

**Guidance on**

# Responsible Business in Challenging Contexts



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## Acronyms

<b>HHRDD</b>	Heightened Human Rights Due Diligence
<b>ICC</b>	International Chamber of Commerce
<b>OECD</b>	Organisation for Economic Co-operation and Development
<b>OHCHR</b>	United Nations Human Rights Office of the High Commissioner
<b>SDG</b>	Sustainable Development Goal
<b>UN</b>	United Nations
<b>UNGPs</b>	United Nations Guiding Principles on Business and Human Rights

### Guidance development process and opportunity to comment

This beta guidance serves to advance responsible business decision-making and action on remaining in or exiting countries facing crisis, conflict or other challenging contexts. This draft builds on the UN Guiding Principles on Business and Human Rights (UNGPs)<sup>1</sup>, the OECD Due Diligence Guidance for Responsible Business Conduct<sup>2</sup>, and tools and frameworks<sup>3</sup> associated with ensuring conflict-sensitive business.

The guidance has been derived from consultations, practice review and literature pertaining to business and peace, conflict and human rights, including emerging acknowledgement that human rights due diligence should incorporate conflict considerations.

1 UN, [Guiding Principles on Business and Human Rights](#), 2011

2 OECD, [Due Diligence Guidance for Responsible Business Conduct](#), 2018

3 Including the [17 Sustainable Development Goals](#) and particularly SDG5 (Achieve gender equality and empower all women and girls) and SDG 16 (Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels)

# Introduction

## Responsible business in challenging contexts

### Why this tool?

International standards of business conduct such as the UN Guiding Principles on Business and Human Rights and the OECD Guidelines for Multinational Enterprises are clear in their expectation that businesses should conduct due diligence to prevent and mitigate adverse human rights impacts. This expectation is amplified in situations of conflicts where businesses are also expected to understand their role in the conflict and respect the standards of international humanitarian law.

Few companies are completely prepared for these responsibilities, and some may not have the prerequisites or a developed strategy for operationalising their commitments to responsible business conduct in these contexts. Yet, when a crisis evolves, companies are under pressure from stakeholders to promptly take decisive and principled actions, including whether to remain or exit the market, while at the same time carefully and comprehensively assessing the impacts on people, communities and society. These expectations can be daunting for a company, in particular when faced with the additional stress caused by external factors and uncertainties outside the company's control.

Therefore this guidance has been produced as a tool to help companies understand and manage the expectations they face in these challenging contexts. Essentially, the underlying assumption is that companies want to do conduct their business responsibly but don't always know how.

This guidance helps companies internalise best practice to meet international expectations when faced with challenging situations that cause stay-or-leave dilemmas. It is also intended to encourage progressively improved understanding of the issues associated with responsible business conduct – and to support continuous improvement in internal systems for responding to crises.

The aim of effective crisis management is to avoid or minimise the negative impact to the organisation, its workforce and stakeholders. The responsible business conduct perspective adds the dimension of taking into account the impact the company's decisions will have on the society and broader context in which it operates.

A crisis in this context is generally triggered by the following risks:

- Geopolitical conflict
- Political unrest, escalation of armed conflicts, terrorism, violence domestically or in the region or military coup
- Allegations of severe and systematic human rights violations by those in power, including persecution of minorities or excluded groups or members of the civil society or civil rights defenders
- Escalation of restrictive trade measures such as embargoes or extensive sanctions regimes
- Onset of new legislation that would be inconsistent with the company's policy commitments
- Public criticism of the company's association with a certain regime or individuals in power
- Any other situation that impedes a company's ability to continue conducting its business in accordance with its internal policies and commitments to responsible business conduct

The common denominator for all these risks tends to be that the consequences quickly escalate to such magnitude that they call for action from the senior management of the company, and, by extension, require a decision on whether – and how – to remain or exit. It must be recognised, however, that no two crises will be identical, and exiting or staying is rarely a binary decision. At the onset of a crisis, companies will not be able to change course overnight, and it will not be beneficial to societies if companies make hasty and uniformed decisions. Instead, companies must be enabled to make a planned decision supported by informed and systematic due diligence.

