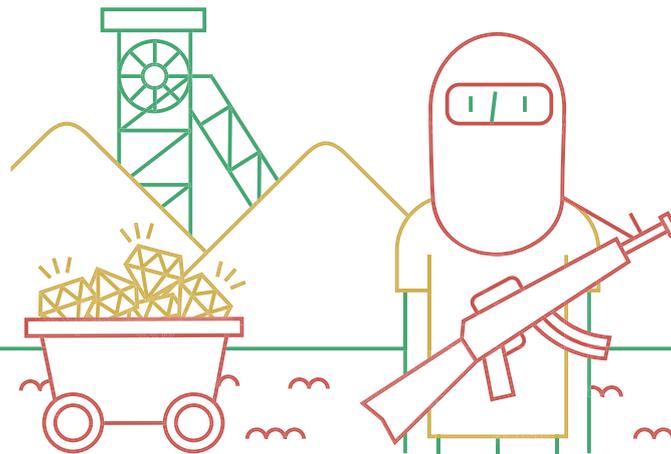


# CONFLICT MINERALS

Q&A to support companies' due diligence



## INTRODUCTION

Well-documented links between extractive activities and conflicts in some regions of the world have sparked concerns about companies' contribution to a vicious cycle of violence, instability, and human rights abuses. In this context, regulatory requirements for responsible business conduct are rising to ensure business respect for human rights and the environment. For adverse impacts related to minerals and metals from conflict-affected and high-risk areas (conflict minerals), an increasing number of laws are obliging companies to conduct due diligence.<sup>1</sup>

But what exactly are conflict minerals, how are companies linked to them and how are they expected to address the risks and impacts of these materials?

In the following, we answer the most important questions for companies looking to get their conflict minerals due diligence started in line with international standards.<sup>2</sup>

### Key Questions

For businesses striving to address the risk and impacts of conflict minerals and metals, the following questions will be answered:

- 1. What are typical human rights risks and impacts of mining?**
- 2. What are conflict minerals?**
- 3. Where is the risk of negative impacts greatest?**
- 4. How can I identify company links to conflict minerals?**
- 5. How can I address the risks and impacts of conflict minerals?**
- 6. What obligations arise from the Swiss conflict minerals regulation?**

**Action points for companies** with recommendations for responsible business conduct.

<sup>1</sup> US: Section 1502 of the Dodd-Frank Act of 2010/EU: Regulation (EU) 2017/821 of 2017/Switzerland: Counter-Proposal to the responsible business initiative of 2020.

<sup>2</sup> The UN Guiding Principles on Business and Human Rights (UNGPs) and OECD Guidelines for Multinational Enterprises.

1.



# WHAT ARE TYPICAL HUMAN RIGHTS RISKS AND IMPACTS OF MINING?

Chief Sustainability Officer

Mining is an inherently high-impact activity with potentially high risks for people and the environment. And the type of mining – whether it is industrial or artisanal – influences its social and environmental impacts. To identify the human rights consequences of the production of certain minerals and metals, companies need to gain a better understanding of the challenges and dynamics of the operations in their local context.

Anywhere in the world, mining is a high-impact activity with potentially high risks for people and the environment. This is due to the nature of extractive activities, which are typically land intensive and often require heavy machinery or potentially harmful chemicals to extract the materials.

Typical human rights risks and impacts of mining include:<sup>3</sup>

- Environmental impacts, including water and soil contamination and air pollution
- Impacts on local communities' rights, e.g. to housing, food, water, health
- Impacts on indigenous peoples' rights, e.g. right to free, prior and informed consent
- Corruption
- Conflicts, e.g. in case of conflicting interests of industrial projects and small-scale miners, conflicts over impacts of mining or profits from resource exploitation
- Conflict finance e.g. in case of extortion by illegal armed group

Not all mining occurs in the same way, and the type of mining influences the risks of social and environmental impacts. Generally, two types of mining are distinguished:

## Industrial and Large-Scale Mining (ILS)

Mining performed by public or private companies with advanced mechanization, often in the formal sector of the market. Companies usually have land or mining titles, operate with qualified staff, and have higher levels of occupational health and safety.

Typical human rights risks and impacts of ILS:<sup>4</sup>

- Land disputes, forced evictions or displacements of communities
- Loss of livelihood of artisanal miners or local communities, inflow of external workforce
- Behaviour of private or public security guards
- Mud- or landslides, dam failures
- Working conditions, labour rights (e.g. unions), forced or compulsory labour



<sup>3</sup> Spohr, M. (2016). *Human Rights Risks in Mining – A Baseline Study*. Max Planck Foundation for International Peace and the Rule of Law.

<sup>4</sup> Ibid.

### Artisanal and Small-Scale Mining (ASM)

Mining performed by individuals, groups, families, or co-operatives with minimal or no mechanization, often in the informal sector of the market.<sup>5</sup> It is often poverty-driven and occurs in less regulated contexts. Informal miners often lack land or mining titles and have low or no qualifications and low levels of occupational health and safety.

Typical human rights risks and impacts of ASM:

- Links to money laundering and the funding of illegal armed groups or organized crime
- Occupational health and safety of miners
- Use of prohibited methods e. g. mercury
- Child labour

To ensure responsible business conduct and identify the human rights risks and impacts of specific mining operations, companies need to gain a better understanding of the challenges and dynamics of the local context. This can be achieved through a combination of various sources of information and ongoing interaction with relevant stakeholders, including through:<sup>6</sup>

- Active **stakeholder engagement** and regular consultations of local communities and groups
- Development of an **operational-level grievance mechanism** with a conflict sensitive approach, which is understandable and easily accessible for the relevant stakeholders
- **Advice from embassies** and investment and trade-related functions that have relevant knowledge of the context, its inherent human rights risks, and recommendations on what responsible business conduct means in specific circumstances

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<sup>5</sup> Spohr, M. (2016). *Human Rights Risks in Mining – A Baseline Study*. Max Planck Foundation for International Peace and the Rule of Law, p. 82.

