

What do the UN Guiding Principles on Business and Human Rights 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 areas¹

"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-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

¹ 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>

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. The commentary to Principle 12 clarifies that the scope of the corporate responsibility to respect may be broader in conflict-affected contexts, as “in situations of armed conflict enterprises should respect the standards of international humanitarian law.”

The commentary to Principle 17 addresses the question of corporate “complicity”: “Questions of complicity may arise when a business enterprise contributes to, or is seen as contributing to, adverse human rights impacts caused by other parties. Complicity has both non-legal and legal meanings. As a nonlegal matter, business enterprises may be perceived as being “complicit” in the acts of another party where, for example, they are seen to benefit from an abuse committed by that party. 19 As a legal matter, most national jurisdictions prohibit complicity in the commission of a crime, and a number allow for criminal liability of business enterprises in such cases. Typically, civil actions can also be based on an enterprise’s alleged contribution to a harm, although these may not be framed in human rights terms. The weight of international criminal law jurisprudence indicates that the relevant standard for aiding and abetting is knowingly providing practical assistance or encouragement that has a substantial effect on the commission of a crime.”

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.