



Chapter 3.4 Mining and Conflict-Affected or High-Risk Areas

BACKGROUND

Mining projects may take place in areas where there are existing or potential conflicts or socio-political instability that can adversely affect the project and local stakeholders. In some cases, conflict may be external to the company's operation, and in other cases conflict may be caused, exacerbated or supported by a company's activities or presence in an area.

"Companies and their investors are paying increased attention to the challenges and opportunities of doing business in conflict-affected and high-risk areas. These areas differ significantly from more stable operating environments and require companies and investors to take into consideration additional factors."¹⁴³

Developing suitable responses when operating in or sourcing minerals from conflict-affected or high-risk areas is challenging, but guidance exists to assist companies in identifying, assessing and mitigating risks and impacts associated with operating in those areas. The most widely accepted framework is the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High Risk Areas.¹⁴⁴

Such guidance is increasingly being used as a means of cultivating transparent mineral supply chains and corporate engagement in the mineral sector, with a view to enabling countries to benefit from their mineral resources and preventing the extraction and trade of minerals from becoming a source of conflict, human rights abuses, and insecurity.

OBJECTIVES/INTENT OF THIS CHAPTER

To prevent contribution to conflict or the perpetration of serious human rights abuses in conflict-affected or high-risk areas.

TERMS USED IN THIS CHAPTER

Affected Community ■ Business Relationships ■ Certification Body ■ Collaboration ■ Competent Professionals ■ Confidential Business Information ■ Conflict-Affected or High-Risk Area ■ Conflict Risk ■ Consultation ■ Contractor ■ Corporate Owner ■ Existing Mine ■ Grievance ■ Grievance Mechanism ■ Human Rights Defender ■ Human Rights Risks ■ Mining Project ■ Mining-Related Activities ■ Mitigation ■ New Mine ■ Operating Company ■ Remediation/Remedy ■ Serious Human Rights Abuses ■ Stakeholder ■ Worker ■ Vulnerable Group ■

These terms appear in the text with a dashed underline. For definitions see the Glossary of Terms at the end of the document.

¹⁴³ UN Global Compact and PRI (2010). They elaborate that "The following conditions often prevail in conflict-affected and high-risk areas: human rights violations; presence of an illegitimate or unrepresentative government; lack of equal economic and social opportunity; systematic discrimination against parts of the population; lack of political participation; poor management of revenues, including from natural resources; endemic corruption; and chronic poverty with associated heightened risks and responsibilities." (UN Global Compact and PRI. 2010. *Guidance on Responsible Business in Conflict-Affected and High Risk Areas: A Resource for Companies and Investors*. https://www.unglobalcompact.org/docs/issues_doc/Peace_and_Business/Guidance_RB.pdf)

¹⁴⁴ Organisation for Economic Cooperation and Development (OECD). 2016. OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High Risk Areas. (3rd Ed.) <https://mneguidelines.oecd.org/mining.htm>

SCOPE OF APPLICATION

RELEVANCE: All mines applying for IRMA certification are expected to have undertaken conflict screening (criterion 3.4.1) to determine if they are in a conflict-affected or high-risk area. The due diligence requirements that follow 3.4.1 are relevant for mines that are proposed or located in conflict-affected or high-risk areas, as well as mines that have product that is transported through conflict-affected or high-risk areas (if the material is in the custody or ownership of the operating company).¹⁴⁵

NEW VS. EXISTING MINES: New mines are expected to undertake conflict screening, and any required due diligence, as early as possible during the mining project investment phase.

Existing mines will not be expected to have carried out conflict screening prior to project investment. They will, however, be required to undertake screening, and any other required due diligence, prior to applying for IRMA certification.

Mining and Conflict-Affected or High-Risk Area Requirements

3.4.1. Conflict-Affected and High-Risk Area Screening

3.4.1.1. The operating company shall conduct a screening analysis, based on evidence from credible sources,¹⁴⁶ to determine whether or not the mining project is located in and/or sources minerals from a conflict-affected or high-risk area.¹⁴⁷

3.4.1.2. If a determination is made that the mining project is located in a conflicted-affected or high-risk area or it sources minerals from such areas, then the operating company shall undertake the additional due diligence steps outlined in the remainder of this chapter.

