

STANDARD GUIDANCE

(COP 6.2) Conflict-Affected Areas

A. Definitions and applicability

Conflict means armed aggression, widespread violence, and/or widespread human rights abuses. These can include:

- i) any forms of torture, cruel, inhuman and degrading treatment;
- ii) any forms of forced or compulsory labour, which means work or service which is exacted from any person under the menace of penalty and for which said person has not offered himself voluntarily;
- iii) the worst forms of child labour;
- iv) other gross human rights violations and abuses such as widespread sexual violence;
- v) war crimes or other serious violations of international humanitarian law, crimes against humanity or genocide. [Source: *Annex II, OECD Due Diligence Guidance*]

Conflict-Affected Areas are areas where Conflict is prevalent. The area may be a region, a country, an area within a country, or an area that crosses one or more country boundaries. Operations are not necessarily complicit in Conflict if they are located in a Conflict-Affected Area. The DRC and Adjoining Countries as defined under Section 1502 of the United States' Dodd-Frank Wall Street Reform and Consumer Protection Act are deemed a Conflict-Affected Area.

Human rights are rights inherent to all human beings, regardless of nationality, place of residence, sex, national or ethnic origin, colour, religion, language, or any other status. We are all equally entitled to our human rights without discrimination.

Source:

- *International Alert, Conflict-Sensitive Business Practice: Guidance for Extractive Industries (2005)*
www.international-alert.org/resources/publications/conflict-sensitive-business-practice-guidance-extractive-industries
- *OECD Due Diligence Guidance on the Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas, Second Edition (2012)*
www.oecd.org/fr/daf/inv/mne/mining.htm
- *RJC Chain of Custody Standard (2012)*
- *United Nations Human Rights – What are Human Rights?*
www.ohchr.org/EN/Issues/Pages/WhatareHumanRights.aspx

The **Conflict-Affected Areas** section of the COP is applicable to Members that operate in, or source Diamonds, Gold or Platinum Group Metals directly from, a Conflict-Affected Area.

The **Conflict-Affected Areas** section of the COP should be read and implemented in conjunction with the **Sustainability Reporting, Human Rights, Bribery and Facilitation Payments Security, Community Engagement**, and **Impact Assessment** sections of the COP, as appropriate.

B. Issue background

The guidance chapter for **Human Rights** should be read in conjunction with this chapter.

Conflict-affected areas are identified by the presence of armed conflict, widespread violence or other risks of harm to people. 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 about how to avoid contributing to human rights harm in these difficult contexts. In recent years, guidance has been developed by the

Organisation for Economic Cooperation and Development (OECD) and the UN Global Compact on responsible practices for businesses operating in such areas.

Conflict threatens human rights, security and the social fabric of a country or region. 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 can play roles in assisting both those corporations and host States to ensure that businesses are not involved with human rights abuse.

Production of diamonds, gold and platinum group metals can sometimes provide opportunities for the financing of illegal armed groups, which can trigger and accelerate conflict. However it is important to stress that mining facilities located in a conflict-affected area are not necessarily complicit in conflict, and can provide important economic and other social development benefits to local communities which may be vital against a background of conflict and instability.

Companies must ensure that they do not contribute to conflict, either through their own activities or directly linked to their operations, products or services through their business relationships. The obligation to avoid contributing to conflict should be a component of human rights due diligence and should specifically cover the risk of any direct or indirect support to illegal armed groups, who are often the perpetrators of serious human rights abuses.

Mining in conflict zones

Human rights abuses are more likely to occur in conflict zones. Extractive industries in particular can find themselves close to the front-line of conflict when operating in conflict-affected areas. Mining activities can inadvertently trigger or sustain violence, or become the focus of resentment. The range of costs imposed by conflict on companies can be direct and indirect. Direct costs most obviously relate to the increased cost of protecting staff and property. Indirect costs are those that impact the operating environment, only to rebound as costs on the company. A ‘conflict-sensitive’ approach to doing business is one that seeks to avoid these costs by developing informed conflict-management strategies. Companies need to avoid any complicity in harms committed in conflict situations.

Observation of national law in host societies is a primary obligation for RJC Members. However in a conflict zone, laws may be inadequately enforced or fail to create the correct enabling environment for conflict-sensitive business practices. Companies should actively uphold relevant international instruments, ensuring their operations are in line with international law and good practice, even when governments are too weak to do so. Key instruments include the Voluntary Principles on Security and Human Rights and the Extractive Industries Transparency Initiative. These are both requirements for RJC Members in the Mining Sector.

Beyond compliance, companies should be aware of their ability to create or exacerbate conflict and develop mitigation measures to avoid or minimise negative impacts. Through improved conflict risk and impact assessment, stakeholder engagement and relationship building processes, conflict-sensitive business practices help companies to identify conflict issues directly or indirectly impacted by a project. This informs the design of mitigating strategies to alleviate them and contribute to peace, in partnership with others, through core business, social investment or policy dialogue activities.

