RESPONSIBLE BUSINESS IN UNCERTAIN TIMES: STRENGTHENING CORPORATE LEADERSHIP AMIDST WIDENING GLOBAL CONFLICTS

PRIORITY ISSUES AND FUTURE DIRECTIONS

BRIEFING

IHRB
Institute for Human Rights and Business

RESPONSIBLE BUSINESS IN UNCERTAIN TIMES: STRENGTHENING CORPORATE LEADERSHIP AMIDST WIDENING GLOBAL CONFLICTS

On 9 October 2024, the Institute for Human Rights and Business (IHRB) organised an international conference on the role of business at a time of increasing global and local conflict and instability. The event was hosted at the International Committee of the Red Cross / Red Crescent (ICRC) in Geneva.

It included participants from business and civil society as well as representatives of the Office of UN High Commissioner for Human Rights and the Government of Switzerland. The discussions built on earlier multi-stakeholder meetings convened by IHRB in Copenhagen (October 2023) and Washington, D.C. (February 2024), all aimed at fostering greater understanding and action on how businesses should respond to an age of growing conflict and uncertainty.

At the end of 2023, there were more than 110 armed conflicts involving 60 states, and 130 non-state armed groups. Current reports note that 210 million people live in territories that are either under the full control of non-state armed actors or in contested territory.

Conflict inevitably impacts on business and commerce. Business practices can in some cases contribute to conflict, whether intentionally or not. In recent years, policymakers, advocacy groups, and UN bodies have reflected on these challenges and devised a variety of frameworks to address them, to enhance the prevention and mitigation of any harm caused by business actions in conflict and fragile settings. Others have issued complementary tools highlighting the contributions businesses can make to lasting peace, development and prosperity, including achievement of UN Sustainable Development Goal 16.

A handful of businesses have participated in such initiatives, bringing a dose of realism to policy discussions, and a recognition that issues are never black and white. But the geopolitical and regulatory context is evolving; technology is adding new dimensions to debates concerning business-related harms. The UN's recently adopted 'Pact for the Future', includes state commitments to addressing conflict, and highlights the roles of finance and technology specifically in this regard.

In a time of increasing securitisation of economic competition globally, the multilateral system for conflict management is struggling to respond effectively. There is an imperative to find collective forms of conflict resolution and management globally, while at the same time looking at how our forms of multi-stakeholder action are fit for purpose, and whether they are having desired impact on the ground, or are in need of reform. These and other issues were considered during IHRB's Geneva event discussions in the context of current conflicts (e.g. Russia and Ukraine, Gaza and Israel, Sudan, DRC, Myanmar, Haiti), and wider geopolitical uncertainty. Specific attention was paid to the commodities, finance and technology sectors.

IHRB's discussions in New York, Copenhagen and Geneva are reflected in the remainder of this document, which provides key insights and priority issues intended to guide IHRB's approach on further activities in this area during 2025 and beyond, including further engagement with governments, businesses, inter-governmental organisations, and civil society.

Panellists in discussion at IHRB's event - Responsible Business in Uncertain Times - held on 9 October 2024 at the ICRC in Geneva.

1. BUSINESS NEUTRALITY IN CONFLICT DOES NOT PREVENT IT FROM HAVING AN IMPACT

Like civilians, businesses operating in contexts of armed conflict have protections under international humanitarian law, including the Geneva Conventions, provided they do not take part directly in armed hostilities. Maintaining this in a complex conflict environment may not be easy, despite a company's best intentions. Even where businesses do not directly contribute to hostilities, their presence and operations might have some impact on conflict dynamics. 'Neutrality' is about not taking side with one party against another. It is different from the impact of business operations on conflict dynamics which can be unintended. The difference is in the positioning and therefore about intentionality of companies involved.

Businesses operating in such contexts need to comprehensively and continuously review their impacts, and all their interactions with conflict actors, as well as the impacts of the conflict on their ability to meet their responsibility to respect human rights. This is what defines conflict-sensitive, or heightened, human rights due diligence.

In 2019, the International Finance Corporation called for a "fragility lens" on all major financing to identify the conflict context, potential impacts of investments, and any ongoing impact that investments could have on conflict. But beyond major multilateral banks, most private institutions tend to see conflict as part of wider political risk analysis and not a distinct factor in investment. The 'Peace Finance Hub', an initiative of Sustainable Finance Geneva, is trying to address this. The International Chamber of Commerce has also recently published guidance to its members when operating in 'challenging contexts'.

2. 'FOLLOWING THE MONEY' IS USEFUL, BUT WILL NOT SOLVE THE PROBLEM ALONE

Conflicts require financing. Governments need to raise more revenue, by formal and informal means. For non-state combatants, the control of key commodities, particularly minerals, is often a major objective, resulting in conflict and associated human rights abuses. All of this can pose risks for businesses and affected stakeholders.

