Regional consultation
Delivering Peace, Justice and Reconciliation: The Role of Business
Co-convened by the UN Working Group on Business and Human Rights and UNDP Asia-Pacific

4-5 September 2019, Davao, Philippines

SUMMARY NOTE

About the consultation

This regional consultation was convened in partnership by the UN Working Group on Business and Human Rights (Working Group)and UNDP Asia-Pacific (UNDP) to collect lessons learned and promote multi-stakeholder dialogue on the role of business in peacebuilding and reconciliation in Asia.

The background to the consultation is the mandate of the Working Group, provided by the UN Human Rights Council, to promote worldwide implementation of the UN Guiding Principles on Business and Human Rights. The Guiding Principles provide the authoritative global framework for the respective duties and responsibilities of governments and businesses to prevent and address business-related adverse human rights impacts. They apply to all companies in all sectors and all geographies and contexts. As part of this mandate, the Working Group in 2018 launched a project to identify and **clarify practical steps that States, companies and investors should take to prevent and address business-related human rights impacts in conflict and post-conflict contexts**.[1] The project is informed by a series of multi-stakeholder consultations in several regions, comprehensive research and submissions by various stakeholders. Final recommendations will be presented to the UN General Assembly in New York in October 2020. The first regional consultation was held in Beirut in March 2019**. The meeting in Davao, Philippines, was the second regional consultation of the project.[2]**

Participants were experts and practitioners from 12 countries in the Asia-Pacific region, including representatives of academia, civil society, government, national human rights institutions, private sector, and the UN. The consultation provided an opportunity to shed light on several questions addressed by the Working Group's project and to **learn from recent experiences in conflict-affected areas and peacebuilding contexts across Asia-Pacific.**

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[1] Project web page: https://www.ohchr.org/EN/Issues/Business/Pages/ConflictPostConflict.aspx. See the endnote for the references to conflict in the Guiding Principles.

[2] Consultations in other parts of the world will follow later in 2019-20. The project is supported by the Swiss Federal Department of Foreign Affairs. The consultation in Davao was organized with support from the Government of Sweden.

Overall messages emerging from the discussions

Several speakers reiterated the underlying premise of the consultation: ***how business enterprises operate in conflict and post-conflict contexts will affect the dynamics that enable or undermine sustainable peace***. It was noted that business, when failing to meet standards of responsible business conduct, contributes to conflict, fuelling a vicious circle of serious human rights abuse and protracted violence.

The consultation highlighted an interesting dilemma: There was broad agreement that the private sector has a key role to play in establishing foundations for peace, in particular through responsible business conduct founded on respect for human rights. However, the role of the private sector, as well as ways to incentivize and support business in playing a positive role, is often overlooked in peacebuilding programmes.

Discussions revolved around two key themes:

- ***Unpacking what responsible business conduct means in practice, with emphasis on the notion of "enhanced human rights due diligence".***
- ***The role of government, business, investors and other stakeholders in promoting responsible business conduct as a conflict-affected area moves into a post-conflict and reconstruction phase.***

The location of the consultation in Mindanao provided an opportunity to do a deep dive on the Bangsamoro peace process, with several stakeholders taking part in specific sessions dedicated to the local experience, sharing perspectives on challenges and early lessons learnt on how companies and investments can help reinforce peace through managing adverse impacts and responsible conduct.

Enhanced human rights due diligence in a post-conflict context

The Guiding Principles note that special care exercising human rights due diligence to identify, prevent, mitigate and account for how businesses address impacts on human rights is needed in conflict-affected areas as the risk of gross human rights abuses is heightened. They state that "in situations of armed conflict enterprises should respect the standards of international humanitarian law" and that companies should "treat the risk of causing or contributing to gross human rights abuses as a legal compliance issue wherever they operate". However, specific implications of such enhanced human rights due diligence are not further elaborated. One of the main objectives of the Davao consultation (and the Working Group project as a whole) was to shed light on how human rights due diligence in a post-conflict situation is different from what is expected in "normal contexts". While the emphasis was on post-conflict situations, several of the considerations that were discussed would apply to the "conflict cycle" as a whole – whether we are talking about pre-, in-, or post-conflict settings. It was also noted that the lines between a "conflict" and "post-conflict" situation are often blurred.

