

UN Working Group on Business and Human Rights consultation with States

Project on business in conflict and post-conflict contexts

Palais Wilson, first floor conference room

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Introduction

As part of its mandate to promote the Guiding Principles on Business and Human Rights in all contexts, the Working Group on Business and Human Rights recently launched a project to clarify the practical steps that companies, investors and States should take to implement the Guiding Principles in conflict and post-conflict contexts. The project will run throughout 2019 and the first quarter of 2020, and the findings and recommendations will be presented in a report to the General Assembly in 2020. An initial consultation with States will be held during the Working Group's 22nd session in Geneva on 6 February. All States are invited to participate.

Project description and background

It is well known that some of the most serious human rights abuses and breaches of humanitarian law take place in conflict-affected areas and other situations of widespread violence. Conversely, human rights abuses are often closely linked to the root causes of conflict and violence, which in turn may lead to further human rights abuses. It is also well known that business operations can have a major impact in conflict and post-conflict situations. Notably, tensions created by economic activities – including but not limited to the exploitation of natural resources – that are not sufficiently sensitive to past or potential grievances can, if left unaddressed, exacerbate pre-existing human rights issues and contribute to a resurgence of violence and insecurity.

The challenge of incentivizing business respect for human rights in these contexts and making rights-respecting business a driver for peace, is one of the major issues of our time. With 1.4 billion people affected by violent conflict each year (including more than 350 million children under the age of 12), the need to turn the corporate responsibility to respect human rights into practice in conflict and post-conflict settings require both businesses and States to act as a matter of urgency. It is also a critical issue that needs to be addressed for achieving Sustainable Development Goal 16 of promoting peaceful and inclusive societies.

While the impact business can have in conflict situations is well documented, better understanding is needed of the practical measures that companies should take in these contexts. How State actors that shape business practice as well as investors can incentivize business conduct to prevent and mitigate involvement in human rights abuse is also an area that remains relatively unexplored. The need for practical guidance and action is particularly acute regarding the role of the private sector in transitional justice and reconstruction contexts. It is also well documented that countries emerging from armed conflict face a high likelihood of sliding back into violence. Thus, conflict-sensitive and responsible business conduct in line with international human rights standards has great potential for contributing to sustainable peace.

Against this background, the Working Group project will address the full “conflict cycle” and practical implications of all three pillars of the Guiding Principles:

- The State duty to protect against human rights abuses by third parties, including business, through appropriate policies, regulation and adjudication;
- The corporate responsibility to respect human rights, which means to avoid infringing on the rights of others and to address adverse impacts with which a business is involved; and
- The need for access to effective remedy for rights-holders when abuse has occurred, through both judicial and non-judicial grievance mechanisms.

Guiding Principle 7 provides some basic guidance for clarifying how States should support business respect for human rights in conflict-affected areas, through: early engagement with business enterprises to prevent and address risks of becoming involved in human rights abuse in conflict contexts; assistance to businesses to assess and address the heightened risks of abuses, paying special attention to both gender-based and sexual violence; denial of access to public support and services for businesses involved in gross human rights abuses; and assessment of effectiveness of current policies, legislation, regulations and enforcement measures. Practical implications were further unpacked by the former Special Representative of the Secretary-General on Business and Human Rights, in a report that accompanied the Guiding Principles. That report outlined a range of policy options that home, host and neighbouring States have, or could develop, to prevent and deter corporate-related human rights abuses in conflict contexts.¹

Regarding business action, 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 tailored human rights due diligence as the risk of involvement in adverse impacts may be higher than in most other contexts. In particular, 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.

The Working Group project aims to add further clarity and address current practice gaps, by developing practical guidance oriented toward questions such as:

- What good practice approaches are emerging among home States to incentivize responsible business conduct in conflict and post-conflict contexts?
- How can host and home States incentivize responsible and rights-respecting business conduct in transitional justice and reconstruction contexts?
- How can host and home States strengthen access to effective remedy for victims of corporate-related human rights abuses in conflict settings and effectively address corporate complicity in crimes involving severe human rights abuse?
- How should national action plans on business and human rights address the role of business in conflict and post-conflict contexts?

