



## Lesson from Ukraine: In the midst of war, there is a need for the heightened human rights diligence

Daria Nagaivska\* & Lukasz Szoszkiewicz\*\*

**Abstract:** The Russian aggression in Ukraine prompted the discussion on the scope of human rights obligations of business actors in times of armed conflict. Are they

---

\*Daria Nagaivska, is a Business and Human Rights Consultant. Daria has expertise in business and human rights, gender equality and private sector partnership, collaborates with international organizations in assessments, advising and capacity building. In 2022 Daria collaborated with the Faculty of Law and Administration at Adam Mickiewicz University (Poznań) as a Visiting Researcher.

\*\*Lukasz Szoszkiewicz, is an Assistant Professor at Adam Mickiewicz University in Poznan (Poland). His research focuses on the intersection of new technologies and human rights. Former Data Coordinator for the [UN Global Study on Children Deprived of Liberty](#) and a collaborator within several follow-up projects to the Global Study.

obliged to continue the provision of services in Ukraine? Can they suspend their activities, even if they provide essential services such as medicines?

The full-scale aggression of the Russian Federation negatively affected companies operating in Ukraine. In March 2022, the export was reduced by [50 percent](#) (for the last eight months, Ukrainian exports amounted to [29 billion USD](#), a third less than during the same period last year). Furthermore, in September 2022 the Ukrainian Business Index, describing the business activity and its ability to increase turnover and create jobs, was [33.9 points](#) from 100 possible. The full-scale war has [resulted](#) in a dire human rights situation across the country and has led to a wide range of human rights violations. In the Russian Federation, although macroeconomic indicators are better than expected (GDP is forecast to decrease between [2.3 percent and 4.5 percent](#) year on year) and foreign companies are massively curtailing their operations. According to the [analytical data](#) from November 2022, 1189 foreign companies are still operating in the Russian market, 1144 businesses decided to leave, and only 135 have fully exited (out of the 3030 businesses analysed).

### **Regulating the nexus of business and human rights**

In 2011 the United Nations Human Rights Council endorsed the UN Guiding Principles on Business and Human Rights ([UNGP](#)), which provide the first comprehensive regulatory framework for the operation of business enterprises in accordance with human rights. The framework developed by the SRSG John Ruggie rests on three pillars, namely: the state's duty to protect against human rights abuses by third parties; corporate responsibility to respect human rights; and access to an effective remedy. The UNGPs were drafted when the nexus of business and armed conflict was [brought](#) to the world's attention. For this reason, the document directly addresses the conflict-affected areas. Principle 7 specifies that the state should help ensure that business enterprises operating in those areas are not involved in human rights abuses, including by:

*(a) Engaging at the earliest stage possible with business enterprises to help them identify, prevent and mitigate the human rights-related risks of their activities and business relationships;*

*(b) Providing adequate assistance to business enterprises to assess and address the heightened risks of abuses, paying special attention to both gender-based and sexual violence;*

*(c) Denying access to public support and services for a business enterprise that is involved with gross human rights abuses and refuses to cooperate in addressing the situation;*

*(d) Ensuring that their current policies, legislation, regulations and enforcement measures are effective in addressing the risk of business involvement in gross human rights abuses.*

Principle 7 is being operationalised through the recommendations of various UN bodies, in particular, the Working Group on the issue of human rights and transnational corporations and other business enterprises. The latter has recently [adopted](#) a report focusing on the conflict-affected regions and highlighted the need for 'heightened' human rights due diligence in this context.

Less attention is paid to this issue by other UN bodies. Recommendations to date have addressed the [displacements of Afro-Colombians](#) in Colombia, the criminalisation of the recruitment and use in hostilities of children by the private security services or companies in [Angola](#), [Cambodia](#), [Cuba](#), and [Portugal](#), the establishment of a specialised mechanism to investigate violations of women's human rights by corporations in the context of the [Bougainville conflict](#) in Papua New Guinea, export of arms to conflict zones in the absence of a specific mechanism for gender-based violence risk assessments by [Italy](#), and the explicit prohibition of trade and export of small arms and light weapons by [North Macedonia](#) to countries where children are known to have been involved in armed conflict.

The magnitude of the Ukraine-Russia full-scale war and its impact on the global economy (particularly gas and food markets) seems likely to reinforce some of the abovementioned recommendations and, possibly, extend the catalog. Let's look at the issues that could be the subject of recommendations.