Overwhelmingly, experts and practitioners underscored that enhanced human rights due diligence in post-conflict situations should involve integrating a conflict analysis or conflict sensitivity:

the challenge identified was that that existing conflict analysis tools do not sufficiently take into account human rights and the role of business and also that this integration needed to go beyond simply adding questions about the conflict to the normal human rights due diligence process.

> *Is responsible business possible in a context affected by armed conflict? Lessons from one country*
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> *Companies operating in a country affected by internal armed conflicts between ethnic groups face demands from state and non-state armed groups to provide donations or taxes in return for offered "security". Examples of companies becoming linked to abuse by such groups include:*
> - *Equipment sold to mining activities that have been linked to large-scale displacements and loss of livelihoods as well as financing of conflict parties.*
> - *Allegations that a telecommunications tower had been used by army snipers to kill members of an ethnic group.*
> - *Land grabs with severe adverse impacts on affected communities.*
> - *Internet shutdowns, with reported impacts on livelihoods.*
> - *Kidnappings and ransoming of staff.*
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> *A useful tool developed by one organization is sector-wide human rights impact assessments that address how business should operate in order to meet international standards. This includes the question of whether to operate at all. Lessons from efforts to develop responsible business approaches include:*
> - *A telecoms company recognizing the importance of having staff in ethnic state capitals to be in touch with local communities and run programmes to empower communities as well as develop operational-level grievance mechanisms*
> - *Even projects that have already started can potentially be redesigned to reduce impacts when carrying out human rights impact assessment with a conflict lens, as seen in one example in the hydropower sector.*
> - *Business operating in "white areas" can play a positive role by contributing to building democratic competence, for example through training employees on respect for minorities and anti-hate speech, and building capacity to constructively handle "small" conflicts in the workplace (which in turn may be linked to the wider conflict)*
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> *The first lesson from this country is that scrutiny from the companies' home government, civil society or investors to develop approaches that reduce negative impacts is essential.*
> *The second lesson is that it does serve the local population and peacebuilding better to have presence from companies that are willing to implement responsible business conduct and human rights safeguards as it complements effectively the traditional peacebuilding efforts.*
> *The challenge is that that companies under scrutiny are not investing or operating due to the high risk of involvement in human rights abuse and becoming linked to armed groups in the mining sector, while companies from countries where there is less scrutiny are present and more often negatively involved in community disputes.*

As specified by the Guiding Principles, **companies operating in conflict zones need to be guided by international humanitarian law in addition to international human rights standards. It should be a key feature of conflict sensitive human rights due diligence**, as international humanitarian law provides the legal framework in conflict zones, and failure to meet obligations under international humanitarian law also exposes the company to legal liability risks. Enhanced due diligence needs to focus on how the company interacts with the conflict situation – and how the conflict situation affects the company, including safety of employees. Companies cannot be expected to fill government roles when governments are failing, but need to exercise heightened caution when dealing with government actors, notably security forces, that do not meet standards of international humanitarian law. The Voluntary Principles on Security and Human Rights (VPs) provide a key multi-stakeholder initiative that focuses on managing risks of human rights abuse by private and public

security forces in the extractive sector. One approach tested by VPs member companies to mitigate potential risks of human rights abuse by government security forces is to support training or induction on international humanitarian law and responsible use of force.

For companies that operate in a conflict-affected area, consultation with communities is key in order to understand to understand local concerns and how its activities and business relationships affect people and the local political economy. As it is often complicated to assess who are legitimate representatives of communities (which can be difficult even in contexts not plagued by armed conflict or at heightened risk of violence), it is important to consult widely, including consider inter-community dynamics. In a post-conflict environment, it is important to consider consulting with different parties involved in a peacebuilding process, while being sensitive to established platforms for dialogue. Consulting with central government actors alone is also insufficient.