## Aim and objectives

This guidance supports companies' ability to:

- **Plan and act** in ways that do not fuel conflicts and instead act with respect for human rights and in alignment with responsible business conduct;
- **Understand** their responsibilities and weigh considerations that take into account the societal context;
- **Balance** regulatory and legal compliance, corporate reputational risk, consistency with corporate purpose and strategy, commitments to international standards, consumer perception, stakeholder expectations and the business' long-term role and impact in a market;
- **Provide** a basis for multistakeholder dialogue, advocacy and collective action for responsible response to crisis;
- **Advocate** for more focused dialogue between business and policymakers to reduce risks to business and to people in such contexts.

Accordingly, two key aspects of this guidance are to encourage companies to establish (1) a stronger connection to the local context and (2) an integrated and inclusive approach to monitoring country-level risks, to support rapid and rigorous decision-making on the basis of a broader set of analysis and technical knowledge.

## Who is this guidance for?

The guidance supports **executives and operational teams** within companies in convening the relevant internal actors around the key actions, and in applying a process with the central task of ongoing planning and preparedness for speedy decision-making on whether to responsibly exit or remain.

## Structure

This guidance is designed to support good practice. It does so in three parts, each building on the last to establish an integrated approach:

1. **Strategic principles and questions:** For high-level decision-makers to quickly get up to speed with their responsibilities
2. **Tactical planning:** Preparedness for executives and operational teams
3. **Response:** Key considerations when responding to a crisis from the vantage point of responsible business conduct

# Part 1: Strategic guidance

## Key audience: High-level decision-makers

### 1.1 Strategic principles

The following overarching principles set the foundation for responsible business response when faced with a crisis. Companies should seek to:

- 1. Avoid** rushing into a decision under pressure of circumstance or scrutiny;
- 2. Guard** against gains falling into the hands of bad actors;
- 3. Acknowledge** that, under certain circumstances, withdrawal could be the right thing to do, and that this should be a well-understood principle within the business;
- 4. Recognise** that the company's decision may require it to balance diverging policies and stakeholder interests;
- 5. Consider** the consequences of the company's response on the broader context, including the environmental and social impact;
- 6. Aspire** for the positive contributions of the company to endure post decision, e.g. support for energy transition, food security, and public health;
- 7. Respect** human rights of affected stakeholders, including employees and workers in the supply chain, consumers and impacted communities, and ensure that the company's actions reflect "do-no-harm" aim and promote conflict-sensitive and gender-sensitive principles;
- 8. Build** and actively take part in multistakeholder initiatives and networks, including civil society, peer companies and other relevant actors to be able to collectively exert appropriate leverage in critical scenarios and avoid actions that increase tensions.

### 1.2 Strategic questions

When faced with crisis, decision-makers at the company should seek to obtain responses to the following questions:

1. Does the company have independent and factual information at hand, informed by a diversity of local stakeholders?
2. How can the company – via effective, proactive communication – create sufficient time and space to make an informed decision, in a responsible manner, on whether to remain or exit and on how such process should be managed in order to preserve positive impacts?
3. How will the company's decision to remain or exit impact its value chain, broader society and policy priorities? Who bears the cost and who benefits?
4. Should the company do anything further to secure that its positive impact can be sustained if it exits?
5. What are the company's legal and normative responsibilities to the people and communities affected by its decision?
6. If the company decides to remain in a location under crisis:
  - a. Can the company avoid complicity in gross human rights abuses, breaches of international humanitarian law, or support to – or benefit from – bad actors?
  - b. What leverage and influence does the company have to support peace, social cohesion and respect human rights?
  - c. Has the company defined red lines and/or scenarios in which an exit becomes necessary?
7. If the company is a financial or insurance institution, technology company or other undertaking on which other companies are dependent, and is considering withdrawing from the market, will the company's clients or supply chain have any freedom other than to reflect your decision? How can the company manage the negative implications of their decision to withdraw, particularly with respect to global priorities including the just transition and food security?
8. If the company decides to pause its involvement in the country, under what circumstances will it be able to re-engage?

