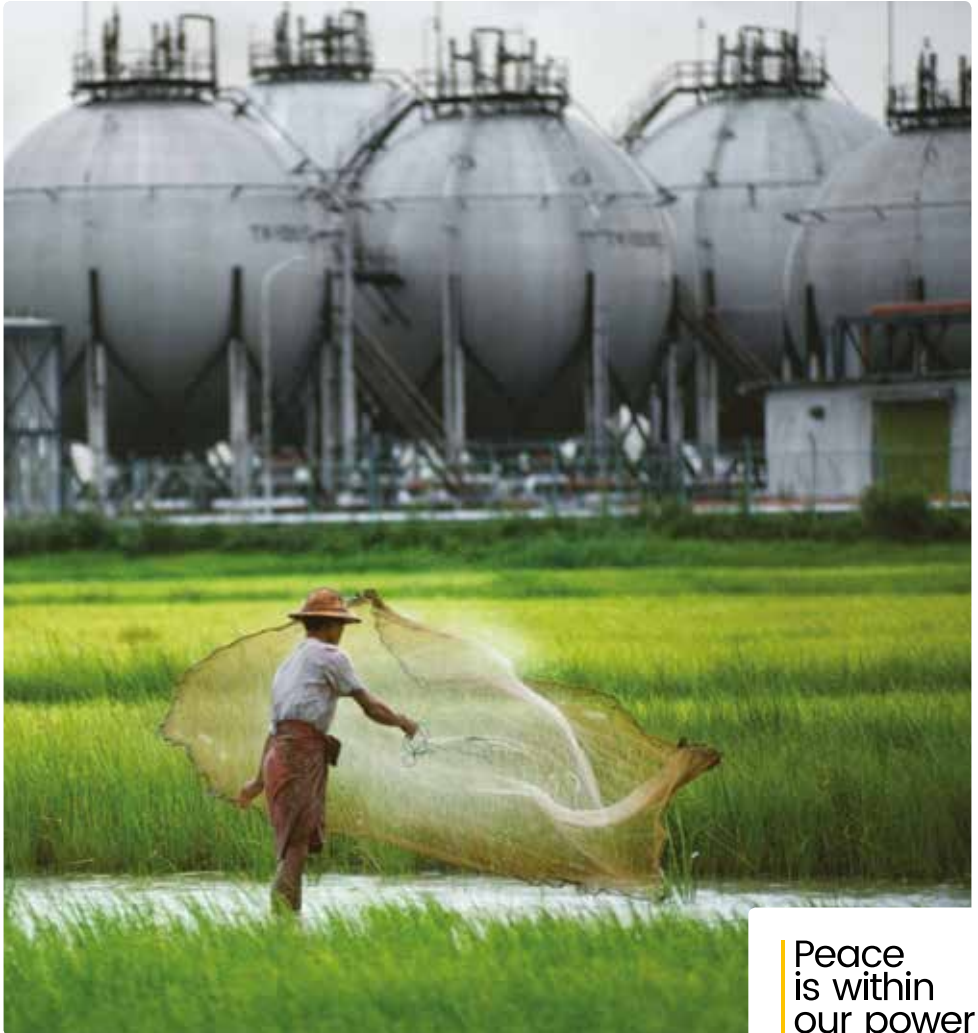




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Human rights due diligence in conflict-affected settings

Guidance overview and summary



Peace
is within
our power

About International Alert

International Alert has been working for 30 years with people directly affected by conflict to find peaceful solutions. We build a more peaceful world by collaborating with people from across divides to resolve the root causes of conflict, because everyone can play a part in building peace, every day.

We work alongside local communities, partners, businesses and policy-makers to turn our in-depth research and analysis into practical solutions and action on the ground. And we bring together people from the grassroots to the policy level to inspire and amplify the voice of peace, because it is only together that we can achieve change.

