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The need for corporate human rights risk management in fragile contexts

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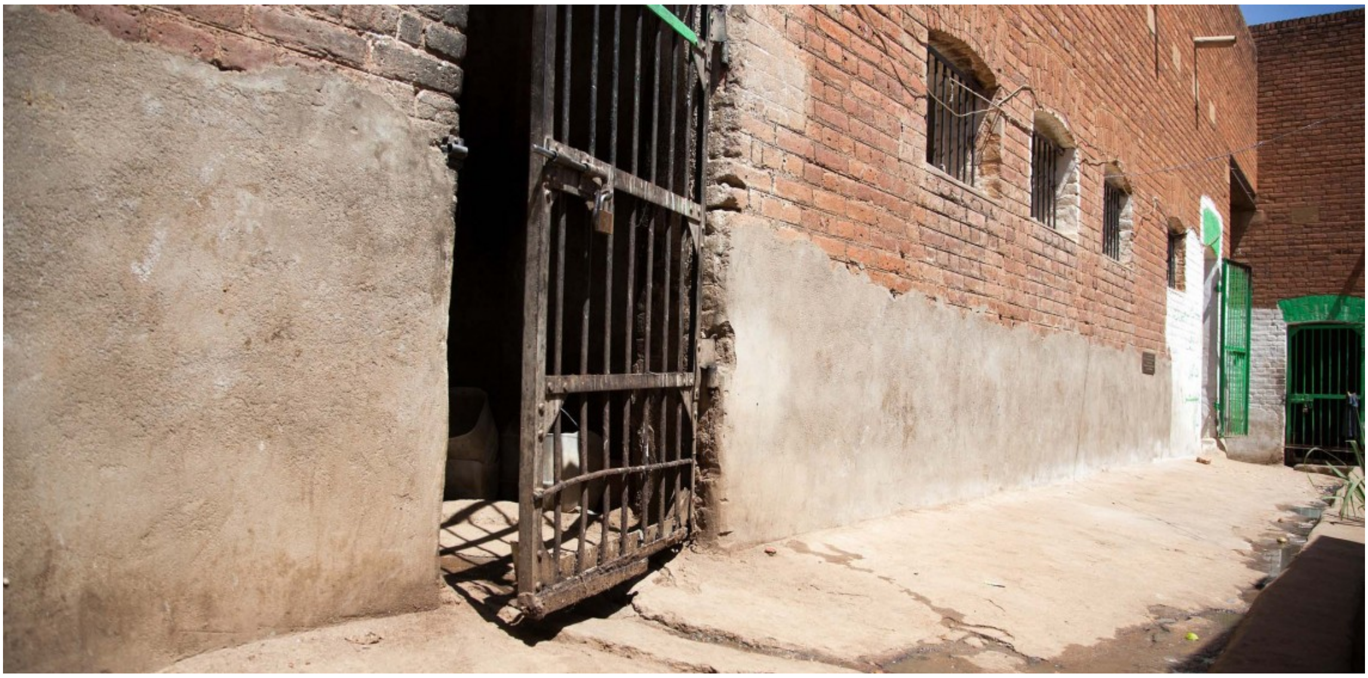


Companies that operate in or are connected to fragile contexts – and the financiers that back tem- need to have a strong understanding of the risks to people that those companies' operations may pose. They need to conduct due diligence to manage those risks in line with the leading international standards.

This article is an excerpt from Issue 27 : Vulnerabilities and crise

All businesses may be involved in harm to people – in other words, in negative impacts on their human rights. But some of the most acute risks to people connected to business activities arise in fragile contexts. Fragile contexts may be least developed countries, but they are not always so. Generally speaking, heightened risks to human rights tend to occur in places where rule of law is weak, legal as well as informal discrimination against particular groups in society is widespread, there is no or limited recourse to effective state-supported remedy, and where raising your voice to complain may lead to swift repression or even amount to a crime.

For companies that operate directly in such contexts, and also for the many thousands of companies whose value chains may be linked to such contexts[1], these risks need to be identified and acted on as part of how business gets done, not as an afterthought.

Integrating a human rights lens into environmental and social risk management

Traditionally, many companies understood risk management as an exercise purely in managing risk to the business itself. As awareness of environmental and social risks of business operations has grown, companies have increasingly sought to manage those risks also, though often with a tendency to focus on the risks that are largely under their control, such as labor conditions inside the four walls of the company's own facility, or the amount of effluent the company's plant releases into local waterways.

When it comes to the most acute social impacts – those that amount to human rights harms – companies need to ensure that they are focusing on the greatest risks to people wherever they are occurring, in their own operations or in their value chain. This can mean prioritizing some of the most acute and challenging problems for attention, whether at the furthest reaches of a company's supply chain (for example, impacts connected to the extraction of conflict minerals), or in the most complex contexts where government action creates very significant risks to human rights.

