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# RESPONSIBLE BUSINESS CONDUCT DURING WAR IN UKRAINE CONTEXT ASSESSMENT STUDY

2023





# Responsible Business Conduct during War in Ukraine

Context Assessment Study



# Responsible Business Conduct during War in Ukraine: Context Assessment Study

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This report was produced as part of the B+HR Academy, which is supported by the Government of Japan through the project 'Promoting Responsible Business Conduct in target countries where Japanese companies operate, with a particular focus on promoting human rights due diligence in global supply chains and leveraging the UN Guiding Principles on Business and Human Rights for a just recovery'.

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## EXECUTIVE SUMMARY

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This report analyses the implications of the Business and Human Rights (BHR) approach in Ukraine implemented by the State and by companies during Russia's invasion of Ukraine. The study covers the situation during February 2022 – March 2023, and maps the human rights context of companies and their impact on rights holders and on the conflict itself, identifies existing solutions in addressing Heightened Human Rights Due Diligence (hHRDD) challenges. The report assesses the effectiveness of State and non-State remedies, in particular operational-level grievance mechanisms, to prevent and protect against business-related human rights abuse in wartime, based on the results of two waves of All-Ukrainian sociological representative surveys, focus group discussions, and key informants' interviews. This report also includes cases of companies on implementing BHR approach.

Business is not neutral in times of war and conflict. International and Ukrainian companies should have been applying enhanced corporate responsibility for human rights as early as 2014, since the beginning of the conflict, which escalated into a war in February 2022. Therefore, the ability of companies to cope with business and human rights challenges depends on several factors:

- industry affiliation (service providers or manufacturing),
- size (large companies with more resources were more efficient than small and medium enterprises),
- location of production facilities or offices (territories beyond control of the Government of Ukraine, territories with active hostilities, or safer regions).

Among other key take-aways, the following should be mentioned:

- 1. Despite the ongoing conflict in Ukraine since 2014, which escalated into a war in February 2022, no particular attention was paid to the possible impact of business on the conflict and consequent human rights risks caused by the conflict (Chapter 1).**
- 2. Before the war, most companies in Ukraine did not have a proper understanding of the BHR concept and hence had poor practical skills of its application in practice. Companies in Ukraine were not aware of hHRDD and operated more intuitively with regards to human rights (Chapter 1).**
- 3. The low awareness of companies about the BHR approach was a critical factor with the beginning of full-fledged Russia's invasion of Ukraine in February 2022, when the need for responsible business conduct and for companies' ability to identify, assess, and prioritize human rights issues became vital (Chapter 1).**
- 4. There were no governmental recommendations for companies on how to operate or make a responsible exit from the areas beyond the control of the Government of Ukraine / war-affected territories / or return to areas where the Government of Ukraine regained control, as well as how to operate in a wartime. There were no sector-specific guidelines for sectors with a high level of informal employment (retail, construction companies, etc.) that had been forced to halt operations. Such actions had a negative impact on employees and on providers of essential goods and services (Chapter 2).**

5. Under the complex economic and social conditions, the government made business operations easier through deregulation and introduced amendments to the labour legislation, which could lead to significant weakening of the guarantees for employees' rights and strengthening of the freedom of employer's discretion (Chapter 2).
6. There are four scenarios for companies in Ukraine to operate during the war: operating under constant bombardment and active hostilities; operating in areas not under the control of the Government of Ukraine; operating in other war-affected areas and relocation towards the safer Western regions of Ukraine or abroad; and/or, operating in areas retaken by the Government of Ukraine. Each of mentioned scenarios could relate to a different list of human rights risks (Chapter 2).
7. The most salient issues are safety and labour discrimination, and access to energy after October 11, 2023, with massive attacks on the energy infrastructure of Ukraine. Among the most vulnerable groups of people during the war are people with disabilities, people with family and caregiving responsibilities, older people, and people with incurable diseases. Among the most common human rights abuses are violations related to health and safety conditions in the workplace, illegal dismissal, unpaid leave, decrease in workload and remuneration, and non-payment of salary or salary in an "envelope" (Chapter 3).
8. Among the best hHRDD tools could be identified the following ones: preparing a Business Contingency Plan (BCP) with a focus on the safety and security of employees and clients; creating an Internal Crisis Management Team to lead a response; establishing a toolkit with guidance for employees on various support options; setting up a hotline for emergency issues and twice-daily communications with employees to ensure their safety; launching an Employee Assistance Programme for medical and mental health support for employees and their families; developing a detailed employee needs assessment; providing financial and relocation assistance; and, planning a responsible exit and responsible return (Chapter 4).
9. In a situation of active hostilities, the constitutional right to access justice was implemented often via video conference mode if there were technical facilities. But most people did not try to protect their rights during the war. They were used to applying non-judicial remedies or corporate mechanisms, including whistle-blower policies, anonymous hotlines, and other formal ways for reporting abuses.
10. The programs for national rebuilding and recovery being currently developed in Ukraine still do not focus on the BHR issues of responsible exit/return and responsible business conduct. The issue of the role of business entities in transitional justice processes, as well as the prospects of applying international humanitarian law and bringing business entities to justice in the case of direct or indirect participation, or contributing to human rights violations, receives no attention so far (Chapter 2).

After analysis, the report provides recommendations for the State, companies, civil society organizations, and human rights activists on how to effectively implement the BHR approach in the times of war and post-war period outlined in Section 6 "Conclusions and Recommendations".



# INTRODUCTION

## CONTEXTUAL BACKGROUND

In times of war, businesses never act neutrally, and business operations always have an impact on conflict dynamics<sup>1</sup>. The full-fledged Russia's war on Ukraine has caused global deterioration in political security, food and energy security, and the appearance of high numbers of refugees and internally-displaced-persons (IDPs). At the national level, it has caused many human tragedies and damages.

Since the large-scale Russia's invasion on Ukraine on February, 24, 2022, companies in Ukraine have experienced significant challenges, including ensuring security and safety of employees, operational challenges of relocating operation and staff, logistic disruptions, and/or other challenges. Most companies were unprepared when the war broke out<sup>2</sup> and had no contingency planning or risk mitigation strategies in place. Several international companies immediately stopped their operations following the recommendations of their governments or corporate policies. At the same time, there were companies, mostly national, that continued their operations, helped people overcome the first days of the war, and provided access to essential goods and services. As highlighted in one of focus group discussions, "supermarkets, banks, pharmacies, and taxi services worked in Ukraine under mass shelling and rocket attacks during the inception of the war, just doing their work"<sup>3</sup>. For many of these companies, this work was a kind of balancing between employee security and consumer' demand.

During wartime, corporate responsibility to respect human rights is stronger than during peaceful times as "the risk of gross human rights abuses is heightened"<sup>4</sup> (UN Guiding Principle 7 (UNGPR) on Business and Human Rights). **Therefore, companies have to assess their impact not only on human rights, but on the conflict itself to ensure that their actions and operations do not contribute to the conflict and companies do not profit from the conflict. In the most severe cases, companies can be involved in "the most egregious human rights abuses"**<sup>5</sup> such as genocide and war crimes, which lead to prosecution. There are well-known examples of such cases, such as that of Lafarge, a French cement company, and its operation in Syria; the case of Lundin, a Swedish oil company, and its operation in Sudan; and, the case of Shell and its operations in Nigeria<sup>6</sup>.

