

Memorandum on Operating in the Presence of Armed Groups
*For the United Nations Working Group on Business and Human Rights
Project on Business in Conflict and Post-Conflict Contexts*

April 10, 2020

This memorandum is intended to contribute to the work of the UN Working Group on Business and Human Rights (henceforth UNWG). It is an element of CDA Collaborative Learning's (CDA) response to the UNWG's call for input into the Project on Business in Conflict and Post-Conflict Contexts.¹

The Memorandum is based on evidence gathered during the initial phase of a study of business operations in the presence of armed groups². Activities conducted as part of the study included a review of relevant literature³, consultations with experts on armed groups and with companies and NGOs in Colombia, interviews with Colombian companies, and three field-based case studies of Colombian companies.⁴ The study is not conclusive because of the insufficient diversity of the of armed groups and the conflict contexts about which evidence was gathered.

CDA has also performed more than 50 operations-level assessments of companies in more than 25 countries, including numerous contexts of conflict. Though most of these assessments did not aim specifically to isolate learning about armed groups, some were conducted in contexts in which armed groups were present. Relevant contexts include Colombia, Kenya, Mexico, Nepal, Nigeria, the Democratic Republic of the Congo (DRC), and the Philippines, among others. This experience also informs the Memorandum.

This Memorandum consists of two parts:

- A characterization at a high level of ***approaches to operations that have been demonstrated to be effective in the presence of armed groups***⁵ in that they allowed operations to move forward, contained the influence of the armed groups, and reduced or avoided increasing risks to the company and its external stakeholders; and

¹ This Memorandum complements a letter and a second memorandum on stakeholder engagement.

² For the purposes of this memorandum, "armed groups" include a broad range of more or less organized, armed, non-state actors that perceive violence as a legitimate means to pursue their aims.

³ Miller, Ben, Dost Bardouille, with Sarah Cechvala. "Business and Armed Non-State Actors: Dilemmas, Challenges and a Way Forward," *Journal Business, Peace and Sustainable Development*, Volume 2014, Number 4, November 2014, pp. 7-40(34), Greenleaf Publishing in association with GSE Research.

⁴ Patiño, Simón and Ben Miller. *ISAGEN and the Construction of the Río Amoyá Hydroelectric Center – La Esperanza*. Cambridge, MA: CDA Collaborative Learning Projects and FIP, 2016; Patiño, Simón y Ben Miller. *Tipiel y el Proyecto de Desarrollo Integral Ciudadela Educativa*, Cambridge, MA: CDA y FIP, 2016; and Patiño Simón, Ben Miller, y Dost Bardouille. *Oleoducto Central S.A. y el Plan de Mantenimiento Civil*. Cambridge, MA: CDA Collaborative Learning Projects y FIP, 2017.

⁵ Throughout this Memorandum, "armed groups" is used in the plural as a default.

- The beginnings of an ***analysis framework for companies*** that may help companies to understand the extent and nature of the risks that armed groups pose and to develop options for effective operations in specific contexts.

Examples that illustrate points of discussion are included in text boxes throughout the document. It should be understood that the practices described in the text boxes may not be effective in all cases.

Approaching operations in the presence of armed groups⁶

Armed groups can complicate every aspect of a company's operations. They typically increase the risk of violence against the company, local communities, and other stakeholders, and impose a broad range of difficult dilemmas and challenges upon companies. Yet it is difficult – perhaps impossible – to identify practices that are effective in all contexts involving armed groups.⁷ There is a high degree of diversity among armed groups, and it is well-understood that conflict dynamics are similarly context-specific. Practices that are effective in one context may be ineffective or counterproductive in other contexts.

Context-Specific Approaches to Extortion Risk

Operating in Casanare, Colombia, BP found that it could reduce the risk that the local armed group would extort its contractors through a two-pronged approach: on the one hand, contractors were included in BP's security envelope and in convoys escorted into and out of Casanare by the army; and contractors' staff were included in trainings on how to respond when confronted by members of an armed group. On the other hand, BP communicated to contractors (in contracts themselves and in on-boarding processes) that it would periodically audit contractors for suspicious financial outflows and dismiss any contractors that made any payment to an armed group.

