

Human Rights Defenders' Fact Sheet

Operating in Conflict-Affected Areas

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1. **Definition of conflict-affected areas**

- 1.1 Some of the worst human rights violations take place in conflict-affected areas. It is essential that, when operating in conflict-affected areas, States and companies comply with their obligations so as not to exacerbate human rights abuses.
- 1.2 There is no settled definition of conflict-affected areas.¹ However, they can be identified by:
 - (A) armed conflict (intrastate), which usually includes state forces and non-state armed groups, regarding the control of governments, territories or resources;
 - (B) armed violence, where there are high violence rates and localised armed violence (but such violence does not meet the criteria required for categorisation as an armed conflict under international humanitarian law (“IHL”));
 - (C) post-conflict, where armed conflict has recently ended; and
 - (D) social unrest where there is (or there is a risk of) violence and/or conflict (for example, riots, isolated and sporadic acts of violence and acts of criminality).
- 1.3 This Fact Sheet highlights the main issues that can arise in conflict-affected areas. It also gives an overview of the main relevant legal instruments, and the obligations of states and corporations in this area. Finally, it provides suggestions on actions that could be taken by human rights defenders (“HRDs”) when dealing with state or non-state actors in conflict-affected areas.

2. **Issues arising in conflict-affected areas**

- 2.1 State and non-state actors must be conscious of their obligations in conflict-affected areas and mindful of the issues that might arise in such situations. Such issues may include:
 - (A) the suspension or complete disregard of obligations under local laws designed to protect human rights and/or international human rights law;

¹ The commentary to Guiding Principle 23 (Issues of Context) of the United Nations Guiding Principles on Business and Human Rights singles out conflict-affected areas as operating environments that “may increase the risks of enterprises being complicit in gross human rights abuses committed by other actors”. The Organisation for Economic Co-operation and Development (OECD) considers that conflict-affected and high-risk areas can be “identified by the presence of armed conflict, widespread violence or other risks of harm to people.” In 2013, the Geneva Academy proposed criteria and guidelines to identify conflict-affected and high-risk areas (see http://www.ohchr.org/Documents/Issues/Business/ForumSession2/Events/3Dec.1.SideEventProposal_GenevaAcademy.pdf).

- (B) the attack or harassment of a community, or parts thereof;
- (C) gender-based sexual or physical violence;
- (D) forced displacement and issues of refugee law;
- (E) acts in contravention of IHL or international criminal law;
- (F) high degrees of militarisation, including the use of private security or state security, the priority of which is to protect business enterprises at the expense of a regard for human rights; and
- (G) an absence of civilian state institutions to enforce the rule of law.

2.2 The deterioration of the stability of an area often leads to the hiring of private companies that provide military and/or other security services to protect economic interests or strategic targets. This subject is considered further in the Fact Sheet on Private/Military Security Companies (“PMSCs”).

3. **The legal framework**

3.1 When assessing the obligations of State and non-state actors in conflict-affected areas, one must consider IHL, international human rights law and international criminal law.

International humanitarian law

3.2 IHL binds state and non-state actors whose activities are closely linked to an armed conflict. It is based on treaties, particularly the Geneva Conventions (and their Additional Protocols), and various other conventions on specific topics. It regulates the methods of warfare and seeks to limit the impact of conflict on non-participants. The principal relevant conventions are set out in the Schedule to this Fact Sheet.

3.3 There is also a substantial body of customary IHL that is binding on all states and parties to a conflict. Customary IHL consists of rule that derive from the consistent practice of States, accompanied by a belief that the practice is legally required. A database of customary IHL is maintained by the International Committee of the Red Cross.²

3.4 The basic rules of IHL can be summarised as follows:

- (A) parties to an armed conflict must always distinguish between combatants and civilians; attacks against civilians are prohibited;
- (B) people who do not (or no longer) take part in hostilities are entitled to respect for their lives and for their physical and mental integrity;
- (C) parties to an armed conflict do not have an unlimited right to choose methods and means of warfare;
- (D) wounded and sick must be cared for by the party to the conflict that has them in its power; and

² <https://ihl-databases.icrc.org/customary-ihl/eng/docs/home>

See also J.M. Henckaerts and L. Doswald-Beck, *Customary International Humanitarian Law*, Vol. I: Rules, 3rd ed., ICRC/Cambridge University Press, Cambridge, 2009: <https://www.icrc.org/eng/resources/documents/publication/pcustom.htm>.

(E) captured combatants and civilians are entitled to respect for their lives, their dignity, their personal rights, and their political and religious rights.