3.4.1.3. If a determination is made that the project is not located in a conflicted-affected or high-risk area, and no minerals are sourced from those areas, then conflict-related risks shall be monitored at a level commensurate with the potential that the project area may become a conflict-affected or high-risk area and/or that minerals from such areas may enter the mine's supply chain. If new risks emerge or previously identified risks intensify, screening shall take place to determine if risks are significant enough to warrant undertaking the additional due diligence steps in the remainder of this chapter.

3.4.2. Company Management Systems

3.4.2.1. When operating in or sourcing minerals from a conflict-affected or high-risk area, the operating company shall not knowingly or intentionally cause, contribute to or be linked to conflict or the infringement

¹⁴⁵ This is based on a similar requirement found in the World Gold Council's Conflict-Free Gold Standard. A2.2. Available at: www.gold.org/gold-mining/responsible-mining/conflict-free

¹⁴⁶ "Credible sources" may include reports and other information (e.g., maps, statements) from governments, international organizations, NGOs, industry, media, United Nations or others (e.g., ethical pension funds) relating to mineral extraction, and its impact on conflict, human rights or environmental harm in the country of potential origin, as well as criteria and indicators of conflict-affected or high-risk areas developed through multi-stakeholder initiatives. Links to credible sources will be provided in Guidance.

¹⁴⁷ Ideally, this should take place early in the project investment phase. However, for new and existing mines entering the IRMA system, the most important thing is that screening does take place, and if it demonstrates that a mining project is located in a conflict-affected or high-risk area, that subsequent due diligence takes place.

of human rights by any party, or knowingly provide direct or indirect support¹⁴⁸ to non-state armed groups or their affiliates, public security forces, or private security forces who:

- a. Illegally control mine sites, transportation routes and upstream actors in the supply chain;
- b. Illegally tax or extort money or minerals at point of access to mine sites, along transportation routes or at points where minerals are traded; or
- c. Illegally tax or extort intermediaries, export companies or international traders.

3.4.2.2. When operating in a conflict-affected or high-risk area, the operating company shall:

- a. Adopt and communicate to the public and stakeholders a commitment that when operating in a conflict-affected or high-risk area the operating company will not knowingly or intentionally cause, contribute to or be linked to conflict or the infringement of human rights by any party;¹⁴⁹
- b. Maintain documentation on: the quantity and dates of mineral extraction; quantity and dates of minerals obtained from other sources (e.g., from ASM); locations where minerals are consolidated, traded or processed; all mining-related taxes, fees, royalties or other payments made to governmental officials for the purposes of extraction, trade, transport and export of minerals; all taxes and other payments made to public or private security forces or other armed groups; identification of all actors in the upstream supply chain; and transportation routes.¹⁵⁰ This information shall be made available to downstream purchasers and auditors and to any institutionalized mechanism, regional or global, with the mandate to collect and process information on minerals from conflict-affected and high-risk areas;¹⁵¹
- c. Assign authority and responsibility to senior staff with the necessary competence, knowledge and experience to oversee the conflict due diligence processes; and
- d. Ensure that stakeholders have access to and are informed about a mechanism to raise conflict-related concerns or grievances.¹⁵²

3.4.3. Conflict Risk Assessment

3.4.3.1. The operating company shall assess the risks to the company, workers and communities associated with operating in or sourcing minerals from the conflict-affected or high-risk area. Assessments shall include, at minimum:

¹⁴⁸ “Direct or indirect support” includes, but is not limited to, procuring minerals from, making payments to or otherwise providing logistical assistance or equipment to non-state armed groups or public or private security forces; it does not include legally required forms of support, including legal taxes, fees, and/or royalties that companies pay to the government of a country in which they operate. (OECD. 2016. OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High Risk Areas. (3rd Ed.) <https://mneguidelines.oecd.org/mining.htm>)

¹⁴⁹ The commitment may be integrated into an existing policy, such as a human rights policy, or be a public statement regarding operations in conflict-affected areas. Additionally, the operating company may develop its own policy, or adopt a corporate owner’s policy as long as the operating company clearly communicates its commitment to abide by the corporate-level policy.