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November 2016

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Executive summary

Since International Alert published its **Conflict-sensitive business practice** in 2005, the field of business and human rights has emerged as a highly influential area of theory and practice. However, while there has been substantial uptake of the United Nations Guiding Principles on Business and Human Rights (UNGPs), particularly around company efforts to undertake more rigorous human rights due diligence, there is little available guidance on what this means for companies operating in conflict-affected settings (CAS).

This is significant, because in CAS the likelihood and severity of human rights violations is considerably higher, and the most vulnerable members of society are likely to disproportionately experience more negative impacts and be less resilient to external shocks. In these complex and volatile environments, thorough and robust human rights due diligence is all the more important, since companies cannot rely on standard approaches.

Given these considerations, International Alert's guidance on **Human rights due diligence in conflict-affected settings** addresses the question of how companies can ensure respect for human rights in their operations without exacerbating or generating conflicts, by providing recommendations, considerations, case studies and tools to help companies integrate conflict sensitivity into the human rights due diligence process. This document provides a summary of the guidance.

Introduction

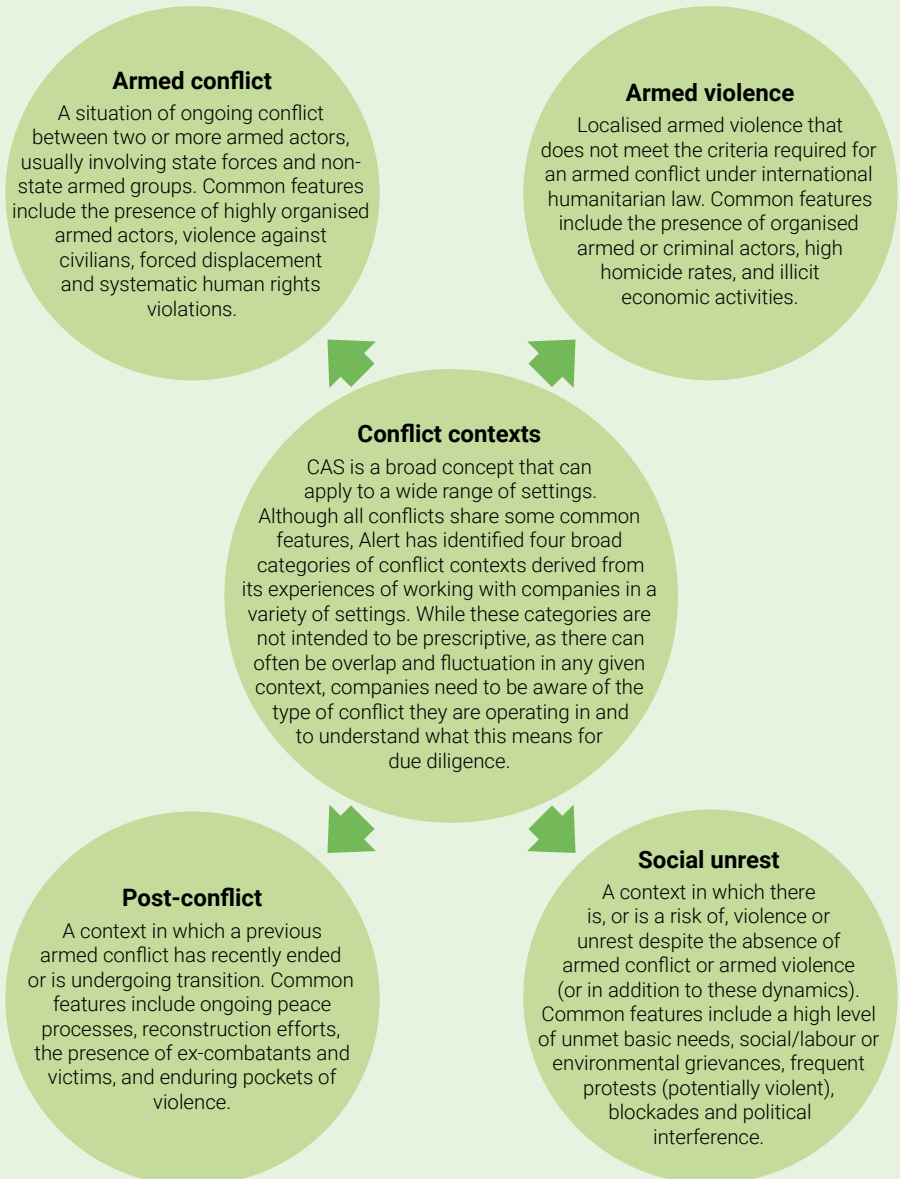
The **Human rights due diligence in conflict-affected settings** guidance is based on Alert's experience of working with over 20 companies across 15 countries affected by conflict.¹ In order to draw on a breadth and depth of experience, Alert held consultations with companies, practitioners, academia and civil society in a number of contexts including Colombia, the Philippines and South Africa.