# Part 2: Tactical planning

## Key audience: Country executives and operational teams

In the context of an interdependent global economic system, responses at scale represent a risk to businesses and communities along value chains. Against this backdrop, tactical planning will guide the company's due diligence. Companies are advised to establish a robust response plan in each high-risk location where the company operates. By initiating tactical planning for a response plan at the earliest opportunity, ideally already at market entry, the company can develop a more sustainable approach to operating in high-risk countries. In situations where the tactical planning has not been prepared in advance, the points for the contextual analysis below will serve as a guidance when responding to a crisis.

### 2.1 Contextual analysis

- **Determine** high-risk locations according to the company's values and policy priorities and geopolitical risk exposure. Identify the inherent responsible business risks in the location based on objective risk indices.
- **Establish** connections with reliable sources, subscribe to relevant information channels and identify means to corroborate information. In a conflict, no actor will be neutral, and the company must take due care that its decisions are guided by trustworthy information free from inherent biases and uninformed perceptions. Grievance mechanisms support companies in this regard as they help the company to identify and address latent risks.
- **Analyse** the company's role in the country, supply chain, and impact on the value chain and broader society. Furthermore, analyse the company's key stakeholder relationships and financial and contractual commitments as that may influence the company's ability to manoeuvre in case of a crisis. It may also be necessary to consider the risks associated with the policy priorities of the home country of the company and/or other key markets as that may influence the company's actions in the particular location.
- **Anticipate** crisis, for example, due to an armed conflict or a military coup, gross human rights violations by those in power, or the onset of new legislation that would be inconsistent with the company's policy commitments. Evaluate the context on the ground to identify triggers for such scenarios. Be informed by factual analysis and independent expertise supported by diverse local stakeholder input (rather than consumer sentiment).
- **Monitor** the triggers for crisis and early warning systems, while maintaining internal capacity and governance structure for reliable information and for fast decision processes within the company.
- **Align** with collective corporate responses, wherever possible and allowed – for example, by sharing contextual analysis, preparing joint public statements in support of the international rules-based system, or by taking collective action towards mitigation of impacts on people or communities affected by the situation or in support of peace. By the same token, evaluate the potentially destabilising or distortionary impacts of any multiplying response derived from a decision of one or group of companies.
- **Articulate** the rationale and processes the company is adopting throughout its engagement and response to crisis by communicating early on with stakeholders in a clear, consistent and transparent way. Anticipate sustained civil society and media scrutiny of the company's position and response. Anchor processes for clear messaging and consistent communication, to create crucial space for informed remain/exit decision-making and responsible action.



## 2.2 Heightened human rights due diligence

Companies in areas where there is an armed conflict or other situation of widespread violence are expected to perform a heightened human rights due diligence (HHRDD) in accordance with the guidance issued by the UN Working Group on Business and Human Rights<sup>4</sup>. This means that the company should not only consider their actual or potential impacts on human rights, but also consider their actual or potential impact on the conflict. In undertaking conflict analysis, the company should endeavour to understand and analyse the geopolitical context of the conflict and the changing conflict dynamics. The company should also identify how it can potentially impact, positively or negatively, the conflict. In particular the company must not become complicit, i.e. it should not fuel the conflict or benefit from the adverse impact on human rights caused by other parties (for example, companies providing security forces).

The HHRDD guidance furthermore requires the company to conduct a legal and normative risk assessment to assess the company's risks of breaching international humanitarian law or international human rights law. The company's presence must not aid, abet, assist or encourage the commission of crime. Finally, the HHRDD should include an assessment of the commercial, practical, political or community influence associated with its activities.

## 2.3 Response plan

An appropriate responsible business risk assessment will support the company in preparing a response plan. This process should be aligned with existing decision-making structures of the company, e.g. risk management processes, business continuity processes, and systems for incident and crisis management and human resource management.

The basic objective of a traditional crisis management response plan is to be able to rapidly respond to a crisis and thereby contain the damage to the company and its business interests. In the context of responsible business, the notion of damage is broader as it takes into account the social and environmental aspects in a location and the human rights situation for impacted communities. As such it may require the company to adopt and defend a principled position that in turn may amplify the crisis.