## GUIDELINES FOR COMPANIES OPERATING IN CONFLICT-AFFECTED AREAS

Doing business responsibly in conflict-affected areas and/or during wartime requires companies **to assess their impact on human rights and conduct Heightened Human Rights Due Diligence**

1 <https://www.e-ir.info/2022/10/22/opinion-responsible-business-conduct-in-times-of-war/>

2 Ibid.

3 Focus groups discussions

4 [https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr\\_en.pdf](https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf)

5 "Business, Human Rights and Conflict-Affected Regions: Towards Heightened Action", Report of the UN Working Group on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, (A/75/212). <https://rm.coe.int/report-on-business-and-human-rights-in-conflict-ukr/1680a595f4>

6 In particular, Lafarge - the cement giant is accused of paying millions of euros to jihadist groups, including the Islamic State, to keep its cement factory in northern Syria running through the early years of the country's civil war. Find more examples here: <https://www.business-humanrights.org/en/latest-news/companies-crimes-against-humanity-cases/>

**(hHRDD)** according to “Business, Human Rights and Conflict-Affected Regions: Towards Heightened Action”<sup>7</sup>, a published guide on hHRDD by the UN Working Group on Human Rights and Transnational Corporations and Other Enterprises. The document includes annexes with practical questions, a capacity assessment, and a checklist for businesses doing business in conflict zones.

Some other documents companies can use to avoid and address adverse impacts are as follows:

- *Heightened Human Rights Due Diligence for Business in Conflict-Affected Contexts: A Guide*<sup>8</sup> – that offers guidance to businesses and other actors on how to meet their responsibilities to carry out a hHRDD in conflict-affected areas; developed by UNDP with the UN Working Group on Business and Human Rights.
- *Voluntary Principles Initiative Conflict Analysis Tool for Companies (2022)*<sup>9</sup>, a tool that helps company’ employees understand the dynamics of conflict in their area of operation, determine the company’s impacts on those dynamics, and generate options to mitigate negative impacts;
- *Voluntary Principles on Security and Human Rights*<sup>10</sup> (the Voluntary Principles), a multi-stakeholder initiative (MSI) that promotes the implementation of principles that guide oil, gas, and mining companies on how to provide security for their operations in a manner that respects human rights, and how to conduct a comprehensive human rights risk assessment while cooperating with public and private security providers to ensure that human rights are respected while protecting company’s facilities and premises;
- *The OECD Due Diligence Guidance for Responsible Business Conduct*<sup>11</sup>, a document that explains how to conduct due diligence in areas related to workers, human rights, the environment, bribery, consumers, and corporate governance that may be associated with their operations, supply chain, and business relationships;
- *Practical tools, guidance, and learning projects on the importance of Do No Harm Conflict Sensitivity*<sup>12</sup>;
- *Conflict-Sensitive Business - Review of Instruments and Guidelines*<sup>13</sup>;
- *Enhanced Human Rights Due Diligence in Conflict Affected and High-Risk Areas*.<sup>14</sup>

## THE CONCEPT OF HEIGHTENED HUMAN RIGHTS DUE DILIGENCE

Traditional Human Rights Due Diligence (HRDD) is a risk management tool that helps businesses to know and show how to avoid or minimize human rights risks to people. More specifically, HRDD is a tool to identify, prevent, mitigate, and account actual and potential adverse human rights impacts on business operation, supply chain, and business relationships.

Heightened Human Rights Due Diligence (hHRDD) strengthens the understanding of the context where businesses operate and, by identifying flash points, potential triggers, and/or the forces that drive the conflict, ensures that their (companies’) activities do not contribute to violence.<sup>15</sup>

In times of conflict or war, people are more vulnerable to human rights threats as the state often is unable to protect its citizens, and rule of law becomes ineffective due to lack of an independent and impartial judiciary, lack of effective civilian oversight of security forces, and high levels of corruption.’

7 <https://www.ohchr.org/en/calls-for-input/report-business-human-right-and-conflict-affected-regions-towards-heightened-action>

8 <https://www.undp.org/publications/heightened-human-rights-due-diligence-business-conflict-affected-contexts-guide>

9 <https://www.voluntaryprinciples.org/resource/voluntary-principles-initiative-conflict-analysis-tool-for-companies/>

10 <https://www.voluntaryprinciples.org>

11 <https://www.oecd.org/investment/due-diligence-guidance-for-responsible-business-conduct.htm>

12 <https://www.cdacollaborative.org/what-we-do/conflict-sensitivity/>

13 [https://www.swisspeace.ch/fileadmin/user\\_upload/Media/Publications/Deliverable\\_3\\_ConflictSensitiveBusiness\\_InstrumentsandGuidelines.pdf](https://www.swisspeace.ch/fileadmin/user_upload/Media/Publications/Deliverable_3_ConflictSensitiveBusiness_InstrumentsandGuidelines.pdf)

14 <https://www.connectingbusiness.org/system/files/2018-11/Enhanced-Human-Rights-Due-Diligence-in-Conflict-Affected-and-High-Risk-Areas.pdf>

15 Heightened Human Rights Due Diligence for Business in Conflict-Affected Contexts. A Guide, UNDP, 2022, p. 10.

(para. 17)<sup>16</sup>. HHRDD is necessary in such situations. It is built around the concept of proportionality: the higher the risk, the more complex the processes.<sup>17</sup> Therefore, hHRDD is about identifying and assessing not only companies' actual or potential adverse impacts on human rights, but also their actual or potential adverse impacts on the conflict or war,<sup>18</sup> as well as all possible efforts to prevent or minimize the negative (i.e., adverse) impact on human rights during conflict or war.

**The war in Ukraine significantly changes the scope of corporate responsibility to respect human rights and highlights the role of business to address human rights challenges caused by the war. Changes were observed in the actions and operations of companies in Ukraine even prior to February 24, 2022** as information about Russian troops near Ukrainian borders was reported in the media starting in autumn 2021. For large multinational and national companies, and Ukrainian IT companies, these signs became “red flags” that prompted them to initiate heightened human rights due diligence, which resulted in a Business Contingency Plan (BCP). These companies acted de facto according to UNDP's new hHRDD guide, which stated that “if a business is uncertain whether a situation requires heightened human rights due diligence, it should consider a simple rule of thumb: if in doubt, carry it out.”<sup>19</sup>

Most companies with BCPs are linked with the IT sector or international companies. At the same time other service providers (consultants, etc.) appeared to be more efficient than production companies, as the latter had difficulties organizing a working process in situations when their employees were relocated within the country (as internally displaced persons (IDP)) or had fled Ukraine. In addition, COVID-19 restrictions, including remote work, helped companies in Ukraine in terms of their resilience and survival.

Therefore, the ability of companies to cope with business and human rights challenges depended on several factors, such as:

- Industry and business affiliation (service providers or manufacturing),
- Size (large companies with more financial and human resources were more efficient than small and medium enterprises),
- Location of production facilities or offices (territories beyond control of the Government of Ukraine/ areas retaken by the Government of Ukraine , territories with hostilities, or safer regions),
- Previous experience (e.g., related to COVID-19 or exit from areas of Donetsk, Luhansk oblasts beyond control of the Government of Ukraine in 2014).

The concept of mandatory HRDD for companies is gaining momentum in Europe, at the EU level and the EU Member State level, including in France, Germany, and The Netherlands.<sup>20</sup>

In the first week of the Russia's invasion on Ukraine, the European Commission published a proposal for mandatory human rights due diligence legislation – the **Corporate Sustainability Due Diligence Directive** (CSDDD) – to require companies to identify and mitigate risks for human rights connected with their global operations and business relations.