¹ UN Document A/HRC/17/32, <http://www.ohchr.org/Documents/Issues/TransCorporations/A.HRC.17.32.pdf>

- What specific policies should companies have in place to be better equipped to meet the responsibility to respect human rights in fragile contexts?
- What does “enhanced” human rights due diligence mean in practice?
- What does meaningful engagement with stakeholders imply in different conflict and post-conflict situations?
- What measures should business take to ensure they do not harm the situation of human rights defenders in conflict contexts?
- How to distinguish between the roles and responsibilities of business enterprises who have a choice of operating in conflict contexts and those with no choice of leaving?
- What roles can and should companies play in transitional justice contexts?
- How can companies contribute positively in a transitional justice context without replacing the role of the State as the primary duty-bearer under international human rights law?
- How can investors and financial institutions (including international financial institutions) ensure that they do not undermine the State’s ability to protect human rights and the corporate responsibility to respect human rights in transitional justice and reconstruction contexts?
- What are the criteria for human rights investing in fragile contexts in a way that is compatible with international human rights standards?
- What are the criteria for “responsible exits”?

Outputs and methodology of the Working Group project

The Working Group’s recommendations and practical guidance will be presented in a report to the UN General Assembly in October 2020. The report may be accompanied by several companion papers to elaborate on specific topics and guidance. The recommendations will be disseminated in the last quarter of 2020, with active outreach to governments, business and the investment community, as well as engagement with civil society and international institutions. It is expected that it will be a key input to the 2020 UN Forum on Business and Human Rights (November/December 2020).

The project was initiated with expert consultations in Geneva in October and November 2018 as well as an open multi-stakeholder discussion at the 2018 UN Forum on Business and Human Rights. These discussions helped inform the scoping of the of the project. During the course of 2019, a number of activities will be undertaken to inform the Working Group’s work:

- Regional consultations with practitioners (MENA, Latin America, Sub-Saharan Africa, Southeast Asia)
- Expert and multi-stakeholder consultations (Washington DC, Geneva, London)
- Consultation with governments (Geneva)
- Research (desk-based and interviews with practitioners)
- Open calls for inputs to be posted on the project web page
- A questionnaire distributed to all governments

The Working Group seeks to develop evidence-based guidance, taking into account both emerging good practices and existing gaps and challenges. It seeks to consult as widely as possible with all relevant stakeholders, including governments, civil society, business, investors, academia, national human rights institutions, trade unions, UN and other international organizations, and affected stakeholders and human rights defenders working on the ground. The project will explore several case studies and a diverse sample of past and current conflict situations in different regions.

The open call for inputs and survey will be issued in the first half of 2019.

The Working Group's conflict project will also be informed by its ongoing project focused on developing a "gender lens" to the Guiding Principles, which seeks to address the disproportionate adverse impacts faced by women in many contexts. As highlighted by the Guiding Principles, this challenge is particularly acute in conflict settings.

Aims and objectives of the 6 February consultation

A central aim of the consultation on 6 February is to inform States about the project and answer initial questions. State delegations are also asked to share information about:

- Policy initiatives to foster responsible business conduct and corporate respect for human rights in conflict and post-conflict contexts (including peacebuilding activities), including through "economic diplomacy", investment agreements, and public procurement.
- How the issue of business in conflict and post-conflict is being addressed in existing or forthcoming national action plans on business and human rights or other relevant frameworks for responsible business.
- Guidance provided to business enterprises to support effective human rights due diligence in conflict-affected and fragile contexts.
- Efforts to address corporate crimes and complicity in conflict contexts.
- Efforts to strengthen coherence in multi-lateral fora and institutions (e.g. international financial institutions) between commitments to implementing the Guiding Principles on Business and Human Rights and efforts to promote investment in post-conflict contexts.

Practical information

For questions about the consultation, please contact wg-business@ohchr.org.