These economic drivers of conflict, particularly in the Great Lakes Region of Africa, have led to more than two decades of work on mandatory traceability and reporting schemes inspired by the Kimberley Process, which aimed to break the link between conflict and diamond mining, and regulations to prevent 'conflict minerals' from being placed on EU and US markets. However, conflict and abuses continue. On 8 October, the US Government Accountability Office released a report concluding that Securities and Exchange Commission (SEC) disclosure rules had not meaningfully reduced conflict, although they had encouraged responsible sourcing efforts and helped make companies aware that their supply chains can affect conditions on the ground. SEC rules also raised international awareness about the risks of minerals benefitting armed groups and contributing to conflict in the DRC. It is worth remembering that conflict minerals rules were never about reducing or stopping the conflict alone. They were necessary to doing so, but not sufficient. In addition, they were also about taking responsibility for global supply chains by those with the most power in those supply chains (consumer country / capital exporting country-based multinationals).

Unfortunately, the problem will not go away and may even increase. There is a rising demand for critical energy transition minerals (CETM) including copper, lithium, nickel, cobalt, and rare earth elements (REEs). Many of them are found in conflict-affected areas and/or close to the lands of Indigenous peoples.

A complementary approach has been responsible sourcing certification. Various industry-driven and multi-stakeholder standards such as the Initiative for Responsible Mining Assurance (IRMA), the Aluminium Stewardship Initiative (ASI), and the four standards currently being merged under the Consolidated Mining Standards Initiative (CMSI) have been advanced in recent years. Generally, these have aligned to the approach to conflict assessment in the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas.

Furthermore, multi-stakeholder initiatives such as the Extractives Industries Transparency Initiative (EITI), the Voluntary Principles on Security and Human Rights (VPSHR), and the Global Battery Alliance (GBA) (part of the Responsible Business Alliance) have sought to address the problem of conflict and natural resource extraction.

There is, however, a need for more local coordination in countries where commodities associated with conflict are extracted and grown, including with host governments, and input from local stakeholders.

In addition to natural resource revenues, in recent years, the question of the contribution that ordinary taxes make to conflict has become a more central topic, particularly in Myanmar, and following Russia's invasion of Ukraine, leading some campaigners to call on companies to practice 'tax resistance'. Taken to its logical conclusion, this can amount to a call for exit, given that companies cannot choose whether or not to meet their legal obligations and not paying taxes would make such companies vulnerable to litigation, including possible arrests of staff in the country. Indeed, UN Guiding Principle 23 reminds businesses that they should comply with all applicable laws, including in challenging circumstances (indeed, this is often an important line of defence against arbitrary government action). In a August 2023 report on challenging contexts, the UN Office of the High Commissioner for Human Rights noted that 'The payment of taxes….does not on its own make a business "involved with" the violations of a government regime, even an illegitimate one (apart from exceptional circumstances where a business is a very significant tax contributor to a government that is involved in gross violations of human rights)'. Another similar challenge is a specific wartime tax imposed to finance the conflict.

3. CONFLICT THRIVES ON, AND CREATES, ECONOMIC INEQUALITIES

Taxes are necessary to fund critical public services such as health and education. "Markets without rights" are prone to violence, corruption and human suffering. Inequality within and between communities, states, and global regions drive mistrust between economic actors. They affect systems of trade and guide motivations of political and business leaders.

Such situations are all too often coupled with a climate of impunity, in which those who break laws and rules face few, if any, consequences. Organisations working with political actors on conflict prevention, resolution and peacebuilding should recognise that private sector activities contribute to the realisation of economic and social rights. They should stress the duty of state actors to protect against business actions that may undermine the realisation of specific rights and call for the adoption and implementation of legal frameworks that support companies in undertaking responsible business activities wherever they operate.

In this context, it is also important to recognise that calls for the private sector to boycott a conflict-affected region may be based on valid human rights concerns. In some situations, divestment or withdrawal may be the only way for companies to respect human rights and international law. When opting to withdraw from business relationships connected to abuse in conflict situations, companies should act with due diligence to ensure their acts do not result in adverse impacts.

4. LEGALITY AND RESPONSIBILITY ARE CONNECTED, BUT DIFFERENT

In addition to their obligations under international criminal and humanitarian law, businesses in conflict-affected and high risk areas (CAHRAs) must comply with local laws, and those of their home jurisdiction. Additionally, all businesses have the responsibility to respect internationally recognised human rights, as set out in the UN Guiding Principles on Business and Human Rights (UNGPs). That responsibility is not simply achieved by staying within the bounds of what is legally permissible and possible. It also requires effective human rights due diligence to minimise adverse impacts, which should be 'heightened' in high risk and conflict situations. That does not mean undertaking 'more' human rights due diligence, but instead highlights the importance of applying a conflict lens.