In the international development finance context, the key standard for private sector investment is the International Finance Corporation's Environmental and Social Performance Standards. In fragile and other high-risk contexts, it is clear that implementation of the Performance Standards already requires heightened attention and greater effort.

But even with the most robust implementation, there are important lessons that human rights due diligence can teach us when it comes to managing risks to people in such complex environments.

> *When it comes to the most acute social impacts […] companies need to ensure that they are focusing on the greatest risks to people.*

The Costs of Company-Community Conflict in the Extractive Sector[2]

While human rights risks are not always the root cause of a financial risk for the company, issues that started as "non-financial risks" can most definitely translate into hard costs.

Take, for example, findings from a 2014 study by Harvard Kennedy School, Shift and the University of Queensland looking at the costs of conflict with communities in the extractives sector. The study found real financial costs associated with conflicts between communities and companies – conflicts with a basis in human rights harms.

- **The most frequent costs** were those arising from lost productivity due to temporary shutdowns or delay of operations – up to US$27 million per week in Net Present Value terms in the case of a world-class mining project.
- **The greatest costs** were the opportunity costs in terms of the lost value linked to future projects, expansion plans, or sales that did not go ahead.
- **The costs most often overlooked** by companies were indirect costs resulting from staff time being diverted to managing conflict – particularly senior management time, including in some cases that of the CEO.

Conducting human rights due diligence in high-risk contexts

> *The Guiding Principles are the global standard on business responsibility for human rights*

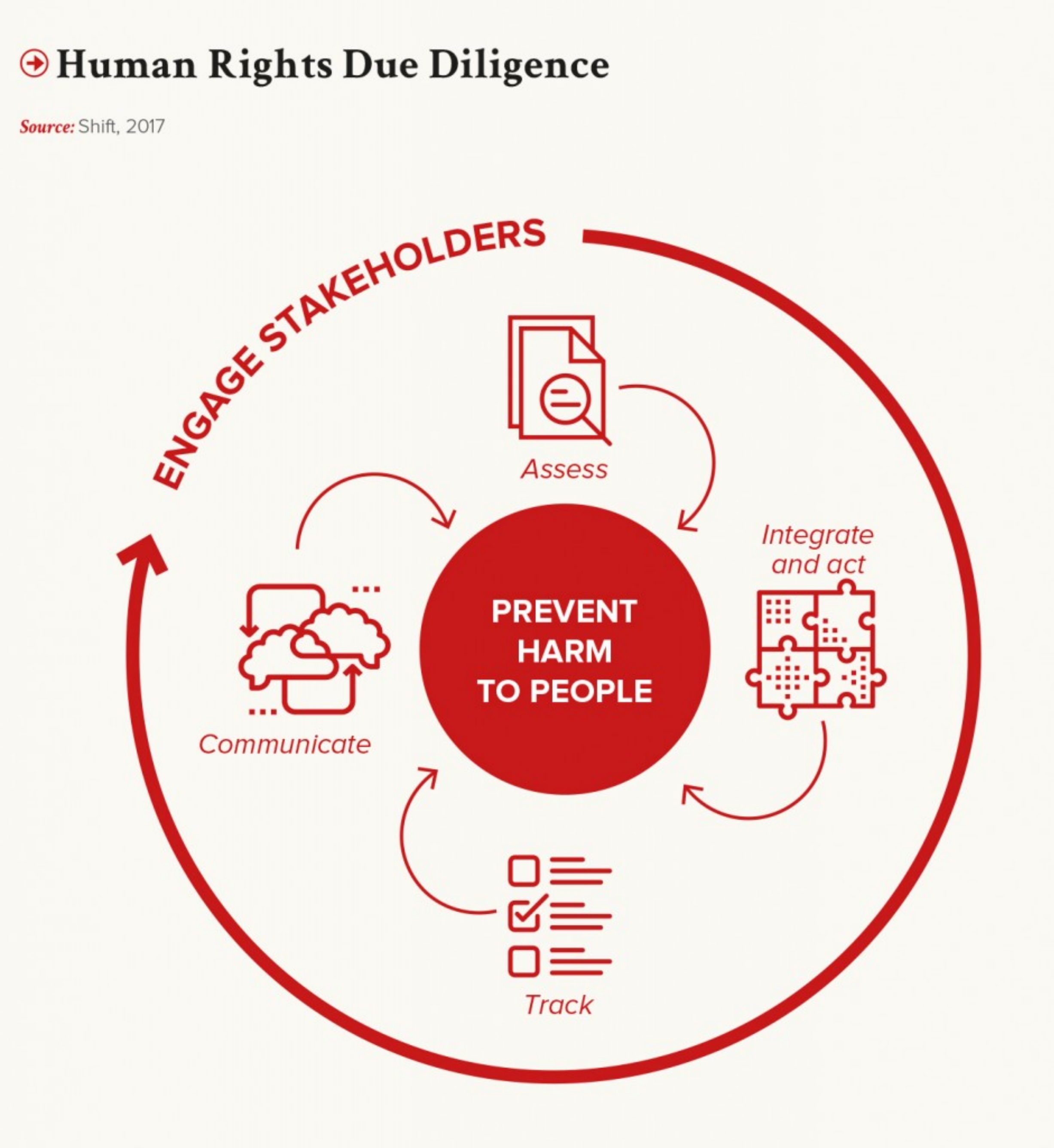
Human rights due diligence is defined in the UN Guiding Principles on Business and Human Rights, which were unanimously endorsed by the UN Human Rights Council in 2011.3 The Guiding Principles4 are the global standard on business responsibility for human rights and have been embraced by business, government, civil society, investors and other stakeholders around the world. They are reflected in other international standards on responsible business conduct, such as the OECD Guidelines on Multinational Enterprises.