In August 2022, a group of 51 civil society organizations (CSOs) and academics<sup>21</sup> active in the fields of business and human rights issued a joint statement calling upon EU policymakers to include in the CSDDD specific provisions on responsible business conduct in conflict-affected areas. This

<sup>16</sup> CONFLICT-SENSITIVE HUMAN RIGHTS DUE DILIGENCE FOR ICT COMPANIES Guidelines and Toolkit for Corporate Human Rights Practitioners, JustPeace Labs and BSR, 2022, p. 5. United Nations Development Programme (2022), “Heightened Human Rights Due Diligence for business in conflict-affected contexts: A Guide,” notes that “Heightened human rights due diligence means identifying potential and actual impacts on people (human rights) as well as on the context (conflict).”

<sup>17</sup> [https://www.undp.org/sites/g/files/zskqke326/files/2022-06/UNDP\\_Heightened\\_Human\\_Rights\\_Due\\_Diligence\\_for\\_Business\\_in\\_Conflict-Affected\\_Context.pdf](https://www.undp.org/sites/g/files/zskqke326/files/2022-06/UNDP_Heightened_Human_Rights_Due_Diligence_for_Business_in_Conflict-Affected_Context.pdf)

<sup>18</sup> Ibid., p. 13.

<sup>19</sup> [https://www.undp.org/sites/g/files/zskqke326/files/2022-06/UNDP\\_Heightened\\_Human\\_Rights\\_Due\\_Diligence\\_for\\_Business\\_in\\_Conflict-Affected\\_Context.pdf](https://www.undp.org/sites/g/files/zskqke326/files/2022-06/UNDP_Heightened_Human_Rights_Due_Diligence_for_Business_in_Conflict-Affected_Context.pdf)

<sup>20</sup> See detailed overview here: Human Rights Due Diligence Legislation in Europe – Implications for Supply Chains to India and South Asia. <https://www.dlapiper.com/en-ae/insights/publications/2021/03/human-rights-due-diligence-legislation-in-europe>

<sup>21</sup> <https://reliefweb.int/report/world/eu-should-include-provisions-conflict-due-diligence-directive>

statement was based partly on research by the Business & Human Rights Resource Centre on companies' due diligence response to the war in Ukraine, which has shown that a large majority of companies struggle with managing the situation responsibly.<sup>22</sup>

On January 25, 2023, the Commission published a proposal for the CSDDD stating that **“in conflict-affected and high-risk areas, ... should undertake heightened due diligence following the guidance on heightened human rights due diligence for business in conflict-affected contexts developed by the UNDP and other relevant international bodies”**<sup>23</sup>. This includes complementing standard due diligence with conflict analysis, based on stakeholder' engagement, aimed at understanding the root causes, triggers, and parties driving the conflict and the impact of the company's business activities on the conflict. On June 1, 2023, the European Parliament has approved the proposal with some amendments<sup>24</sup>. Next steps for the proposal will include negotiations between European Parliament, European Commission and European Council on the draft.

Since 2014 conflict in Ukraine, which escalated into a war in February 2022 war, the BHR issues should have already been addressed by many companies operating, or planning to start their business, in countries – parties to the conflict. Unfortunately, this was not the case, which has had an impact on Russia's capacity to prepare for its invasion of Ukraine. After February 24, 2022, more than 1,000 international companies have publicly announced that they are voluntarily winding down operations in Russia; although 42 big international companies still ignore Russia's violations and continue operations there. In addition, many international companies have the responsibility of Russian offices over Ukrainian divisions in their internal structure, which creates a lot of challenges.<sup>25</sup>

## ● SCOPE, OBJECTIVES, AND METHODOLOGY OF THE STUDY

This report analyses the implications of the BHR approach in Ukraine implemented by the State and by companies during Russia's invasion of Ukraine. The study covers the situation during February 2022 – March 2023, and maps the human rights context of companies and their impact on rights holders and on the conflict itself, identifies existing solutions in addressing hHRDD challenges.

The aim of this research study is to further analyse and document the following:

- Corporate responses to the heightened human rights risks in the time of conflict and war in Ukraine;
- Approaches taken by companies in Ukraine to minimize or prevent a negative impact on human rights;
- Specifics for different business sectors in terms of their adherence to business and human rights. Given the new contextual war challenges, there was a need to follow up on the pre-war research “Business and Human Rights in Ukraine: Accelerating Sustainable and Equitable Development Through Implementation of the UN Guiding Principles on Business and Human Rights<sup>26</sup>”, conducted in 2021.
- In addition, the research aims to give an overview of where companies in Ukraine operated, how their operation was/is impacted and influenced by the war, and if and how the business and human rights framework was, or could be, applied by the businesses during this fragile context.

22 <https://www.business-humanrights.org/en/from-us/briefings/business-response-to-the-russian-invasion-of-ukraine/>

23 [https://commission.europa.eu/publications/proposal-directive-corporate-sustainability-due-diligence-and-annex\\_en](https://commission.europa.eu/publications/proposal-directive-corporate-sustainability-due-diligence-and-annex_en)

24 [https://www.europarl.europa.eu/doceo/document/TA-9-2023-0209\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-9-2023-0209_EN.html)

25 <https://leave-russia.org/about-project>. According to the KSE Institute LeaveRussia project, as of April 16, 2023, 1242 companies out of those being monitored by the project have stayed in Russia.

26 <https://www.undp.org/ukraine/publications/business-and-human-rights-ukraine-accelerating-sustainable-and-equitable-development-through-implementation-un-guiding>

The research methodology includes combination of desk research and empirical methods, including All-Ukrainian sociological representative studies, focus groups discussion, interviews with stakeholders. The detailed methodology, including questionnaires are described in Annex 1 to this report.

Based on the findings, the study presents with some key recommendations and options to consider for Ukraine, companies, civil society organizations, and human rights activists on how to effectively implement the BHR approach in the times of war and post-war period. These recommendations are outlined in Section 6 “Conclusions and Recommendations” of the report.

# 1. PRE-WAR BUSINESS AND HUMAN RIGHTS DEVELOPMENTS

## Key takeaways from Chapter 1

1. Despite the ongoing conflict in Ukraine since 2014, which escalated into a war in February 2022, no particular attention was paid to the possible impact of business on the conflict and consequent human rights risks caused by the conflict. Up until now, there are no governmental recommendations for companies on how to operate or make a responsible exit from the areas beyond the control of the Government of Ukraine / war-affected territories / or return to areas where the Government of Ukraine regained control, as well as how to operate in a wartime.
2. The majority of companies in Ukraine did not have a proper understanding of the BHR concept and hence of the practical skills of its application in practice. The importance of ensuring corporate respect for human rights increased significantly with the beginning of the Russia's invasion on Ukraine when the need for responsible business conduct - and companies' ability to identify, assess, and prioritize human rights issues - became vital.

The issues of BHR in Ukraine has been gradually developing since 2017. Then, for the first time, a public discussion of the UN Guiding Principles on Business and Human Rights (UNGPs) took place within the framework of the 1st Kharkiv Legal Forum<sup>27</sup>, and a pilot report on business and human rights in Ukraine was presented (according to the methodology of the Danish Institute for Human Rights)<sup>28</sup>.