For European businesses, many of whose supply chains are global, and extend to conflict-affected areas – these two elements of legality and responsibility are becoming increasingly intertwined. In 2024, the European Union adopted a directive mandating human rights due diligence. Its implementation will challenge businesses to understand and comply with legal obligations under national and international laws, while not losing sight of a wider responsibility to reduce harms they may cause to people.

5. THE RED LINES FOR AVOIDING COMPLICITY IN INTERNATIONAL CRIMES ARE EVOLVING, PARTICULARLY AS A CONSEQUENCE OF TECHNOLOGY

Under international criminal law, businesses risk being complicit in international crimes such as genocide, war crimes, crimes against humanity, and ethnic cleansing. Major criminal law legal cases directed at business leaders are rare, but current cases in Sweden, involving Lundin Oil in Sudan, and in France for Lafarge/Holcim's operations in Syria are both notable, and will have wider implications. Business leaders therefore need to understand where the red lines are to ensure that they do not contribute to or benefit from international crimes. They should review whether business relationships may draw them into situations that expose them to complicity risk, and whether these complicity risks are changing, for example, in the case of Vanuatu's proposed amendment to add 'ecocide' to the Rome Statute of the International Criminal Court.

The use of technology, including artificial intelligence (AI), in conflict and the theatre of war is a quickly evolving area in which the private sector is intrinsically involved, either through military contracts or indirectly through the potential dual-use or misuse of products by armed actors, raising major issues of human rights and humanitarian law. The ICRC has highlighted three areas in which Artificial Intelligence (AI) is being developed for use by armed actors in warfare, which raise significant questions from a humanitarian perspective:

1. Integration in weapon systems, particularly autonomous weapon systems
2. Use in cyber and information operations
3. Underpinning military 'decision support systems'

Corporations developing AI for military applications must establish ethical guidelines, focusing on human rights and humanitarian law, and limiting potential misuse. But state regulation is also needed.

Social media platforms also have major and evolving legal responsibilities to prevent dissemination of disinformation and misinformation which contributes to conflict, while at the same time ensuring that evidence of international crimes that does appear on their platforms is preserved for use by investigators from state bodies and civil society.

Human rights-based governance and regulation is needed for content moderation to eliminate biases, and to create international frameworks to prevent AI from contributing to misinformation or "hallucinations" that distort historical facts in sensitive contexts. Technology companies need to implement standards to mitigate the spread of disinformation and misinformation that exacerbate social divisions and insecurity. Participation in initiatives like the Global Network Initiative (GNI) and the Rabat Action Plan, alongside contributions to developing global norms for technology governance, will support safer online environments. The UN Human Rights B-Tech Project has highlighted the duties and responsibilities of states and tech companies under the UNGPs to prevent and mitigate risks from AI including in conflict related contexts.

Panellists discussing the role of responsible technology at IHRB's event - Responsible Business in Uncertain Times - held on 9 October 2024 at the ICRC in Geneva.

6. BOARDS NEED TO CONSIDER CONFLICT AS MORE THAN 'GEOPOLITICAL RISK'

Increasing conflict and uncertainty represent a material risk all directors should be focussed on as part of their fiduciary duties. But too often this issue sits on a dashboard under the broad heading of 'Geopolitical Risk'. There, it is considered primarily from a Financial Materiality perspective, with the focus on commercial and operational risk: what are the impacts on supply routes and input scarcity, and market demand? Do we have insurance? Can we declare force majeure? The impacts on people may be forgotten. Consumer-facing companies also view it as a 'reputational' risk.

The 'double materiality' perspective, now required under the European Sustainability Reporting Standards, requires a consideration of 'Impact Materiality': the business' impacts on people and the environment. Through heightened human rights due diligence, a company should be able to tease out the impacts of conflict on its own people, and its customers, and nearby communities. Complicity, for example the use of a company's property or services to commit war crimes, is an obvious potential material impact on people.

In Myanmar, for example, the conflict has resulted in insecurity for commuting employees due to roadblocks and the military's enforcement of conscription. Companies operating in other CAHRA territories such as Colombia, Sudan, and Nigeria have been sued under the US Alien Tort Statute over their links with, or their provision of logistical or financial support to, the military. Boards need to also be aware of the potential wider implications of ongoing criminal law cases such as Lafarge in Syria and Lundin in Sudan as well as the Chiquita case relating to Colombia.

