



# Joint NGO Submission to the UN Working Group on Business and Human Rights

Project on business in conflict and post-conflict contexts

April 2020

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## Introduction

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This joint submission by the Business, Conflict and Human Rights Network (BCHR Network), Christian Aid Ireland, Control Arms, Quaker United Nations Office (QUONO) and Swedwatch, was developed to outline practical measures that States and business enterprises should take to prevent and address business-related human rights abuses, in response to the Working Group's call for inputs for their project on business in conflict and post-conflict contexts launched in 2018.<sup>1</sup>

We have all long been active at the intersections of arms control, peacebuilding, climate change and business and human rights, with a holistic recognition of the substantially gendered dimensions of these phenomena. Bringing a mix of policy and programmatic expertise and with regular joint engagement in various processes, we most recently came together during the 2019 Business and Human Rights Forum in Geneva, during which the BCHR Network<sup>2</sup> held its 2019 Annual Meeting on 'The role of business in peacebuilding and conflict affected settings'. The substance of the submission is rooted in those conversations, where we identified several core issues that we found pivotal to business in contexts affected by conflict. These were:

**The importance of home State policy coherence and consistency** to ensure that home States' fiscal, trade and environmental policies are compatible with their development policy, support for international peacebuilding efforts and international human rights law and standards. *This is relevant to the Working Group's key focus area of specific policies, regulation and adjudication home and host States should take to protect against corporate-related abuses in conflict and post-conflict situations.*

**Access to information**, which is crucial to prevent adverse impacts of business activities, ensure freedom of expression and, crucially, to enable effective and meaningful public participation for affected individuals and communities in decision-making and seeking and obtaining remedies. *This links to the Working Group's key focuses on specific measures business enterprises should take in conflict and post-conflict situations and home and host State policies, regulation and adjudication.*

**Transitional justice**, including the need to avoid contributing to escalations or becoming complicit in new forms of violence, and to learn lessons from transitional justice processes. *This is pertinent to the Working Groups' focus area of the role of business in transitional justice, as well as on responsible and sustainable investment in post-conflict and reconstruction contexts.*

**Challenges of finance and collusion**, with the use of tax havens by business enterprises having a particularly detrimental impact in contexts affected by conflict. *This links to the Working Group's focus area of responsible and sustainable investment in post-conflict and reconstruction contexts.*

**The arms industry**, with a specific focus on what practical steps arms companies can take to reduce the risks of provoking, intensifying and prolonging existing conflicts, de-stabilising post-conflict environments and preventing adverse human rights impacts. *This links to the Working Group's key focus on what specific measures business enterprises and States should take in conflict and post-conflict situations.*

The Working Group has also encouraged the inclusion of case studies and good practice examples. In light of this, the submission includes an annex of case studies and a longer list of relevant reports and references for their consideration.

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<sup>1</sup> United Nations Office of the High Commissioner for Human Rights (OHCHR), 'UN Working Group on Business and Human Rights: Project on business in conflict and post-conflict contexts', <https://www.ohchr.org/EN/Issues/Business/Pages/ConflictPostConflict.aspx>.

<sup>2</sup> The theme areas for the conference included: the role of business in peacebuilding and conflict affected settings in the regions of Sierra Leone and Liberia, the role of businesses in the conflict and re-construction in Syria, as well as the emerging research in the 'business and peace' field and a UN Working Group consultation about the role of business in post-conflict settings.

## State policy coherence and consistency

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The current fiscal, trade and environmental policies of many home States of multinational business enterprises are manifestly incompatible with their development policy and support for international peacebuilding efforts. While development policies and financial commitment to international peacebuilding efforts claim to contribute to peace and security and to strengthen domestic resource mobilisation in developing countries, the human rights impacts of their business activities abroad frequently undermine local and regional efforts to sustain peace.

Improving policy coherence is not easy. It requires strong leadership, oversight, and a lot of coordination. Whilst policy coherence can require trade-offs within policies of a single government, policies between countries or members of a regional bloc, and between private, civil and State actors, human rights compliance must provide the foundation for policy coherence and underpin sustainable peace and security and positive foreign policy initiatives. It should also be noted that policy incoherence is not always intended and can be caused by a lack of knowledge of likely effects or weak representation from developing countries.<sup>3</sup>

### Recommendations:

- UN member States should adopt legislation on mandatory gender-sensitive Human Rights Due Diligence (HRDD), including accountability and access to remedy measures to ensure that companies respect human rights and conduct HRDD on their operations, business relationships, value chains and investments, especially in conflict-affected settings. Environment (including climate) impact considerations must be integrated into HRDD processes.
- Business enterprises should conduct conflict and gender-sensitive HRDD in line with the UN Guiding Principles on Business and Human Rights (UNGPs)<sup>4</sup> and the Organisation for Economic Co-operation and Development (OECD) Due Diligence Guidance for Responsible Business Conduct.<sup>5</sup>
- UN member States should update existing Business and Human Rights National Plans to incorporate issues of incoherence as well as gender and conflict-sensitive HRDD for business activities abroad.
- States should conduct research and comprehensive impact assessments on effects of policies to detect where they can undermine each other and how their results (known or unknown) can impact developing countries.
- States should set up 'Policy Coherence for Development'<sup>6</sup> mechanisms to rectify inconsistencies between tax regimes, trade agreements, greenhouse gas policies and international human rights law. These mechanisms should monitor and ensure that the development, design and results of a government's development and human rights policies are not undermined by policies in other areas. Government and State policies should support development objectives where feasible, and at a minimum ensure these policies do not adversely impact developing countries.
- Home States should ensure that business enterprises are assessed and monitored (and in cases of non-compliance, sanctioned) on responsible business conduct in the areas of human rights, social impacts, the environment and climate change, and impacts on labour rights.

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<sup>3</sup> Christian Aid, 'Policy coherence: How can policies complement each other to support development?' (2018), <https://www.christianaid.ie/news/how-can-policies-complement-each-other-support-development>; Christian Aid, 'Undermining Human Rights: Ireland, the ESB and Cerrejon coal' (2020), [https://www.christianaid.ie/sites/default/files/2020-02/Cerrejon%20Report\\_0.pdf](https://www.christianaid.ie/sites/default/files/2020-02/Cerrejon%20Report_0.pdf).

<sup>4</sup> United Nations OHCHR, 'Guiding Principles on Business and Human Rights' (2011), [https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf).

<sup>5</sup> OECD, 'OECD Due Diligence Guidance for Responsible Business Conduct' (2018), <https://www.oecd.org/investment/due-diligence-guidance-for-responsible-business-conduct.htm>.

<sup>6</sup> Bond, Coherent Europe for Sustainable Development and the European Union, 'Ensuring Policy Coherence in Sustainable Development (PCSD)', [https://www.bond.org.uk/sites/default/files/resource-documents/ensuring\\_policy\\_coherence\\_in\\_sustainable\\_development\\_pcsd\\_0.pdf](https://www.bond.org.uk/sites/default/files/resource-documents/ensuring_policy_coherence_in_sustainable_development_pcsd_0.pdf).

## Access to information

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The right to information<sup>7</sup> is crucial in order to prevent adverse impacts of business activities, ensure freedom of expression and enable individuals and communities to participate in decision-making processes and to seek and obtain remedies.

Consulted communities and civil society organisations in Liberia and Sierra Leone have frequently cited a lack of transparency in concession agreements, despite established requirements for Environmental Impact Assessments (EIAs) and for the promotion of community development agreements through consultations with affected groups.<sup>8</sup> The lack of transparency experienced ranges from a lack of publicly available information on the scope and expected social and economic impacts of a project, disclosure of impact assessments that is often at too short notice to allow communities to make informed decisions, to the lack of meaningful consultation with affected communities, and the use of overly technical terminology in concession and contract terms.