An additional complication in this context is that a crisis is rarely singular nor black-and-white. For example, a hydropower project that has a positive impact on the energy transition may be faced with criticism due to reports of oppression of civil rights defenders, or a distributor of essential public goods may be faced with the risks of its workforce being extorted by terrorists. The context may therefore require the company to manage ethical dilemmas.

A response plan will guide the company to identify early warning signs for each of the risks by establishing options or scenarios with triggers that define tolerance levels, so that the plan can set the course of action if and when the situation starts deteriorating. The response plan should also identify when the response working group must be mobilised. Clear procedures will enable management to be more considered and credible in their response to the onset of a crisis.

## 2.4 Working Group

Companies will benefit from putting in place a working group to oversee the company's commitment to responsible business conduct, commensurate with the company size, scale and reach. The roles and responsibilities of the members of the Working Group, protocols for the decision-making process

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4 Though every context will be different, for initial high-level guidance on triggers which the business should consider when deciding to enact its response plan, see the [OHCHR Guidance Note on Business and Human Rights in Challenging Contexts Considerations for Remaining and Exiting](#), 2023, and the UNDP/UN Working Group on Business and Human Rights, [Heightened Human Rights Due Diligence for Business in ConflictAffected Contexts](#), 2021 (p. 11)

and crisis communication should be pre-established. Typically, the Working Group should have one or several representatives who can manage responsibilities for convening the working group and leading the response, making quick executive decisions, liaising with internal and external stakeholders and managing the crisis communication – both on the ground where the crisis evolves as well as in the home country of the company, if different.

Where Working Groups lack specific expertise to assess the relevant responsible business risks, this expertise should be sourced externally as part of the response plan development process.

The specific tasks that are required in this context will typically include:

- Assessing geopolitical risks;
- Advising on compliance with trade sanctions and export control or other legal restrictive measures;
- Evaluating supply chain risks and resilience;
- Conducting heightened HHRDD and advising on appropriate mitigation actions;
- Soliciting the outside-in perspective, e.g. through engaging with impacted communities, non-governmental organisations or other stakeholders;
- Integrating the gender perspective in the decision-making process;
- Monitoring the human rights situation;
- Alerting the group of signs of deterioration that would reduce the space for decision-making (e.g. an embargo);
- Regularly updating the list of stakeholders that need to be engaged when crises occur.

The effectiveness of the Working Group will depend on how well it is integrated into the company's incident management and business continuity procedures, and also on its ability to liaise with other business critical roles at time of crisis such as Compliance, Legal, Finance, IT, HR, Communication and Senior Management representatives.

The Working Group as well as the broader Business Continuity and Crisis Management Team should meet periodically and perform mock exercises to maintain a high level of awareness and preparedness, and to re-evaluate the response plan on an ongoing basis, including the risks, scenarios and triggers.

## 2.5 Reference Panel

Where possible, a reference panel should be engaged to inform the Working Group the perspective of the impacted communities. The purpose of the Reference Panel is to provide independent advice and contextual information to the company regarding the local context, economy, conflict dynamics and emerging community concerns. The Reference Panel should also be well placed to advise on remediation of harms and monitor any residual or un-remediated harms. The Reference Panel should seek to include participation from civil society organisations, representation from the local community, including human rights defenders, union or migrant workers' representatives, and local business partners (if possible). Research has shown that women are more likely to have their human rights negatively impacted<sup>5</sup>. Similarly, other groups (including children, marginalised groups, old and young people) can bear disproportionately negative impacts. Therefore the reference panel should consider gender-specific risks, discriminations, and inequalities.

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5 OHCHR, [Unilateral sanctions hurt all, especially women, children and other vulnerable groups – UN human rights expert](#), 2021, and Perry K, [Better for whom? Sanction type and the gendered consequences for women](#), 2022

## Part 3: Response

A crisis is by its nature sudden and intense. It puts pressure on the company to urgently present a solution to the situation. At the onset of a crisis, the company management will be under pressure to make quick decisions on how to respond and whether any immediate adjustments must be made. It may initially not be possible to foresee what actions can be taken, whether the company has the time to implement measures in a controlled pace, or whether changes need to be done abruptly. It is important to recognise that a crisis normally evolves rapidly in an unstable environment and that each decision in a crisis will generate different evolving circumstances.