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<sup>6</sup> United Nations General Assembly (2020). Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises: *Business, human rights and conflict-affected regions: towards heightened action*. Seventy-fifth session. A/75/212. Lit. 106.



## WHAT ARE CONFLICT MINERALS?

Board Member

When sourced in a conflict-affected or high-risk context, all minerals and metals have the potential to cause or contribute to conflict financing and severe human rights abuses. Many materials have been well researched and documented for the human rights risks that are related to their production. Publicly available information helps companies to identify the materials that have higher risks of contributing to poverty, insecurity, and human rights abuses.

Almost all minerals and metals used today are products of mining. In addition to the general risks and impacts of mining that may occur in any context, the extraction of minerals located in high-risk or conflict-affected contexts poses additional risks for people and the environment, and therefore an additional challenge for responsible business conduct.

displaces local communities, when it is used to finance illegal armed groups, or is produced under precarious conditions that endanger the health and life of workers. To respect human rights and avoid contributing to conflict, it is key that companies make an extra effort to ensure responsible sourcing of minerals and metals from such areas.

### Conflict-Affected and High-Risk Areas (CAHRAs)

As defined in the OECD Due Diligence Guidance, “conflict-affected and high-risk areas are identified by the presence of armed conflict, widespread violence or other risks of harm to people.”<sup>7</sup> They are often characterised by widespread human rights abuses and violations of national or international law, and have the following main characteristics:

- **Armed conflict:** may take a variety of forms, e.g. conflict within a State (national) or between two or more States (international), wars of liberation, insurgencies, or civil wars
- **High-risk areas:** may include areas of political instability or repression, institutional weakness, insecurity, collapse of civil infrastructure and widespread violence

### Conflict minerals and responsible business conduct

Conflict minerals are minerals and metals from conflict-affected or high-risk areas. While the production of these materials can be an important source of income and development for producing countries, it can also cause poverty, insecurity, and human rights abuses – especially in sensitive contexts.<sup>8</sup> This may be the case when the production destroys the livelihood of or

### What minerals are conflict minerals?

Certain minerals and metals have been well researched and documented and are known for the human rights risks that are often related to their extraction. These include the four minerals and metals that are covered by existing conflict minerals regulations: **tin, tantalum, tungsten and gold** (also called 3TG). However, civil society organizations argue that a large number of minerals exploited worldwide are associated with conflict and systematic human rights abuses, and that the selection of the 3TG minerals in the regulations is arbitrary and too narrow.

A mapping exercise of violent conflict and mineral production in 2015 showed, for example, that **copper** was produced in 11 countries where violent conflicts associated with minerals occurred, **silver** in 7 countries, **iron ore** in 6 countries, **cement minerals** and **sulfur** in 5 countries.<sup>9</sup> **Cobalt** is also receiving increasing attention due to its negative impacts on peace and human rights in the Democratic Republic of Congo, where over two-thirds of the world production come from.<sup>10</sup> In various Central and West African countries, the mining and trade of so-called “blood” or conflict **diamonds** has financed violent wars and severe human abuses in the past.<sup>11</sup> Furthermore, a significant share of the global reserves of **rare earths** and many other minerals that

<sup>7</sup> OECD (2016). *OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas: Third Edition*. OECD Publishing, Paris. P. 13.

<sup>8</sup> *Ibid.*, P. 12.

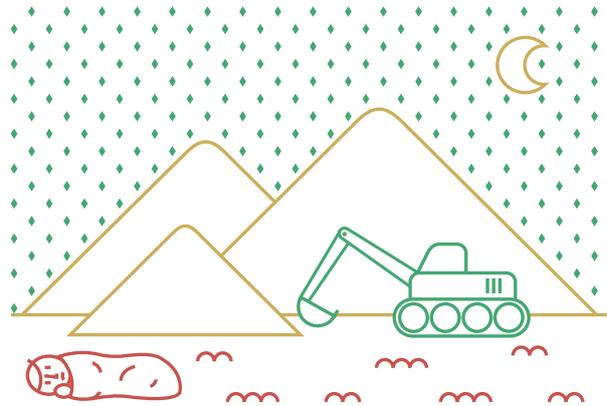
<sup>9</sup> SOMO (2015). *There is more than 3TG*. SOMO Paper January 2015.

<sup>10</sup> Baumann-Pauly, D. & Cremer Iyi, S. (2021, June 4th). *Cobalt must be included in Swiss responsible business legislation*. Swissinfo.ch.

<sup>11</sup> Armstrong, P. (2012, May 16th). *How diamonds fuel Africa's conflicts*. CNN.

are indispensable for green technologies and the transition to a low-carbon economy are located in states that are classified as (very) fragile and corrupt.<sup>12</sup>

When extracted and traded in a conflict-affected or high-risk context, all minerals and metals have the potential to cause or contribute to conflict financing and severe human rights abuses. Publicly available information helps companies identifying human rights risks linked to specific materials that are relevant for their business.<sup>13</sup>



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<sup>12</sup> International Institute for Sustainable Development (2018). *Green Conflict Minerals: The fuels of conflict in the transition to a low-carbon economy*. IISD Report.

<sup>13</sup> Sources include Business & Human Rights Resource Center, OHCHR or Human Rights Watch

3.