Consulted civil society representatives are concerned about increased levels of insecurity caused by the lack of access to information on the scope and impacts of business operations. This lack of information feeds misconceptions and misunderstandings, which in turn erodes trust and thus heightens conflict potential within and between communities. If left unaddressed, it is likely that the factors outlined above will strengthen momentum towards social conflict.

On the contrary, informed public participation in environmental decision making facilitates greater consensus, mitigating the potential for conflict and increasing the likelihood of finding effective, long-lasting solutions, in line with Principles 16, 18 and 21 of the UNGPs.<sup>9</sup> This is also crucial to the prevention of destructive environmental conflict and the sustaining peace agenda.<sup>10</sup> Principle 10 of the 1992 Rio Declaration on Environment and Development sets out three core 'access rights': access to information, access to public participation and access to justice.<sup>11</sup> Frameworks and laws at regional and national levels grounded in Principle 10 are needed – especially in contexts where private companies are involved in natural resource extraction and use.<sup>12</sup> Inclusive and participatory natural resource management processes help determine whether the potential for destructive conflict simmers with the danger of re-erupting into violence.<sup>13</sup>

### Recommendations:

- State and business enterprises should proactively ensure that communities are provided with effective communication of adequate and timely information on the development and implementation of activities occurring in their area of residence and on the potential impacts of these operations. In addition, business enterprises should work with local leaders to create accountability and grievance mechanisms and organise local spaces for information-sharing.
- Access to transparent information and reporting should be accessible for all stakeholders throughout the entire process. Business enterprises should ensure that community engagement is built into the underlying strategy of a business project, including integration into internal reporting and monitoring processes.<sup>14</sup>
- Business enterprises must ensure meaningful consultations with affected groups prior to signing agreements, as part of a comprehensive impact assessment on the impact of business activities on human rights, including women's rights and economic, social and cultural rights. It is imperative that attention is given to the inclusion of marginalised groups; for example, considering the time and place of meetings surrounding women's security concerns.<sup>15</sup>
- Home and host States should create national frameworks and laws at regional and national levels based on Principle 10 of the 1992 Rio Declaration on Environment and Development, in order to ensure affected communities' access to information regarding environmental projects that affect them. It is also essential that meaningful consultation includes the right of communities to withhold consent for proposed development projects that may affect them, this being fundamental to the principle of free, prior and informed consent (FPIC).<sup>16</sup>

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<sup>7</sup> OECD et al., 'Right to Access Information' (2018), <https://www.oecd.org/mena/governance/right-to-access-information-2018.pdf>.

<sup>8</sup> Hannah Peters, 'Business, Human Rights, Environment and Sustaining Peace – Experiences from Liberia and Sierra Leone', Swedwatch (2019), [https://swedwatch.org/wp-content/uploads/2019/11/Peacebuilding\\_Policy-paper\\_191120\\_uppslag-fin-1.pdf](https://swedwatch.org/wp-content/uploads/2019/11/Peacebuilding_Policy-paper_191120_uppslag-fin-1.pdf), p. 10.

<sup>9</sup> Ellie Roberts and Alexandra Pluss Encarnacion, 'Building Peace through Principle 10: Access Rights and the Prevention of Environmental Conflict', Quaker United Nations Office (2015), [http://www.quno.org/sites/default/files/resources/building%20peace\\_pr10.pdf](http://www.quno.org/sites/default/files/resources/building%20peace_pr10.pdf), p. 2; United Nations OHCHR, 'Guiding Principles on Business and Human Rights'.

<sup>10</sup> Ibid.

<sup>11</sup> Ibid.

<sup>12</sup> Ibid., p. 31.

<sup>13</sup> Ellie Roberts and Lynn Finnegan, 'Building Peace around water, land and food: Policy and practice for preventing conflict', Quaker United Nations Office (2013), <https://quno.org/resource/2013/9/building-peace-around-water-land-and-food-policy-and-practice-preventing-conflict>, p. 28.

<sup>14</sup> Lynn Finnegan, 'All voices heard: natural resources, conflict and company-community engagement', Quaker United Nations Office (2013), <https://quno.org/resource/2013/12/all-voices-heard-natural-resources-conflict-and-company-community-engagement>, p. 2-3.

<sup>15</sup> Ibid., p. 3.

<sup>16</sup> United Nations OHCHR, 'Free, Prior and Informed Consent of Indigenous Peoples' (2013),

<https://www.ohchr.org/Documents/Issues/ipeoples/freepriorandinformedsent.pdf>; Emily Greenspan, 'The right to say "No": Indigenous rights experts weigh

## Transitional Justice

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How business enterprises engage on issues of transitional justice<sup>17</sup> is crucial, requiring analyses and sensitivity to ‘do no harm’ and to avoid contributing to escalations or becoming complicit in new forms of violence. There are several key areas the UN Working Group should consider in its guidance for business enterprises.

The use of the term ‘post-conflict contexts’ is problematic as ambiguities arise around this classification. Conflict and violence present in a range of forms following non-linear, often cyclical, patterns. If a country is classified as ‘post-conflict’ it signals readiness and openness for business, without consideration for the risks of reinforcing human rights abuses or driving more conflict. The UN Sustaining Peace Agenda states that pre and post-conflict phases are time bound and risk “path dependent responses”, and therefore all tools and techniques should be drawn upon depending on the context.<sup>18</sup>

Following periods of sustained violent conflict, many States prioritise neoliberal macroeconomics and policies of liberalisation which undermine and marginalise indigenous and local businesses for the sake of attracting the investment of multinational companies. This leads to weak systems of governance, deteriorating existing tax systems that States need to ensure social protection and can undermine the UNGPs on community consultation, and legal frameworks on FPIC.<sup>19</sup> In addition, trade agreements can often undermine the economy and income for local businesses, such as 2012 Free Trade Agreement (FTA) between Colombia and the United States which allowed US-subsidised agricultural products to freely enter the country to compete with local producers.<sup>20</sup>

Peacebuilding approaches in contexts affected by conflict must prioritise natural resources; developing natural resource management that is equitable, sustainable and peaceful requires long-term engagement from all parties, including States and domestic and multinational business enterprises.<sup>21</sup>

It is also essential that lessons are learned from transitional justice processes, and that those business enterprises who are found to have played a harmful role in a conflict are held to account. For example, States must ensure that companies that have enabled the contravention of UN sanctions are not allowed to become ‘repeat offenders’: making money from a conflict, disappearing and then re-emerging in a different conflict context. To ensure this, there needs to be stronger legislation from host States against business enterprises that have engaged in harmful practices, as well as improved information sharing between countries. Investors must also use their leverage to support outcomes that do not undermine human rights and sustainable peace.

### Recommendations:

- Avoid the language of ‘post-conflict’ and assess ways the UN could accurately describe the cycle and different forms of violence that occur, reoccur and emerge in order to accurately and helpfully guide States and business enterprises in protecting and respecting human rights in such contexts.
- Business enterprises and States should conduct conflict analysis (including robust gender and power analyses) and risk assessments through gender-sensitive HRDD that is preventative (aimed at preventing human rights harms) rather than purely internal (aimed at protecting the company/home State), and develop strategies to manage those risks in a conflict-sensitive way.
- States and diplomatic missions should advise business enterprises on specific local conflict dynamics, including: the presence of armed actors, the status and legality of land ownership (avoiding stolen lands and awareness of the right to property) so investments do not act as systematic or proximate drivers of violence. This should not be the only source of information – business enterprises should also seek out information from other independent authoritative sources.