Community engagement upfront: Lessons learned by a company in the extractives sector operating in a conflict-affected region in one country

The experience of one transnational corporation in the extractives sector in a country affected by inter-communal violence and social unrest highlights the importance of consulting directly with affected communities at local level. During the course of its investment and operations, the company had developed a strong partnership with the central government. As operations faced local opposition, the company decided to assess its impacts more carefully and to address concerns that were uncovered. However, it did not have a network on the ground and planning was done with the federal government working through a few intermediaries. No robust conflict analysis was undertaken, and initially transfers to communities to address environmental impacts, created more conflict at community level. Eventually, the company acknowledged the need to consult directly with local leaders, and direct dialogue was facilitated with support by the UN. The message from community representatives was clear: they did not trust the central government, the company should have come to the local community to consult in the first place, and if the operations had been done right, the conflicts could have been avoided. The key lessons learned by the company:
- *Consult directly with both local communities and the central government before investments take place and listen to, and address community concerns upfront.*
- *Assess impacts across the local value chain and how operations affect local socio-economic and inter-communal dynamics and take steps to ensure that investments are not done at the expense of local communities and do not undermine local sustainable development.*

Participants suggested a number of elements that should be part of the conflict analysis or conflict sensitivity integrated in human rights due diligence (that *may* go beyond typical human rights impact assessments for "normal contexts"):

- Assess how revenues and economic value of the business activities are distributed – or perceived to be distributed – at the local level. For example: distribution of jobs, social goods for employees or communities benefiting from philanthropic projects, revenues directly benefiting local leaders, distribution of revenues between central government authorities and local communities, distribution of economic value between men and women.
- Assess impacts of the business model and its compatibility with local sustainable development, taking a broad look at local environmental, social (human rights) and economic impacts, and in turn the risks of fuelling dynamics that may cause or re-ignite conflict.
- Be sensitive to and assess the situation for refugees and internally displaced people and whether and how business operations affect their situation.

- Assess whether consultations with local stakeholders will be seen as inclusive (including a key consideration for human rights due diligence in all contexts: consider how to ensure that risks to "voiceless" and vulnerable groups are identified, and that they are consulted directly, to the extent possible) and to what extent the central government is trusted or not by local stakeholders.
- Explore how to work within established dialogue platforms, and if they do not exist, consider how to provide support for such mechanisms to be established, in consultation with credible experts, as effective dialogue (or lack thereof) is closely connected with the sustainability of peace.

Participants also noted that every context will have its particular characteristics and there is no one-size-fits-all checklist. However, a cross-cutting challenge is the vulnerability of women and children and that reconstruction often tends to perpetuate discrimination, including on gender, ethnic and religious grounds. It was noted that while Security Council Resolutions on the issue of women, peace and security (1325, 1820, 1888 and 1960) go beyond the issue of violence and deal, inter alia, with women's participation in mediation, peace-making and peace-building, women keep being excluded in peace processes and are often seen as "trouble-makers" by those in power.

Another cross-cutting consideration which emerged as part of the upfront human rights due diligence is the need to look at structural elements and root causes that lie beneath conflicts. Poverty, inequality and discrimination as well as weak legal and institutional frameworks are systemic issues across countries. In such contexts, communities using collective land face high risks of "land grabs" by powerful actors. *"Land grabs" was highlighted as a key factor for conflict, and unresolved land issues as a major risk for conflicts to be reignited.* For example, typically investors enter into agreements with government entities to develop land that was confiscated by armed forces. This becomes a source for new conflicts as local communities are excluded from the process. *Also, corporate "social" investment can cause new conflict or amplify existing grievances, and needs to be subject to due diligence.* Too often communities are only consulted in the context of corporate philanthropic projects, such as building of schools or provision of social services, but not carried out in the context of reconstruction activities or to understand past negative impacts such as loss of land.

That dialogue with communities is essential, though never easy, was a repeated key message. One good practice element for companies includes working with civil society organizations and directly with communities to set up mechanisms for dialogue and accountability. An important element is "social preparation" – to address power imbalances to empower communities to engage effectively and take part in economic activities. The assumption that such imbalance exists should always be a key element of community engagement. Free, prior and informed consent of communities in line with international standards should be a premise for consultation and dialogue processes. Companies need to respect the right of communities to say no. Failure to listen to the concerns of local communities and investment without human rights safeguards risk becoming "development aggression", even if dressed up as "development projects". Companies and investors also need to be sensitive to the risks faced by human rights defenders and people opposing investment and exercise caution in relations with security forces. Mitigation and steps to enable dialogue should be part of due diligence.

The option of not entering into some areas also needs to be on the table and seriously considered if business activity risks undermining sustainable peace. Identification of "no-go areas" should involve consultations with a range of actors, including civil society, international financial institutions and

governments, as retreat by companies committed to responsible business practice may open the door to others that do not follow international standards.