## WHERE IS THE RISK OF NEGATIVE IMPACTS GREATEST?

Chief Risk Officer

Contextual factors that are prevalent in some countries or regions can increase the risk of negative impacts of extractive activities. For example, high levels of corruption, state fragility, poverty, conflict and weak governance, make it more challenging to ensure responsible mining. To identify potential conflict minerals, it is thus key to trace back the supply chain and understand the context in which minerals and metals were sourced.

The extraction of minerals and metals is an inherently high-impact activity with significant risks for people and the environment. To minimize the potential negative impacts, it requires a responsible operation mode in any country it occurs. The presence of certain risk factors in a geographic area makes it more difficult to ensure responsible business conduct, and thus increases the likelihood that extractive activities negatively impact peace, stability, development, or human rights. Consequently, whether a mineral or metal is a

conflict mineral does not only depend on the type of material, but also on the operating context in which it is sourced.

The following table provides an overview of how some of the most important risk factors may exacerbate negative impacts of extractive activities, and suggests sources or international indices that provide country-level information about the prevalence of these factors.

Risk factor	Explanation	Index
Corruption	A high level of corruption makes it more likely that income generated from minerals and metals are used for personal gains instead of public services and development. It can make governments more prone to giving in to the preferences of companies instead of the justified concerns of citizens and local communities. Corruption also contributes to a lack of enforcement of the rules for social and environmental protection that are crucial for responsible mining.	Transparency International: <a href="#">Corruption Perceptions Index</a>
State Fragility	Based on a set of 12 conflict risk indicators in the areas of national cohesion and security, economic development and inequality, and political and social stability, the Fragile States Index assesses the vulnerability of states to collapse. <sup>14</sup> The more fragile a state is, the more likely its authorities lack the capacity to protect human rights and enforce regulations to ensure that extractive activities are conducted with respect for people and the environment.	Fund for Peace: <a href="#">Fragile States Index</a>

<sup>14</sup> The Fund for Peace (2017). *Fragile States Index Methodology*.

Poverty	Poverty increases people’s exposure to certain human rights violations, including child or forced labour, and increases their vulnerability when facing deteriorating conditions in their environment, e.g. due to soil degradation or resettlements. Poverty is also a driver for artisanal and small-scale mining, which often entails the risks of an informal activity and may lead to conflicts with formal mining companies.	UNDP: Multidimensional Poverty Index
Conflict	The presence of conflict increases the likelihood for severe human rights abuses, including by governmental actors or security forces that are protecting mining operations. In conflict-affected contexts, income from minerals and metals can be used to finance violence, e.g. when artisanal mines are controlled by illegal groups or when companies or miners are extorted. Moreover, as highlighted by the Heidelberg conflict barometer, in some conflicts natural resources have been identified as “conflict items” that are at the core of the dispute.	Heidelberg Institute for International Conflict Research: Heidelberg conflict barometer
Natural Resource Governance	The Resource Governance Index measures the quality of extractive sector governance in resource-producing countries around the world. It measures how well countries realize value from their resources, manage the revenues, and how the broader political and economic context affects resource governance. According to the Natural Resource Governance Institute, a lack of transparency and accountability in the extractives sector can mean that citizens do not see the benefits of their national resources, and poor governance can lead to corruption, environmental damage and even violence and conflict. <sup>15</sup>	Natural Resource Governance Institute: Natural Resource Governance Index

Table 1 focusright ltd.: risk factors for adverse impacts of extractive activities

Conflict minerals cause negative human rights impacts not mainly because of the properties of the minerals or metals themselves, but because of their high-impact extraction in sensitive contexts. While it is always recommended to conduct thorough due diligence for minerals and metals, additional measures are necessary to address the risks and impacts of extractive activities in high-risk contexts. To ensure responsible sourcing of minerals and metals, it is thus essential to trace back the supply chain and identify where and how the materials were mined and traded.



15 Natural Resource Governance Institute (n. d.). *The only international index dedicated to resource governance.* <https://resourcegovernanceindex.org/>



## HOW CAN I IDENTIFY COMPANY LINKS TO CONFLICT MINERALS?

Head of Production

Companies can be linked to conflict minerals through their own operations, business relationships or supply chain. The appropriate action a company should take depends on the type of link it has to the material as well as its leverage in addressing the impact. A high-level risk analysis can help the company identify its potential links. Mapping the relevant raw materials and the associated human rights risks in the (likely) production countries allow the company to identify and prioritize materials with the highest risk for negative human rights impacts.

### Are minerals and metals relevant for my company?

Almost all companies are somehow linked to minerals and metals, as their use is indispensable for most aspects of the economy and modern life. Depending on a company's industry and economic activity, however, it is linked to these materials in different ways. According to the UN Guiding Principles on Business and Human Rights (UNGPs), businesses' responsibility to respect human rights is two-fold:

- a) **Avoid causing or contributing to** adverse human impacts through their **own activities**, and address such impacts when they occur;
- b) **Prevent or mitigate** adverse human rights impacts that are directly **linked to** their operations, products or services by their **business relationships**, even if they have not contributed to those impacts.<sup>16</sup>

The appropriate action a company should take to address adverse impacts on human rights depends on the type of link it has to the impact as well as its leverage in addressing the impact by influencing the behavior of the actor that is causing harm.<sup>17</sup> To ensure responsible business conduct with regards to minerals and metals, each company should therefore identify how it is linked to these materials and adopt the measures that are appropriate for its specific circumstances.