The guidance seeks to provide a set of ideas and tools to help companies address the most challenging aspects of conducting human rights due diligence in CAS. This includes:

- **Conflict contexts:** The guidance presents four types of conflict-affected environment and provides considerations to support companies in managing the different challenges presented by each (see Figure 1).
- **Stakeholder engagement:** The guidance also includes considerations and recommendations for stakeholder engagement – an area that remains particularly challenging from Alert's experience of working with companies in CAS.
- **Conflict Analysis and Human Rights Impact Assessments (HRIA):** The conflict analysis tool will enable companies to understand the dynamics of conflict around their project and to identify additional risks and impacts that are not always captured by a traditional HRIA.

1 For a more detailed overview of the main concepts on which the guidance is based, please see Alert's background paper, *Why conflict sensitivity matters for business and human rights*.

Figure 1: Conflict contexts



Main elements of the guidance

The guidance is structured around the stages of the due diligence cycle as outlined in the UNGPs. In particular, it focuses on **identifying and assessing impacts**, and **integrating and acting upon findings**, as the most critical stages of the due diligence process from a conflict-sensitive perspective. Guidance on the **design** of the due diligence as the initial stage is also outlined, as this helps to identify the level of effort and resources and anticipate challenges and likely conflict issues by assessing the project phase. In addition, the guidance includes separate ‘**flashpoints**’ on subjects that warrant individual attention – namely, pre-investment, legacy issues and supply chains. These flashpoints do not provide solutions, but rather offer different perspectives and suggestions on how these particularly challenging issues might be managed.

The primary audience for the guidance is those involved in overseeing or undertaking due diligence, including staff from extractive companies, practitioners or consultants. The guidance also highlights some of the key considerations for smaller companies, recognising that such companies often face a different set of challenges. In addition, the guidance includes considerations on how to make the business case for investing the resources required to conduct effective due diligence in CAS.

The full guidance document consists of the following chapters:

- Why conflict sensitivity matters for business and human rights;
- Getting started: Designing your human rights due diligence in conflict;
- Identifying and assessing conflict and human rights risks and impacts;
- Integrating and acting upon findings;
- Tracking and communicating findings; and
- Flashpoints: pre-investment, legacy and supply chains.

Each chapter offers considerations for conducting human rights due diligence from a conflict-sensitive perspective, provides recommendations aimed at strengthening stakeholder engagement, and illustrates points with examples and case studies. The following sections give a brief overview of the main chapters.

Designing human rights due diligence for conflict-affected settings

In environments characterised by volatility, instability or violence, how a due diligence process is designed is key to ensuring that the process is effective in capturing the information necessary to manage human rights and conflict risks. It also ensures that the due diligence process is itself sensitive to the local conflict dynamics faced by the operation. The design chapter of the guidance includes a **self-assessment tool** to support companies in developing their human rights due diligence by identifying how to plan and focus their due diligence and to assess the level of effort, detail and resources required to carry out the process. The self-assessment tool will help users to make decisions on important design considerations such as:

- What **existing policies, procedures and practices** are in place that can be leveraged for the due diligence process;
- Whether an impact assessment should be **general** or **issue-specific** or should adopt a hybrid approach, and on which particular issues an issue-specific assessment should focus; and
- Whether an impact assessment should be conducted as a **standalone** exercise or **integrated** into other impact assessments.

