

DEVELOPMENTS IN THE FIELD

Companies Operating in Conflict-Affected Environments Without Impacting the Conflict: Between Regular and Heightened Human Rights Due Diligence

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Abstract

The concept of heightened human rights due diligence (hHRDD) is often used to address corporate responsibilities in situations of armed conflict. For companies in these contexts, the first step is to assess whether their activities impact the conflict and its dynamics, and, as a result, whether they are involved in conflict-related human rights abuses. However, companies often find that they have no impact on the conflict. Should companies in these scenarios just focus on regular human rights due diligence (HRDD)? This piece aims to illustrate, based on the example of Ukraine, the human rights challenges that emerge during a war which companies with no influence on the conflict still face and to respond to the question of whether in such situations companies should still engage in hHRDD or continue to conduct HRDD as usual.

Keywords: conflict-affected areas; corporate responsibility; heightened human rights due diligence; Ukraine; war

1. Introduction

Ensuring responsible conduct by companies operating in situations of armed conflict or other contexts of widespread violence has been a key focus for business and human rights (BHR) researchers and practitioners for the last few decades.

The concept of heightened human rights due diligence (hHRDD) gradually formed, as a process that complements the standard human rights due diligence (HRDD). According to guidance by the United Nations Development Programme (UNDP) and the United Nations Working Group on Business and Human Rights, 'traditional human rights due diligence helps businesses to know and show how to avoid or minimise human rights risks to people. Heightened human rights due diligence strengthens the understanding of the context where businesses operate and ensures that their activities do not contribute to violence by identifying flash points, potential triggers or the forces that are driving the conflict'.¹

¹ UNDP, *hHRDD for Business in Conflict-Affected Contexts: A Guide* (New York: UNDP, 2022), p 10.

Companies are also warned that ‘where a war is unlawful under international law, businesses should, at a minimum, assess, and avoid or mitigate its connection to the war efforts of the aggressor country’.² The guidance adds a critically important issue: ‘causing, contributing or being directly linked to armed conflict and other situations of widespread violence always means causing, contributing or being directly linked to human rights abuses’.³

Thus, the first step for a company operating in conflict-affected areas is to assess if its activities impact the conflict and its dynamics, and therefore, if it is involved in conflict-related human rights abuses. In the case of Ukraine, most companies do not influence the conflict itself.⁴ In such contexts, the question that emerges is if companies need to only conduct regular HRDD. This question is relevant to other emergencies not necessarily related to conflict, such as the COVID-19 pandemic or natural disasters.

This piece aims to illustrate, drawing from research conducted over the first year of the Russian invasion of Ukraine, the set of human rights risks that arise or significantly worsen due to a situation of war, which a company with no influence on the conflict itself still faces. Based on this research, this piece attempts to answer the following question: Is the hHRDD concept appropriate in these situations or can the company continue to conduct HRDD as usual?

II. Research Methodology

To address this question, the authors sought to gain firsthand testimony about companies’ operating conditions in Ukraine during the first year of the Russian full-scale invasion. They conducted interviews, held expert meetings, gathered insights through questionnaires to companies and local communities and obtained additional information through direct requests to selected companies.

The authors conducted 26 interviews with company directors and employees, rightsholders and vulnerable groups affected by the full-scale war. Businesses were selected randomly from a list of 50 companies located in different regions of Ukraine, of different sizes, and from different sectors. Ten interviews with company directors were conducted in total. 16 interviews were conducted with company employees, consumers and residents from diverse locations who responded to an open call shared via social media platforms (Facebook, Telegram chats). These interviewees had diverse experiences of the war. They came from differently affected parts of Ukraine (areas closely located to the front line; occupied and then liberated; relatively calm) and represented different age and sex groups.

To obtain greater insights into the war context, three expert meetings were held online. These meetings were attended by international BHR experts, human rights defenders, civil society representatives and researchers, and aimed to discuss human rights risks caused by the war and good corporate practises in these contexts.