Type of link	Examples of economic activities	Examples of industries	Type of measures
Own operations	Companies engaged in the exploration, mining, processing, and trading of minerals and metals	Extractive industry, commodity trading, etc.	Ensure responsible business conduct in own operations
Business relationships	Companies that have business relationships with companies that have minerals and metals in their own operations or value chain	Financial industry, institutional investors <sup>18</sup> , banks, etc.	Use leverage to influence behaviour of business partners
Value chain	Companies buying products or product components that are made of or contain minerals and metals	Consumer electronics, jewellery, machine, automotive, medical equipment, etc.	Ensure responsible sourcing practices and influence behaviour of suppliers

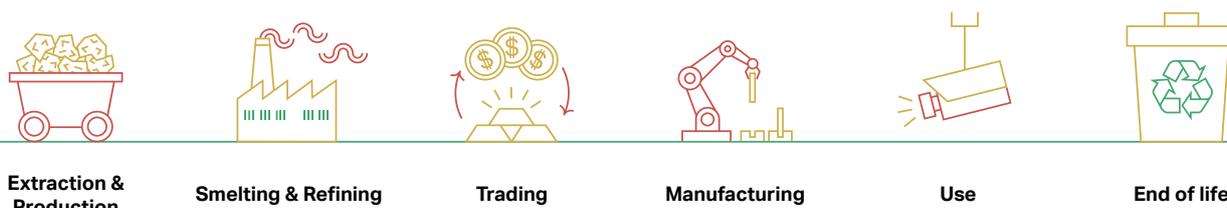
Table 2 focusright ltd.: types of company links to conflict minerals

<sup>16</sup> UNGPs, Nr.13.

<sup>17</sup> UNGPs, Nr. 19.

<sup>18</sup> See e.g. UNEPFI (2014). Human Rights Guidance Tool for the financial sector: Mining and metals.

## Activities at different stages of a mineral and metal value chain

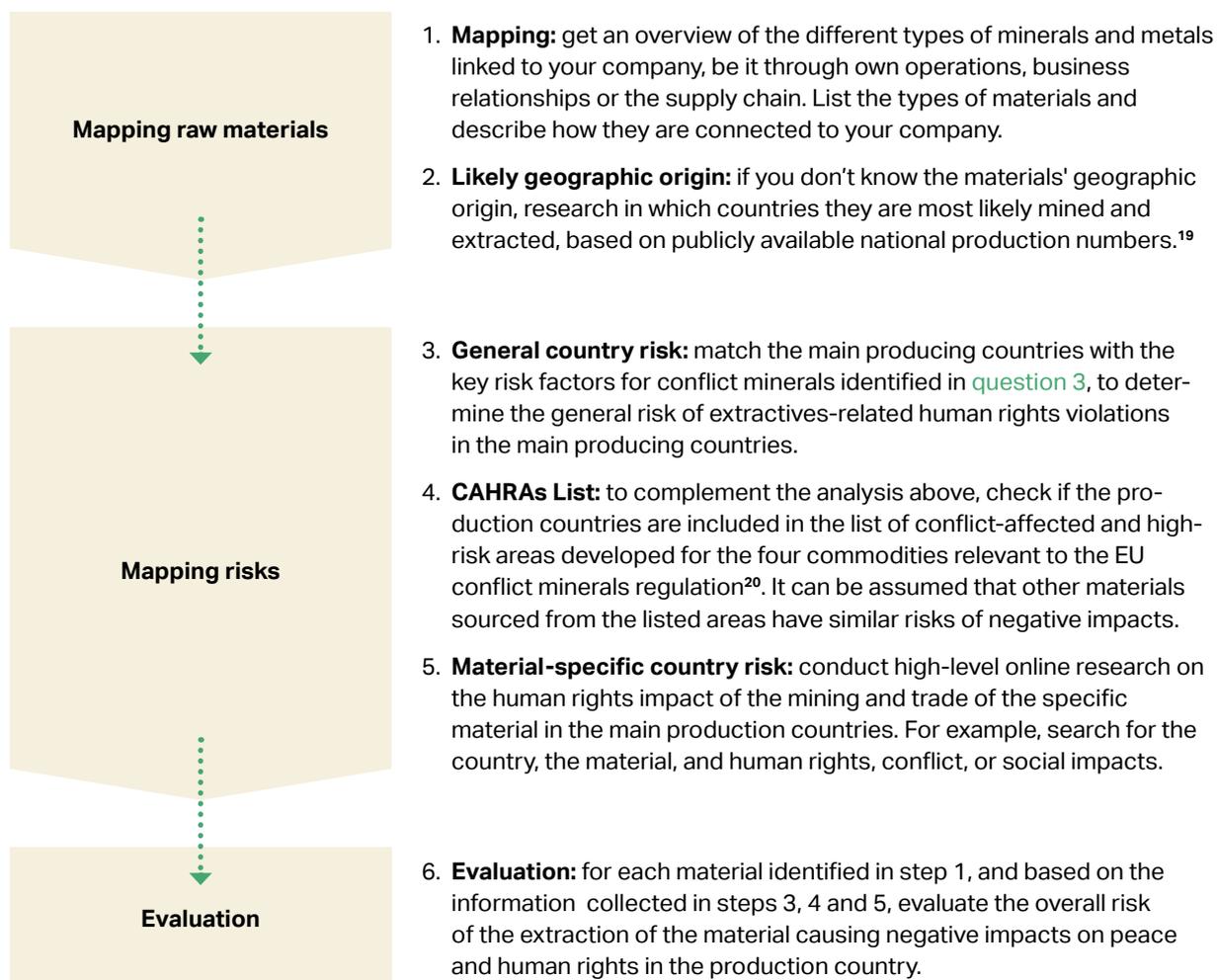


### Identifying company links to conflict minerals

Not every mineral or metal is a conflict mineral. Where information about the geographic origin and circumstances of the extraction and processing of the material is missing, companies can evaluate the general risk level based on assumptions derived from publicly avail-

able information. We propose the following process for a high-level analysis of whether the minerals and metals linked to your company may be sourced from conflict-affected and high-risk areas (CAHRAs):

### High-level analysis in six steps



<sup>19</sup> For example, the U.S. Geological Survey: *National Minerals Information Center – Mineral Commodity Summaries* provide key information about the world mine production and reserves of many minerals and metals.