The design chapter also includes a section on **identifying and engaging with stakeholders**. It contains considerations, ideas and practical tips to support companies in ensuring that stakeholder engagement is robust, constructive and conflict-sensitive.

Identifying and assessing conflict and human rights risks and impacts

The process of identifying human rights impacts in CAS can benefit greatly from the tools and methodology of conflict sensitivity. **Integrating a conflict analysis into the human rights impact assessment process can bring to light additional risks and impacts (and their implications in terms of human rights) which are not captured by a traditional HRIA.** This chapter demonstrates how to conduct a basic conflict analysis in order to identify conflict risks, defined as the risk that a company will either create new or exacerbate existing conflict issues through their business activities. It also supports the identification of any actual or potential human rights impacts associated with these risks. The methodology adopted in this conflict analysis also allows users to identify areas in which they may be able to make a positive impact. The chapter draws on practical examples and case studies from Alert's work with companies and other actors.

The relationship between conflict risks and human rights impacts

When identifying the human rights implications of conflict risks, it is important to consider the following:

- Human rights violations 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; and
- A conflict situation can negatively impact additional human rights which may not have been considered by the company in previous assessments.

A core part of the chapter is the **Conflict and Human Rights Impact Assessment (CHRIA)** tool. This tool enables companies to better understand the connection between business operations, conflict dynamics and human rights impacts by providing a distinct and specialised lens of analysis to complement and enhance standard HRIAs. **CHRIAs identify the human rights implications of conflict risks.**

How to conduct a CHRIA

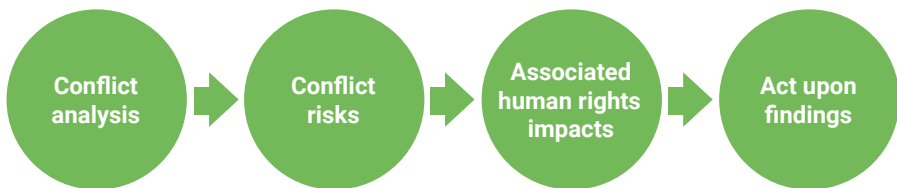
The CHRIA tool is divided into two parts. The first part outlines how to identify conflict

risks through a simple **conflict analysis** that identifies grievances (or conflict issues), affected stakeholders, key mobilisers and resilience factors. The second part shows how to identify the **human rights impacts** associated with each conflict risk. The tool also includes two case studies to demonstrate how it works in practice.

The CHRIA tool can be used in two different ways:

1. For companies planning to conduct a standard HRIA in a CAS, the conflict analysis section can be lifted and used separately to complement the assessment; and
2. The tool can also be used independently by doing a ‘deep dive’ analysis on the conflict risks identified through a conflict analysis and their human rights implications.

Figure 2: The CHRIA process



When to use the CHRIA tool

There are certain triggers that should prompt companies to conduct a more detailed or ‘deep dive’ analysis of their actual or potential conflict and human rights impacts.

Triggers for such an assessment include the following scenarios:

- When companies are operating in any of the four **conflict contexts**;
- When a project moves into a new phase of the lifecycle;
- When there is a change in the conflict dynamics of the operating context (for example, when underlying tensions escalate into violence, when a peace agreement is signed, when a political transition takes place or when there is a change in political stability); and
- When an incident with one or more stakeholders (such as communities, local authorities, contractors) results in a stable operating environment becoming conflict-affected.

Case study: How a conflict analysis brings to light different or additional human rights impacts

In this case, a joint venture was undertaken by an international oil company and a national oil company in an area inhabited by indigenous peoples. Conflict and social unrest broke out between the companies and the communities when the government passed legislation allowing for royalties and compensation to be allocated by a central government agency instead of by local committees and local authorities, as had previously been the case. The structure of the compensation scheme designed by the company also inadvertently led to disagreement between the community and its national representing organisation. Eventually, the community decided to leave the national organisation altogether as it felt that it was not serving the community's best interests.