C. Key initiatives

International Initiatives

The RJC Chain-of-Custody (CoC) Standard provides more guidance on carrying out conflict-sensitive due diligence in the jewellery supply chain and the CoC Guidance can be used as a general reference to support conformance with this provision. Certification against the RJC CoC Standard, or similar conflict-sensitive due diligence initiatives, would provide the objective evidence for conformance with COP 7.

Other relevant standards available as a reference and/or assurance tool include:

- World Gold Council Conflict-Free Gold Standard: provides guidance on operating gold mines in conflict-affected areas. Independent assurance against this standard provides objective evidence for conformance with COP 7.

- London Bullion Market Association Responsible Gold Guidance: provides guidance to gold refiners on due diligence for responsible supply chains. Independent assurance against this standard provides objective evidence for conformance with COP 7.
- Conflict-Free Smelter program (EICC-GeSI): provides guidance to gold refiners on due diligence relevant to Section 1502 of the Dodd-Frank Act (USA). Inclusion on the Conflict-Free Smelter list provides objective evidence for conformance with COP 7.
- OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas: includes a Supplement on Gold which provides recommendations for the gold supply chain.
- International Alert - Conflict-Sensitive Business Practice Guidance for Extractive Industries: a generic guidance tool help ensure business operations are conflict-sensitive.

Also see the guidance chapter for **Human Rights** for information on the UN Guiding Principles for Business and Human Rights.

National law

The US Dodd Frank requires SEC reporting companies to disclose annually whether any conflict minerals ‘necessary to the functionality or production of a product’ manufactured by the company originate in the DRC or an adjoining country. The Final Rule implementing the legislation requires companies to produce a ‘Conflict Minerals Report’ if they have reason to believe that the minerals they use may have originated in the region. The report must contain a description of the due diligence efforts taken to determine the source and chain of custody of the conflict minerals and conform to a recognized due diligence framework, such as the OECD Due Diligence Guidance.

D. Suggested implementation approach

- **COP 6.2: Conflict-Affected Areas:** *Members, if operating in, or sourcing Diamonds, Gold or Platinum Group Metals directly from, a Conflict-Affected Area, shall use the Human Rights due diligence process to assess the heightened Risks of adverse Human Rights impacts.*
 - d) Review the heightened Risks of adverse Human Rights impacts.*
 - e) Where Risks are identified, Members shall implement systems to manage and mitigate risks of causing or contributing to Conflict and adverse Human Rights impacts.*
- Points to consider:**
- Identifying whether this provision applies involves first identifying any relevant conflict-affected areas where you may have operations or direct suppliers. If you are unsure whether you operate in or source from any conflict-affected areas, seek guidance from:
 - UN Security Council Resolutions. Note if any international sanctions apply, it may not be possible to operate in accordance with Applicable Law.
 - UN Peacekeeping Operations.
 - US State Department “Conflict Minerals Map” and associated reports required by the Dodd-Frank Act.
 - US State Department Country Reports on Human Rights Practices.
 - Heidelberg Institute Conflict Barometer.
 - Uppsala Conflict Data Program.
 - International Alert.
 - International Crisis Group.
 - The business’ in-country risk assessments and/or incident monitoring and reporting.

Box X: Geneva Academy: Indicators for conflict-affected and high-risk areas

Between states:

- One or more states attack another state’s territory or armed forces with ground forces;
- One or more states attack another state’s territory or armed forces with air forces;
- One or more states’ navies attack another state’s territory or armed forces; and/or
- One or more states occupy another state’s territory without the latter’s consent.

Instability:

- UN Security Council has stated that international humanitarian law applies to a particular situation;

- Organised NSAG controls territory of a state;
- Organised NSAG is fighting with armed forces of a state on a regular basis;
- Many civilians are fleeing combat zones; and/or
- In failed state or area where rule of law has broken down, members of two or more organised NSAGs fighting each other on regular basis.

Armed conflict:

- Area falls within territory on which armed conflict is ongoing;
- Area contains internally displaced persons fleeing armed conflict, and/or
- Area contains a refugee camp or refugees who have fled across the border from a state in which an armed conflict is ongoing.

High-risk areas:

- The state is no longer effectively able to tackle ordinary crime;
- The police or other security forces are killing or beating ordinary people with apparent impunity; or are conducting widespread, arbitrary arrests of ordinary people;
- The police or other security forces cannot enter or patrol safely;
- The state cannot provide basic health services and/or primary education;
- Children are engaged in dangerous forms of labour;
- There are high levels of sexual violence;
- People are forced to carry out labour;
- Children are being recruited into armed forces or armed groups;
- Bribes are demanded for ordinary state services;
- The law is not enforced impartially by the judiciary; and/or
- Organised crime networks operate successfully and with apparent impunity.