¹⁵⁰ Documentation for some of these items is required in IRMA Chapter 1.5 (e.g., quantities of minerals produced; mining-related taxes, fees, royalties and other payments made to governments). See requirements 1.5.1.2 and 1.5.2.2. Documentation on those particular items does not need to be provided to auditors for the purposes of this chapter if the mine site has already been verified as meeting the relevant requirements of Chapter 1.5.

¹⁵¹ The company may exclude information that compromises the safety of any individual or is legitimate confidential business information. Justification shall be provided for information that is omitted.

¹⁵² The operational-level grievance mechanism developed as per Chapter 1.4 may be used as the mechanism to receive all types of concerns or complaints, including conflict-related grievances, or a separate mechanism may be created to handle only conflict-related complaints and grievances. If a separate mechanism is developed, it shall be done in a manner consistent with Chapter 1.4.

- a. Analysis of structural, root and proximate factors in the current conflict, and potential triggers of conflict in the area of operation;¹⁵³
- b. Review of the factual circumstances of the operating company's mineral extraction, transport, and, if relevant, mineral sourcing and/or processing;¹⁵⁴ and
- c. Analysis of the risk that any of the company's activities may lead to the direct or indirect infringement of human rights, support of armed groups or otherwise contribute to conflict.

3.4.3.2. Assessments shall follow a recognized risk assessment methodology,¹⁵⁵ and be carried out and documented by competent professionals.

3.4.3.3. Assessments shall be based on credible evidence including on-the-ground research, expert advice, and information from consultations with relevant stakeholders, including men, women, children (or their representatives) and other vulnerable groups.¹⁵⁶

3.4.3.4. Conflict risk assessments shall be updated at minimum, on an annual basis, and more often if necessitated by the situation.

3.4.4. Conflict Risk Management

3.4.4.1. The operating company shall develop and implement a risk management plan that includes actions to be taken to prevent or mitigate risks identified through the risk assessment process.

3.4.4.2. The operating company shall collaborate with relevant stakeholders to develop culturally appropriate strategies to prevent or mitigate risks that are relevant to them; to develop performance objectives, timelines and indicators to measure the effectiveness of the risk management strategies; and to update or revise its prevention and mitigation strategies as needed.¹⁵⁷

¹⁵³ Structural/root factors are long-term, deep-rooted factors underlying conflict; proximate/intermediate factors are visible, recent manifestations of the conflict, and factors; and triggers are actions that contribute to further escalation of the conflict. For more information on structural, root and proximate causes, as well as potential triggers of conflict, see: UN Development Group. 2016. Conducting a Conflict and Development Analysis. pp. 59-64. https://undg.org/wp-content/uploads/2016/10/UNDP_CDA-Report_v1.3-final-opt-low.pdf

¹⁵⁴ This requirement comes from OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High Risk Areas. For more details on factual circumstances see, for example, p. 82 of OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High Risk Areas. 3rd Ed. <https://mneguidelines.oecd.org/mining.htm>

Mineral sourcing refers to situations where the operating company purchases ore or mined materials from other mines, and processes it at the mine site. These materials may come from other large-scale mines or artisanal and small-scale mining (ASM) operations (See also Chapter 3.6).

¹⁵⁵ Risk assessments typically include: establishment of scope; identification of risks; assessment of risks; development of risk treatment and mitigation measures; monitoring and revision; as well as stakeholder engagement and communication requirements.

¹⁵⁶ "credible evidence" may include reports and other information (e.g., maps, statements) relating to mineral extraction, and its impact on conflict, human rights or environmental harm. Sources of evidence would be considered credible if they are trusted and/or referred to by a range of stakeholders, including competent professional and experts who work on human rights and/or conflict-affected areas. Such sources may come from governments, international organizations, NGOs, industry, media, United Nations, academics or others.