This section outlines the key due diligence considerations from the vantage point of responsible business conduct that should guide the company when responding to a crisis.

### 3.1 Safety first

A company's duty of care towards its workforce (including contract workers) should be the first and utmost priority in an emergency. Therefore it is essential that the company promptly locates its workers and establishes communication lines and supporting mechanisms with its staff at the location of the crisis. Any consequences of strategies and decisions that would endanger, complicate or aggravate the staff's physical or mental health and safety must be considered at each step.

### 3.2 Societal impact

In order to guide its decision-making process, the company will need to assess whether its presence has been or may be causing or contributing to adverse human rights impact, as well as whether it could be complicit in human rights abuse by any other organisation or individuals in power. If there is an ongoing adverse human rights impact, the company must do its utmost so that the adverse impact is ceased, and further harm is prevented. The legal and reputational implications may be significant if an adverse impact is established, and so these implications must be understood.

### 3.3 Indirect consequences

Any indirect consequences must be understood and mapped. For all companies, it is important to acknowledge that businesses never operate as isolated islands – all business activities have an impact on human rights and the society. Certain companies, such as financial institutions, insurance providers and technology companies, will have an obvious impact on other companies. Their decisions whether to remain or exit can amplify negative consequences on other companies or industries and the broader ecosystem, or render it impossible for other critical actors to continue functioning. Other companies may need to think more broadly to weigh second- and third-order implications of company decisions, and the effect on the value chain and on others that are dependent on their product or service, as delivered in-country, for example, consideration of essential goods or service.

### 3.4 Interdependencies

The manoeuvring room will be dependent on several interdependent parameters that will influence the company's decision-making abilities. These normally include the ability to continue making international transfers, the availability of payment systems, contractual obligations, the availability of government approvals, access to decision-makers, export and import controls and supply chain resilience. All of these parameters tend to evolve over time and must be carefully assessed and monitored. In certain sectors, such as extractive industries, multi-stakeholder frameworks for contract transparency/disclosure apply.

### 3.5 Legal and compliance risks

All decisions made during a crisis must be taken with due consideration for legal liability. In today's geopolitical landscape, restrictive trade measures, such as trade sanctions and export control, are increasingly used by governments to further their security interests, preserve regional stability and protect human rights. Trade sanctions are not static but develop with time, so it is important to stay clear of breaching any applicable restrictive measures, and to perform trade compliance assessments and counter-party screenings prior to each step or transaction.

Other legislation that normally must be considered includes data privacy regulations regarding cross-border transfer of personal data, tax regulations, credit and currency restrictions, corporate disclosure rules and anti-corruption provisions. In particular, it should be recognised that integrity risks will be elevated in crisis situations, such as the risk of extortion and the pressure to use facilitation payments.

### 3.6 Leverage

Leverage is a central concept in human rights guidance and refers to the company's ability to influence others and effect positive change. The company should early on identify what direct and indirect means of leverage the company may have at its disposal for mitigating adverse human rights impacts and evaluate how those means of leverage can be creatively applied.

As indicated in recent OHCHR guidance, generally, entities with which a company has a business relationship should be given notice and opportunities to correct and remedy adverse impacts, with appropriate escalation. The UNGPs recognise that leverage may take time to build and is not a static concept. Just because a business does not have leverage initially does not mean that leverage cannot be built over time. In situations where a company lacks the leverage to prevent or mitigate adverse impacts and is unable to increase it, it should consider ending the relationship, taking into account credible assessments of potential adverse human rights impacts of doing so<sup>6</sup>. It should, however, be recognised that a company will have stronger leverage in an ongoing relationship and while it remains in the market, rather than when it has terminated a relationship and exited a market. Reporting mechanisms should be put into place to follow up on the leverage and to confirm whether the leverage has had the intended impact.

In sum, a plan for exercising leverage will be essential for the success of enduring positive social and environmental impact beyond the immediate decision of the company.