The interviews and expert meetings were organised via Zoom for safety reasons. Most participants were located in different cities in Ukraine and during air alerts had the opportunity to disconnect, go to shelters and reconnect when the air alert was over.

Direct personal insights were supplemented by questionnaires to companies and residents from different local communities. 35 companies responded to the company questionnaires, which were shared via different business associations in Ukraine. The questionnaires included general questions on corporate human rights policies and

² Ibid, p 28.

³ Ibid, p 10.

⁴ UNDP, *Responsible Business Conduct during War in Ukraine: Context Assessment Study* (Kyiv: UNDP, 2023).

mechanisms to detect and respond to human rights abuses and specific questions about measures to ensure respect for human rights and responsible business conduct during the war.

The questionnaire to members of local communities included questions on humanitarian needs and the challenges faced by residents from the war-affected Kharkiv, Donetsk, Poltava, Vinnytsia and Kyiv regions. 62 responses were obtained in total.

III. Identified Human Rights Challenges

A. Risks to Employees' Physical Safety

The entire territory of Ukraine is characterised by some level of risk to people's safety.⁵ A lack of company capacity to ensure employees' safety could potentially contribute to the conflict's impact on employees' right to life, physical integrity and safe working conditions.

Only a few of the researched companies were able to conduct a quick assessment of the situation as the invasion unfolded and develop a plan of action based on a human rights approach. These companies evacuated their employees before or immediately after the invasion and put in place measures for the personal safety of workers (access to bomb shelters, provision of food, drinking water and medicines, etc.). These examples came from international companies and large Ukrainian companies, which are members of business associations and had acquired human rights knowledge and expertise before the war.

Some employers also organised training sessions for their employees on survival and security. Some companies operating in occupied territories advised employees to use evacuation corridors and provided guarantees that all evacuated employees would receive financial support or any other aid they might need.

While putting in place evacuation and relocation plans is a necessary and effective response to the personal safety risks of employees, many companies did not apply a gender or vulnerability lens to these strategies. Many companies did not take into consideration the family responsibilities and individual needs of their employees, and the physical or mental disabilities of their family members when developing evacuation or relocation plans. For example, some employees could not easily be evacuated because family members had limited mobility. These employees were forced to remain in situations of high risk to their lives and safety. In other cases, companies did not consider the fact that employees with family responsibilities, such as caring for young children, could not work full-time immediately after relocation due to the time and effort necessary to settle the entire family into a new place.

The research also revealed cases of companies that do not require workers to go to bomb shelters when the emergency alarm sounds, leaving the decision to individuals. If workers do go to shelters, the time spent in them counts as time off work and is not paid.

B. Risks to Employees' Mental Health

As a result of the war, Ukrainian people are suffering from exposure to abuse and violence, and the loss of their closest friends and family members. This is resulting in severe amounts of psychological trauma.⁶

⁵ World Bank, Government of Ukraine, European Union, United Nations, *Second Ukraine Rapid Damage and Needs Assessment: February 2022 – February 2023* (Ukraine: World Bank, 2023).

⁶ Andrew Lee, 'Ukraine: war has an impact on people's health beyond bullets and bombs', *The Conversation* (2 March 2022), <https://theconversation.com/ukraine-war-has-an-impact-on-peoples-health-beyond-bullets-and-bombs-178062> (assessed 17 April 2022).

According to the prognosis of the World Health Organization, approximately 9.6 million people in Ukraine may have a mental health condition.⁷

Most participant employees reported psychological burnout caused by the uncertainty of the war and relocation, the increased responsibility for the safety and psychological well-being of their family, the need to perform additional work for family survival, the challenges of remote work and the unavailability of preschool and after-school education facilities. Some companies started providing psychological aid for employees from the first days of the war. They are also conducting regular surveys to determine the psychological state of employees and offer them psychological support as needed. Some are holding weekly online meetings between directors and employees or extending their psychological support services to family members. However, the vast majority of companies ignore the psychological health of their employees, believing that employees should solve their psychological problems on their own.