A second company operating elsewhere in Colombia believed that its contractors were being extorted by the FARC, though the company was unable to prove it. Contractors had reported extortion attempts to the company, but doing so had incurred reprisals by the FARC, and contractors had stopped informing the company about attempts to extort them. The company's contracts all contained anti-extortion clauses and provisions that allowed the company to audit contractors for suspicious payments. When the company terminated contracts, however, the contractors' local employees lost their jobs and pressured the company about unemployment.

Armed Groups and Local Communities

Across contexts, companies indicate that armed groups' ability to sustain activities in the vicinity of a company's operations and put pressure on a company depends significantly upon the groups' ability to influence or exert control over other actor groups in the context, local communities and institutions in particular. For this reason, companies consistently indicate that the organization and cohesiveness of local communities and their strong and active support for the company are important factors that can minimize or contain the potential negative impacts of armed groups. The reverse is also true: when communities do not support the project or are disorganized, it is easier for the armed group to disrupt operations and pressure the company.

⁶ This Memorandum presumes that, in cases where violence is extreme, widespread, and sustained, companies are likely to suspend operations completely. These scenarios are outside of the scope of this Memorandum. Further, it recognizes that physical security measures are critical for managing risks presented by armed groups. They are also outside of the scope of this Memorandum.

⁷ CDA's detailed case study work has not included a sufficiently diverse group of armed actors for us to identify conclusively approaches that are effective in all cases. Accordingly, CDA has a higher level of confidence in the analysis processes that are needed to scope and define effective operations than it does in the practices that have demonstrated effectiveness in particular contexts.

CDA has seen cases in which:

When communities support a company:	When communities do not support a company:
They share intelligence with the company about the movements and plans of armed groups.	They willfully mislead the company and encourage action by the company that makes extortion easier for armed groups.
Their representatives engage with or otherwise influence armed groups to deter them from taking hostile and violent action against the project.	They encourage armed groups to take action against the company.
They report to the company unknown or suspicious people who are seen in the vicinity of the company's installations.	They collude with armed groups in actions intended to extort or sabotage the company.
Armed groups are not able to operate effectively in or near those communities.	They provide armed groups with food and shelter in the vicinity of the company's operations or provide armed groups with information about the company's activities.
They urge or pressure other members of their communities not to steal from, extort, or sabotage the company.	They choose not to act to constrain the efforts of their fellows' efforts to steal from or sabotage the company.

Approaches to operations that are effective in managing the presence of armed groups focus on local communities – in particular their cohesiveness, their relationships with the company, and their relationships with the armed groups. Specifically, they involve:

- **Working proactively to align the interests of the community with those of the company.** Companies have achieved this by delivering, and being seen to deliver, benefits to local communities through local content and social investment that meet the community's needs and conform with their idea of fairness; and by engaging in dialogue with communities – often very extensive and detailed dialogue – to reach agreements about mutually acceptable practices and approaches to technical operations.
- Operating and engaging with communities in ways that **maintain a strong base of support for the project among those communities**, or a “social license to operate”. Companies have succeeded in the presence of armed groups by scrupulously controlling operational activities so that they conform to agreements between the company and the community; and by taking responsibility for adverse operational impacts in a complete and timely manner.
- Working with partners such as NGOs and/or donor agencies, if appropriate, to **identify opportunities to enhance the accountability and effectiveness of local institutions**. Depending on the context, this may entail enhancing the accountability of office-holders to the community; enhancing the capacities of legitimate representatives of the community to identify and articulate the community's needs and priorities; and creating conditions in which those representatives can succeed in their negotiations and discussions with other actors (e.g. the company, the government or security forces, and,

if applicable, the armed groups). As communities may not perceive local office-holders as their legitimate representatives, sustained engagement with local communities may be necessary to identify appropriate representatives.

- Working with partners such as NGOs, donor agencies, and/or the host state, or other entities as appropriate, to ***identify opportunities to introduce or strengthen state institutions that provide services such as education and justice.***

Specific ways in which the company may be able to achieve these aims in a particular context depend on the characteristics of the operating environment. One of the goals of the company's analysis of that environment should be to identify potential avenues for achieving one or more of the above.

A provisional analysis framework for companies

Companies may need to consider a broad range of issues in order to identify constructive ways forward when they operate in the presence of armed groups. Some of these – the capacities of local government institutions or potential NGO partners, for instance – are issues that companies would be likely to consider in any operating environment. As the presence of armed groups does not call for a distinct approach to those issues, we do not address them herein.