Among the business community, the BHR issues were discussed in the context of corporate social responsibility (CSR) and sustainability with a focus on the UN 2030 Agenda and the Sustainable Development Goals (SDGs). This was facilitated by the global policy developments on CSR, including the EU Corporate Sustainability Reporting Directives<sup>29</sup>; and the involvement of an increasing number of companies at the global and national levels in CSR activities, and partly in BHR issues through the National Strategy Concept for Corporate Social Responsibility.<sup>30</sup> Among key actors were CSR and sustainability committees in the European Business Association, the American Chamber of Commerce, the Centre for CSR Development (CSR Ukraine), and the UN Global Compact network (UNGC), which was engaged in popularization CSR and few issues in BHR agenda (e.g., anti-corruption by UNGC or diversity and inclusion by CSR Ukraine).

27 <https://legalforum.nlu.edu.ua/2017/>

28 <http://bhr.in.ua/%D0%B1%D0%B8%D0%B7%D0%BD%D0%B5%D1%81-%D0%B8-%D0%BF%D1%80%D0%B0%D0%B2%D0%B0-%D1%87%D0%B5%D0%BB%D0%BE%D0%B2%D0%B5%D0%BA%D0%B0-%D0%B2-%D1%83%D0%BA%D1%80%D0%B0%D0%B8%D0%B-D%D0%B5-%D0%BF%D0%B8%D0%BB%D0%BE/>

29 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32022L2464>

30 <https://zakon.rada.gov.ua/laws/show/66-2020-%D1%80#Text>

According to the UNDP study conducted in 2021, the level of awareness on UNGPs and SDGs (27% and 26%, respectively) is about twice higher among members of business member organizations (BMO), as compared to companies with no BMO membership experience.<sup>31</sup>

Before the war, more and more companies in Ukraine began to implement the principles of CSR in their operational activities, partially due to the need to prepare a Management Report and the National Bank of Ukraine's requirements within a sustainable finance agenda to create a sustainable ESG-focused financial sector.<sup>32</sup> According to the ESG Transparency Ranking-2020 conducted by CSR Ukraine and the Professional Association of Corporate Governance<sup>33</sup>, performance of companies-largest corporate taxpayers in terms of human rights increased twofold in 2020 compared to 2019. The number of companies that published human rights-related information increased from 27 to 54. Companies mostly mentioned human rights issues in their Codes of Ethics or in non-financial reports when they described the employment practices of people with disabilities<sup>34</sup>.

Over the past five years, there have been noticeable positive changes in the implementation of business and human rights standards in Ukraine at a national level:

- On March 15, 2017, Ukraine joined the OECD Declaration on International Investment and Multinational Enterprises and undertook the obligation to create a National Contact Point with the aim of improving the effectiveness of OECD Guidelines and providing a mediation platform to solve challenges that may arise with respect to businesses implementing the Guidelines.
- Since 2019, the implementation of the UN Guiding Principles on Business and Human Rights had been one of the strategic areas of activity of the Parliamentary Commissioner for Human Rights. In 2021, the Commissioner conducted the first Business and Human Rights Week, which included a series of events, namely: a quiz, a virtual BHR training, a contest for students' scientific works, a collection of proposals for implementing the UN Guiding Principles on Business and Human Rights in Ukraine, and a round table on the best corporate practices for ensuring respect for human rights.
- The Action plan on the implementation of the Concept of implementation of State policy in the sphere of promoting of socially responsible business in Ukraine for the period until 2030 (approved by the decree of the Cabinet of Ministers of Ukraine July 1, 2020 No. 853-r) included the principles and standards of responsible business in accordance with the OECD Guidelines, the UN Guiding Principles on Business and Human Rights, and the UN Global Compact, as well as the positive experience and practice of socially responsible business.
- Chapter 16 "Ensuring Human Rights in Business Activities" was included in the National Human Rights Strategy approved by a decree of the President of Ukraine on March 24, 2021.

**At the same time, the issues of the adverse impact of business on the conflict in Ukraine since 2014, has not been discussed. There were no recommendations for companies on how to operate or make an exit from the areas not under control of the Government of Ukraine.**

The key BHR challenges identified by the UNDP study "Business and Human Rights in Ukraine as a Condition and Driver of Sustainable Development in the Context of the Implementation of the UN Guidelines on Business and Human Rights in Ukraine" (2021 Study)<sup>35</sup> were as follows:

31 OUTLOOK STUDY FOR UKRAINE ON ADVANCEMENT OF BUSINESS MEMBERSHIP ORGANIZATIONS AND BUSINESS DEVELOPMENT SERVICES. Analytical Report. Kyiv: United Nations Development Programme in Ukraine, 2022, 182 pages. P. 53.

32 <https://bank.gov.ua/en/news/all/natsionalniy-bank-prezentuvav-politiku-schodo-rozvitku-stalogo-finansuvannya-na-period-do-2025-roku>

33 [https://cspa.com.ua/wp-content/uploads/2022/02/Transp\\_index\\_2020\\_en\\_web-1.pdf](https://cspa.com.ua/wp-content/uploads/2022/02/Transp_index_2020_en_web-1.pdf)

34 <https://www.undp.org/ukraine/publications/business-and-human-rights-ukraine-accelerating-sustainable-and-equitable-development-through-implementation-un-guiding>, P.84

35 <https://www.undp.org/ukraine/publications/business-and-human-rights-ukraine-accelerating-sustainable-and-equitable-development-through-implementation-un-guiding>

1. Lack of BHR awareness and capacities among all actors: rights holders, especially vulnerable groups, State and local authorities, and the corporate sector.
2. Policy incoherence at national, local, and corporate levels and lack of capacities to ensure substantive (not just formal) compliance of national, local, and corporate policies and practices with human rights standards, as well as poor consistency of such policies and practices with each other.
3. Increasing requirements for responsible business conduct from the international community, including international companies, investors, and civil society.
4. Lack of effective State and non-state remedies, in particular operational-level grievance mechanisms, to prevent and protect against business-related human rights abuse.

The 2021 Study also identified the labour challenges in ensuring corporate responsibility for human rights, namely informal employment; the unprotected status of gig-workers; a gender pay gap and gender segregation of the labour market; youth unemployment; wage arrears; weak guarantees for freedom of association and the right to collective bargaining; forced labour; lack of occupational safety and health; environmental safety; violence against and prosecution of human rights defenders; discriminatory practices within particular business models (such as discriminatory advertising, lack of reasonable accommodation); and, lack of effective mechanisms for communication between local communities and business.

Unfortunately, many companies, even those with BHR policies, demonstrated quite a formal attitude to their human rights obligations and acted by the principle “know but not show”. The reason for this was lack of a proper understanding of the BHR concept (Conclusion 1 of Study 2021) and hence lack of the practical skills of its application in practice, and lack of specific, comprehensible measurement indicators and clear action algorithms in regard to business and human rights.

These gaps in ensuring corporate respect for human rights increased with the Russia’s full-scale invasion on Ukraine, when the need for responsible business conduct and for identification, assessment and prioritization of BHR issues became critical. In general, the identified findings demonstrate that companies in Ukraine were not prepared from a BHR standpoint for war realities and heightened human rights risks.