Discussions touched on several general requirements for effective human rights due diligence, including:

- **Human rights due diligence is not a one-off exercise**. Guiding Principle 17 clarifies that it "should be ongoing, recognizing that the human rights risks may change over time as the business enterprise's operations and operating context evolve." Given the complexity of conflict-affected contexts, even in the absence of ongoing violence, the importance of understanding changing circumstances and having capabilities to adapt are critical.
- **No context is the same**. Companies need to understand the human rights risks in all contexts they are involved to address all their potential and actual adverse human rights impacts. As risks may be very different in different geographies, even within countries, tailored assessments are needed. This also applies to the conflict analysis, and **serious conflict-sensitive human rights due diligence needs to assess State structures and the political landscape**, including the intersection between political actors (including non-State factions) and business interests.
- There is no simple tick-box solution for effective human rights due diligence. **When operating in complex contexts, meaningful consultation with affected stakeholders is essential**, and the more complex, the wider consultations may need to be, including with critical voices. Companies should learn from emerging good practice examples of effective company-community engagement.

Participants noted that many companies do not think they have a role to play in peacebuilding contexts, as peacebuilding tends to be seen as "political" and within the purview of governments. Some suggested that SDG 16 presents an opportunity for corporate engagement to support peace beyond "doing no harm". It was stressed, however, that the greatest contributions that companies can make toward sustainable peace is to manage adverse impacts with which they may be involved.

Participants also recognized that human rights due diligence involves a cost for companies, and that practical guidance for the big majority of companies (SMEs in particular) needs to be simplified. At the same time, it was stressed that human rights due diligence can be done and is not rocket science.[3] Participants suggested that the UN and NGOs can support the human rights due diligence of companies operating in fragile contexts by sharing their conflict analysis more widely.

Discussions also touched on role of business in transitional justice. It was suggested that supporting reparations and development of decent job opportunities would contribute to preventing reoccurrence of conflict and human rights abuse. Representatives of victims would like to see business playing a role in reparations (including supporting symbolic remedy), as they observe that during time of conflict, business was part of the economic structure and some helped finance the warring parties. Discussions highlighted that the connection between the corporate responsibility to respect human rights and the appropriate role for business in transitional justice needs to be examined further.

The most important takeaway to emerge was **that the "risk-to-people" lens of human rights due diligence alone is necessary but not sufficient.** It needs to be complemented by a thorough analysis

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[3] The companion paper to the Working Group's 2018 report to the UN General Assembly underlines this point and provides guidance on how to get started with human rights due diligence: https://www.ohchr.org/Documents/Issues/Business/Session18/CompanionNote2DiligenceReport.pdf.

of the local context and assessment of the potential and actual impacts of business activity on it. Business activity and relationships may affect the grievances and power dynamics that fuel conflicts (most often inadvertently, though some business actors also have an interest in perpetuating conflict as an inherent part of their business model), which in turn significantly increases the risk that gross human rights abuses may happen. Adopting a conflict lens that assesses the impact on the wider environment is therefore a key element of responsible business conduct for such settings. Participants suggested that business enterprises and those advising them should use conflict analysis tools developed by peacebuilding actors as a starting point and adapt them to the specificities of business operations. This includes mapping all the actors and their role in the political and socio-economic landscape. If the company does not have a network on the ground, it should consult with credible expertise, such as the UN, embassies, and specialized NGOs.

The other key issue which emerged from the discussions was the different expectations posed on companies in post-conflict contexts. Whereas the basic responsibility of business is *to prevent and address adverse impacts on people*, in peacebuilding and fragile contexts stakeholders' expectations may extend into filling traditional government roles and contributing directly to development or reconstruction projects, i.e. beyond managing the impacts they caused, contributed or are linked to. It was underlined by participants that the baseline expectation to take proactive steps to prevent harm to people in itself is already a major contribution to sustainable development. Similarly, it was well understood that companies are required to exercise the same level of due diligence for their own operations or when they engage in what could be described as peacebuilding activities beyond the scope of their own operations. Nonetheless, how expectations to companies are articulated may differ between peacebuilding and human rights communities – which to a large extent may be due to "language" differences.

Further dialogue between these groups would also help clarify what concrete elements should be part of a baseline responsibility for companies in fragile contexts and the articulation between "normal" and "enhanced" due diligence.

Special focus: hate speech and the role of business
One session addressed the challenge of technology platforms being used to spread hate speech and violent extremism, testing the notion of technology companies being a "force of good".