In the presence of armed groups, companies at a minimum need to understand:

- the conflict (as it exists locally, if not also more broadly);
- specific aspects of local communities, as described below; and
- the armed groups and their relationship with the local community.

Understanding the conflict requires good conflict analysis⁸

If well planned and executed, a conflict analysis can deepen understandings of the grievances that motivate armed groups and their local supporters, explain why local actors (including armed groups) perceive and engage with the company in the way that they do, and illuminate the positions of local actors and institutions with respect to the issues that drive conflict locally. It may also enhance a company's ability to predict the responses of local actors to its activities and help to identify courses of action that might constrain the influence of armed groups on other local actors.

At a minimum, a conflict analysis should identify:

- factors that drive conflict;
- factors that drive peace and stability; and
- conflict actors and their interests.

Companies also should include in their analysis the ways in which their own presence and activities impact upon conflict drivers and conflict actors.

⁸ The Voluntary Principles on Security and Human Rights also recommend that companies perform conflict analysis.

There are a number of established conflict analysis methodologies.⁹ CDA's work with peacebuilding organizations¹⁰ suggests that any of them may be useful, provided that the analysis is:

- used to inform the planning and implementation of activities;
- performed as a multi-stakeholder activity that includes local actors and institutions and captures local knowledge and perspectives; and
- updated regularly.

Understanding local communities

Companies typically develop detailed knowledge of communities near their operations. In cases in which armed groups are present, specific aspects of the life of the community indicate at a high-level which approaches to operations and engagement may be effective. Those aspects are:

- **The alignment of the community's interests with the interests of other actors:** Companies across contexts suggest that, in the presence of an armed group, some degree of alignment of interest between the company and the community is a precondition for a successful project. In contrast, when the community's interests are more aligned with those of the armed group than with those of the company, it is relatively easy for the community and the armed group to collude to manipulate the company or disrupt operations.

Alignment of Interests

Colombia

In the Putumayo Bajo region of Colombia, communities in the vicinity of an extractive industry company's operations earned their livelihoods by growing coca. There were few other available economic opportunities in the area. Local armed groups processed the coca and trafficked cocaine, in an economically interdependent relationship with local communities. The company tried to interest communities in alternative income generation projects, but their efforts failed. Instead, communities found it more profitable to collude with the armed group. Utilizing intelligence provided by the community, local FARC units repeatedly ruptured pipelines belonging to the company. The community would then pressure the company to hire local people to clean up the resulting spills.

Iraq

Communities living near to an oil pipeline in Iraq wanted the project to continue without interference, as it provided the community with a range of economic benefits. Community members routinely reported to the company "suspicious" people within the pipeline corridor out of concern that they might be planning to sabotage the pipeline or stop the company's operations.

- **The degree to which the community is cohesive:** The degree of cohesion within the local community is a significant predictor of the community's capacity to resist the influence and control of an armed group. Cohesion can be assessed by factors like the perceived legitimacy of local institutions and formal representatives, the presence of "factions" or

⁹ Examples include the Global Partnership of the Prevention of Armed Conflict's [Conflict Analysis Framework](#), World Vision's [Making Sense of Turbulent Contexts](#), or USAID's [Conflict Assessment Framework](#).

¹⁰ More information about CDA's experience with peacebuilding and organizations, including CDA's approaches to conflict analysis, can be found [here](#).

cleavages (e.g., ethnic, religious, political) within a community, and whether or not community institutions have histories of inclusive decision-making. Companies may be able to operate or work with communities and/or external partners (e.g. NGOs, religious organizations, or government) in ways that enhance community cohesion.

Community Cohesion

In Colombia's economically marginalized Cañon de las Hermosas, communities welcomed a company project because it would provide jobs, contracts, and community development funds. The local "front" of the FARC, however, which controlled the territory around the project site, opposed the project, as Colombian armed forces would provide security for the company.

Communities in the canyon were represented by a local union of "Community Action Boards."¹¹ As the company undertook negotiations with community representatives, those representatives undertook their own, parallel negotiations with the local FARC commanders. The community representatives persuaded the FARC that the project might be in the interest of communities throughout the canyon, and the FARC ultimately accepted that the communities wanted the project to go forward. Though they continued to defend the territory against Colombian armed forces, the FARC opted to support the Community Action Boards in their negotiations with the company.