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in on community consent’, Oxfam America (2015), <https://politicsofpoverty.oxfamamerica.org/2015/08/the-right-to-say-no-indigenous-rights-experts-weigh-in-on-community-consent/>.

<sup>17</sup> Transitional justice is an approach that can help create the conditions for peace, security and development. It refers to the set of judicial and non-judicial measures implemented in different jurisdictions to redress the legacies of massive human rights abuses committed in times of violent conflict. (Fran Witt and Karol Balfe, ‘Civil Society, Conflict Transformation and Peace Building: A Christian Aid Ireland Learning Paper’ (2016), <https://www.christianaid.ie/sites/default/files/2018-02/conflict-transformation-peace-building-learning-paper.pdf>, p. 9.

<sup>18</sup> United Nations, ‘Striving for Peace during the Seventy-Second Session of the United Nations General Assembly: September 2018’ (2018), <https://www.un.org/pga/72/wp-content/uploads/sites/51/2017/12/18-12095-PGA-Book-Striving-For-Peace-web3-small.pdf>, p. 47.

<sup>19</sup> United Nations OHCHR, ‘Guiding Principles on Business and Human Rights’; International Labour Organisation, ‘Indigenous and Tribal Peoples Convention, 1989 (No. 169)’, [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C169](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C169); United Nations, ‘United Nations Declaration on the Rights of Indigenous Peoples’ (2007), [https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP\\_E\\_web.pdf](https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf).

<sup>20</sup> Oxfam America, ‘Dashed Expectations: Small-scale farmers are the clear losers in the first year of the US-Colombia Free Trade Agreement’ (2013), <https://www.oxfamamerica.org/static/media/files/dashed-expectations-media-brief.pdf>;

The Nation, ‘The Horrific Costs of the US-Colombia Trade Agreement’ (2013), <https://www.thenation.com/article/archive/horrific-costs-us-colombia-trade-agreement/>.

<sup>21</sup> Roberts and Finnegan, ‘Building Peace around water, land and food’, p. 28.

- The State should be central and empowered to ensure progressive governance and generate resources, including gender-sensitive systems and genuine and inclusive consultations that protect the right to FPIC. This benefits citizens and business enterprises alike as it supports more robust regulation and legislation, more equal wealth generation and ultimately reduces instability and risk.
- In relation to consultation and FPIC, States should enforce legal protections, including gender-specific protections for human rights defenders, union representatives, social leaders and environmental activists working to protect rights in the context of business practices. Business enterprises should not obstruct these activities and mechanisms should be established to hold companies and their representatives accountable for complicity in violence.
- States need a richer understanding of how the formal and informal economy connect and what would enable inclusive economic transformation and sustainable peace. A transition out of conflict needs to have inclusive economic solutions at its heart and be grounded in a people-centred human rights-based approach.
- Host States should pass legislation to enact strong repercussions upon, including sanctions against, business enterprises who have negatively impacted conflict or engaged in other harmful practices. In addition, States should ensure improved mechanisms for information sharing between themselves on this topic. Investors must also use their leverage to ensure that those business enterprises who have negatively impacted conflict or engaged in other harmful practices do not enjoy impunity.
- In contexts affected by conflict, States should develop natural resource management that is equitable, sustainable and peaceful, ensuring long-term engagement from all parties, including States and domestic and multinational business enterprises.<sup>22</sup>

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<sup>22</sup> Roberts and Finnegan, 'Building Peace around water, land and food', p. 28.

## Challenges of finance and collusion

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Tax abuses prevent governments from mobilising the maximum available resources to meet their human rights obligations as well as achieving the SDGs. The use of tax havens by business enterprises has a detrimental impact in contexts affected by conflict. A 2018 study by the Stockholm Resilience Centre and the Royal Swedish Academy of Sciences has highlighted the role of tax havens in supporting economic activities with potentially detrimental environmental consequences<sup>23</sup>; there are clear implications for land-use and natural resource conflicts here. Moreover, the Stockholm Declaration<sup>24</sup> and the New Deal for Engagement in Fragile States<sup>25</sup> have recognised the need to scale up support to domestic resource mobilisation and tackle tax evasion schemes in order to address root causes of violence.<sup>26</sup>

Business enterprises and individuals shifting untaxed wealth into tax havens results in fewer resources available to governments to fund peacebuilding and the implementation of peace agreements, to strengthen governance institutions, the rule of law, and other crucial government-led initiatives for sustaining peace. According to the 2014 OECD report on Fragile States, “fragile states mobilise less than 14% of their GDP in tax revenues” and it is in these contexts that accountable tax systems are crucial not only for recovery from conflict and violence, but also for building trust and mutual accountability between States and citizens for sustained peace.<sup>27</sup> However, any attempt to raise taxes from the general population will be more difficult if there is a strong perception that multinational companies or wealthy individuals are abusing or avoiding tax and not held accountable. Such a situation will not only hinder national efforts for sustainable peace and development but undermine the social contract and democracy itself.

Applying more stringent transfer pricing rules to the valuation of intellectual property (IP) and of returns to IP would reduce the effectiveness of multinationals shifting profits from its sales around the world into tax havens. It would do this by ensuring that the tax haven company could only acquire the IP for which it receives royalties by paying a fair price, properly reflecting the future income stream to that IP, to the affiliate in a higher-tax jurisdiction which actually developed the intellectual property. This payment would be taxable, reducing the amount of tax saved by moving the IP to a tax haven.<sup>28</sup>

### Recommendations:

- States must ensure the legal and political environment supports mandatory HRDD for business enterprises, with clear risk analyses for business enterprises and communities so investment does not become a new driver of violence. It is vital that due diligence requirements identify differentiated impacts on men, women, sexual and gender minorities and appropriate mitigation strategies.
- States should ensure registered companies are tax resident when they are registered, without exception. This would remove incentives for multinationals to book sales in tax havens, and ensure they are booked in countries where sales are made, especially in developing countries.
- In contexts affected by violence, stronger investment is required to strengthen domestic resource mobilisation, accountable and transparent tax systems and equitable progressive, gender-responsive budget allocation to support peacebuilding initiatives and stronger institutions to ensure peace, development and human rights.

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<sup>23</sup> Victor Galaz et al., ‘Tax havens and global environmental degradation’, *Nature Ecology & Evolution* 2 (2018), <https://www.nature.com/articles/s41559-018-0497-3>, p. 1352-7.

<sup>24</sup> International Dialogue on Peacebuilding and Statebuilding, ‘Stockholm Declaration: Addressing Fragility and Building Peace in a Changing World’ (2016), [https://www.pbsbdialogue.org/media/filer\\_public/1e/23/1e237c73-5518-4a03-9a87-b1aa6d914d20/stockholm\\_declaration.pdf](https://www.pbsbdialogue.org/media/filer_public/1e/23/1e237c73-5518-4a03-9a87-b1aa6d914d20/stockholm_declaration.pdf).

<sup>25</sup> International Dialogue on Peacebuilding and Statebuilding, ‘A New Deal for Engagement in Fragile States’, [https://www.pbsbdialogue.org/media/filer\\_public/07/69/07692de0-3557-494e-918e-18df00e9ef73/the\\_new\\_deal.pdf](https://www.pbsbdialogue.org/media/filer_public/07/69/07692de0-3557-494e-918e-18df00e9ef73/the_new_deal.pdf).

<sup>26</sup> International Dialogue on Peacebuilding and Statebuilding, ‘Stockholm Declaration’.