Experiences from the early 2000s demonstrated how technology can be as an effective tool in enabling free speech as helping governments in cracking down on dissidents, especially when technology companies did not have necessary safeguards in place to uphold international standards. Multi-stakeholder initiatives, such as the Global Network Initiative, created to counter pressure and violations by repressive governments, also have had their limitations when not backed by legal tools, or in cases that fall under criminal law. These initiatives and individual companies were also not equipped to address the challenges posed by abuse and misuse of technology platforms in contexts affected by conflict and widespread violence. Examples involving companies included:

- In several countries, the government shut down the communications network citing the threat by violent groups to detonate bombs via the mobile network.
- The use of social media as conduit for hate speech against an ethnic minority.
- Having seen that mobile text messages had been used to coordinate violence in the context of an election, one mobile company took steps in the next election to monitor and prevent this from happening again. While it helped reduce violence, such messages by groups involved in violence transferred to social media platforms instead.

One lesson from these and other experiences is that companies cannot anticipate the next move by those wanting to abuse human rights. In relation to hate speech, it was noted that a distinction between hate speech and dangerous speech (incitement to violence) could be useful when considering mitigation. When assessing what may constitute dangerous speech, considerations include: [4]

- What is the context?
- Is the messenger a powerful person or a random drunk?
- Has the target group suffered recent violence?
- Is it only one person talking?
- Is the target group characterized in dehumanizing terms (explicit or coded) to justify killings?
- Has the audience received similar messages before?

The question concerning the use of technology to spread hatred in the form of videos showing violence was also highlighted. In that regard, it was noted that the Christchurch Call provides a good example of collective, voluntary commitments from Governments and online service providers intended to prevent and address the issue of terrorist and violent extremist content online.

A common feature that remains less addressed is that most extremist groups also promote hate speech against specific groups such as women and LGBTI, which often goes unaddressed in spite of international human rights law obligations of governments. Another challenge highlighted by several participants was the trend in different countries of hate speech involving State actors. Journalists and human rights defenders who represent dissenting voices are being branded as "treacherous" or "enemy of the State", which in some cases has resulted in killings. This is an important issue that needs to be considered in companies' human rights due diligence.

It was noted that it is often difficult for corporations to understand incitement in different contexts. The discussion underlined that there is no one-size-fits-all solution, but also that local level approaches may not always provide the solution either, as local employees may lack a clear understanding of free speech and be influenced of bias against vulnerable groups. Countering hate speech is a long-term undertaking, which also requires support to actors that can independently play a positive role (analogous to the role of independent investigative journalism plays a role to counter fake news). It was stressed that well-intended limitations on free speech by companies could provide a tool to repressive governments to curb free speech and human rights defenders, while at the same time stronger laws and law enforcement to counter hate speech are necessary. A key question for technology companies to avoid becoming involved in human rights abuse through its services – and ultimately for holding them to account – is whether they knew or should have known that their technology was being used by State actors or violent groups to fuel or enable attacks on people. [5]

Supporting responsible business to build sustainable peace: the role of different actors

The consultation sought to examine the role of different actors in a post-conflict situation, with a view to support responsible business that contributes to sustainable peace. A key question was to shed light on what support would be needed from the outside.

The role of governments was at the centre of discussions, with emphasis on the duty of States to protect against human rights abuse by third parties. Several suggestions revolved around general

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[4] As developed by the Dangerous Speech Project: https://dangerousspeech.org/.
[5] A useful reference for companies in all sectors on considerations for avoiding liability risks when operating in high-risk environments is the "Red Flags" initiative: https://www.redflags.info/

rule of law development. Participants stressed the importance of building the capacity of government to regulate business and implement the duty to protect. It was observed that companies that do not respect international standards typically respond that they comply with local law. Examples included companies that fail to take into account the rights of communities being displaced with force without any meaningful consultation or consent and adequate compensation. A key aspect of this challenge is the absence of government as effective regulator – with a part of the picture being government actors actively conducting or benefitting from the human rights abuse. As governments want to attract investment to facilitate reconstruction and economic development, investors and financial institutions should support capacity building to regulate in line with international standards and underline the importance of managing adverse impacts on people as a key component of sustainable peace and development. The same should be done by other actors in the international community playing a role in supporting capacity building.