## 2. BUSINESS AND HUMAN RIGHTS AGENDA IN TIMES OF WAR IN UKRAINE

### Key takeaways from Chapter 2

1. The study has defined four scenarios for companies in Ukraine to operate in a wartime situation: (1) operating under constant bombardment and active hostilities; (2) operating in areas not under the control of the Government of Ukraine; (3) operating in other war-affected areas and relocation towards the safer Western regions of Ukraine or abroad; and/or, (4) operating in areas retaken by the Government of Ukraine. Each of these scenarios could be related to specific human rights risks. A cross-cutting human rights issue relevant for all scenarios is safety of employees and consumers. For the fourth scenario, the concept of responsible return should be discussed and developed.
2. The size and affiliation of a company plays an important role in how the company will address human rights challenges. Large companies, especially multi-nationals, have more resources to relocate people to another enterprise in a safer region unlike SMEs. Geography showed that a lot of business and human rights risks for companies were in territories beyond control of the Government of Ukraine and territories with hostilities. Difficulties remain in areas retaken by the Government of Ukraine due to full destruction caused by hostilities.
3. Under the complex economic conditions, the government made business operations easier through deregulation. This could lead to significant weakening of guarantees for employee' rights and a strengthening of the freedom of employer's discretion. There is a need to reconsider the recent amendments in the labour legislation through a human rights lens. At the same time, there are still no human-rights-based governmental guidelines outlining responsible business conduct during hostilities, on the territories beyond control of the Government of Ukraine, or relocation of companies and employees.<sup>36</sup>
4. The programs for national rebuilding and recovery that are being developed in Ukraine still do not integrate the need for responsible business conduct. The role of business entities in transitional justice processes, as well as the prospects of applying international humanitarian law and bringing business entities to justice in the case of direct or indirect participation, or of contributing to human rights violations, receives no attention.
5. The most affected companies are those that could not work online, namely manufacturing and construction companies. Due to hostilities, some industries halted their operations (e.g., civilian aviation, ports), others reduced them (e.g., entertainment, pawnshops). The IT sector, as expected, turned out to be the most resilient<sup>37</sup>.
6. A key role during the war and conflict is played by companies that provide essential service and goods to consumers (e.g., food retailers, Internet, banks). Nonessential services and goods may become essential ones when the delivery of a nonessential service is interrupted for some time.

<sup>36</sup> See detailed Responsible business conduct in times of war: Implications for essential goods & services providers in Ukraine. <https://www.business-humanrights.org/en/latest-news/new-study-responsible-business-conduct-in-time-of-war-implications-for-essential-goods-services-providers-in-ukraine/>

<sup>37</sup> <https://www.44.ua/news/3395480/v-kmda-nazvali-qaluzi-aki-najbilse-postradzali-vid-vijni>

7. The efforts of companies to be socially responsible during the war resembled corporate social responsibility in its narrowest sense (e.g., purchasing and providing goods for the needs of the local communities, hospitals, etc.; charitable contributions, providing humanitarian aid, etc.). The efforts could also be seen as corporate responsibility to respect human rights when companies (often, intuitively, rather than based on pre-developed policies and procedures) try to determine the potential and real impact of their actions on human rights, take into account possible scenarios of developing military actions; and, prevent or minimize possible negative consequences for their employees, customers, and local community residents. Among the common socially responsible practices are the following: assistance to international and local NGOs, volunteering, assistance to communities, provision of services and goods pro bono, and change in products produced by companies.

## 2.1. ECONOMIC AND SOCIAL SITUATION IN UKRAINE

The war on Ukraine has caused humanitarian, food, and energy crises with a devastating impact on the country, resulting in a massive displacement crisis and a significant regional spill-over. The United Nations High Commissioner for Refugees (UNHCR) reported more than 7.7 million Ukrainian refugees<sup>38</sup> across Europe and 6.5 million internally displaced people (IDPs)<sup>39</sup> in Ukraine. In total, UN agencies and humanitarian partners have reached 13.5 million people with humanitarian assistance since February 24, 2022<sup>40</sup>.

From 24 February 2022, which marked the start of the large-scale armed attack by the Russian Federation, to 17 April 2023, the Office of the UN High Commissioner for Human Rights (OHCHR) recorded 22,904 civilian casualties in the country: 8,534 killed and 14,370 injured. 2022, 16,462 civilian casualties: however the”. The actual figures are considerably higher, as the receipt of information from some locations where intense hostilities have been going on has been delayed and many reports are still pending corroboration<sup>41</sup>.

As of February 2023, according to Ukraine’s second [Rapid Damage and Needs Assessment](#), considering a full year of war, direct damage in Ukraine has reached over US\$135 billion, with housing, transport, energy, and commerce and industry the most affected sectors. Damage is concentrated in the frontline oblasts, particularly Donetsk, Kharkivska, Luhanska, Zaporizka, Khersonska, Mykolaivska, and in oblasts that were brought back under government control, such as Kyivska and Chernihivska. Disruptions to economic flows and production, as well as additional expenses associated with the war, are collectively measured as losses and amount to some US\$290 billion. Ukraine’s gross domestic product (GDP) shrank by 29.2 percent in 2022, and poverty increased from 5.5 percent to 24.1 percent in 2022 (based on the poverty line of US\$6.85 per person per day). Reconstruction and recovery needs are estimated at about US\$411 billion<sup>42</sup>.

The damage and losses for Ukrainian agriculture are estimated to reach US\$40.2 billion, with losses accounting for 78 percent of the total (damage of US\$8.72 billion for the agriculture sector, aggregate losses total US\$31.50 billion). The damage includes partial or full destruction of machinery and equipment, storage facilities, livestock, fisheries and aquaculture, and perennial crops, as well as stolen inputs and outputs<sup>43</sup>.

The blockade of Ukraine’s Black Sea ports caused a global food crisis, given that Ukraine is one of the world’s top agricultural exporters. Opening the Black Sea Grain Corridor in August 2022 decreased the intensity of food security and stabilized prices, but many red flag issues remain

38 <https://data.unhcr.org/en/situations/ukraine>

39 <https://dtm.iom.int/reports/ukraine---internal-displacement-report---general-population-survey-round-10-17-27-october>

40 <https://reliefweb.int/report/ukraine/ukraine-2022-flash-appeal-estimated-number-people-reached-27-october-2022>

41 <https://www.ohchr.org/en/news/2023/04/ukraine-civilian-casualty-update-18-april-2023>

42 <https://documents.worldbank.org/en/publication/documents-reports/documentdetail/099184503212328877/p1801740d1177f-03c0ab180057556615497>

43 <https://documents.worldbank.org/en/publication/documents-reports/documentdetail/099184503212328877/p1801740d1177f-03c0ab180057556615497>

there, including land mines, war results, etc.<sup>44</sup>. As of February 2023, a third of Ukrainian territories have been mined, and a third of Ukrainian forests have been burnt down.

Business assets are the third largest item of direct infrastructure damage. It accounts for about 10% of total losses. In terms of industries, metallurgy suffered the most. As of February 2023, the total direct losses of companies' assets are estimated at \$11.3 bn. In total, at least 426 large and medium-sized private enterprises, as well as state-owned enterprises, and tens of thousands of small private enterprises, have been damaged or destroyed since the beginning of the war. The true figure is likely to be higher, as not all businesses are reported, especially those in the territories beyond control of the Government of Ukraine<sup>45</sup>.

In particular, two of the largest enterprises on the list of damaged/destroyed were destroyed – Azovstal and Ilich Steel and Iron Works (both in Mariupol). In terms of regions, Donetsk region suffered the most, accounting for almost half of the total direct damage to businesses. There were also significant losses in Kharkiv, Luhansk and Kyiv regions<sup>46</sup>.