<sup>27</sup> OECD, ‘Fragile States 2014: Domestic Revenue Mobilisation in Fragile States’ (2014), <https://www.oecd.org/dac/conflict-fragility-resilience/docs/FSR-2014.pdf>, p. 1.

<sup>28</sup> Christian Aid Ireland, ‘Tax abuses robs poor countries of more than \$400bn a year’ (2019), <https://www.christianaid.ie/news/tax-abuses-robs-poor-countries-more-400bn-year>; Christian Aid Ireland, ‘Not Without Cost: The impact of Ireland’s tax code on developing countries’ (2018), <https://www.christianaid.ie/news/tax-justice-1>.

## The arms industry

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Arms transfers and their subsequent potential or actual use can have a negative impact on the enjoyment of human rights.<sup>29</sup> Every year, corporate actors supply large volumes of military equipment to violent and unstable parts of the world, where the equipment is often used unlawfully in the context of armed conflicts and in political unrest marred by serious violations of international human rights and humanitarian law.<sup>30</sup> There are also gender issues arising from investment in contexts affected by conflict, due to the highly gendered human rights impacts of weapons, and the impact of weapons on gender-based violence.<sup>31</sup> The defence sector thus plays a key role in contexts affected by conflict, and faces a range of human rights risks related to its business relationships (often with parties to conflicts), and the misuse of its products and services.<sup>32</sup> Companies supplying arms to fragile States can trigger, intensify and prolong existing conflicts; accumulations of arms can destabilise recovery.

Arms companies<sup>33</sup> can take a series of practical steps to reduce these risks and prevent adverse human rights impacts. These include:

- Identifying and addressing potential human rights risks before, during and after an arms transfer using a wide range of authoritative and independent sources.
- Vetting clients' past performance against human rights benchmarks and building high expectations of compliance with international human rights and humanitarian law into contracts (allowing them to be terminated prematurely for human rights reasons).
- Using leverage to influence the behaviour of clients up to and including suspending, or even ceasing the business relationship where risks cannot be adequately mitigated.

### Recommendations

- Arms companies should not engage in a business relationship if the human rights risk linked to this relationship cannot be mitigated. If a company's product does contribute to gross human rights violations or serious violations of international humanitarian law, the company must endeavour to provide or facilitate prompt and effective reparation.
- States supplying weapons to areas affected by conflict must properly resource arms export licencing authorities, promote information sharing and transparency in their decision making, and invest in effective post-delivery monitoring mechanisms.
- States must deny licences for transfers where there is a substantial risk that the arms will be used to commit or facilitate serious violations of international human rights and humanitarian law.<sup>34</sup>
- In relation to business enterprises, States must put in place and enforce a legislative framework which forces the defence industry to identify, assess, prevent, and account for how they address the human rights risks it faces and penalises those enterprises that fail to comply with their human rights responsibilities.
- States must not support business enterprises that cause, contribute to or are linked to serious violations of international human rights and humanitarian law, including through trade promotion, research, development funding and other assistance.
- States must criminalise violations of international and regional arms embargos and devote adequate resources to investigating and prosecuting any arms embargo breaches, along with other breaches of arms control law.

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<sup>29</sup> United Nations Human Rights Council, 'Impact of arms transfers on the enjoyment of human rights: Report of the Office of the United Nations High Commissioner for Human Rights', A/HRC/35/8 (2017), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/109/83/PDF/G1710983.pdf?OpenElement>, p. 3.

<sup>30</sup> Amnesty International, 'Outsourcing Responsibility: the human rights policies of the defence sector', Index: ACT 30/0893/2019 (2019), <https://www.amnesty.org/download/Documents/ACT3008932019ENGLISH.PDF>, p. 3.

<sup>31</sup> Amnesty International et al, 'How the human rights pillar is contributing to arms control: part of the New Shapes: Weapons Governance conference', Quaker United Nations Office (2019), [https://quno.org/sites/default/files/timeline/files/2019/QUNO%20-%20Conflict%20Weapons%20and%20Human%20Rights%20at%20Weapons%20Governance\\_Event%20Summary.pdf](https://quno.org/sites/default/files/timeline/files/2019/QUNO%20-%20Conflict%20Weapons%20and%20Human%20Rights%20at%20Weapons%20Governance_Event%20Summary.pdf).

<sup>32</sup> For a detailed discussion of the following points, see the above Amnesty International report, 'Outsourcing Responsibility'

<sup>33</sup> These can be defined as "arms-producing and military service companies" (SIPRI, 'The SIPRI Top 100 arms-producing and military service companies, 2018' (2018) [https://www.sipri.org/sites/default/files/2019-12/1912\\_fs\\_top\\_100\\_2018.pdf](https://www.sipri.org/sites/default/files/2019-12/1912_fs_top_100_2018.pdf)) or as "corporations involved in the arms trade" – involved namely "in the supply of military goods and services" (Amnesty International, 'Outsourcing Responsibility', p. 3, 7).

<sup>34</sup> This obligation is contained in Articles 6 and 7 of the Arms Trade Treaty (ATT). The ATT, which entered into force on 24 December 2014, is the first legally binding international agreement to regulate the global trade in conventional arms by establishing common international standards for the transfer of conventional arms and ammunition. With 105 States Parties and 33 signatories as of 1 April 2020, the ATT seeks to stop irresponsible and illegal transfers of conventional arms which may be used to commit violations of human rights and international humanitarian law. The reporting obligations in the ATT contribute to transparency, information sharing and cooperation not only among States but also industry actors. (The Arms Trade Treaty 2014, <https://thearmstradetreaty.org/treaty-text.html?templateId=209884>).

### ANNEX 1 – CASE STUDY - Land grabs in Sierra Leone <sup>35</sup>

#### What is the issue?

In January 2019, in Malen chiefdom, Pujehun district, State security personnel used excessive force during a security operation where two people were killed, villages were razed, villagers beaten and many arrested including fifteen people from the Malen Affected Landowners Association (MALOA), including Honourable Shiaka Sama, MP.<sup>36</sup> The violence was triggered by a strike led by workers of the SOCFIN palm oil plantation because of poor working conditions. This strike was at the backdrop of escalating tensions between communities and the multinational palm oil company SOCFIN. Since the elections in April 2018, there were renewed hopes among the communities in Malen that there was energy and commitment by the President to resolve the land conflict that SOCFIN has been accused of perpetrating since its arrival in Sierra Leone in 2011. However, those hopes gradually dissipated when workers' rights were not improving, the president wasn't fulfilling his campaign promises and families were still not seeing a resolution.

#### Why is it happening?

In 2011, a land agreement was made between the Paramount Chief of Pujehun District and SOCFIN, a French Belgian palm oil company, for the 50-year lease of 6,500 ha to be converted to a monoculture palm oil plantation. This agreement originally affected 22 villages but has subsequently affected 52 villages with successive leases that expanded the appropriation to 18 473 ha, of which 12,000ha have been converted to industrial palm oil plantations. The affected communities have consistently condemned the human rights violations that include lack of consultation with land owners, lack of transparency in relation to the land agreement, corruption, violation of the rights to adequate food and nutrition, water as well as violations against freedom of expression and association.