<sup>20</sup> Indicative, non exhaustive list of conflict-affected and high-risk areas under Regulation (EU) 2017/821. Retrieved from [www.cahraslist.net/cahras](http://www.cahraslist.net/cahras)

**Prioritization:** if you have identified several minerals and metals that are potentially sourced from conflict-affected and high-risk areas, and it is not feasible to conduct a due diligence for all of them at once, start by prioritizing the materials with the highest risk for negative human rights impacts.

For example, if your company has products with components that are made of aluminium, which is produced from bauxite, a high-level analysis of whether the bauxite is sourced from conflict-affected and high-risk areas could look as follows:

<b>Analysis</b>	<b>Example: Aluminium/Bauxite</b>
1. Mapping	<ul style="list-style-type: none"> <li>• Material: aluminium/bauxite</li> <li>• Link to company: value chain, component of product A is made of aluminium</li> <li>• Sourcing information: sourced from supplier X based in country Y (who sources raw materials from country Z etc.)</li> </ul>
2. Likely geographic origin	<p>Top 3 production countries: bauxite production in 2019 in thousand metric dry tons<sup>21</sup> (and % of global production)</p> <ol style="list-style-type: none"> <li>1. Australia: 100,000 (27%)</li> <li>2. Guinea: 82'000 (22%)</li> <li>3. China: 75,000 (20%)</li> </ol>
3. General country risk	<p>E. g. for Guinea:</p> <ul style="list-style-type: none"> <li>• Corruption Perceptions Index 2020 – Score: 28<sup>22</sup> (high perceived corruption)</li> <li>• Fragile States Index 2021 – 97.4/120<sup>23</sup> (high fragility)</li> <li>• MPI – Population in multidimensional poverty<sup>24</sup> – 61.6% (2016)</li> <li>• Heidelberg Conflict Barometer 2020 – violent crisis</li> <li>• Natural Resource Governance Index - satisfactory (62/100)</li> </ul>
4. CAHRA List	Guinea: not included
5. Material-specific country risk	Online search on the impacts of bauxite mining in Guinea (examples): displacement of local communities and loss of livelihood <sup>25</sup> ; mining on indigenous peoples' land <sup>26</sup> , depletion of water reserves <sup>27</sup>
6. Evaluation	Bauxite from Guinea: very high risk for negative impacts

Table 3 focusright ltd.: high-level analysis of the human rights risks of aluminium/bauxite production

<sup>21</sup> U.S. Geological Survey (2020). *Mineral Commodity Summaries: Bauxite and Alumina*. January 2020.

<sup>22</sup> The lower the score, the higher is the perceived levels of public sector corruption according to the Index.

<sup>23</sup> The lower the score, the less fragile a State is according to the Index.

<sup>24</sup> United Nations Development Programme and Oxford Poverty and Human Development Initiative (2020). *Global Multidimensional Poverty Index 2020*. Table 1, p. 41–42.

<sup>25</sup> Human Rights Watch (2021). *Aluminium: The Car Industry's Blind Spot*.

<sup>26</sup> Doyle, C.M., Tugendhat H. & Halip R. (eds.) (2015). *Mining, the Aluminium Industry, and Indigenous Peoples: Enhancing Corporate Respect for Indigenous Peoples' Rights*. (AIPP, FPP, IUCN: Chiang Mai, Gloucestershire & Gland, 2015)

<sup>27</sup> Morse, I. (2020, August 6th). *How China warped the market for a vital clean energy ingredient*. Green Rocks.



## HOW CAN I ADDRESS THE RISKS AND IMPACTS OF CONFLICT MINERALS?

Head of Operations

To ensure responsible business conduct related to minerals and metals from conflict-affected and high-risk areas, it is necessary to conduct heightened due diligence. This includes a closer analysis of risks and impacts, stronger measures, and the incorporation of additional considerations. Moreover, in conflict-affected contexts, companies should take a conflict-sensitive approach. As a last resort, it might even be necessary to stop sourcing certain materials from certain areas to avoid being complicit in gross human rights violations.

### Implement human rights due diligence

To ensure responsible business conduct and respect for human rights, all companies are expected to implement human rights due diligence (HRDD): a management system with processes and policies that enable companies to proactively identify and address adverse human rights impacts. International standards, like the UNGPs or OECD Guidelines, outline key principles and requirements of how this should be done. The goal of HRDD is to avoid and manage negative impacts on human rights related to a company's own operations, value chain and business relationships.

### Heightened due diligence in high-risk areas

The UNGPs are based on the concept of proportionality: the higher the risk for negative human rights impacts, the more thorough a company's due diligence processes must be. To ensure responsible business conduct with regards to materials from high-risk and conflict-affected areas, companies are thus required to conduct heightened due diligence. This means that they should analyse their risks and impacts more closely and take stronger measures. Additional considerations that companies need to integrate in their HRDD are outlined by the UNGPs:<sup>28</sup>

- The "host" State may be unable or unwilling to protect human rights adequately due to a lack of resources or effective control. The company's responsibility to respect human rights applies independently of the State's capacity to protect and enforce them.
- Some operating environments, including conflict-affected areas, may increase the risks of companies being complicit in gross human rights abuses committed by other actors (e.g., by security forces, through extortion etc.).