During October and November 2022, with a new wave of rocket' and drone' attacks, almost 50% of Ukraine's electricity system was damaged or destroyed, causing disruption and power outages in 10 out of Ukraine's 24 regions that in some cases will take years to fix<sup>47</sup>. Seventy-four percent of companies had to purchase generators to resume production processes<sup>48</sup>. In general, a lack of electricity, water, and heating became one of the biggest obstacles for Ukrainian enterprises at the end of 2022. Among other obstacles, there are increased prices for raw materials, safety of employees<sup>49</sup> and disrupted supply chains<sup>50</sup>. Some enterprises suspended their operations due to massive damage to the Ukrainian energy infrastructure. In terms of small and medium enterprises, the total direct damages amount to \$64-85 billion<sup>51</sup> with 87% of companies in need of funding. Half of small and medium enterprises stopped or nearly stopped their activities.

**Thus, the war has had a devastating impact on people's lives and on the economy, not only in Ukraine, but globally, taking into account global food and energy security. The vast damages have also had negative effects on business operations.**

44 <https://www.forbes.com/sites/madelinehalpert/2022/06/15/russias-invasion-of-ukraine-has-caused-almost-43-billion-in-agricultural-damage-study-finds/?sh=2f6a19f3618f>

45 [https://kse.ua/wp-content/uploads/2023/03/ENG\\_FINAL\\_Damages-Report\\_.pdf](https://kse.ua/wp-content/uploads/2023/03/ENG_FINAL_Damages-Report_.pdf)

46 Ibid.

47 <https://www.theguardian.com/world/2022/oct/27/kyiv-facing-sharp-deterioration-electric-supply-russian-strikes>

48 Results of the Eighth monthly survey of companies managers "Ukrainian business in conditions of war" (December 2022).

49 Ibid.

50 Ibid.

51 Бізнес-2022wave-5v52.pdf: <https://drive.google.com/file/d/1qbTXyuk3YWnmjBIPTy8IbGr8JTLfBmyc/view>

## 2.2 BUSINESS AND HUMAN RIGHTS AT THE NATIONAL LEVEL

The UNGPs and the Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie “Business and human rights in conflict-affected regions: challenges and options towards State responses”<sup>52</sup> provide a range of actions for states to act, including on how states can do more to ensure that companies operating in conflict areas respect international human rights law and international humanitarian law.<sup>53</sup>

The full-fledged war in Ukraine has many risks and challenges. Thus, the role of the state is much higher, including developing of special human-rights-based governmental guidelines outlining responsible company conduct in case of hostilities, on the territories beyond control of the Government of Ukraine, and/or relocation of companies and employees. Such guidelines could also be sector specific for those sectors with a high level of informal employment (e.g., retail, construction companies, etc.) that have been forced to halt operations.<sup>54</sup>

At the same time, the Ukrainian government has supported deregulation for businesses. Thus, several adopted documents have made employees’ rights protection weaker. Among such documents:

- Law of Ukraine “On the Organization of Labour Relations in the Conditions of Martial Law” March 15, 2022 N° 2136-IX<sup>55</sup> includes the possibility for an employer to suspend an employment contract without any payments if there is no feasible ability to have the work be done under such a contract. What is’ more important is that the compensation to an employer should be paid by the aggressor-country.
- “On Amendments to Certain Legislative Acts of Ukraine Regarding the Regulation of Labour Relations with Non-Fixed Working Hours”<sup>56</sup> states an employer could conclude an employment contract with non-fixed working hours that does not specify time working slots for an employee and when there is no guarantee that such work will be provided continuously.

International human rights law allows derogations from international human rights obligations by States “in time of public emergency which threatens the life of the nation”<sup>57</sup> and “in time of war or other public emergencies threatening the life of the nation.”<sup>58</sup> Despite the controversy of applying this point in the above-mentioned laws, there is the universal rule stating that any human rights

52 <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G11/135/63/PDF/G1113563.pdf?OpenElement>

53 <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N20/190/21/PDF/N2019021.pdf?OpenElement>

54 See detailed Responsible business conduct in times of war: Implications for essential goods & services providers in Ukraine, <https://www.business-humanrights.org/en/latest-news/new-study-responsible-business-conduct-in-time-of-war-implications-for-essential-goods-services-providers-in-ukraine/>

55 <https://zakon.rada.gov.ua/laws/show/2136-20#Text>.

56 Про внесення змін до деяких ... І від 18.07.2022 N° 2421-IX (rada.gov.ua)

57 International Covenant on Civil and Political Rights. <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>

58 European Convention on Human Rights. [https://www.echr.coe.int/documents/convention\\_eng.pdf](https://www.echr.coe.int/documents/convention_eng.pdf)

limitations should not lead to the levelling of the human right itself. Thus, it's critical to introduce amendments to the above-mentioned Ukrainian documents.

In designing transitional justice mechanisms and the application of its four pillars (truth seeking, prosecution, reparations, and institutional reforms), the Ukrainian State still 'does not consider the role of business, although according to the 2020 report "Business, Human Rights and Conflict-Affected Regions: Towards Heightened Action" it should. There are still unclear **prospects of applying international humanitarian law and bringing business entities to justice in the case of direct or indirect participation, or contributing to human rights violations** outside sanctions mechanism. Regarding recovery processes, national rebuilding programs still do not focus on the issues of responsible business conduct.

At the societal level, every company's action aimed at supporting the fight for Ukrainian independence is welcomed. **Assessment of businesses regarding their potential or actual impact on human rights is not carried out except** in regard to the issue of the presence of global brands in Russia and Ukraine. This issue is being actively monitored, however, mostly not from a human rights view, but from an ethical view of the impossibility of running a business and paying taxes in the aggressor country.<sup>59</sup>

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59 See also B4Ukraine citation. Also <https://corpgov.law.harvard.edu/2022/06/24/it-pays-for-companies-to-leave-russia/>

## 2.3. THE IMPACT OF WAR ON BUSINESS IN UKRAINE

In the first months of the full-scale Russian invasion, CSR Ukraine developed a Catalogue of Business Contributions to the Russian-Ukrainian War. The Catalogue presents the cases of contributions of companies to the fight against Russia's invasion. The Catalogue contains 328 cases, where only 26 of them are aimed at supporting employees, mostly in an emergency nature, such as:

- Relocation or evacuation
- Provision of psychological support
- Provision of financial support
- Programs for employees' children

Currently, there are four scenarios of how companies are operating during the war:

- (1) operating under constant bombardment and active hostilities;
- (2) operating in areas not under the control of the Government of Ukraine;
- (3) operating in other war-affected areas and relocation towards the safer western regions of Ukraine or abroad; and/or,
- (4) operating in areas retaken by the Government of Ukraine.

### SCENARIO 1 – Operating under constant bombardment and active hostilities

This scenario is characterized by the following factors:

- lack of safety and, consequently, need for the relocation of people
- shutdown of international companies due to lack of safety
- destruction of critical infrastructure and difficulties in repairing
- disruption of supply chains
- continuation of the work of local businesses due to better understanding of the context and lack of an alternative plan, as employees do not want to be relocated
- continuation of the work of municipality- and state-owned enterprises, often with high risks to employees' safety, e.g., to secure water or gas supply, or garbage collection, even under active shelling; or, to carry out the evacuation of people by trains.

**Case:** The management of *EKO Market supermarkets* made the decision to work in frontline territories. As of July 2022, only one of the seven supermarkets operating in Donbas regions has closed. Only essential goods are offered for purchase (400-500 products compared with 2500-3000 items pre-war).