This is one example of the consequences of instability in Sierra Leone as a result of its conflict ridden past and little experience of periods of long-term stability. Sierra Leone has experienced military coups in 1967, 1968, 1992, 1996, 1997 and endured a highly destructive civil war from 1991-2002, where over 50,000 people were killed.<sup>37</sup> More recent conflicts have included seven major strikes and riots around mines and concessions between 2009 to 2014.<sup>38</sup> Some experts have also explained the Ebola crises in 2014 to be “a crisis of governance” with echoes of “crises past”.<sup>39</sup>

One of the sources for this political instability has been the historical concentration of wealth among a few businessmen, usually with close connections to the political elite. This has not only led to the lack of economic diversity but also heightened citizen distrust and resentment of the State. This pattern has continued since the 1970s, contributing to the perpetual cycles of violence by prioritising foreign direct investment and the extractive industry and deprioritising indigenous businesses. In 2012, Sierra Leone was the fastest growing economy in the world with a GDP of 20%; the dark side of this trend meant unfair land allocation, little local employment and agreements that served the self-interests of the politically and socially powerful in the country. As this caused inevitable tension and conflict with local landowners, pastoralists and farmers, violence and corruption became more institutionalised through protecting the interests of the economic elites, State intolerance of dissent, harassment of political opposition and denial of human rights.

#### What is civil society and communities doing to address the issue?

When the Memorandum of Understanding between SOCFIN and the Government of Sierra Leone in 2012, local civil society raised their concerns over the corrupt process of land acquisition in Malen Chiefdom.<sup>40</sup> They called for a review of the land agreement, increased compensation, transparency in future negotiations, and clarity on the social and community commitments of SOCFIN. Communities made a submission to the Human Rights Commission of Sierra Leone who conducted a fact-finding mission and introduced a mediation process, but this was not possible owing to the absence of key local authorities, including the Paramount Chief.<sup>41</sup> In 2013, a protest was organised resulting in the

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<sup>35</sup> FIAN Belgium and Green Scenery, 'Land Grabbing for Palm Oil in Sierra Leone: Analysis of the SOCFIN case from a human rights perspective' (2019), [https://www.fian.be/IMG/pdf/fian\\_b\\_report\\_landgrab\\_in\\_sl\\_malen\\_2019\\_full.pdf](https://www.fian.be/IMG/pdf/fian_b_report_landgrab_in_sl_malen_2019_full.pdf). See also FIAN Belgium, 'Landgrabbing by SOCFIN in Sierra Leone – documentation', <https://www.fian.be/Landgrabbing-by-SOCFIN-in-Sierra-Leone-documentation?lang=en>.

<sup>36</sup> Human Rights Defenders Network-Sierra Leone et al., 'Report of the fact finding mission on the Human Rights situation in Malen Chiefdom after the violent incidents in January 2019, Compiled by Human Rights Defenders in Sierra Leone' (2019), <https://wrm.org.uy/wp-content/uploads/2019/01/Report-on-Malen-INCIDENT-Final-version.pdf>.

<sup>37</sup> Herbert M'cleod and Brian Ganson, 'The underlying causes of instability in Sierra Leone', Commission on State Fragility, Growth and Development (2018), <https://www.theigc.org/wp-content/uploads/2018/04/Sierra-Leone-Report-v2.pdf>, p. 4.

<sup>38</sup> Ibid.

<sup>39</sup> Ibid.

<sup>40</sup> 'Memorandum of Understanding and Agreement' (2012), [www.fian.be/IMG/pdf/sac\\_memorandum\\_of\\_understanding\\_mou\\_and\\_agreement\\_with\\_rep\\_of\\_sierra\\_leone\\_24-09-2012\\_.pdf](http://www.fian.be/IMG/pdf/sac_memorandum_of_understanding_mou_and_agreement_with_rep_of_sierra_leone_24-09-2012_.pdf)

<sup>41</sup> FIAN Belgium and Green Scenery, 'Land Grabbing for Palm Oil in Sierra Leone', p. 25.

arrest and conviction of six members of MALOA. In 2014, Green Scenery, a partner of Christian Aid, facilitated a joint mission of the Parliamentary Committees on Land and Agriculture but this delegation failed to issue concrete recommendations.<sup>42</sup>

Further efforts were made by Green Scenery and MALOA in 2016 to ensure an independent investigation and to revive the dialogue process through the Minister of Political and Public Affairs. This again failed to bring about positive or concrete actions until a year later when the Chief of Staff at the President's Office established a Malen Issues Mediation and Coordination Committee. Since the elections in 2018, a series of meetings were held with the President and the Vice President with a clear demand from civil society and affected communities for an independent investigation. However, this again went unanswered leading to increasing tensions, the workers strike and organised protests by women in the community, which escalated further in January 2019.<sup>43</sup>

#### What is the progress?

The long-standing resistance and demands of communities and civil society organisations in Malen and Pujehun District has sustained pressure on local authorities, the national government and SOCFIN itself. From a national perspective, the recognition and efforts by the new President of the intractable conflict in Malen is a positive sign. It has contributed in some way at a local level too, with SOCFIN publishing their annual lease payments to land owners for the first time and the courts dropping charges of incitement and riotous conduct against MALOA members, essentially recognising their role as human rights defenders. However, there are still challenges to the work of human rights defenders; since the incident in January 2019, 18 persons were charged in a magistrate court and have been attending court since to solve the case.

At a national level, there has also been some progress where the Government established the National Land Policy Steering Committee for the development of the Customary Land Rights and Land Commission. The Committee is tasked with establishing a framework for the protection of land rights under customary law; repealing the Land Act, Cap 122 that gives Paramount Chiefs ultimate power over land ownership, making provisions for the registration of private land title and setting guidelines for national land use planning. This is a significant move forward because it demonstrates readiness by the government in preventing and mitigating land conflicts and creating a transparent land allocation processes.

Lastly, the community organisation and solidarity in defending their land rights has shown unwavering resilience, with many examples during the recent violence of joint advocacy for release of those arrested, local initiatives for conflict resolution between community land owners and chieftom authorities and key government officials as a smaller step in the community's demand for broader dialogue. This resistance, solidarity and organisation has influenced community agency in other areas against land deals conducted by their own Paramount Chief.

However, the issue of the government ensuring businesses respect human rights has yet to see clear and targeted advances in accountability. Voluntary frameworks remain the key instruments for encouraging businesses such as the Guidelines for Monitoring Human Rights and Business in Sierra Leone<sup>44</sup>, the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forestry<sup>45</sup>, and the UN Principles on Responsible Investment.<sup>46</sup> In order to break the pattern of economic inequality and instability, violence, conflict and exclusion in Sierra Leone, foreign direct investment and business enterprises need to be held to account and implement clear plans for conflict analysis, identification of risks to human rights and mitigation strategies for preventing and addressing human rights abuses or negative impacts as a result of their interventions.

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<sup>42</sup> Ibid., p. 26.

<sup>43</sup> SILNoRF, Green Scenery et al., 'In Sierra Leone, Land rights defenders under attack: Press Statement for Immediate Release' (2019), [https://www.fian.be/IMG/pdf/malen\\_incident\\_press\\_release.pdf](https://www.fian.be/IMG/pdf/malen_incident_press_release.pdf).

<sup>44</sup> Sierra Leone Human Rights Commission, 'Guidelines for Monitoring Business and Human Rights in Sierra Leone' (2013), [https://www.humanrights.dk/sites/humanrights.dk/files/media/dokumenter/tools/sierra\\_leone\\_business\\_human\\_rights\\_guidelines\\_2013.pdf](https://www.humanrights.dk/sites/humanrights.dk/files/media/dokumenter/tools/sierra_leone_business_human_rights_guidelines_2013.pdf).

<sup>45</sup> Food and Agriculture Organisation of the United Nations (FAO), 'VGGT - Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security' (2012), <http://www.fao.org/3/i2801e/i2801e.pdf>.

<sup>46</sup> United Nations, 'Principles on Responsible Investment' (2006), <https://www.unpri.org/pri>.