"expert advice" may involve drawing on expertise and cross-functional consultation within the company, but also consulting externally with credible independent experts, including from governments, civil society (e.g., human rights defenders), national human rights institutions and relevant multi-stakeholder initiatives. (See, e.g., UN Guiding Principles on Business and Human Rights, Commentary for Principle 23. http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf)

"Relevant stakeholders" may include local government or community leaders; civil society organizations; other companies operating in the area; or independent experts with local knowledge and expertise. Special effort should be made to include women, children or their representatives, and other groups who may be particularly vulnerable to impacts from security arrangements (e.g., this might include ASM operators, human rights defenders, and youth).

¹⁵⁷ For this requirement, "relevant stakeholders," at minimum, should include those who have the potential to be directly affected (either actual individuals or their representatives) by the risks identified by the company. And "culturally appropriate" strategies would be those that are

3.4.4.3. If risks to human rights are identified in the assessment, the operating company shall adhere to the requirements in IRMA Chapter 1.3.¹⁵⁸

3.4.5. Monitoring

3.4.5.1. The operating company shall implement and monitor the effectiveness of its risk management plan as per the performance objectives, timelines and indicators developed with stakeholders.

3.4.5.2. If through monitoring or some other means it is discovered that the operating company has unknowingly or unintentionally been complicit in armed conflict or serious human rights abuses in conflict-affected or high-risk areas, the operating company shall immediately cease or change the offending action, mitigate or remediate the impact, and carry out external monitoring of its due diligence activities as per as per IRMA Chapter 1.3.¹⁵⁹

3.4.6. Reporting

3.4.6.1. The findings of conflict risk assessments, risk management plans and monitoring shall be reported to senior management of the operating company; and stakeholders, contractors, mine workers and other employees shall be informed of findings that are relevant to them.

3.4.6.2. On an annual basis, where the operating company is operating in or sourcing minerals from a conflict-affected or high-risk area, the company or its corporate owner shall publicly report on due diligence undertaken to ensure that its actions are not supporting armed conflict or the infringement of human rights in those areas.¹⁶⁰

NOTES

The most widely recognized due diligence framework for minerals sourced from conflict zones is the *OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas* (OECD Guidance).¹⁶¹ The OECD Guidance formed the basis for many of the requirements in this chapter.

The risk of committing, contributing to or being linked to human rights violations is increased in conflict-affected and high-risk areas. Requirement 3.4.2.1 mentions that companies shall not infringe upon human rights, however, Chapter 1.3 is the primary chapter that addresses IRMA's expectations related to the unknowing or unintentional infringement of human rights. When mining projects are located in conflict-affected or high-risk areas, operating companies must ensure that risks to human rights are addressed as per Chapter 1.3 Human Rights Due Diligence.

If a company knowingly contributes to serious human rights abuses, whether in a conflict-affected area or not, IRMA, through its Policy on Association, may refuse certification, decertify a mine or end its association with a company. The IRMA Policy on Association will not be put into effect until after the IRMA Launch Phase. IRMA

aligned with the cultural norms of the affected communities. Stakeholders can help to define for the company what is considered culturally appropriate. (For more on culturally appropriate engagement, see IRMA Chapter 1.2).

¹⁵⁸ The risk of committing, contributing to or being linked to human rights violations is increased in conflict-affected and high-risk areas. When mining projects are located in conflict-affected or high-risk areas, operating companies must ensure that risks to human rights are addressed as per IRMA Chapter 1.3. The chapter requires steps to prevent, mitigate and remediate potential and actual human rights impacts.

¹⁵⁹ IRMA Chapter 1.3—Human Rights Due Diligence. (See specifically, requirements 1.3.3.3. and 1.3.4.2.).

¹⁶⁰ This report may be integrated into the reporting on human rights due diligence as per IRMA requirement 1.3.5.1.