*"In the first days of the full-scale invasion, all large businesses left town, but one small bakery stayed. The owners of this bakery had three or four shops where they sold their products. They moved all their employees who stayed into the basement bomb shelter. The bakery provided Kharkiv residents with free bread for the first two months and paid their employees. They gave cars to their employees to transport their products around the city and to take their families and the most necessary things out of Kharkiv (FGD-4(1)\_Inna).*

## SCENARIO 2 – Operating in areas beyond the control of the Government of Ukraine

This scenario is the riskiest from the perspective of international humanitarian law (IHL), a universally recognized specialised set of international legal rules, including a business framework, applicable to situations of armed conflict. Ukraine imposed a ban on economic activity in the territory not under control of the Government of Ukraine, up to the threat of criminal liability<sup>60</sup>, including bans on:

- interaction with entities in areas beyond control of the Government in Ukraine,
- making payments from/to territory not under control of the Government of Ukraine,
- paying taxes to the budget of the Russian Federation, which qualifies as financing terrorism under Ukrainian law,
- the import and export of goods from/to territory not under control of the Government of Ukraine, which leads to the impossibility of doing business,
- if a party of agreement is an entity located in a territory not under control of the Government of Ukraine, the agreement is null and void, and licenses are considered invalid there.<sup>61</sup>

The consequences for committing such actions is imprisonment for a term of 3 to 5 years with deprivation of the right to hold certain positions or engage in certain activities for a term of 10 to 15 years, as well as the potential confiscation of property.

On the other hand, entities in the areas not under control of the Government of Ukraine sometimes deprive companies of the opportunity to operate (for example, jam the mobile signal) or establish de facto control over enterprises (including, notably, nuclear power plants in Chernobyl and Zaporizhzhia).

Third parties have also imposed sanctions on any business activity in territories beyond the control of the Government of Ukraine, which clearly signals that economic activities in such territories are considered as irresponsible business conduct. Under such conditions, transnational companies have immediately stopped their operations; national private companies have continued to work as long as possible without the need to interact with the controlling authorities (e.g., the possibility of payments in hryvnia remained; there were stocks of medicines in pharmacies, food in stores, etc.).

As of August 2022, almost 65,000 Ukrainian businesses operated in territories beyond control of the Government of Ukraine, or about 5% of the total number of legal entities in Ukraine.<sup>62</sup> **Ukrainian officials admit in speeches that there are essential goods and services, such as utilities, pharmacies, or food shops, for which no responsibility should arise. A draft of the law on improving Article 111-1 in order to determine a list of essential goods and services that must be provided and for which criminal liability should not be imposed has been prepared.**<sup>63</sup> In particular, the draft law specifies that only those who voluntarily cooperate with the aggressor will be punished. Also, the developers of the draft singled out the types of activities that should not be covered by the Criminal Code, in particular, healthcare, bank services, and agriculture.<sup>64</sup> **But no amendments to the legislation have yet been introduced**<sup>65</sup>.

60 There are examples of “financing terrorism” criminal cases against Kyiv companies whose network of pharmacies operates in territories beyond control of the Government of Ukraine (see <https://ssu.gov.ua/novyny/sbu-vykryla-stolychnu-farmkompaniiu-na-finan-suvanni-boiovykiv-dnr-cherez-aptichniy-biznes-u-donetsku>).

61 Про забезпечення прав і свобод громадян та правовий режим на тимчасово окупованій території України, <https://zakon.rada.gov.ua/laws/show/1207-18#Text>

62 <https://opendatabot.ua/analytics/business-in-occupation>

63 <https://zmina.info/articles/yak-ukrayincyam-na-okupovanyh-terytoriyah-ne-potrabyty-pid-stattyu-pro-kolaboraczionizm/>

64 <https://zn.ua/ukr/business/jak-biznesmenu-v-okupatsiji-ne-peretvoritisja-na-kolaboranta.html>

65 <https://zmina.info/articles/yak-ukrayincyam-na-okupovanyh-terytoriyah-ne-potrabyty-pid-stattyu-pro-kolaboraczionizm/>



The Ministry of Reintegration of Temporarily Occupied Territories of Ukraine provided a clarification: on the territories beyond control of the Government of Ukraine, it is allowed to carry out the educational process according to Ukrainian educational programs, to ensure the provision of medical services to the population, and to eliminate the consequences of emergencies<sup>66</sup>. If it is not possible to relocate a business, the representatives of the Chamber of Commerce in Ukraine have suggested temporarily closing the company and, after liberation, resuming work.

**Case:** *When Kherson was beyond control of the Government of Ukraine, large Ukrainian companies, even supermarkets, had relocated their employees and workers within a few days to territories controlled by Ukraine. The Ukrainian properties were transferred to the ownership of "loyal entrepreneurs" or moved to Russia. Although, some companies managed to work for a certain time on the territories beyond control of the Government of Ukraine, despite logistics disruptions:*

- *"Ukrposhta" supported the operation of branches in territories beyond control of the Government of Ukraine in order to pay pensions and salaries. The money was taken from the payment for communal services, so in general it was like a loop system. The same situation was with Privatbank and other banks, which work autonomously. Local entrepreneurs try to cooperate with banks and deposit cash into bank cash registers themselves. Thus, money is returned to ATMs through store cash registers, and vice versa. In March, Kherson residents bought about two thousand QR-tickets for public transport through Privat24. Although it was not safe, as bank branches were attacked and bank employees received threats<sup>67</sup>.*
- *"Epicentr" stores, the biggest Ukrainian retail chain, continued operations, thanks to filled stocks.*

### SCENARIO 3 – Operating in other war-affected areas and relocation towards the safer western regions of Ukraine or abroad

Under Scenario 3, business operates more or less as usual with the exception of relocated businesses. Although these territories are not safe, as from time to time there would be rocket attacks on certain settlements or objects of critical infrastructure after 11 October 2022, businesses continue their operations there. These territories are characterized by the significant presence of internally displaced persons, which at certain moments creates a shortage of food, in some cases a significant increase in prices for products, a shortage of cash, or problems with housing (rental housing prices in some cases increased by 200-300 percent, which made housing unaffordable for many people, especially for IDPs and especially in the beginning of the war). Vulnerability in access to housing and food significantly increases the risks of adverse impact by business operations.

Only a few transnational companies stopped working in the safer Western or central regions, mostly because of a general decision to wait until the end of hostilities. Both American companies Uber and McDonalds did not function for 2-5 months, thus not providing critical mobility services, employment, or local tax revenues.

The national government recommended businesses from territories beyond control of the Government of Ukraine to relocate to safer areas. On May 5, 2022, 500 enterprises relocated to safer locations, of which 300 have already recommenced work. With the decreasing intensity of military activities in central Ukraine and the liberation of Kyiv oblast, fewer and fewer companies planned to relocate. Thus, in March 2022, there were applications from 1266 enterprises; and in June 2022, only 79 applications<sup>68</sup>. In general, as of September 2022, 71% of SMEs did not plan to relocate. Only 20% of SMEs moved enterprises to safer Ukrainian regions; 4.4% SMEs were relocated abroad. State-owned enterprises such as Oschadbank and Ukrzaliznytsia, supported companies in relocation efforts.