## Annex 2 – CASE STUDY - Mining and Myanmar’s military <sup>47</sup>

Imports of heavy mining machinery in Myanmar have increased significantly in the past 20 years, enabling extraction to take place at an unprecedented speed. Products are brought into the country via international distributors and dealerships or are smuggled from China. The equipment is used by mining companies, many of which reportedly have close links to the Myanmar military and generals from the old military junta.<sup>48</sup> The extensive mining activities, including around jade extraction, have led to wide-ranging human suffering and environmental degradation in Myanmar’s conflict-torn Kachin state. This is contrary to the UNGPs, which state that business enterprises should carry out HRDD on adverse human rights impacts that may be directly linked to their products through their business relationships.

### Armed conflict and Myanmar’s military

Myanmar underwent a military coup in 1962 and over the next five decades was ruled by a military junta responsible for wide-spread human rights violations, resulting in comprehensive sanctions on Myanmar which were lifted in 2016.<sup>49</sup> Today, military officials and military-owned companies still control much of the private sector and trade, as well as the mechanisms for allocating mining permits, according to experts.<sup>50</sup> As economic sanctions have gradually lifted, foreign investments in Myanmar have increased dramatically. Knowingly or unknowingly, foreign investors in various sectors have engaged with former and current military generals – some of whom have become tycoons, cronies and drug lords.<sup>51</sup> The Myanmar mining sector – known to be “as opaque as it is profitable” – attracts a significant portion of the investments.<sup>52</sup> Generals from the junta days and army officials in Kachin state are making fortunes from the trade.

### Natural resources

Myanmar’s abundance in natural resources, such as jade, is inseparably connected to the ongoing armed conflict, and the main players have seemingly few (if any) incentives to seek peace due to their income from the jade mines.<sup>53</sup> Due to the thriving illicit trade and non-transparent ownership structures behind these assets, the billions of dollars generated by the country’s natural resources remain concentrated in the hands of a few – principally the military and its crony associates. Several ethnic armed groups also benefit from control over mine sites and smuggling.<sup>54</sup> According to estimates by the Asia Foundation, most of Myanmar’s mining operations (56%) are located in areas affected by armed conflict. In a report from 2017, the Asia Foundation concluded that “both small- and large-scale mining – for gems, gold, silver, iron, coal, tin, and many other resources – was occurring in two-thirds of townships affected by armed clashes in 2015 and 2016, including some of the most violently contested parts of the country”.<sup>55</sup>

### Governance of the mining sector

Mineral exploration and mining are active throughout Myanmar but are under-reported, and the laws governing the country’s mining sector have been criticised for being inconsistent and unclear. The mining licensing process poorly aligns existing laws with current practices and suffers from widespread noncompliance with national policies. As of April 2016, there were more than 21,000 active gemstone mining licences, but enforcement of environmental and safety standards remains largely absent.<sup>56</sup>

Since 2015, the Myanmar government has required companies to undertake environmental and social impact assessments on investment projects, and both aspects must be covered in an EIA.<sup>57</sup> However, government officials are said to lack the capacity to assess EIAs, and arguably none of the thousands of active mining projects in Myanmar rely on an EIA that meets international standards. The government has also adopted new mining rules and regulations, and

<sup>47</sup> Based on Therese Sjöström, ‘Overlooked and Undermined: Communities affected by jade mining operations in Myanmar, and the responsibilities of companies providing machinery’, Swedwatch (2018), [https://swedwatch.org/wp-content/uploads/2018/06/91\\_Myanmar\\_181003\\_final.pdf](https://swedwatch.org/wp-content/uploads/2018/06/91_Myanmar_181003_final.pdf).

<sup>48</sup> United Nations Human Rights Council, ‘The Economic Interest of the Myanmar Military - Independent International Fact-Finding Mission on Myanmar’ A/HRC/42/CRP.3 (2019), <https://www.ohchr.org/EN/HRBodies/HRC/MyanmarFFM/Pages/EconomicInterestsMyanmarMilitary.aspx>

<sup>49</sup> International Human Rights Clinic at Harvard Law School, ‘Crimes in Burma’ (2009), <http://hrp.law.harvard.edu/wp-content/uploads/2009/05/Crimes-in-Burma.pdf>.

<sup>50</sup> Daniel Pye, ‘The Dark Shadow of Myanmar’s Jade Trade’, The Financial Times (2016), <https://www.ft.com/content/cf46e086-6909-11e6-a0b1-d87a9fea034f?mhq5j=e5>.

<sup>51</sup> Global Witness, ‘Jade and the Generals’ (2017), <https://www.globalwitness.org/en/campaigns/myanmar/jade-and-generals/>.

<sup>52</sup> Oxford Business Group, ‘Myanmar’s Holds a Diverse Mix of Mineral Resources’ (2016), <https://oxfordbusinessgroup.com/overview/treasure-trove-complex-geography-provides-diverse-mix-rich-minerals>.

<sup>53</sup> Andrew R. C. Marshall and Min Zayar Oo, ‘Myanmar Old Guard Clings to \$8 Billion Jade Empire’, Reuters (2013), <https://www.reuters.com/article/us-myanmar-jade-specialreport/special-report-myanmar-old-guard-clings-to-8-billion-jade-empire-idUSBRE98S00H20130929>.

<sup>54</sup> Global Witness, ‘Jade: Myanmar’s Big State Secret’ (2015), <https://www.globalwitness.org/en/campaigns/oil-gas-and-mining/myanmarjade/>, p. 14.

<sup>55</sup> The Asia Foundation, ‘The Contested Areas of Myanmar – Subnational Conflict, Aid and Development’ (2017), <https://asiafoundation.org/wp-content/uploads/2017/10/ContestedAreasMyanmarReport.pdf>.

<sup>56</sup> Emma Irwin, Paul Shortell, ‘Governing the Gemstone Sector: Lessons from Global Experience, Natural Resource Governance Institute’, Natural Resource Governance Institute (2017), <https://resourcegovernance.org/analysis-tools/publications/governing-gemstone-sector-lessons-global-experience>; Myanmar Extractives Industries Transparency Initiative (MEITI), ‘EITI report for the period April 2013–2014: Oil, gas and mining sectors’ (2015), [https://www.burmalibrary.org/sites/burmalibrary.org/files/obl/docs21/meiti\\_reconciliation\\_report\\_2013-2014\\_final\\_version-red.pdf](https://www.burmalibrary.org/sites/burmalibrary.org/files/obl/docs21/meiti_reconciliation_report_2013-2014_final_version-red.pdf).

<sup>57</sup> The Government of the Republic of the Union of Myanmar Ministry of Environmental Conservation and Forestry, ‘Environmental Impact Assessment Procedure, Draft’ (2015), <https://www.myanmar-responsiblebusiness.org/pdf/2015-06-Myanmar-EIA-Procedures.pdf>.

external experts have been hired to help manage the over 1,000 EIAs that were submitted in 2017.<sup>58</sup> Parliament is also redrafting the Myanmar Gemstone Law, which regulates the trade in jade and is therefore key to the outlook for peace in Kachin. According to critical voices however, the process of creating a new Gemstone Law has so far failed to include consultations with the Kachin people and may therefore contribute to a “re-escalation of the conflict in Kachin”.<sup>59</sup>

Overall, the weak and incoherent legal framework, combined with the failure to properly implement the EIA requirement and the dominant presence of non-transparent business owners, signal an urgent need to strengthen Myanmar’s national agenda for corporate responsibility, particularly as an increase in foreign investments is expected over the next few years.