¹⁶¹ OECD. 2016. OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High Risk Areas. (3rd Ed.) <https://mneguidelines.oecd.org/mining.htm>

welcomes comments on its draft Policy on Association, which is available on the IRMA website: www.responsiblemining.net.

IRMA reserves the right to delay certification audits for operations located in conflict-affected or high-risk areas if, through consultation with certification bodies, auditors and the operating company, IRMA or certification bodies determine that armed conflict in the vicinity of the mine makes it impossible for auditors to safely visit the operation.

CROSS REFERENCES TO OTHER CHAPTERS	
CHAPTER	ISSUES
1.2—Community and Stakeholder Engagement	All <u>stakeholder</u> engagement in Chapter 3.4 must conform with the requirements of Chapter 1.2. In particular, criterion 1.2.3 is important to ensure that affected <u>stakeholders</u> have the capacity to fully understand their rights and participate effectively in the assessment and development of <u>prevention/mitigation</u> plans, monitoring, and <u>remedies</u> for impacts on their safety and human rights in <u>conflict-affected or high-risk areas</u> . And 1.2.4 ensures that communications and information are in culturally appropriate formats and languages that are accessible and understandable to <u>affected communities and stakeholders</u> , and provided in a timely manner.
1.3—Human Rights Due Diligence	Information from human rights impact assessments may feed into the <u>conflict risk</u> assessment, and vice versa, and public reporting on conflict due diligence (i.e., requirement 3.4.6.3) may be integrated into the public reporting on human rights due diligence reporting, as per requirement 1.3.5.1, if human rights due diligence reporting is done on an annual basis. Strategies developed to prevent, <u>mitigate</u> and <u>remediate</u> potential or <u>actual human rights impacts</u> related to mining in conflict-affected areas must conform with the relevant requirements in Criteria 1.3.3. External monitoring as per requirement 1.3.4.2 shall occur if a company’s conflict-related due diligence fails to prevent it from unknowingly causing or contributing to armed conflict or <u>serious human rights abuses</u> .
1.4—Complaints and Grievance Mechanism and Access to Remedy	As mentioned in 3.4.2.1.d, the <u>operating company</u> shall ensure that <u>stakeholders</u> are informed of the existence of mechanisms for raising conflict-related concerns. The operational-level <u>grievance mechanism</u> developed as per Chapter 1.4 may serve this purpose. It may be deemed necessary, however, to create a separate mechanism or separate procedures for handling complaints from <u>stakeholders</u> in conflict-affected areas. If a separate mechanism or procedures are created, they must be developed in a manner that aligns with Chapter 1.4.
1.5—Revenue and Payments Transparency	Information gathered to fulfill requirements in Chapter 3.4 (e.g., 3.4.2.1, 3.4.3.1) may feed into the reporting requirements in Chapter 1.5 (e.g., requirements 1.5.1.3 and 1.5.3.2) regarding payments to governments. Also, in <u>conflict-affected or high-risk areas</u> , ensuring strict adherence to anti-corruption requirements (1.5.5) is critical.
2.1—Environmental and Social Impact Assessment	Conflict screening may occur as part of the Environmental and Social Impact Assessment process.
3.1—Fair Labor and Terms of Work	Incidents of <u>child labor</u> and <u>forced labor</u> are addressed in Chapter 3.1. However, the potential for <u>child labor</u> and <u>forced labor</u> in conflict-affected areas should also be considered during the <u>conflict risk</u> assessment in Chapter 3.4.
3.5—Security Arrangements	Information related to security arrangements from <u>conflict risk</u> assessments (e.g., the use of private or public security forces at the mine site or along transportation routes, payments made to these entities, history of infringement of human rights by security forces, etc.) may feed into the security risk assessments, and vice versa.
3.6—Artisanal and Small-Scale Mining	If the mine is sourcing minerals from <u>ASM</u> entities located in conflict-affected areas, requirements in this chapter are also relevant in Chapter 3.6 (see requirement 3.6.4.2).