The importance of building constitutional capacity and adequate checks and balances in the legal framework was stressed. The role of the judiciary should not be overlooked, as access to remedy is a huge challenge. This includes support to institutional capacity-building, but also initiatives to support empowerment of civil society organizations. Capacity building of judges and lawyers should be supported, and it was noted that the judiciary should be exposed to best international practice. It was observed that if laws are applied equitably, adverse impacts involving business can be addressed more effectively – and lead to better prevention in the future as consequences become more predictable. In addition to building constitutional capacity, efforts to support mechanisms for mediation and arbitration should also be pursued. In terms of legal frameworks that incentivize responsible conduct by SMEs, it was suggested to learn from the area of anti-corruption.

It was also stressed that outside support to build capacity of local actors needs to be sensitive to local realities and should not be top-down, and to become sustainable needed to build home-grown solutions. A critical aspect is to support capacity-building of civil society to hold government and business accountable. It was noted that Western legal concepts cannot simply be forced onto local legal systems with long traditions. However, when traditional systems are not equitable, there is a need to incorporate best international practice to protect vulnerable populations. It was stressed that fixing past violence is critical and the law is needed, as failure to do so can provide ground for further violence, as seen in post-conflict contexts in different regions. For example, in one country, when former claimants to land returned after the peace agreement, they found that the army had given the land to new claimants, who were also poor groups. The legal framework to attract investors appeared to fuel new conflict where land disputes had not been resolved.

The investment "eco-system" was a key area explored in discussions, touching on the role of both internal and external actors. The experience from one context was that local investment boards can help provide incentives to companies to act responsibly. One regional board of investment developed a business sustainability framework, as many companies were seeing the risks of doing business in the area of being too high because of the conflict. The investment board noted that managing human rights risks would help prevent failure and stressed that the key success factor was to engage effectively with communities based on sensitivity to local values. If putting the right process in place, while provided the right incentives through the investment framework, the chances of a successful outcome for all parties would be much higher. It was noted that such frameworks also need to involve partnerships with communities, where for example the experience from Canada of involving indigenous communities in public-private partnerships could hold lessons also for conflict-affected contexts.

The role of international financial institutions was emphasized by several participants, and examples from many countries highlighted how they are failing to promote international standards to protect affected stakeholders. It was suggested that the practice of international financial institutions focused on attracting investors without building in adequate human rights safeguards (in spite of their policy frameworks that provide for such protection) in some contexts had facilitated investments that involved human rights abuses and provided fuel to reigniting old conflicts. As a minimum, international financial institutions should align with the Guiding Principles on Business and Human Rights. They should carry out their own human rights due diligence and require the same from companies benefitting from funding and advisory service, and they should support investments involving companies that are committed to responsible business conduct.

The important monitoring role of civil society organizations was a key message. It was also suggested that civil society organizations could become more strategic. Often engaging in multi-stakeholder collaboration and dialogue with business can be more effective than naming and shaming. Companies, investors, governments and international organizations all can play a role in supporting the capacity of civil society both in their role as watchdogs and constructive partners to promote responsible business that supports peace.

Filipino experiences: Bangsamoro

A key issue for the transition from conflict after the peace agreement for Bangsamoro, is the transformation of "camps" into peaceful and resilient communities. The framework being put in place involves engagement with the private sector along the four components of the development plan: developing physical infrastructure, environmental protection, socio-cultural sensitivity and economic investment. While companies are invited to join public-private partnerships to contribute to development, extractive industries are off the table – due to few mineral resources in the area, but also because of the recognized risk of mining being a driver for conflict. Economic components of the transformation include:

- *Sustainable agriculture, where inclusive corporate-community engagement and empowerment of women workers are key elements*
- *Job creation (one of the biggest challenges in a post-conflict situation)*
- *Industry development*
- *Tourism that supports peace*

The local government is looking at both how to bring in investors and empower communities in order to integrate with the wider economy. A key challenge for the region – and one that has been amplified by the conflict – is the widespread poverty. Community capacity-building and empowerment are critical elements of putting communities in a position to engage with the private sector and take part in economic development. Risks to the peace process include underlying grievances and sense of entitlements, especially if reconstruction does not take into account local community concerns.