- **The degree to which local institutions represent the community's perspectives and deliver equitable development and access to justice:** Companies have found that the strength of local institutions (e.g., community councils, mayoral or municipal offices, community development committees) is a significant predictor of a community's vulnerability to armed groups. Where those institutions are weak, corrupt, or indifferent to the community's needs, armed groups are able to impose themselves on communities relatively easily by capturing or undermining local institutions. Where those institutions are strong and responsive to the community, they may be capable of defining the community's interests as apart from those of armed groups and containing the influence of armed groups' partisans and sympathizers within the community.

Analyzing the armed groups

Evidence suggests that companies can benefit from understanding the positions, interests, tactics, intentions, and organization of armed groups; from communicating certain information about the company to armed groups; and from establishing channels of communication with armed groups prior to any crisis. **Armed groups that might affect or be affected by a company's project should be considered stakeholders of the project and analyzed much as a company would analyze any other stakeholder organization or group.**¹² If it is both safe and legal to do so, companies should engage and communicate directly with armed groups in the vicinity of their operations. In some cases where direct engagement is permissible under host-state, home-state, and applicable third country law, CDA has seen cases in which companies reach agreements with armed groups that allow operations to move ahead without interference from the groups.

¹¹ *Juntas de Acción Comunal* exist throughout Colombia. They are elected community representatives charged with advancing development within their communities.

¹² There is a robust literature by and for humanitarian agencies on the topic of analysis of armed groups.

There are several specific characteristics of armed groups that should be considered in making decisions about how to manage the armed groups' presence.

Adapting to an Armed Group's Tactics

During the armed conflict in Colombia, many companies recognized that the FARC, the *Ejército de la Liberación Nacional* (ELN), and other armed groups frequently attempted to infiltrate companies and their contractors and sent agents to meetings between companies and communities. Many companies recognized that armed groups in the vicinity of their operations were privy to information about their operations and determined that it was best to operate under the assumption that everything that staff knew about the company was also known by local armed groups.

This assumption had different implications in different operational contexts. Some companies found that it was possible to communicate indirectly to armed groups which they were not allowed by law to engage directly: information disseminated in community meetings or to staff of the company and contractors would ultimately reach the armed group. In other cases, companies recognized that the most effective approach to managing issues such as extortion risk was a high degree of policy coherence. Armed groups often pressured companies to contravene their own rules and understood how the company managed those issues internally. Resisting pressure by the armed group required that all staff understand zero-tolerance policies among all staff, and that the company itself always acted, and was seen to act, in accordance with policies.

- **The objectives of the armed group:** The actions of armed groups may correspond with specific goals and objectives, such as challenging the state, controlling territory and key resources, or protecting the residents of a particular area or members of an ethnic or religious group. Armed groups may also see themselves, and wish to be seen by others, in particular ways - as champions or protectors of a particular social group, as legitimate political actors, etc., and this may motivate armed groups to strategize and act in specific ways. A group's stated aims may not always be consistent with its methods and tactics, however; they should be understood in light of its practices.

A new strategy for a new threat

In La Guajira, Colombia, the end of hostilities between the government and the *Fuerzas Armadas Revolucionarias de Colombia* (FARC) changed the nature and activities of armed groups in Cerrejón's operational area. Many local FARC groups abandoned efforts to control territory and the strategic military objectives of the FARC, which included attacking Cerrejón, and became "*bandas criminales*" or armed groups without political aspirations or links to other groups within the country. The groups continued to pursue illicit economic activities (notably smuggling petrol across the Venezuelan border) that had sustained local FARC units during the conflict.

The changing nature and activities of the armed groups in La Guajira lead to significant changes in the purpose, form, and frequency of the violence perpetrated by those groups. Recognizing this, Cerrejón identified the need for a new security risk mitigation strategy that accounted for the changed circumstances. Working with the *Centro Regional de Empresas y Emprendimientos Responsables* (Regional Center for Responsible Businesses and Ventures, CREER), Cerrejón conducted a participatory risk assessment with local communities and the local police. The analysis identified three groups of risks: risks to the company, risks to the community, and risks to both. The company adopted a strategy that involved managing its own risks directly (with local security actors), collaborating with the community to manage shared risks, and identifying ways to support the community and the local police to manage risks to the local community.

