and faced the consequential legal and reputational risk of an adverse finding, with a number of cases addressing the impact of businesses in conflict-affected countries.

HARDENING LAW

Whilst the voluntary frameworks are not currently binding on companies through domestically enforceable legislation, the global direction of travel is towards mandatory 'hard' law requirements for robust and effective sustainability due diligence. France and Germany have adopted targeted supply chain due diligence legislation and the EU is expected to adopt the Corporate Sustainability Due Diligence Directive (CSDDD), which would require certain EU and non-EU businesses to implement due diligence procedures in their chain of activities to mitigate adverse environmental and human rights impacts. The latest text explicitly references the UN guidance on businesses acting in conflict affected areas.

These broader due diligence frameworks sit alongside more targeted legal frameworks, such as sanctions, money laundering and terrorist financing regimes. Developments in [corporate criminal liability](#) further raise the stakes for businesses. They include an increasing use of criminal sanctions in pursuit of human rights objectives and attempts to hold corporates accountable at a domestic level for core international crimes.

⁴ Working Group Report, p. 17, Remaining and Exiting Guide, p. 4.

⁵ *Ibid.*

⁶ Heightened Due Diligence Guide, p. 10.

⁷ *Ibid.*, p. 26.

⁸ *Ibid.*, p. 32.

Practical steps

As the regulatory landscape changes and ongoing and new conflicts persist, the following points are worth keeping front-of-mind.

Heightened due diligence capabilities: are existing due diligence policies set up to conduct heightened due diligence, where necessary? Operating in conflict-affected areas, or engaging in business relationships with undertakings that do so, can require due diligence capabilities beyond those that most companies currently employ. Businesses may wish to seek external advice on how best to set up appropriate systems and factor in community and stakeholder engagement.

Governance: heightened due diligence is most effective when integrated into effective governance structures. This can, for example, involve dedicated resource for conducting due diligence and regularly reporting to and seeking input from committees, including the board. Robust and integrated governance helps to ensure that due diligence feeds directly into strategic decision making. Establishing crisis management teams who have the benefit of human rights and sustainability expertise can help inform decision making when evaluation time may be limited. Clear reporting lines and regular assessment of the effectiveness of governance systems can serve to harness and strengthen due diligence processes.

Performing human rights impact assessments: these can vary in scope and subject matter but can help to identify adverse impacts related to a company's sector (including products, supply chains and services), geography (governance, rule of law environment and risk of conflict) and internal structure (oversight, due diligence capabilities, standards implementation and whistleblowing mechanisms).⁹ Impact assessments can categorise the likelihood and severity of an adverse impact based on its scale, scope and irremediability.¹⁰ Integrating the findings of such assessments supports businesses in meeting their obligations to identify, prioritise and mitigate impacts, including through the use of leverage. Leverage can take many forms in this context, such as commercial leverage, broader business leverage (e.g. capacity building) and multi-stakeholder collaborations.

Legal considerations: businesses may wish to review their progress in meeting the expectations of voluntary frameworks they have committed to, but may not have fully implemented, particularly in light of 'hard law' due diligence obligations. There are legal considerations associated with implementing compliance with any regime. For example, understanding the potential risks associated with suppliers and customers may involve expanding information requirements in supplier contracts, agency and subcontractor arrangements. Broad definitions of the supply chain can be addressed through the requirement to cascade such information rights down to indirect suppliers or customers. Cross business-unit and jurisdictional impact assessments can be undertaken to evaluate and identify adverse impacts.

Opportunities: navigating the responsibilities of a business in a conflict area is a difficult exercise. That said, effective engagement and proactive management can be a real opportunity for businesses. The benefits can range from operational resilience, lower risk exposure to civil, regulatory and legal action and market differentiation. Businesses that actively grapple with these issues and take steps to reduce their impacts can have a significant and lasting effect on the areas they operate in, helping to minimise any involvement with human rights violations and foster respect for human rights.

⁹ OECD Due Diligence Guidance for Responsible Business Conduct, p. 25.

¹⁰ OECD Due Diligence Guidance for Responsible Business Conduct, p. 42.

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