C. Risks to People with Disabilities and Veterans

In 2020, more than 2.7 million persons with disabilities (including over 160,000 children) were registered in Ukraine,⁸ and this number has risen to 3 million since the full-scale invasion.⁹ Persons with disabilities are especially vulnerable, whether they stay behind because of mobility challenges, or attempt to flee.¹⁰

Some companies created chatbots with information about the possibility of evacuation, passing checkpoints, affordable housing, working pharmacies and shops, leaving Ukraine and staying abroad, procedural requirements and documents, contacts of state institutions and organisations, interactive maps, etc. However, many of these instruments are not accessible to blind or illiterate users. As mentioned earlier, many companies are failing to integrate a vulnerability lens into their evacuation plans. Companies that are not ensuring accessibility of their information or providing assistance to disabled employees or family members in their evacuation and accommodation plans, may be causing discrimination against them, and impacting negatively things such as their rights to safe and healthy working conditions, adequate standard of living, etc.

In 2022, 700,000 soldiers fought in the Armed Forces of Ukraine.¹¹ After demobilisation, former soldiers (including persons with disabilities) will return to their workplaces, search for new jobs, or start businesses. There is a lack of application of international standards for accessibility throughout Ukraine. Physical infrastructure is not adapted for people with diverse disabilities, which may become a growing concern for survivors of armed conflicts.

Only a few companies are developing special programs to support veterans in social reintegration, reskilling, upskilling and employment and professional growth. Some are also holding special information briefings for employees on how to communicate with veterans.

⁷ WOH, 'Scaling-up mental health and psychosocial services in war-affected regions: best practices from Ukraine', <https://www.who.int/news-room/feature-stories/detail/scaling-up-mental-health-and-psychosocial-services-in-war-affected-regions--best-practices-from-ukraine> (accessed 20 February 2023).

⁸ The European Commission, 'Ukraine 2023 Report', https://neighbourhood-enlargement.ec.europa.eu/system/files/2023-11/SWD_2023_699%20Ukraine%20report.pdf (accessed 27 November 2023).

⁹ Ukrainska Pravda, 'In a year and a half, the number of people with disabilities in Ukraine increased by 300,000 - Ministry of Social Policy', <https://life.pravda.com.ua/society/2023/09/19/256633/> (accessed 21 September 2023).

¹⁰ UNDP, *Rapid Assessment of the Experience of Evacuating People with Disabilities in Ukraine Due to the War: Study Report* (Ukraine: UNDP, 2022).

¹¹ Olena Panchenko, 'Ukraine is protected by 700,000 soldiers – Zelenskiy', *The Village* (21 May 2022), <https://www.the-village.com.ua/village/city/city-news/326177-ukrayinu-zahischa-700-tisyach-viyskovih-zelenskiy> (assessed 20 March 2023).

However, for most companies, the approach to onboarding and well-being support for veterans (including psychological support) remains unclear.

D. Risks to Women Employees

The full-scale invasion negatively affected women in many different ways. Many of them became internally displaced people, had to become sole breadwinners and caregivers in their families,¹² or were forced to move abroad to protect their children. Mostly women employees stayed behind to care for family members with mobility problems, forfeiting relocation opportunities. The militarisation of society and the increase in stress and trauma experienced by many individuals also significantly increased the risk of domestic violence. These traits and patterns are exacerbating already profound gender inequalities in the country, including in the labour market.¹³

Many companies rapidly adapted their human rights policies and practises to support women employees, including by ensuring their evacuation to safer regions of Ukraine and abroad, arranging equipped shelters and rooms for children, offering opportunities for remote work, offering access to psychological services, and developing upskilling and mentorship programs. These findings are in line with a UN Women study.¹⁴ Since February 2022, 17 companies signed the Women's Empowerment Principles and started conflict-related initiatives to support women in the workplace, supply chains, and local communities, through career coaching, business training and employment. Efforts have also included developing partnerships with local and national non-governmental organisations to address structural changes in the labour market because of the destruction of productive facilities and relocation of business to safer regions or abroad.