3.5 IHL distinguishes between international and non-international armed conflicts.³ As a matter of law, armed violence and social unrest does not amount to non-international armed conflict (although such events may escalate into non-international armed conflict). When considering the scope of a state's obligations under IHL, it is important to understand the nature of the conflict addressed by the relevant convention and whether the relevant State has ratified that convention.

International human rights law

3.6 International human rights law is applicable to all conflict-affected areas (unlike IHL, which is only applicable in situations of armed conflict). The international human rights movement was strengthened by the adoption in 1948 of the UN Universal Declaration of Human Rights.⁴ Although not legally binding, the declaration has been elaborated in subsequent international treaties, which have developed further international human rights law.⁵

3.7 In situations of armed conflict, human rights will often be interpreted based on standards of IHL (for example, the right to life must be interpreted in light of IHL, which permits attacks against combatants).

3.8 It is generally understood that international human rights law is binding on states, but not on companies. However, this is a subject of fierce debate, particularly since the publication of the UN General Principles of Business and Human Rights ("UNGP's", discussed in greater detail below).

3.9 It is important to note that there may also be national human rights law that is applicable to individuals and/or companies, in respect of which legal advice in the relevant jurisdiction should be sought.

International criminal law

3.10 International criminal law relates to genocide, crimes against humanity and war crimes, and applies to armed conflicts in countries that have ratified the Rome Statute of the International Criminal Court ("ICC").⁶ The ICC does not have jurisdiction over companies, but can prosecute individual company executives or any individual who is alleged to have committed crimes within the jurisdiction of the ICC.⁷

4. Guidance for businesses operating in conflict-affected areas

4.1 IHL applies to companies that operate in an armed conflict and carry out activities that are linked to the conflict. However, where business actors carry out regular activities that are not related to armed conflict, they are likely to be considered as civilians.

4.2 Although not bound by international human rights law, companies are under increasing pressure to consider their wider human rights obligations. The United Nations Guiding Principles on Business and Human Rights ("UNGPs") is a set of international, non-binding

³ The definition of an "international armed conflict" is found in Article Two common to the four Geneva Conventions. It states that the rules of "international armed conflict" apply to "all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties . . ." In Article Three common to the four Geneva Conventions a "non-international armed conflict" is defined in the negative, as "an armed conflict not of an international character."

⁴ http://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf

⁵ For a list of the core international human rights instruments, see:

<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CoreInstruments.aspx>

⁶ https://www.icc-cpi.int/nr/rdonlyres/ea9aef77-5752-4f84-be94-0a655eb30e16/0/rome_statute_english.pdf.

⁷ This is discussed at page 5 of "Understanding the International Criminal Court" International Criminal Court: <https://www.icc-cpi.int/iccdocs/PIDS/publications/UICCEng.pdf>.

standards for preventing, and addressing, the risk of adverse impacts on human rights linked to business activity.⁸

- 4.3 The UNGPs provide that, wherever they operate, business enterprises should comply with all applicable laws and respect internationally-recognised human rights.⁹ When faced with conflicting requirements, business enterprises should seek ways to honour internationally-recognised human rights and should treat the risk of causing, or contributing to, gross human rights abuses as an issue of legal compliance.¹⁰
- 4.4 This is particularly relevant when operating in conflict-affected areas, where there are heightened risks of gross human rights abuses. In such scenarios, business must take care not to exacerbate the situation and should consult internally and externally with independent experts when determining how to respond.¹¹
- 4.5 The UNGPs set out further steps businesses should take to ensure that they do not cause, or contribute to, human rights breaches, either through their own activities or through business relationships. These steps include the publication of a human rights policy statement, the conducting of human rights due diligence, and the provision of effective grievance mechanisms and remediation where human rights have been breached.¹² In particular, specific care should be taken to ensure that adequate human rights due diligence is carried out when operating in conflict-affected areas.¹³
- 4.6 Even if business accept that they should adhere to the (non-binding) UNGPs, they often find it difficult to determine what they should be doing to meet their obligations. This has led to the publication of numerous texts that provide guidance for companies operating in conflict-affected areas, including:
- (A) the International Committee of the Red Cross;¹⁴
 - (B) the UN Global Compact Office;¹⁵
 - (C) International Alert;¹⁶
 - (D) SOMO (the Centre for Research on Multinational Companies);¹⁷
 - (E) Shift;¹⁸
 - (F) the Institute for Human Rights and Business;¹⁹ and

⁸ http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

⁹ Guiding Principle 23(a)

¹⁰ Guiding Principle 23(b) and (c)