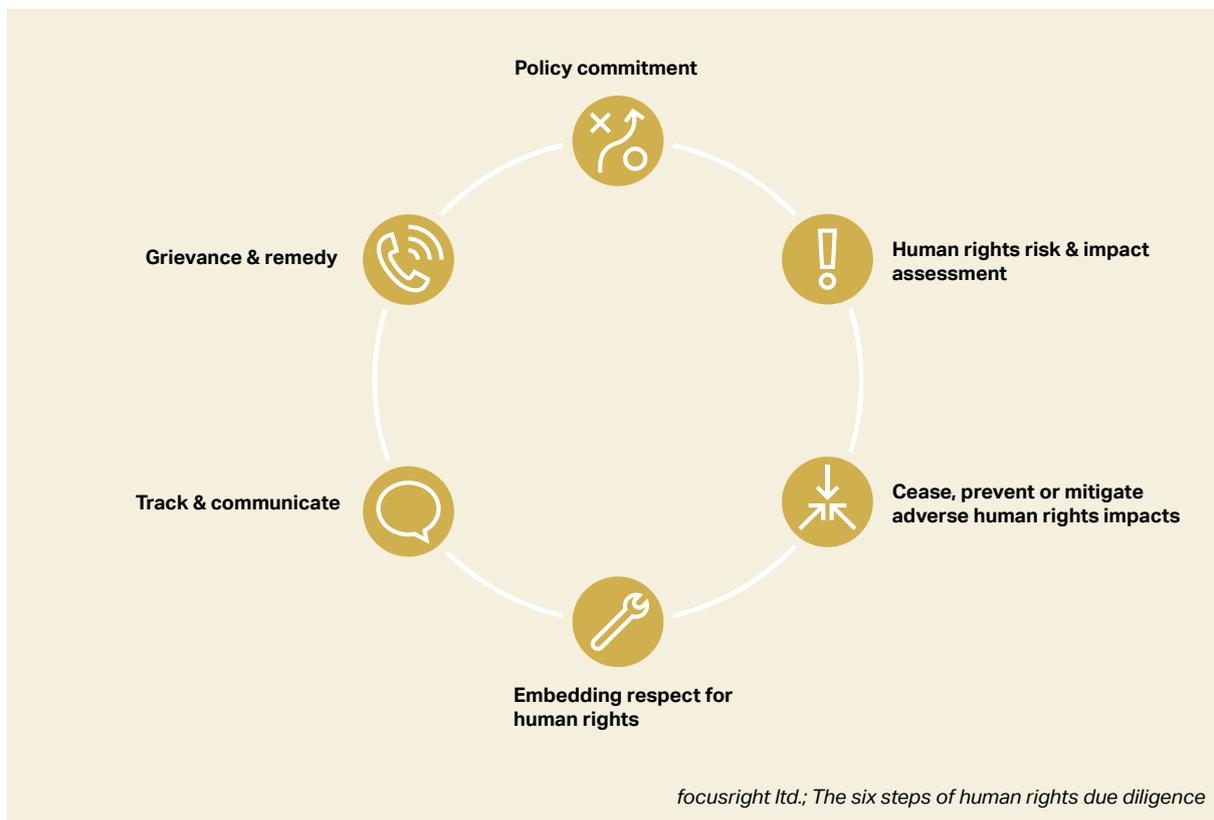
- Pay attention to human rights abuses that are especially prevalent during times of conflict, such as the risk of sexual and gender-based violence or the financing of illegal armed actors.
- Review whether the company policies, due diligence and control measures effectively address the heightened risks and strengthen the policies where necessary.
- Apply additional standards where necessary. For example, in situations of armed conflict, companies should respect the standards of international humanitarian law.<sup>29</sup> When relying on private or public security providers, consider implementing the Voluntary Principles on Security and Human Rights.<sup>30</sup>



<sup>29</sup> United Nations General Assembly (2020). Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises. *Business, human rights and conflict-affected regions: towards heightened action*. Seventy-fifth session. A/75/212. Lit. 10: "International humanitarian law (...) binds State and non-State actors, including businesses, as well as individual managers and staff of businesses whose activities are closely linked to an armed conflict."

<sup>30</sup> The Voluntary Principles on Security and Human Rights (n.d.). [www.voluntaryprinciples.org/the-principles/](http://www.voluntaryprinciples.org/the-principles/)

<sup>28</sup> UNGPs. Commentary to Principles 7, 12 and 23.



According to international standards, human rights due diligence encompasses the six steps shown above.<sup>31</sup>

### Take a conflict-sensitive approach

Businesses are not neutral actors in conflicts. Their actions and the impact of their operations will influence conflict dynamics, even when they act with best intentions and do not take sides. In a conflict context, even interventions that in other circumstances would be normal and respectful of human rights may fuel conflict. For example, the mere presence of public or private security forces to protect company operations from violence might affect the behaviour of local conflict parties and lead to an escalation of violence. For this reason, in a conflict-affected context, human rights due diligence needs to be complemented by a conflict-sensitive approach. This means that businesses need to thoroughly understand the two-way interaction between their activities and the context, and act to minimize negative impacts.<sup>32</sup>

According to the UN Working Group on Business and Human Rights, a conflict-sensitive approach to business encompasses three main steps:<sup>33</sup>

1. **Identify conflict root causes:** identify the root causes of tensions and potential triggers, which include contextual factors such as the characteristics of a country or region that can affect conflict, and the real and perceived grievances that can drive conflict.
2. **Map conflict actors:** map the main actors in the conflict and their motives, capacities and opportunities to inflict violence, which include affected stakeholders, parties to the conflict and “mobilizers” (people or institutions using grievances and resources to mobilize others, either for violence or for peaceful conflict resolution). Pay particular attention to human rights defenders peacefully advocating for human rights, and differentiate them from conflict parties.
3. **Identify own impacts:** identify and anticipate the ways in which the businesses’ own operations, products or services impact existing social tensions and relationships between the various groups, and/or create new tensions or conflicts.

