

**“NEW REPORT SHEDS LIGHT ON WHAT GOVERNMENTS, BUSINESS AND THE UN NEED TO DO IN CONFLICT-AFFECTED AREAS: BUT WHAT’S NEXT FOR THIS FIELD?”**

Event report - 10 November 2020

With well documented evidence that the worst forms of business-related human rights abuse tend to happen in conflict-affected contexts, the [UN Working Group on Business and Human Rights](#) (UN Working Group) sought to outline a better understanding of the practical measures that States and business enterprises should take to prevent and address business-related human rights abuse in conflict and post-conflict contexts.

Their recommendations are now out in a [report to the UN General Assembly](#) and were the subject of a discussion organized by the [Geneva Human Rights Platform at the Geneva Academy](#), in partnership with the [Friedrich-Ebert-Stiftung](#), the [Quaker United Nations Office](#) and the [UN Working Group on Business and Human Rights](#).

**So, what does the report say – and what is next for this field?**

In the report, the UN Working Group identifies and clarifies a range of policies and tools that could be employed in conflict-prone regions to help ensure that business activity does not lead to human rights abuse and in turn stimulate or exacerbate conflict or negatively impact peacebuilding.

Their headline message was the need for **heightened action both** throughout the conflict cycle - from ensuring preventative action to ensuring responsibilities were taken within the transitional justice phases – and throughout the business cycle – from entry into new and fragile contexts to ensuring **responsible exits**.

This was particularly emphasized when it comes to **preventative action from a State** perspective both when it is acting as a state itself; and when it is supervising and guiding companies to acting in their conflict contexts to respect human rights. The report usefully fleshes out some of the triggers and indicators when heightened due diligence is warranted and when States should require more from business than just “respect for human rights” as in an ordinary setting. The **post-conflict** setting was where ‘newer’ recommendations were developed – and their starting point was a challenge to the assumption that the provision of jobs and investments by companies in post-conflict contexts is always a good thing. Indeed, it was highlighted that businesses are not neutral in conflict settings – not least because of its partnerships with government or other conflict parties. They should not assume that being allowed to re-enter a market delivers them from their own due diligence, as what they understands as salient will be different in the post-conflict context, rendering the need to ensure their work practices are conflict sensitive all the more important.

Some areas for further exploration were outlined by the UN Working Group, including the **role of non-state actors** and the challenge of bringing in the ‘business sector’ variable in what is an already tense debate regarding **remedies in transitional justice process** (accountability and trade-offs).

Further engaging **UN’s peace and security pillar – and more broadly a call for stronger inter-agency cooperation at the UN level** in this space which was raised in the report was also brought up in the discussion. As a positive example of this approach, the recent HRC resolution on prevention (HRC 45/31) was mentioned as it includes an invitation to the Chair of the Peacebuilding Commission (PBC) to annually brief the Human Rights Council on the work of the Commission. This was seen as a good approach to be replicated to further inter-agency cooperation. Building on this point, a call for the inclusion of responsible business conduct in discussions at the PBC was made.

The strong and repeated reference to conflict sensitivity in heightened corporate due diligence was welcomed and seen as equally important for business activities as for development and humanitarian activities in conflict affected settings. There is currently no uniformly applied human rights due diligence for UN activity – which raised concern given that the private sector often plays a large role in the implementation of UN humanitarian agencies’ activities. For example, humanitarian operations might engage private companies in the implementation of aid distribution or in security provision for their premises and personnel. For these reasons, there are suggestions that the Guiding Principles may regulate engagement and reconstruction in some contexts.

The point on export credits as investment incentives and the need for international financial institutions to prioritize investments involving responsible business conduct in conflict affected regions was also raised as an important topic from the report. Further work to strengthen the monitoring frameworks concerning human rights impacts in trade and investment agreements was agreed, as necessary. The Human Rights Council has already focused some of its

work on export credit and the UN Working Group is working on bringing in the role of investors to the fore in their new project on 'UN Guiding Principles for the next decade'.

It was welcomed that the report adopts a gender lens that isn't limited to sexual and gender—based violence. Women (including girls) experience business-related human rights abuses in unique ways and are often affected disproportionately. Women also experience structural discrimination and additional barriers in seeking access to effective remedies for business-related human rights abuses. The report usefully builds upon the UN Working Group's previous thematic report on the [Gender dimension of the Guiding Principles on Business and Human Rights](#), which was presented during the 41st session of the Human Rights Council on 26 June 2019.

Discussants were keen to emphasize one major blind spot in the report— **the defence and policing sector**. Indeed, the report covers business activities caught up in conflict or post-conflict – whether by accident or not – but not those inextricably bound up with conflict. These businesses are often not merely provisioning military goods and services, but often have deep, enduring contractual links with parties to the conflict. In both sectors there is also the question of research and production of intrinsically abusive and inhumane equipment – which the report touches on only when speaking of lethal autonomous weapons.

The UN Working Group flagged that they take an interest in this discussion – and felt that a separate project or guidance note could be considered. They also noted that while many of the discussion on 'conflict and post conflict' settings led them to discussing governance gaps in the so called 'global south' – the discussion on defence, policing but also the tech industry (the latter is covered in the report) provides an interesting opportunity to discuss governance gaps in the north given that is where main arms exporters are.

While not explicitly raised in the context of the defence sector, many points made in the report resonate with these industries including investment incentive and the need for conflict sensitivity.

As the conversation came to a close, the UN Working Group explained their call 'to consider an **international agreement** clarifying risks, prohibited activities and modes of liabilities with respect to business in conflict or other high-risk situations, such as clarifying the types of gross human rights abuses that are prohibited'. They developed this recommendation from John Ruggie's concluding report which made the point that there is ambiguity about how international humanitarian law (IHL) and international criminal law applies to legal persons i.e. how we use it to hold companies accountable. There is a narrowly based discussion focused on gross human rights abuses and international crimes and how they should be transposed to business entities that the UN Working Group wish to look at further.

While the UN Working Group didn't want to outline a definite form or target audience for their recommended "**multilateral and multi-stakeholder forum** to share existing practices in the context of conflict and peacebuilding" they did want this to be a call for joint action – giving the development of an international code of conduct for private military and security companies (PMSCs) as a positive example of a multi-stakeholder forum working in practice.

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The discussion finished by emphasizing that this was only one milestone in what remains a long road to implement the practical measures that States and business enterprises should take to prevent and address business-related human rights abuse in conflict and post-conflict contexts; and continue clarifying areas warranting further attention.

**The UN Working Group Members as well as co-organizers of the event expressed a keen interest in continuing the discussion and an inclusive collaboration to drive this agenda forward.**

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## WELCOME & MODERATION

- **Felix Kirchmeier**, Executive Director, Geneva Human Rights Platform & Manager of Policy Studies, Geneva Academy
- **Ira Gibson**, Program Officer Human Rights and Development, Friedrich-Ebert-Stiftung, Geneva Office
- **Florence Foster**, Representative, Peace and Disarmament, Quaker United Nations Office in Geneva

## REPORT PRESENTATION & DISCUSSANTS

- **Anita Ramasastry**, Project Lead and Chair, UN Working Group on Business and Human Rights
- **Gerald Pachoud**, Project Advisor, UN Working Group on Business and Human Rights
- **Hannah Peters**, Researcher, Swedwatch
- **Patrick Wilken**, Arms Control and Human Rights Researcher, Amnesty International