Following a CHRIA, it emerged that the indigenous peoples felt that their *right to participate in the decisions affecting their rights* was negatively impacted under the new scheme. In particular, they felt that it removed their participation in decision-making over allocation of compensation funds, therefore giving no guarantee that allocated resources would respond to community needs. The communities also felt that their *right to self-determination* as an indigenous community was negatively affected, as traditional leaders were being disempowered from making decisions. The conflict also had a negative impact on the communities' *right to representation*, because by leaving the national-level organisation, the community lacked representation and thus became even more vulnerable.²

While a standard HRIA could have touched on some of these elements, integrating a conflict analysis into the impact assessment brought to light more nuanced impacts that would not be identified by looking at the human rights impacts of business activities alone. For example:

Conflict Issues	Conflict Risks	Human Rights Implications
<p>Dissatisfaction over new legislation on royalties and compensation</p> <p>Disagreement and subsequent confrontation between the community and the national organisation</p>	<p>Inadvertently, the compensation scheme designed by the company led to a rupture of relations between the community and the national organisation</p>	<p>Right to representation of the community in the broader indigenous organisation: by leaving the national-level organisation that serves as their representing body, the community is thus unrepresented and even more vulnerable considering their recent creation (and lack of experience) following the systematic violation of their rights</p>

2 The rights referenced here refer to internationally recognised human rights enshrined under the International Bill of Human Rights and the UN Declaration on the Rights of Indigenous People

Assessing and prioritising impacts

Once human rights impacts have been identified, the next step is to plan for how they will be addressed. According to the UNGPs, prioritisation of the order in which impacts are addressed should be based on the severity of the impact. However, in CAS, other considerations need to be included. For instance, impacts that are more likely to drive conflict should be given more weight in the prioritisation process.

Acting upon, tracking and communicating findings

Conflict sensitivity involves not only understanding a particular conflict situation through the use of conflict analysis. It also relates to the measures taken to prevent or mitigate risks and impacts. These measures should also be conflict-sensitive in order to avoid **unintended consequences**. One such consequence occurred, for example, when a company committed to women's economic empowerment sought to create employment opportunities in a country where women needed permission to work from their husbands by law. Inadvertently, the company caused marital disputes by not involving the women's husbands in the discussions. In the end, many women did not participate in the programme.

Conflict sensitivity involves not only understanding a particular conflict situation, but also the measures taken to prevent or mitigate risks and impacts.

At the same time, acting upon the findings of an impact assessment in CAS can have an additional benefit by helping to **prevent, mitigate or de-escalate conflict risks**. However, due to the complexity of many CAS, **collaboration is often one of the best ways for companies to act upon some of the issues driving conflict and generating adverse impacts in such contexts** (such as state legacies). The chapter includes examples of how companies have collaborated to address some of these issues.

Other areas covered in the guidance

1. Considerations for tracking the effectiveness of responses to due diligence and communicating how impacts are addressed, with particular focus on the opportunities for engaging stakeholders in developing indicators and participatory monitoring; and
2. Short guidance notes on cross-cutting subjects that are particularly challenging and warrant further consideration. This includes pre-investment, legacy and supply chains.

Next steps

The full guidance document will be published in early 2017. In developing the guidance five years after the publication of the UNGPs, International Alert acknowledges that human rights due diligence remains an evolving area of practice. Lessons will continue to be learned as implementation expands and practice evolves, and Alert is committed to continuing its engagement with companies to facilitate continued learning and improvement. Alert welcomes feedback from companies, practitioners and anyone else who uses the guidance or any of the tools contained within. It also invites interested parties to contact the organisation to explore joint implementation. The team can be contacted directly at csbp@international-alert.org.

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