Conflict is not only an impact on people; it becomes financially material when all the workforce flees to avoid press-ganging or forced enlistment. Another impact is societal polarisation, which can extend into the workplace, and raises risks of discrimination and bullying. Whether real, or exaggerated by the fog of war, these impacts on people can also become financially material, if they provoke boycotts, or cause reputational damage and loss of investors. All in all, Boards are in real need of good guidance in navigating the multifaceted material risks presented by conflict and uncertainty, as well as some cautionary tales – and good practice examples.

7. 'DE-RISKING' AND EXIT MAY NOT ALWAYS BE THE BEST WAY FOR COMPANIES TO RESPECT HUMAN RIGHTS

Faced with daunting challenges in uncertain times, companies may choose to 'de-risk' and quit a high-risk market, or a source of supply, where they are able to do so. The UNGPs set expectations for companies to identify and mitigate adverse impacts in their due diligence, and that includes when considering whether to exit a country or relationship. Companies are expected to take into account credible assessments of potential adverse human rights impacts of doing so. Part of that should involve meaningful engagement and discussion of the dilemmas and options with local rights holders, and other stakeholders and experts. Sometimes withdrawal or divestment may be the only or the best option for responsible action. It is a perfectly legitimate response to the risk of links to abuse, but only where exit is carefully managed and considered in light of the impacts of exit.

But exits, responsible or otherwise, may not lead to the best human rights outcome – the company de-risks but risks remain for rights holders, or even increase. The exit of a company committed to operating responsibly may contribute to an overall decline in the protection and respect for human rights in the sector if remaining companies do not apply the UNGPs, or a company less committed to human rights steps in to grab a profitable opportunity. Exits may lead to losses of jobs or essential services, or reduced quality or competition. In all situations of conflict, the potential human rights impacts of staying as well as going need to be carefully assessed against each other.

8. USE LEVERAGE, PURSUE COLLECTIVE ACTION, AT LOCAL LEVEL

The UNGPs also call on companies to use their leverage to prevent or mitigate adverse human rights impacts, including by collaborating with others, which can be far more effective than acting alone. Such leverage is exercised more effectively through collective action. In a sensitive situation, for companies there is safety in numbers, both within and across sectors. While global multi-stakeholder initiatives or industry initiatives can provide the principles and case studies, the most effective collective action and leverage is achieved when it is coordinated in-country, by those who are actually dealing with the current challenge and involving local civil society and national and sub-national governments.

The ecosystem of multi-stakeholder initiatives at international level, which address business in conflict-affected environments, needs an overhaul, particularly as funding sources are drying up. This is true both for the older initiatives focused on company approaches to physical security, such as the Voluntary Principles on Security and Human Rights and the International Code of Conduct Association (ICoCA), but also for newer initiatives related to technology and human rights important to conflict, such as freedom of expression and privacy. These include the Freedom Online Coalition (which engages governments) and the Global Network Initiative (business, investors, NGOs and academics).

9. GOVERNMENTS, AND PARTICULARLY EMBASSIES IN CONFLICT-AFFECTED COUNTRIES, NEED TO STEP UP

After initial enthusiasm in 2011 with the adoption of the UNGPs, followed by National Action Plans on Business and Human Rights published by some countries, many governments currently seem less engaged on the business and human rights agenda, both from a funding perspective, and in-country level through diplomatic missions. Coming at a time when there are increasing societal and regulatory expectations on business to undertake conflict-sensitive human rights due diligence, this reveals a major gap and a mismatch.

Embassies can work together to monitor evolving human rights and conflict risks related to business, and identify opportunities for collective government advocacy or capacity building. For example, the government members of the Freedom Online Coalition, in addition to their work at global and UN level, should be active at local level, including with chambers of commerce, individual companies and other stakeholders, where national legislation including on digital issues, undermines human rights and good governance.

Companies, particularly those who source but are not present in the market, value this advocacy, as well as the local guidance and civil society contacts that embassies can provide to enable their human rights due diligence to be conflict sensitive. They will have more confidence in operating jn and sourcing from challenging contexts if they know that development partners are supporting the host nation to develop regulatory frameworks which protect human rights, since this will facilitate business in meeting their responsibility to respect human rights. Otherwise, the company's inclination may be to exit and de-risk, if it is able to do so. Where there is a human rights case to stay, guidance and support to companies undertaking due diligence is even more essential, including in ongoing efforts to support just transitions for workers and local communities.

This briefing builds on discussions from a series of IHRB events on the role of business in conflict, including: *Responsible Business in Uncertain Times* (Geneva, 2024); *Corporate Responsibility in a New Age of Conflict and Uncertainty* (Washington D.C., 2024); and a multi-stakeholder meeting in Copenhagen in 2023. IHRB would like to thank its partners and colleagues who contributed to these events, shared their expertise, and whose insights have helped inform the analysis in this briefing.

For more information about IHRB's work related to business and conflict, please visit our conflict-dedicated webpages: https://www.ihrb.org/issues/conflict-zones