*“Mining companies in Myanmar usually have no knowledge about how to conduct EIAs, so they often hire consultants to perform them. But the consultants also lack expertise. The government officials in charge of approving the EIA know even less. This means that even the tiny number of mines operating with an officially approved EIA in Myanmar – and they are very few indeed – are doing so based on a seriously flawed assessment, which would not have been approved in any Western country.”*

– A national resource management researcher, interviewed by Swedwatch<sup>60</sup>

*“There has been huge fraud around EIAs. Hundreds have been performed, but nobody knows how to really conduct them.”*

– A foreign resource management expert, interviewed by Swedwatch<sup>61</sup>

*“There is not a single mining project in Myanmar that can be used as a positive example of responsible mining. International mining machinery companies should really encourage their Myanmar partners to become more responsible, both in regard to environmental and social issues.”*

– A researcher on extractive industry governance, interviewed by Swedwatch<sup>62</sup>

#### Human rights violations

Access to clean natural drinking water has dramatically diminished due to the impacts from mining. Today, community members rely on buying bottled water. According to an interviewee, many mining machines dump mining waste in the rivers: “When they dump mining waste in the rivers, the natural currents are disrupted. The water stalls and gets polluted.” Loss of land caused by mining projects was a key concern. The majority either had land unlawfully confiscated from them or had been pressured by mining companies to sell their land for less than market value. They explained that when a mine site expands closer to a land plot, this decreases the value of the plot as large cracks appear in the ground. The closer the mine expands to the plot, the less the mining company offers. Explosions and drilling in the mine cause nearby houses to crack, further decreasing their value.

*“We used to live off the land, the mountains and the rivers. Now, with the mines, there are no possibilities to continue like we used to. When the [mining] companies come, they leave big holes in the ground and soil that no can longer be cultivated...Some try their luck in jade because they don’t have any other option.”*

– Community leader in Hpakant in an interview with Swedwatch<sup>63</sup>

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<sup>58</sup> Swedwatch interview with Myanmar Responsible Business Center, 2017, cited in Swedwatch, ‘Overlooked and Undermined’, p. 26.

<sup>59</sup> Swedwatch interview with Myanmar Responsible Business Center (2017), cited in *ibid.*

<sup>60</sup> Cited in Swedwatch, ‘Overlooked and Undermined’, p. 30.

<sup>61</sup> *Ibid.*

<sup>62</sup> *Ibid.*

<sup>63</sup> *Ibid.*, p. 42.

### **Annex 3 – CASE STUDY - Managing natural resources in post-conflict peacebuilding: Land mediation centres in the Democratic Republic of Congo <sup>64</sup>**

The return of internally displaced persons (IDPs) and refugees in Democratic Republic of Congo (DRC), as outlined in the Goma Peace Agreement, has fuelled tensions around ownership of, and access to, natural resources. Land mediation centres have been set up in Kitchanga, Ituri and Kiwanja in Eastern DRC by UN-Habitat to help resolve land disputes. Returning IDPs and refugees can have stronger rights than host communities, particularly when local land rights are based on customary laws that are not sufficiently recognised by the State.<sup>65</sup> Increasing numbers of State-given land concessions in areas primarily governed by customary tenure have also created land disputes.<sup>66</sup> This case demonstrates the role that water and land management can play in post-conflict settings.

Despite criticism that the 1973 DRC Land Tenure Law does not outline a formal role for customary institutions and has led to State control of land, it does provide legislation for community participation in land concessions. Section 5 of the Land Law obligates the State to carry out community consultations before giving a land concession, requiring them to identify whether the requested land is being used and whether there are local objections.<sup>67</sup> However, awareness of this Law in rural areas remains low, making it difficult for local communities to claim their rights in cases of land concessions.

The mediation centres in Kitchanga, Ituri and Kiwanja provide mediation services to peacefully address competing land claims. They also serve as local access points for information on land law, rights and disputes.<sup>68</sup> The centres run training workshops to strengthen skills for conflict resolution, targeting groups such as returning displaced persons and those affected by land concessions. The workshops provide information on land issues, approaches to mediation and how to register grievances and disputes, as well as offering potential ways to resolve conflicts.<sup>69</sup> The programme has also trained 300 customary authorities, 200 local authorities, and judiciary representatives on Alternative Dispute Resolution (ADR) methods.<sup>70</sup>

In the Ituri centre local people are identified by local authorities and customary leaders and trained as mediators. This is important for the effectiveness of the program, as mediators who are rooted within local communities and chosen by local representatives tend to be in a better position to resolve local conflicts.<sup>71</sup>

The mediation centres have, however, found it difficult to reach women. Women face cultural barriers to engaging with land debates, a problem exacerbated by the continued presence of male-dominated militias and violence against women.<sup>72</sup> There has been some engagement by women; two of seven local mediators at the Kitchanga centre are female, while 17% of conflicts registered at the Kitchanga centre were reported by women. Yet women struggle to participate in training workshops, particularly those that span several days and require them to stay in a different town or village away from home. There is even evidence that their travelling away from home has led to domestic violence in some cases. It is possible that mediators could play a greater role in bridging the gap between local land authorities and women, or that gender balanced mediation teams could help to include women in debates over land ownership.<sup>73</sup>

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<sup>64</sup> Roberts and Finnegan, 'Building Peace around water, land and food', p. 25.

<sup>65</sup> Paul V. De Wit, 'Land Conflict Prevention and Mitigation Program Eastern Democratic Republic of Congo: Program Evaluation', UN-Habitat (2012), p. 2, 20, cited in *ibid.*, p. 24.

<sup>66</sup> UN-Habitat, 'Focus on Land: Addressing land in the peacebuilding perspective', p. 1, cited in *ibid.*

<sup>67</sup> De Wit, 'Land Conflict Prevention and Mitigation Program Eastern Democratic Republic of Congo', cited in footnote 76, p. 19-20, cited in *ibid.*

<sup>68</sup> UN-Habitat, 'Focus on Land', cited in footnote 77, p. 2, 3, cited in *ibid.*

<sup>69</sup> De Wit, 'Land Conflict Prevention and Mitigation Program Eastern Democratic Republic of Congo', cited in *ibid.*

<sup>70</sup> *Ibid.*, p. 17, cited in *ibid.*

<sup>71</sup> *Ibid.*, p. 30-34, cited in *ibid.*

<sup>72</sup> *Ibid.*, p. 13, cited in *ibid.*, p. 25.

<sup>73</sup> *Ibid.*, p. 13, cited in *ibid.*

## Annex 4 – CASE STUDY – Due diligence policies and procedures: the defence sector and the fight against corruption <sup>74</sup>

Over the last decade the large corporates in the defence sector have developed strict due diligence policies and procedures for combatting corruption and bribery.<sup>75</sup> This followed State anti-corruption and bribery legislation flowing from the adoption of conventions by the UN and the OECD.<sup>76</sup>

Policies include vetting of third-party contractors, building high expectations of probity into contracts, continuous monitoring and periodic auditing of performance, using leverage to influence behaviour and mitigate risks and ceasing business relationships where risks cannot be adequately mitigated.

For instance, Lockheed Martin’s responsible business initiative includes “tailored risk assessments and audit plans” to maintain “a robust compliance program for our international business” and concludes, “we would rather walk away from business than risk violating...anti-corruption laws and our corporate values.”<sup>77</sup>

Financial contracts with business partners are typically short, running on two-year cycles – even where the work is likely to take considerably longer – so that formal due diligence processes can be repeated regularly. These principles, which echo aspects of human rights due diligence, could be used to develop policies and procedures to control human rights risks posed by the supply of military products and services to third parties. The industry response to laws on bribery and corruption also shows the impact of legislation on corporate behaviour.