However, many other companies have failed to take any action to support women. Some companies declared that because of the negative impacts of the war, they were focusing primarily on increasing income, and could not revise their policies and implement gender-sensitive initiatives. Some companies refused to evacuate low-mobility family members. As explained before, this negatively impacted many women employees who were forced to remain with their family members and continue to confront situations of high risks to their lives and safety.

The lack of gender and vulnerability-sensitive responses by many companies can be partly explained by the low representation of women on corporate boards.

IV. Competing Needs and Dilemmas

Companies were confronted with many hard choices and dilemmas in their efforts to implement appropriate rights-based responses to the human rights risks resulting from the war. A key challenge for many companies lies in balancing employees' safety with ensuring access to essential services and goods for local communities.¹⁵ A decision to stop operating to safeguard employee safety can put community access to essential services and goods, and therefore their rights to an adequate standard of living, health and others, at risk. For example, one retail company explained that it decided not to evacuate employees and

¹² The World Bank, the Government of Ukraine, the European Union, the United Nations, *Ukraine Rapid Damage and Needs Assessment: February 2022 – February 2023* (Ukraine: The World Bank, 2023).

¹³ UN Women and CARE International, *Rapid Gender Analysis of Ukraine* (Ukraine: UN Women, 2022).

¹⁴ UN Women, *Report on analysis results of the private sector's best practices in women economic empowerment during the full-fledged war* (Ukraine: UN Women, 2023).

¹⁵ Olena Uvarova, *Responsible business conduct in times of war: implications for essential goods and services providers in Ukraine* (Copenhagen: Danish Institute for Human Rights, 2022).

urged its stores to reopen if an assessment of the situation allowed it, by arguing that products are essential for the local people. On this same basis, other companies decided to return to liberated areas. However, this choice in itself carries significant risks if done without sufficient knowledge about the potential presence of mines in the territory.

Another challenge for companies comes from conflicting requirements between their human rights assessments and the law. The most striking example is the case of Energoatom employees working at the Zaporizhzhia Nuclear Power Plant. They were not allowed to leave because this could have led to a catastrophic nuclear incident, but this put their lives and safety at extremely high risk. From the beginning of the war, the Ukrainian government also imposed a ban on economic activity in the temporarily occupied territory, ignoring the needs of the local population. Companies were forced to end operations even if this was putting the rights of the local communities they served at risk from adverse human rights impacts.

Social expectations for 'brave business' increased dramatically in Ukraine during the first year of the war. Demands to companies such as supporting the country's economy, organising a volunteer movement, or paying taxes, rarely include expectations for responsible business conduct. Navigating these demands and expectations can be tricky since actions to support national security (e.g. enrolling employees into volunteering initiatives), or ensuring access to public goods, do not necessarily go hand in hand with many human rights.

V. Conclusions

Based on the findings described above, the authors have drawn three overarching conclusions. Firstly, conflict can change a company's regular HRDD significantly, forcing it to address the human rights challenges that the conflict creates. This is the case even for companies that have no influence on the conflict itself, as is the case for the vast majority of companies in Ukraine. It is no longer just about a company's impact on human rights, but about its role in responding to new human rights challenges that the conflict creates. Secondly, to address these new challenges, regular HRDD is not enough and must be complemented with hHRDD. This can allow companies to identify the human rights risks and impacts that result from the conflict, understand their own capabilities in minimising these impacts, and take action to preserve human rights. Thirdly, this approach is appropriate for other situations of global emergency in which companies need to know how an emerging crisis is impacting human rights and their capability and the action they should take to minimise these impacts.

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