<sup>31</sup> For more information on the different steps of human rights due diligence, refer to the focusright website:

[www.focusright.ch/en/human-rights-due-diligence](http://www.focusright.ch/en/human-rights-due-diligence)

<sup>32</sup> United Nations General Assembly (2020). Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises. *Business, human rights and conflict-affected regions: towards heightened action*. Seventy-fifth session. A/75/212. Lit. 41–43

<sup>33</sup> Ibid, lit.46–48.

### Practical guidance for businesses

The *OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas*<sup>34</sup> or International Alert's *Conflict-Sensitive Business Practice: Guidance for Extractive Industries*<sup>35</sup> provide in-depth guidance for businesses on how to implement a conflict sensitive approach in high-risk operating contexts. To ensure responsible business conduct, topic-specific guidance should be applied in addition to general due diligence standards, such as the UNGPs or the OECD Guidelines.

### Stop sourcing to avoid complicity

A key principle of doing business in high-risk contexts is that in cases where State actors are responsible for gross human rights abuses, foreign companies should not become complicit in the repression of the population or support for an oppressive regime. In certain circumstances, the only way to ensure business respect for human rights may be to stop sourcing minerals and metals from this area or find alternative materials elsewhere. The Danish Institute for Human Rights has developed a **decision map for companies** deciding whether to engage in a country or region with a high risk of human rights violations occurring.<sup>36</sup>

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<sup>34</sup> OECD (2016). *OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas: Third Edition*. OECD Publishing, Paris.

<sup>35</sup> International Alert (2005). *Conflict-Sensitive Business Practice: Guidance for Extractive Industries*.

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<sup>36</sup> Danish Institute for Human Rights (2010). *Decision Map: Doing Business in High-Risk Human Rights Environments*. Due Diligence Papers.



# WHAT OBLIGATIONS ARISE FROM THE SWISS CONFLICT MINERALS REGULATION?

Chief Compliance Officer

Conflict minerals regulations are per definition narrow and should therefore be understood as complementary to broader human rights due diligence. Complying with conflict minerals regulation does not lead to compliance with international standards, such as the UNGPs or the OECD Guidelines, or broader legislation on human rights due diligence. To fulfil stakeholder expectations, companies may need to conduct a full due diligence.

## What obligations arise from the Swiss conflict minerals regulation?

The due diligence requirements of the new Swiss conflict minerals regulation have been defined analogous to the requirements of EU Regulation 2017/821<sup>37</sup>. Companies and individuals in the scope of the regulation must implement a 5-step framework which is based on the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas (CAHRAs)<sup>38</sup>. The Swiss regulation requires companies to implement five main steps:

1. **Management system:** establish a management system with a supply chain policy for minerals and metals potentially sourced from CAHRAs, which includes a system to trace back the supply chain
2. **Risk assessment:** assess and evaluate the risks of negative consequences of minerals and metals potentially sourced from CAHRAs
3. **Risk management plan:** define a risk management plan and implement measures to minimize the identified risks
4. **Third-party audit:** annual audit of compliance with the due diligence requirements through an independent expert
5. **Annual report:** the highest management or executive organ publishes an annual report about the company's compliance with due diligence requirements

**Sanctions:** failure to comply with the conflict minerals reporting obligation may result in a fine of up to CHF 100'000.

**Entry into force:** the new due diligence requirements entered into force in 2022. After a one-year transitional period, companies in the scope of the regulation will have to implement the due diligence requirements for the first time during the 2023 financial year and publish their first report in 2024.

**Scope of application:** the scope of the Swiss conflict minerals due diligence regulation<sup>39</sup> has been defined analogous to the rules of EU Regulation 2017/821<sup>40</sup>. It applies to the following companies and activities:

- **Companies:** companies whose registered office, head office or principal place of business is in Switzerland (regardless of size or legal form)
- **Economic activities:** import to or processing in Switzerland
- **Materials:** minerals and metals containing tin, tantalum, tungsten or gold, (whether they are in the form of mineral ores, concentrates or processed metals) from conflict-affected and high-risk areas

### Exemptions:

- Importing or processing minerals and metals below annual quantity thresholds (specified in the appendix of the implementing regulation)
- Recycled metals (documentation required)
- Companies that implement equivalent international standards (e.g. EU Regulation 2017/821 and the OECD Due Diligence Guidance for Conflict Minerals)

<sup>37</sup> EU Regulation 2017/821 of the European Parliament and of the Council of 17 May 2017.

<sup>38</sup> OECD (2016). *OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas: Third Edition*. OECD Publishing, Paris.

<sup>39</sup> Indirekter Gegenvorschlag zur Volksinitiative «Für verantwortungsvolle Unternehmen – zum Schutz von Mensch und Umwelt») und Verordnung über Sorgfaltspflichten und Transparenz bezüglich Mineralien und Metallen aus Konfliktgebieten und Kinderarbeit (VSoTr).

<sup>40</sup> EU Regulation 2017/821 of the European Parliament and of the Council of 17 May 2017.

### Conflict minerals regulations vs. international standards

International standards on responsible business conduct take a different approach than the EU and Swiss conflict minerals regulations. They require companies to implement a broad due diligence, covering all human rights and their whole operations, value chain and business relationships. They do not limit due diligence to certain materials, topics or geographical areas. According to international standards, the identification of negative impacts and the prioritization of measures based on the severity of impacts is an integral part of due diligence and not a precondition for conducting it.