> *Applying a human rights lens to risk management means testing the robustness of a company's (or financier's) existing environmental and social due diligence*

There is extensive guidance for companies about how to implement the UN Guiding Principles , including in high-risk circumstances 5. While we're not going to repeat that in-depth guidance, we can distill key elements of it here. Applying a human rights lens to risk management means testing the robustness of a company's (or financier's) existing environmental and social due diligence in three primary ways:

- Expand the scope of due diligence: Does the scope include the activities of other actors connected to the business's operations (i.e., its business relationships, including joint venture partners, suppliers at every tier of the supply chain, or the government where a company has been granted access to land by the government or relies on public security forces to protect its assets) that could be generating significant risks to people (assessed using internationally recognized human rights standards)?
- Prioritize on the basis of severity: Does the due diligence prioritize which risks to address first based on the severity of risk to people, not just risk to the business alone? This means ensuring that risk identification is informed by the perspectives of those who are or could be affected by the business and takes account of where impacts may occur on those who are the most vulnerable.
- Identify opportunities to take action, including using leverage: Does the due diligence identify steps that a company should take to address the most severe risks and impacts that it is connected to using its existing leverage, if other actors are involved, to try to get them to change their behavior?6 This means understanding the operating context and what is likely to make effective action challenging in practice, particularly where government action may be the primary source of human rights risks.

By bringing these aspects into the company's overall risk management system, companies help ensure they are prepared for where the most severe risks to people may occur in connection with their business and have developed realistic responses, including in fragile and other high-risk contexts.



Source : Shift, 2017

Extract from "IFC Performance Standards on Environmental and Social Sustainability, January 1, 2012"

The International Finance Corporation Performance Standards (IFC PS) are directed towards clients, providing guidance on how to identify risks and impacts, and are designed to help avoid, mitigate, and manage risks and impacts as a way of doing business in a sustainable way, including stakeholder engagement and disclosure obligations of the client in relation to project-level activities. Together, the eight IFC PS establish standards that the client is to meet throughout the life of an investment by IFC In addition to meeting the requirements under the IFC PS, clients must comply with applicable national law, including those laws implementing host country obligations under international law.

Footnotes:

1 The numbers of people directly affected by global supply chains is estimated to be around one billion. See "Making Economic Globalization Work for All: Achieving Socially Sustainable Supply Chains," John G. Ruggie, http://www.shiftproject.org/resources/viewpoints/ruggie-address-responsible-supply-chains-g20/.
2 See "UN Guiding Principles," Shift, http://www.shiftproject.org/un-guiding-principles/.
3 For example, see "Doing Business With Respect for Human Rights," Oxfam, Shift, UN Global Compact Netherlands, https://www.businessrespecthumanrights.org/.
4 For example, see "Human Rights Due Diligence in High Risk Circumstances," http://www.shiftproject.org/resources/publications/human-rights-due-diligence-high-risk-circumstances/.
5 This text is drawn from "ESG Toolkit for Fund Managers – Human Rights Briefing Note," authored by Shift and published by UK Development Finance Institution CDC, http://toolkit.cdcgroup.com/e-and-s-briefing-notes/human-rights.
6 See "Costs of Company-Community Conflict in the Extractive Sector," Rachel Davis and Daniel Franks, http://www.shiftproject.org/resources/publications/costs-company-community-conflict-extractive-sector/