- **The methods and tactics of the armed group:** The actions of an armed group can contextualize its stated objectives and may provide a basis for identifying risks to the company and local communities, as well as the group’s likely behavior in specific scenarios. The purposes for which the group employs violence or the threat of violence, and the circumstances in which it does so, are particularly relevant. Armed groups may use violence for a range of purposes: to sustain its members economically through forms of extortion or banditry, to intimidate or displace identity groups defined as “other” inside and/or outside of the community, to coopt or pressure community institutions, to protect themselves and intimidate competitors in the course of illicit economic dealings, etc.

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- **The degree of “command and control” within the armed group:** If an armed group is highly organized, it may be more likely that individual units of the group follow decisions and directives issued at the command-level. In some cases, it may be reasonable to expect units of the group to abide by cease-fire and other agreements and to follow the groups’ established policies, practices, and other dicta. Less organized armed groups may be less reliable counter-parties, with local unit leaders or individual soldiers acting in their own interests when it suits them.

Command and Control within an Armed Group

A company in Colombia received reports that the FARC was attempting to extort one of its social investment programs that was designed to benefit the most vulnerable populations in the vicinity of a project. The local FARC units were known to have relatively close ties with the community and hoped to be seen by the community as acting in its interests. The company maintained a zero-tolerance anti-extortion policy and decided that the social investment project could not continue in view of the extortion risk. The company met with community leaders and local authorities, both as a matter of course to inform them of the decision, but also with the knowledge that community leaders would communicate the decision to the local front of the FARC. Several days after the meeting, the company received an official letter from the local FARC command indicating that the social investment project would no longer be targeted for extortion. The company was able to complete the project without incident.

- **The course of the armed conflict:** Evidence indicates that the strategy, conduct, and internal organization of armed groups often change in response to the course of the conflict. For instance, a group may conduct itself one way when it is able to control territory and in a different way when military or police pressure forces it to adopt guerrilla tactics.

The Course of the Conflict

A construction company in Nepal held a contract to construct a bridge across a ravine in areas where Maoist guerrillas had been active. The company was concerned that the guerrillas would attempt to disrupt its activities. Local community members, police, and army commanders were in agreement, however, that recent confrontations with the military had left the local guerrilla units severely depleted and that the guerrilla units would have to regroup, recruit new members, and rebuild their store of supplies before again becoming an effective military force. The local actors estimated that the company had a window of 6 months at a minimum to advance its project without risk of disruptions by the armed group.

- **The armed groups' relationships with the local communities.** These may be as diverse as armed groups themselves. Some armed groups may be comprised of community members, or members of ethnic or religious groups that are represented within the community; others may seek to exert control over the community through violence or the threat thereof, or see the community as a source of economic resources to be plundered; still others may seek to win the collaboration or allegiance of the community by providing protection or other services.

Understanding these aspects of the armed groups may help the company to determine how the groups may respond to the entry of the company into the context, to efforts to build relationships with the local community or to strengthen local institutions, and to the presence of public and private security actors. The armed groups' likely use of violence or intimidation, and therefore the risks that armed groups may pose to the human rights of community members and the staff of the company, can also be understood against this background.

Conclusion

There is a clear need for more research and learning about issues relating to business operations and armed groups; CDA's own findings in this area are not fully developed. Nevertheless, it is possible to identify emergent patterns from CDA's case studies and other evidence. Successful outcomes (from the perspective of both the company and communities in the vicinity of the company's operations) appear to be possible when the armed groups have some degree of concern for the wellbeing of local communities, and when the company is able to align the community's interests with its own and operate in ways that sustain strong support within the community for the company. Successful outcomes may be more difficult to achieve in situations where an armed group is indifferent to the wellbeing and human rights of local communities or in situations where the community is fragmented and has weak institutions.

In any case, contexts in which armed groups are present should always be regarded as extremely high-risk contexts. Until more evidence becomes available, specific practices that have proven to be effective in one setting should not be assumed to be effective in other settings. Robust analysis

of specific contextual factors is essential for identifying effective practices in specific operational settings.