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<sup>74</sup> Amnesty International, ‘Outsourcing Responsibility’, p. 41.

<sup>75</sup> See for instance: Raytheon, ‘Company Policy: corruption’, RP-OGC-019 (2018), [https://www.raytheon.com/sites/default/files/ourcompany/rtnwcm/groups/gallery/documents/digitalasset/rtn\\_160603.pdf](https://www.raytheon.com/sites/default/files/ourcompany/rtnwcm/groups/gallery/documents/digitalasset/rtn_160603.pdf) and Lockheed Martin, ‘Compliance with Anti-Corruption Laws’, CPS-730 (2018), <https://www.lockheedmartin.com/content/dam/lockheed-martin/eo/documents/ethics/cps-730.pdf>.

<sup>76</sup> United Nations Convention against Corruption (2004), [https://www.unodc.org/documents/brussels/UN\\_Convention\\_Against\\_Corruption.pdf](https://www.unodc.org/documents/brussels/UN_Convention_Against_Corruption.pdf) and the OECD ‘Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and Related Documents’, [http://www.oecd.org/daf/anti-bribery/ConvCombatBribery\\_ENG.pdf](http://www.oecd.org/daf/anti-bribery/ConvCombatBribery_ENG.pdf). For a summary of anti-corruption laws in the UK, see Nick Maxwell and Ben Cowdock, ‘Corruption Laws: A non-lawyers’ guide to laws and offences in the UK relating to corrupt behaviour’, Transparency International (2016), <https://www.transparency.org.uk/wp-content/plugins/download-attachments/includes/download.php?id=5414>.

<sup>77</sup> Lockheed Martin, ‘2017 Sustainability report: The Science of Citizenship’ (2017), [https://www.lockheedmartin.com/content/dam/lockheed-martin/eo/documents/sustainability/Lockheed\\_Martin\\_Sustainability\\_Report\\_Full\\_2017.pdf?&\\_ga=2.99741660.372989612.1538495234-1539752607.1525795442#page=2](https://www.lockheedmartin.com/content/dam/lockheed-martin/eo/documents/sustainability/Lockheed_Martin_Sustainability_Report_Full_2017.pdf?&_ga=2.99741660.372989612.1538495234-1539752607.1525795442#page=2), p. 20.

## List of references, reports and case studies

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Amnesty International, 'Outsourcing Responsibility: the human rights policies of the defence sector', Index: ACT 30/0893/2019 (2019), <https://www.amnesty.org/en/documents/act30/0893/2019/en/>.

ATT Monitor, 'Dealing in Double Standards: How Arms Sales to Saudi Arabia are Causing Human Suffering in Yemen' (2016), <https://attmonitor.org/en/dealing-double-standards-arms-sales-saudi-arabia-causing-human-suffering-yemen/>.

Bread for All and Green Advocates, 'Struggle for Life and Land – Socfin's rubber plantations in Liberia and the responsibility of Swiss companies' (2019), [https://brotfueralle.ch/content/uploads/2019/09/Bfa\\_Socfin\\_Report\\_Update\\_Nov\\_19.pdf](https://brotfueralle.ch/content/uploads/2019/09/Bfa_Socfin_Report_Update_Nov_19.pdf).

Control Arms, 'How to use the Arms Trade Treaty to address Gender-Based Violence: A Practical Guide for Risk Assessment' (2018), [https://controlarms.org/wp-content/uploads/2018/08/GBV-practical-guide\\_ONLINE.pdf](https://controlarms.org/wp-content/uploads/2018/08/GBV-practical-guide_ONLINE.pdf).

Christian Aid, 'Undermining human rights: Ireland, the ESB and the Cerrejon mine in Colombia' (2020), [https://www.christianaid.ie/sites/default/files/2020-02/Cerrejon%20Report\\_0.pdf](https://www.christianaid.ie/sites/default/files/2020-02/Cerrejon%20Report_0.pdf).

FIAN Belgium and Green Scenery, 'Land grabbing for palm oil in Sierra Leone – Analysis of the SOCFIN case from a human rights perspective' (2019), [https://www.fian.be/IMG/pdf/fian\\_b\\_report\\_landgrab\\_in\\_sl\\_malen\\_2019\\_full.pdf](https://www.fian.be/IMG/pdf/fian_b_report_landgrab_in_sl_malen_2019_full.pdf).

Global Witness, 'Jade: Myanmar's Big State Secret' (2015), <https://www.globalwitness.org/en/campaigns/oil-gas-and-mining/myanmarjade/>.

Natural Resource Governance Institute, 'Governing the Gemstone Sector: Lessons from Global Experience' (2017), <https://resourcegovernance.org/analysis-tools/publications/governing-gemstone-sector-lessons-global-experience>.

Quaker United Nations Office, 'All voices heard: resources, conflict and company-community engagement' (2013), [https://quno.org/sites/default/files/resources/Building%20Peace%20Briefing%20paper%201%20-%20All%20voices%20heard\\_%20natural%20resources%2C%20conflict%20and%20company-community%20engagementpdf.pdf](https://quno.org/sites/default/files/resources/Building%20Peace%20Briefing%20paper%201%20-%20All%20voices%20heard_%20natural%20resources%2C%20conflict%20and%20company-community%20engagementpdf.pdf).

Quaker United Nations Office, 'Building Peace through Principle 10: Access Rights and the Prevention of Environmental Conflict' (2015), [http://www.quno.org/sites/default/files/resources/building%20peace\\_pr10.pdf](http://www.quno.org/sites/default/files/resources/building%20peace_pr10.pdf).

Quaker United Nations Office, 'Building Peace around water, land and food: Policy and practice for preventing conflict' (2013), <https://quno.org/resource/2013/9/building-peace-around-water-land-and-food-policy-and-practice-preventing-conflict>.

Swedwatch, 'Business, Human Rights, the Environment and Sustaining Peace: Experiences from Liberia and Sierra Leone' (2019), [https://swedwatch.org/wp-content/uploads/2019/11/Peacebuilding\\_Policy-paper\\_191120\\_uppslag-fin-1.pdf](https://swedwatch.org/wp-content/uploads/2019/11/Peacebuilding_Policy-paper_191120_uppslag-fin-1.pdf).

Swedwatch, 'Colombian human rights defender warns of risks related to Colombian hydropower plant in post-peace agreement context' (2018), <https://swedwatch.org/en/themes/high-risk-and-conflict-areas/human-rights-defender-warns-risks-related-colombian-hydropower-plant/>.

Swedwatch, 'No business, No rights - Human rights impacts when land investments fail to include responsible exit strategies: The case of Addax Bioenergy in Sierra Leone' (2017), <https://swedwatch.org/en/regions/africa-south-of-the-sahara/swedfund-fmo-lacked-responsibility-leaving-project-without-exit-strategy/>.

Swedwatch, 'Overlooked and Undermined: Communities affected by jade mining operations in Myanmar, and the responsibilities of companies providing machinery' (2018), [https://swedwatch.org/wp-content/uploads/2018/06/91\\_Myanmar\\_181003\\_final.pdf](https://swedwatch.org/wp-content/uploads/2018/06/91_Myanmar_181003_final.pdf).

United Nations Human Rights Council, 'Report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes on his mission to Sierra Leone', A/HRC/39/48/Add.1 (2018), [https://ap.ohchr.org/documents/dpage\\_e.aspx?c=165&su=165](https://ap.ohchr.org/documents/dpage_e.aspx?c=165&su=165).