¹¹ Commentary to Guiding Principle 23

¹² See the following Fact Sheets for further information on the obligations of business enterprises under the UNGPs: (i) UNGPs: Human Rights Policy Statement; (ii) UNGPs: Human Rights Due Diligence; (iii) UNGPs: Grievance Mechanisms and Remediation; and (iv) UNGPs: Leverage

¹³ See also additional guidance regarding conducting human rights due diligence in conflict-affected areas. For example: OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas:

<http://www.oecd.org/daf/inv/mne/OECD-Due-Diligence-Guidance-Minerals-Edition3.pdf>

¹⁴ International Committee of the Red Cross, "Business and International Humanitarian Law: An Introduction to the Rights and Obligations of Business Enterprises under International Humanitarian Law", September 2006

<https://www.icrc.org/en/publication/0882-business-and-international-humanitarian-law-introduction-rights-and-obligations>

¹⁵ UN Global Compact, "Guidance on Responsible Business in Conflict-Affected and High Risk Areas", 2010

https://www.unglobalcompact.org/docs/issues_doc/Peace_and_Business/Guidance_RB.pdf

¹⁶ International Alert, "Human Rights Due Diligence in Conflict-Affected Settings" 2018 https://www.international-alert.org/sites/default/files/Economy_HumanRightsDueDiligenceGuidance_EN_2018.pdf

¹⁷ SOMO "Fragile" Handle with Care: Multinationals and Conflict", November 2016 <https://www.somo.nl/wp-content/uploads/2016/11/Report-Fragile.pdf>

¹⁸ Shift "Human Rights Due Diligence in High Risk Circumstances" March 2015

https://shiftproject.org/wp-content/uploads/2015/03/Shift_HRDDinhighriskcircumstances_Mar2015.pdf

¹⁹ IHRB, "From Red to Green Flags: The Corporate Responsibility to Respect Human Rights in High-Risk Countries", 2011 https://www.ihrb.org/pdf/from_red_to_green_flags/complete_report.pdf

- (G) the Danish Institute for Human Rights.²⁰
- 4.7 States are also obliged under the UNGPs (Guiding Principle 7) to help to ensure that business enterprises operating in conflict-affected areas are not involved in human rights abuses. They can do so by:
- (A) engaging with relevant business enterprises to help to identify, prevent and mitigate human rights abuses;
 - (B) providing assistance to business enterprises to address the heightened risk of human rights abuses;
 - (C) denying to business enterprises involved in gross human rights abuses access to public support and services; and
 - (D) ensuring that they have policies, laws and enforcement mechanisms to address the risk of business involvement in human rights abuses.
- 4.8 The commentary to Guiding Principle 7 flags that, where transnational corporations are involved, their “home” states also have roles to play in assisting both corporations and “host” states to ensure that businesses are not involved in human rights abuses (particularly when the “host” state is struggling to protect human rights due to a lack of effective control). Neighbouring states can also provide additional support.
- 4.9 Furthermore, where states identify that business enterprises are involved in human rights abuses, they should take steps to address this. This may include exploring civil, administrative and criminal liability against the corporation for committing, or contributing to, the human rights violation(s) in question. These measures are in addition to a states’ obligations under international humanitarian law and under international criminal law.
5. **Practical steps for human rights defenders when operating in conflict-affected areas**
- 5.1 Conflict-affected areas pose a heightened risk to HRDs in their daily work. In light of this, HRDs should:
- (A) carry out periodic risk assessments of their own security (and that of their associates) to identify the sources of threats against them, any points of operational, legal or political vulnerability, and any strategies that can be developed to mitigate such risks.
 - (B) share with other HRDs, civil society stakeholders and experts best-practice in collective or individual protection mechanisms and protocols. PBI has created an online tool providing information to HRDs on security and protection.²¹
 - (C) encourage states to introduce or strengthen protection for HRDs at risk in conflict-affected areas. Make use of any local or regional protection mechanisms that have already been implemented.²²
 - (D) seek coordination and support from different stakeholders to engage with state and/or non-state actors where direct or unilateral HRD engagement by the HRD with these entities may increase the threats and risks to HRDs.
- 5.2 Having assessed the risks to their own security (and that of their associates), HRDs may

²⁰ DIHR, “Decision Map: Doing Business in High-Risk Human Rights Environments”, 2010

<http://www.ideaspaz.org/tools/download/59446>

²¹ <https://www.peacebrigades.org/en/publications/security-and-protection-resources>

²² Such as the Inter-American Commission of Human Rights and the African Commission on Human and Peoples’ Rights.

consider taking the following steps:

- (A) Engage with other stakeholders to formulate a strategy for preventing and addressing the risks of business involvement in gross human rights abuses in the relevant conflict-affected area.
- (B) Remind state and non-state actors of their obligations under IHL and international criminal law, and of their (international/national) human rights obligations.
- (C) Flag, as necessary, gaps in policies, legislation, regulations and enforcement mechanisms regarding the protection of human rights to “host” or “home” states.
- (D) Develop (or assist NGOs to develop) early-warning indicators to alert government agencies and business enterprises to humanitarian and human rights problems in conflict-affected areas.
- (E) Advocate for states to develop intra and extra-territorial remedies for failure by companies to remedy human rights abuses (which may include the introduction of criminal, civil and administrative sanctions and/or the withdrawal of public support or services from such companies).
- (F) Check whether the relevant company has published a human rights statement, or has adopted any voluntary principles or guidelines. Remind companies of their (non-binding) obligations under these documents, the UNGPs and any other associated guidelines.
- (G) Remind companies that heightened due diligence should be conducted in conflict-affected areas to ensure that their operations do not cause or exacerbate human rights abuses.
- (H) Consider the practical steps for HRDs that are set out in the following Fact Sheets:
 - (1) UNGPs: Human Rights Policy Statement;
 - (2) UNGPs: Human Rights Due Diligence;
 - (3) UNGPs: Grievance Mechanisms and Remediation;
 - (4) UNGPs: Leverage; and
 - (5) Private Military/Security Companies.
- (I) When taking these practical steps, HRDs may also decide to copy in, as appropriate, UN Special Procedures,²³ Inter-American Commission on Human Rights Thematic Rapporteurships and Units,²⁴ African Commission on Human and Peoples’ Rights Special Mechanisms,²⁵ or the Business and Human Rights Resource Centre,²⁶ to help raise awareness of any concerns raised or request ongoing monitoring and support.

²³ <http://spinternet.ohchr.org/Layouts/SpecialProceduresInternet/ViewAllCountryMandates.aspx?Type=TM>

²⁴ <http://www.oas.org/en/iachr/mandate/rapporteurships.asp>

²⁵ <https://www.achpr.org/specialmechanisms>

²⁶ <https://www.business-humanrights.org/>

SCHEDULE 1 PRINCIPAL CONVENTIONS REGARDING IHL

The principal conventions regarding international humanitarian law are:²⁷

- (A) the four Geneva Conventions of 1949 and the Additional Protocols of 1977²⁸ (in particular, Additional Protocols I and II) which deal with the Protection of Victims of International Armed Conflicts and the Protection of Victims of non-International Armed Conflicts, respectively);²⁹
- (B) the Convention on the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction (sometimes referred to as the Ottawa Treaty or the Mine Ban Treaty);³⁰
- (C) the Convention on Cluster Munitions;³¹
- (D) the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxic Weapons and their Destruction (sometimes referred to as the Biological Weapons Convention);³²
- (E) the Convention on the Prohibition of Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction (sometimes referred to as the Chemical Weapons Convention);³³
- (F) the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be deemed to be Excessively Injurious or to Have Indiscriminate Effects;³⁴
- (G) the Convention on the Rights of the Child;³⁵
- (H) Council Regulation (EC) No 2368/2002 of 20 December 2002, implementing the Kimberley Process certification scheme for the international trade in rough diamonds; and
- (I) EU Regulation 2017/821 of 17 May 2017, laying down supply chain due diligence obligations for Union importers of tin, tantalum, tungsten, their ores, and gold originating from conflict-affected and high-risk areas.

²⁷ For a complete list see the website of the International Committee of the Red Cross: <https://ihl-databases.icrc.org/ihl#view: id1: id2: id250:repeat1:1:labelAnchor>

²⁸ See <https://www.icrc.org/eng/war-and-law/treaties-customary-law/geneva-conventions/overview-geneva-conventions.htm>. A third protocol, Additional Protocol III, was adopted in 2005 and relates to the red cross emblem.

²⁹ Additional Protocol III, which was adopted in 2005, relates to the red cross emblem.

³⁰ https://www.apminebanconvention.org/fileadmin/APMBC/text_status/Ottawa_Convention_English.pdf

³¹ <http://www.clusterconvention.org/files/2011/01/Convention-ENG.pdf>

³² <http://disarmament.un.org/treaties/t/bwc/text>

³³ https://www.opcw.org/fileadmin/OPCW/CWC/CWC_en.pdf

³⁴ https://www.icrc.org/eng/assets/files/other/icrc_002_0811.pdf

³⁵ See paragraphs 49 - 52 of General comment No. 16 on State obligations regarding the impact of the business sector on children's rights (<http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.GC.16.pdf>)