### 3.7 Communication

A key feature on communication is the expectation that companies quickly make an

internal and external corporate public policy commitment to principles-based decision-making and response. This communication must be carefully crafted with priority given to not triggering retaliation against the personnel of the company that remain in the location or against other exposed stakeholders. Typically a communication will commit to adhering to the UNGPs and to the OECD Due Diligence Guidance for Responsible Business Conduct.

Certain key stakeholders may require personal communication, for example, investors, key business relationships and home-country or in-country governments.

It is essential that a clear communication protocol is established for conveying the company's position, transparently and diligently, to its broad set of stakeholders. The communication must consider both the immediate communication needs and the long-term reputational consequences and intention of the company.

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<sup>6</sup> OHCHR, Guidance Note "Business and Human Rights in Challenging Contexts", 2023

### **3.8 Time perspective**

While the immediate priority will be to responding to near-term pressures, the company must keep the long term in view, including preserving any gains in responsible business conduct, and maintaining focus on mitigation of adverse impacts on affected communities and local value chain. An expectation will be that the company ensures that effective, rights-compatible remediation be made available to stakeholders where the company has caused or contributed to a harm, irrespective of whether the company decides to exit or remain. In an exit, the company should consider its legacy and the ability for remaining staff to continue to manage operations in accordance with the responsible business standards set out by the company.

### **3.9 Collaborative platforms**

As a crisis evolves, companies will often seek comparable contextual information and guidance as to how to chart the best course of response. Platforms for information sharing are likely to create efficiencies in information collection and analysis, and to receive input and advice from experts and key local stakeholders. They should enable, in alignment with competition law, confidential discussion of shared or collective analysis, implications and considerations on global priorities of action at scale, for example, on energy transition, food security, and public health.

Collaborative platforms may further present opportunities for shared responses, both in the near and longer term, which may help to reduce political and reputational risks to individual companies. These can include the exploration and assessment of options for responses as business, or as part of civil society or governmental/multilateral efforts, joint advocacy to governments, decision-makers, and financial and insurance institutions. Collaborative action needs to take into account the scope of waivers for sectors essential to global priorities (energy transition, food security, communications and public health) and the provision of 'essential goods and services'.

Making a joint statement with other actors that share the same circumstances is also a way to mitigate the risk of retaliation against individual persons or companies, as well as of making the communication more effective.

### **3.10 Monitoring**

A crisis tends to evolve rapidly with transformations that cannot be foreseen. It is important to frequently stress-test relevant corporate policies, commitments and decisions against the prevailing context. This includes ensuring that preventive, mitigative and any discretionary actions planned as part of the company's response comply with applicable policies and are consistent with undertakings vis-à-vis affected stakeholders.

Monitoring human rights risks, as well as legal and compliance risks, may appear evident when the company remains and continues to operate in a country where there is an ongoing conflict. However, it is also relevant to monitor human right risks when a company has completed its exit, in particular to follow up on the fulfilments of any commitments made prior to its departure (such as distribution of compensation).

### **3.11 Account**

Finally, the company must from the outset prepare documentation to account for and document its decision-making process and actions. This is in particular the case if the management of the crisis includes navigation of trade sanctions or potential conflicting laws between the home country of the company, the local country of the crisis and other key stakeholder countries for the company. Companies will also be expected to track and communicate the measures taken to respect human rights throughout their decision-making process during the crisis.

## Conclusions

It is not possible to foresee all mutations of a crisis and to establish a step-plan response for each possible crisis scenario. Instead, this tool aims to provide a framework for responsible business conduct in challenging situations, and to highlight key considerations, building on current best practice and on the expectations that companies face.

By adopting this guidance and establishing a tactical planning programme, including a response plan for high-risk countries of operation, the company will set a solid foundation for a credible and considered response to an escalation or commencement of a crisis, irrespective of whether it is an armed conflict, a gross human rights violation, the imposition of trade sanctions, or a crisis of governance, such as a coup d'état.

The most important take away should be that it is possible for companies to support their resolution of remain/exit dilemmas with reference to sound evidence-based due diligence, through engagement with stakeholders, with due consideration of the company's responsibilities, and by applying creative leverage. Those companies that apply this robust process will be best placed to secure their legacy as a responsible business.

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