Overall takeaways

The discussions highlighted that there is a need to strengthen the connection and sharing of knowledge between experts and practitioners working in the respective fields of conflict prevention and business and human rights. There is a need to work together to develop integrated tools for conflict analysis and human rights due diligence, as "enhanced" corporate human rights due diligence should integrate conflict analysis or conflict sensitivity.

In terms of key elements of effective human rights due diligence in conflict-affected contexts, the need to focus on understanding the context dynamics beyond the company's own impacts combined with meaningful consultation with affected stakeholders followed by appropriate action to address potential and actual negative impacts were stressed again and again. The role of business in transitional justice in line with the corporate responsibility to respect human rights also needs to be examined further.

With regard to government action, national action plans on business and human rights should include provisions on Guiding Principle 7 for supporting business respect for human rights in conflict contexts, which has particular emphasis on the role of home States.

Finally, the conducive role of investors and financial institutions was emphasized. It is a widely held assessment that pressures to attract investment quickly to facilitate reconstruction and economic development often mean that human rights safeguards are ignored. This, in turn, presents risks to sustainable peace. There is a need to examine what responsible investment frameworks should entail in practical terms and ways to change the practice of financial institutions and private investors.

Endnote

What do the Guiding Principles say about protecting and respecting human rights against business-related adverse impacts in conflict contexts?

State duty to protect: Guiding Principle 7 – Supporting business respect for human rights in conflict-affected areas[6]

"Because the risk of gross human rights abuses is heightened in conflict-affected areas, States should help ensure that business enterprises operating in those contexts are not involved with such abuses, including by:

    (a) Engaging at the earliest stage possible with business enterprises to help them identify, prevent and mitigate the human rights-related risks of their activities and business relationships;
    (b) Providing adequate assistance to business enterprises to assess and address the heightened risks of abuses, paying special attention to both gender-based and sexual violence;
    (c) Denying access to public support and services for a business enterprise that is involved with gross human rights abuses and refuses to cooperate in addressing the situation;
    (d) Ensuring that their current policies, legislation, regulations and enforcement measures are effective in addressing the risk of business involvement in gross human rights abuses.

Commentary: Some of the worst human rights abuses involving business occur amid conflict over the control of territory, resources or a Government itself – where the human rights regime cannot be expected to function as intended. Responsible businesses increasingly seek guidance from States about how to avoid contributing to human rights harm in these difficult contexts. Innovative and practical approaches are needed. In particular, it is important to pay attention to the risk of sexual and gender-

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[6] Elaborated in Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, Business and human rights in conflict-affected regions: challenges and options towards State responses, UN Document A/HRC/17/32, 2011 (A companion report to the Guiding Principles focused on policy options for States): https://www.ohchr.org/Documents/Issues/TransCorporations/A.HRC.17.32.pdf

based violence, which is especially prevalent during times of conflict. It is important for all States to address issues early before situations on the ground deteriorate. In conflict-affected areas, the "host" State may be unable to protect human rights adequately due to a lack of effective control. Where transnational corporations are involved, their "home" States therefore have roles to play in assisting both those corporations and host States to ensure that businesses are not involved with human rights abuse, while neighboring States can provide important additional support. To achieve greater policy coherence and assist business enterprises adequately in such situations, home States should foster closer cooperation among their development assistance agencies, foreign and trade ministries, and export finance institutions in their capitals and within their embassies, as well as between these agencies and host Government actors; develop early-warning indicators to alert government agencies and business enterprises to problems; and attach appropriate consequences to any failure by enterprises to cooperate in these contexts, including by denying or withdrawing existing public support or services, or where that is not possible, denying their future provision."

Corporate responsibility to respect

The Guiding Principles clarify that companies should exercise "human rights due diligence" in all contexts, meaning that they should assess potential and actual adverse impacts, take action to address them, track the effectiveness of their efforts, and communicate how risks and impacts are being managed. They should also help remediate any negative impacts that they cause or contribute to. Having operations or business relationships in conflict-affected areas will require a different type of human rights due diligence as the risk of involvement in adverse impacts may be higher than in most other contexts. Guiding Principle 23 recommends business enterprises to treat the risk of causing or contributing to gross human rights abuses as a legal compliance issue. It notes that having operations or business relationships in conflict-affected areas may increase the risk of being complicit in gross human rights abuses committed by other actors (for example, security forces), which necessitates extra care. The Guiding Principles imply that such measures should take the form of "enhanced" or "heightened" human rights due diligence.