Points to consider:

- Integrate conflict-sensitive sourcing commitments into your company policy/ies. This could be via:
 - Including a commitment to avoid contributing to conflict in the business' policy statement on respecting human rights (**Human Rights**) and/or responsible business practices generally (**Policy and Implementation**); or
 - Establishing a more specific company supply chain policy for diamond, gold and platinum group metals from conflict-affected areas. Model policies and templates are available in the OECD Due Diligence Guidance and in the RJC Chain-of-Custody Standard Guidance.
- Use a risk assessment or due diligence process to document and review the heightened risks of adverse human rights impacts and contributing to conflict.
 - If the business operates in a conflict-affected area:
 - Check that systems are in place to identify all illegal armed groups and their affiliates in the conflict affected area, and establish systems to prevent payments, logistical assistance or equipment being provided to such Illegal Armed Groups or their affiliates. Further guidance for conflict-free due diligence for mining companies operating in conflict-affected areas can be found in the RJC Chain of Custody Guidance document, provision 4.2 Due Diligence. Other types of businesses can adapt this guidance to suit their circumstances. General guidance for companies managing conflict risks can be found in the *OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas*.
 - The level of detail in the due diligence should be commensurate with the level of risk that conflict could occur, based on current social or political conditions and/or proximity of operations to existing or recent conflict, and/or the complexity and nature of the company's local suppliers.
 - If the business sources diamonds, gold or platinum group metals directly from a conflict-affected area:
 - A direct source means a supplier that engages directly with the Member, including entities that are affiliated with or under the control of the supplier.
 - Assess the risks of the supplier contributing to conflict, particularly the risk of direct or indirect assistance to illegal armed groups. Determine whether the identified risks can be mitigated by continuing, suspending or terminating the relationship

with the supplier/s. Further guidance for companies managing supply chain risks can be found in the *OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas*.

- The level of detail in the due diligence should be commensurate with the nature and complexity of the supplier base, and whether any supplier operates in an area that is proximate to existing or recent conflict.
- o Wherever possible, integrate steps to address the identified risks with implementation of other COP provisions:
 - Consider heightened risks of bribery and corruption in conflict-affected areas, and regularly review implementation of the policies and procedures developed under **Bribery and Facilitation Payments**.
 - Consider heightened risks associated with use of security forces. Members with Mining Facilities are required to conduct security risk assessments and ensure that security personnel receive training and operate in accordance with the Voluntary Principles on Security and Human Rights, under **Security**.
 - Consider how to promote responsible business practices to significant **Business Partners**.
 - Members operating in, or sourcing from, a conflict-affected area should publicly report on their supply chain due diligence policies and practices. This may be incorporated with **Reporting**.

Check:

- ✓ Do you know whether or not you operate in, or directly source from, conflict-affected areas?
- ✓ Can you show the auditor how you have reviewed heightened risks of adverse human rights impacts for those operations or suppliers in conflict-affected areas? Some kind of documented risk assessment or due diligence process will be required – this can be stand-alone or integrated in other Code of Practices assessments, for example Business Partners and/or Human Rights.
- ✓ Are you also documenting, and where appropriate communicating, what steps you are taking to avoid contributing to conflict? This could be related to other Code of Practices provisions, such as Security, Business Partners and Bribery and Facilitation Payments.

E. Further information

The following websites have further information on conflict-affected areas:

- Geneva Academy
www.geneva-academy.ch
- Heidelberg Institute for International Conflict Research
www.hiik.de/en/
- International Alert
www.international-alert.org/
- International Alert, Conflict-Sensitive Business Practice: Guidance for Extractive Industries (2005)
www.international-alert.org/resources/publications/conflict-sensitive-business-practice-guidance-extractive-industries
- International Crisis Group
www.crisisgroup.org/
- International Crisis Group – Crisis Watch Monthly Bulletin
www.crisisgroup.org/en/publication-type/crisiswatch.aspx
- OECD Due Diligence Guidance on the Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas, Second Edition (2012)
www.oecd.org/fr/daf/inv/mne/mining.htm
- Schulte Roth & Zabel - Conflict Minerals Resource Center
www.srz.com/conflict_minerals_resource_center/
- Uppsala University – Uppsala Conflict Data Program
www.pcr.uu.se/research/UCDP/
- United Nations (UN) Guiding Principles on Business and Human Rights

www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

- United Nations (UN) Peacekeeping Operations
www.un.org/en/peacekeeping/operations/current.shtml
- United Nations (UN) Security Council Resolutions
www.un.org/en/sc/documents/resolutions/index.shtml
- U.S. Department of State – Human Rights Reports
www.state.gov/j/drl/rls/hrrpt/
- U.S. Securities and Exchange Commission (SEC) Rule for Disclosing Use of Conflict Minerals - Dodd-Frank Wall Street Reform and Consumer Protection Act (2012)
www.sec.gov/news/press/2012/2012-163.htm