The following table gives an overview of some key differences between the Swiss conflict minerals regulation and international standards on responsible business conduct<sup>41</sup> applied to conflict minerals:

### Below international standards

As new regulations on mandatory human rights due diligence emerge, it is important to note that conflict minerals regulations take a narrow approach and are below international standards in various aspects. A company that complies with the conflict minerals regulations without implementing a full human rights due diligence may thus not be compliant with the relevant international standards, other due diligence legislation, or the expectations of its business partners and investors. As a consequence, conflict minerals due diligence should be regarded as complementary, not alternative to general human rights due diligence.

	<b>Swiss conflict minerals regulation</b>	<b>International standards on responsible business conduct</b>
Approach	Narrow due diligence	Broad due diligence
Personal scope	Companies that import or process certain minerals and metals above certain quantity thresholds	All companies, regardless of their size and operating quantity. The type and depth of due diligence conducted can vary with the company's characteristics.
Materials covered	Tin, tantalum, tungsten or gold	All materials
Geographical scope	Any conflict-affected and high-risk area around the world	All countries, as the analysis of the human rights risks of the production context is part of due diligence. Human rights violations can also occur in low-/medium-risk contexts.
Value chain covered	Upstream from importing/processing companies	Whole value chain: up- and downstream, from mining until end-of-life processes
Example of requirements	No reference to direct consultation of potentially affected stakeholders or the remediation of negative impacts	Stakeholder consultation and the remediation of negative impacts are key principles of responsible business conduct

Table 4 focusright ltd.: key differences between the Swiss conflict minerals regulation and international standards on responsible business conduct applied to conflict minerals

<sup>41</sup> Such as the UN Guiding Principles on Business and Human Rights and the OECD Guidelines for Multinational Enterprises.

# ACTION POINTS FOR COMPANIES

## Key measures according to the type of company link

The specific type of measures required by each company to ensure responsible business conduct with regards to minerals and metals from conflict-affected and high-risk areas depends, among other things, on the type of link it has to the materials.

Own operations	Business relationships	Value chain
<ol style="list-style-type: none"> <li>1. Conduct <b>heightened due diligence</b> to identify the specific risks and impacts of operating in a high-risk environment.</li> <li>2. Implement a <b>conflict sensitive approach</b> to understand how your operations may interact with and influence local dynamics.</li> <li>3. Adhere to <b>additional standards</b> (e. g. on security and human rights) that are relevant for working in a sensitive context.</li> </ol>	<ol style="list-style-type: none"> <li>1. <b>Identify business partners</b> that may have conflict minerals in their own operations or value chain.</li> <li>2. Gather <b>information</b> about your partners' current policies and practices that ensure a responsible sourcing of these materials as well as the risks and impacts of their operations.</li> <li>3. Use your <b>leverage</b> to influence your partners' business conduct.</li> </ol>	<ol style="list-style-type: none"> <li>1. Improve the <b>traceability</b> of your value chain to progressively identify where the minerals and metals exactly come from.</li> <li>2. Gather <b>information</b> about your suppliers' current policies and practices that ensure a responsible sourcing of these materials as well as the risks and impacts of their operations.</li> <li>3. Raise <b>awareness</b> on responsible business conduct among your suppliers and <b>require</b> them to implement heightened due diligence.</li> </ol>

*Table 5 focusright ltd.: types of company links to conflict minerals and corresponding measures for responsible business conduct*



### Key recommendations for responsible business conduct

In summary, companies should consider the following action points for ensuring responsible business conduct with regards to minerals and metals from conflict-affected and high-risk areas:

1. Understand the **typical risks and impacts of mining**. They may differ depending on the type of mining and potentially occur in any production context.
2. Based on publicly available information, **identify minerals and metals** in your value chain that are known for their human rights risks and impacts and thus represent an additional challenge for responsible business conduct.
3. Understand the **contextual factors** that may increase risks and exacerbate negative impacts of extractive activities.
4. **Conduct a high-level risk analysis** to identify whether the minerals and metals linked to your company may be sourced from conflict-affected and high-risk areas.
5. For high-risk materials and production contexts, conduct **heightened due diligence** integrating additional considerations and taking a **conflict sensitive approach** where needed.
6. Identify the requirements of the **national laws or international standards** that are most relevant for your company. Keep in mind that legal requirements differ from country to country and are often below international standards.

### Learning by doing and continuous improvement

Conducting human rights due diligence is not a tick-box exercise, but a management process that relies on learning by doing and continuous improvement. If the challenge seems daunting at first, do not hesitate to

reach out to industry peers, governmental or developmental actors or human rights experts for support. focusright has developed tools to assist and support companies with our expertise and practical experience.

## Imprint

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Published in	January 2022
Editor and Copyright	focusright Ltd., <a href="https://focusright.ch">focusright.ch</a>

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## focus right

**focusright Ltd.** works with companies from various sectors to **strengthen their management systems** to identify and address their human rights risks – both in their operations and in their extended value chains. focusright Ltd. advises on embedding relevant policies, designing **human rights due diligence processes**, managing value chain risks and structuring remedy in line with the UN Guiding Principles on Business and Human Rights (UNGPs) and the OECD Guidelines for Multinational Enterprises (OECD Guidelines). focusright Ltd. provides guidance on implementing human rights-related regulations such as the UK Modern

Slavery Act, recommends actions to take to tackle systemic human rights issues, and conducts **human rights impact assessments** in higher-risk environments. Depending on the organizational structure of its client, focusright Ltd. works with senior management, corporate responsibility or human resources functions. As the soft law contained in the UNGPs becomes increasingly binding, focusright Ltd. works increasingly with in-house lawyers, to equip them with the tools necessary to advise their companies.

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## Disclaimer

The present publication is intended for information purposes only and does not necessarily cover every aspect of the topics with which it deals. It is not designed to provide legal advice to organizations nor to inform their compliance with due diligence legislation, such as the Swiss Counter-Proposal to the Responsible Business Initiative or any other legal requirement.