### **Business and human rights in the context of the Russian aggression in Ukraine**

Before the beginning of the full-scale war on 24 February 2022, many Ukrainian companies had already faced different risks connected to the annexation of Crimea and the following war in Eastern Ukraine near the border with the Russian Federation (Donetsk and Luhansk regions), which was caused by the aggression of Russian troops in 2014. [These involved](#) (i) security risks, such as continuing hostilities on the territory of these regions and the landmine threat in certain (primarily agricultural) territories; and (ii) economic risks, including the loss of suppliers and/or business-to-business clients as well as enterprises' reduced access to their traditional internal and external sales markets (located in the areas no longer controlled by the Ukrainian government and in the Russian Federation, respectively).

The full-scale aggression of the Russian Federation sets the goals of financial stability and operational survival of Ukrainian companies among the most important to ensure the capacity to proceed with economic activities, pay taxes to fill budgets, and care about the team and community members.

The main challenges that arose among businesses in respect of human rights after the outbreak of the full-scale war in Ukraine could be defined as the following: (1) ensuring safety and security at the workplace; (2) ensuring the continuity of production processes because of the air alerts and missile attacks; (3) timely payment of full salaries; (4) employee retention (many of them, who relocated to other regions in Ukraine and other countries, were in need for financial and psychological support); (5) effective participation in the supply and value-added chains (facilities of some suppliers and contractors were destroyed); and (6) ensuring compliance and demonstrating heightened human rights due diligence (hHRDD).

Companies influence the entire spectrum of internationally recognised human rights. Therefore, 'some human rights may be at greater risk than others in particular industries or contexts, and therefore will be the focus of heightened attention' (see the [Commentary to Guiding Principle 12](#)).

The heightened human rights due diligence is based on [four processes](#):

- (a) Identifying and assessing actual or potential adverse conflict and human rights impacts,*
- (b) acting on the findings from impact assessments across relevant functions and company processes,*
- (c) tracking the effectiveness of measures and processes to address adverse conflict and human rights risks or impacts,*
- (d) communicating on how risks or impacts are being addressed.*

The OECD identified [three fundamental questions](#) to help assess potential negative impacts:

- 1) Is there an actual or potential adverse impact on human rights or the conflict connected either to the company's activities (actions or omissions), products or services?*
- 2) If so, do the company's activities (including actions or omissions) increase the risk of that impact?*
- 3) If so, would the company's activities (including actions or omissions) in and of themselves be sufficient to result in that impact?*

According to the [Red Cross guidance](#), employers, contractors, and consultants of businesses operating in conflict zones 'are deemed to be civilians while performing their roles', which includes 'protection against violence to their life, health, physical

or mental well-being. In practice, Ukrainian state-owned and private companies turned out to be more flexible and adaptive than international corporations bound by internal policies and political commitments. While Ukrainian businesses evacuated their personnel and shifted their focus partially or entirely to meeting humanitarian needs, some multinational corporations ceased operations in Ukraine, claiming the need to protect their employees. For example, Ukrzaliznytsya, the state-owned railway company, [evacuated](#) more than 4 million people and 120 thousand of animals from the beginning of the full-scale war. Uklon, the taxi company operating in 26 cities of Ukraine, [continued](#) to provide services even during the shelling in Kyiv, Kharkiv, Gostomel, and Irpin, and launched the [evacuation program](#) to help customers to move between the cities in Ukraine. The company stopped its operational activities in Kherson and later in Maryupil because of the massive missile attacks and occupation of these cities by the Russian troops.

On the contrary, [Uber](#) stopped operational activities from the first day of the full-scale war, Metro Cash and Carry and McDonald's restaurants also [stopped](#) working on 24 February 2022 when the local population needed access to food. McDonald's [reopened only three branches](#) in the capital city of Ukraine 7 months later, in September 2022. Moreover, some international companies continued to work in both countries, even [firing Ukrainian employees](#) who pushed the company's management to exit the Russian Federation's market.

### **Lesson from Ukraine**

The hHRDD can be an effective tool for companies to identify and assess adverse conflict and human rights impact. The problem is that the implementation procedure is often not enough to ensure corporate social responsibility to respect human rights.

The society in the country where the company operates demands a more attentive and sensitive approach by using leverage to reduce human rights risks. Engaging different stakeholders in the risk management processes, particularly local communities, is crucial to ensure that all voices are heard and adequately taken into account.

The dilemma of choosing between the safety of the employees and addressing the local community's basic needs is not easy, but businesses could find the middle way by engaging local people suffering from the war to help others survive. It is more complex than just stopping business activities, but in difficult times we need responsible steps to be taken by the private sector.