66 МВС: Будь-які органи, їх посадові та службові особи на тимчасово окупованій території та їх діяльність є незаконними, 26 травня 2022 року [Ministry of Internal Affairs: All bodies, their officials and officials in the temporarily occupied territory and their activities are illegal, May 26, 2022]. <https://www.kmu.gov.ua/news/mvs-bud-yaki-organi-yih-posadovi-ta-sluzhbovi-osobi-na-timchasovo-okupovanij-teritoriyi-ta-yih-diyalnist-ye-nezakonnimi>

67 <https://www.epravda.com.ua/rus/publications/2022/11/21/694076/>

68 Data from [https://old.prozorro.sale/marketplace\\_landing-page#yak1](https://old.prozorro.sale/marketplace_landing-page#yak1)

## SCENARIO 4 – Operating in areas retaken by the Government of Ukraine

As of 14 November 2022, 52% of territories were retaken by the Government of Ukraine. Once territories are liberated, it is important to ensure businesses can conduct a safe return. The situation in these territories is harsh, as there is always damaged infrastructure (roads and bridges), no electricity and internet, and mined offices and lands.

For instance, when Kharkiv region was liberated, there was no electricity or internet for 3-4 weeks. Local people needed humanitarian assistance, basic products, and psychological support.

*Case: The resumption of Oschadbank branch operations in the areas retaken by the Government of Ukraine is preceded by hard work: demining, fixing damages, planning and implementing restoration works, checking the functioning of communication channels, searching for personnel ready to return to work... The bank has already restored the work of 63 branches in territories in Kyiv, Sumy, and Chernihiv region where the Government of Ukraine regained its control..*

Another issue is recruitment of people who were on the territories beyond the control of the Government of Ukraine. Therefore, companies should also conduct a due diligence to check whether employees were related to collaboration activity.

**Studying materials, the research team 'has not found any governmental recommendations for businesses on how to return safely to the liberated areas. From a human rights perspective, there are a lot of heightened risks because of safety reasons, psychological support, reimbursement of damages for employee' property, availability of childcare facilities, and many others. All these risks should be discussed to develop a strategy for responsible return, especially in the context of violations of international humanitarian law by companies and the heightened risks of human rights abuses by companies.**

## 2.4. WARTIME CORPORATE SOCIAL RESPONSIBILITY

Many respondents during the focus group discussions mixed CSR with BHR activities. Unlike BHR activities, where companies act more intuitively and rarely, CSR activities have been implemented often. In the beginning it was an ad hoc activity, later it turned into a separate business operation. For more than a year, many companies have been helping communities, people, international and national non-governmental organizations.

*Assistance to international and local NGOs:* Astarta, an agriculture company, supported food and humanitarian missions<sup>69</sup>. Since March 2022, Astarta has been delivering humanitarian cargo for the UN World Food Program. As part of a joint project with the International Labour Organization, the Ministry of Foreign Affairs of Denmark, the Embassy of Denmark in Ukraine, and the Federation of Employers of Ukraine, more than 3,500 food kits were created and delivered to Kharkiv and Mykolaiv.

*Provision of products and services pro bono and assistance to communities:* Kharkiv's volunteer food cluster consisted of approximately four dozen cafes that donated products, and their kitchens and other facilities for preparing food for the military; hospitals, maternity homes, and Kharkiv residents in bomb shelters. Antoshka company, a children's store, donated diapers and baby food worth UAH 250,000.

*Change in product production:* VESNA, a cosmetic brand from Bucha, Kyiv Region, began to produce frontline kits for the military (300 healing ointments and hand creams were sent to the front). They distributed products from their eco-store to people in Bucha. Over UAH 800,000 were spent on helping the Army and the community. Several fashion companies that sew clothes started sewing military uniforms. After February 24, 2022, company Ajax released an application for air alert notifications for the population.

*Advance tax payment:* In the beginning of the war, many large companies paid their taxes in advance, which was a significant support for the Ukrainian economy. According to the catalogue of business contributions, the total sum of advance tax payment equalled UAH 10 billion.

*Volunteering:* A lot of employees volunteered. 84% of small and medium-sized business leaders believe that volunteering and helping the Army increased the company's morale during the difficult period.<sup>70</sup>

**FGD-2\_Iryna.** *Certain employees from our company have even established their own charitable foundations. Other employees joined a charity as volunteers. We held various meetings. They also cooperated with international organizations and delivered humanitarian aid to occupied territories. We mainly work in the directions of Luhansk and Kharkiv Regions. Now we only provide humanitarian aid once a week to people who apply to our charitable organization. And we give them certain humanitarian packages.*

69 [https://cfts.org.ua/articles/yak\\_v\\_umovakh\\_viyni\\_perebudovuyutsya\\_kompani\\_povyazani\\_z\\_transportom\\_chastina\\_3\\_astarta\\_kiv\\_i\\_metinvest\\_1907](https://cfts.org.ua/articles/yak_v_umovakh_viyni_perebudovuyutsya_kompani_povyazani_z_transportom_chastina_3_astarta_kiv_i_metinvest_1907)

70 <https://www.the-village.com.ua/village/business/news/331231-38-kerivnikiv-maloqo-y-serednoqo-biznesu-planuyut-naymati-novich-pratsivnikiv-po-pri-viynu>

*Support for suppliers:* There were examples where business entities increased purchase prices to support partners in a difficult situation.

Among the participants of the focus groups, there is no single position regarding which business is more socially responsible in the conditions of war. Some participants believe that international businesses more often have established practices for working with personnel and tries to adhere to them in times of crisis. On the other hand, Ukrainian business is often more involved in internal Ukrainian issues, has a patriotic character, and works to help win the war and preserve human potential as much as possible. Accordingly, this issue remains debatable.

Opinions differ on whether there is anything local governments can do to encourage socially responsible businesses. On the one hand, some local authority representatives believe that local authorities providing any preferences for business has great corruption risks. On the other hand, in more stable situations, some respondents from local self-government authorities say they are ready to consider deeper cooperation if specific rules are formulated by the central government: what benefits and preferences can be granted and which would not be interpreted as corrupt actions.

## 2.5. INDUSTRY CASE STUDY ANALYSIS

According to desk study, **economic sectors where remote work is impossible and that work directly with people** have been the most affected by Russia's war against Ukraine<sup>71</sup>. Such sectors practically disappeared, such as air transport, sea transport, and port infrastructure.

The second most affected by the war<sup>72</sup> have been **sectors that require the largest investments or logistics, such as mechanical engineering and tourism**. The largest percentage of enterprises that have completely or partially stopped work reaches 84% in the field of tourism, 70% in mass media, 58% in construction, and 50% in mechanical engineering. Agriculture (40%) and real estate (53%) have also been affected. Business was affected during the first month of the large-scale invasion when a large number of enterprises were purposefully destroyed by hostilities (rockets and bombing), especially in the east of the country. **Mining and metallurgical industries, which altogether with the agricultural sector** had provided the lion's share of Ukrainian exports in pre-war times and one of the highest levels of wages, has currently had a lot of challenges. In Mariupol, Ukraine lost two large metallurgical enterprises: "Azovstal" and Ilyich MMK, which accounted for more than 40 percent of metal production in the country. Other metallurgical giants have been operating at 20% of their capacity since the beginning of the summer 2022<sup>73</sup>. **IT, as expected, turned out to be the most stable industry**<sup>74</sup>. There are industries in safer regions with growth, including **healthcare, transport, postal services, and restaurants**<sup>75</sup>.

### Human rights abuses by companies, February – September 2022

According to an Omnibus study conducted in August-September 2022, most human rights abuses were observed in healthcare (14.7%). The extractive industry (2.2%) was the leader with the least number of human rights abuses, although this industry suffered the most. This could be explained by the fact that sectors where human rights abuses were identified are sectors that continued to operate during the war, and these sectors' services are the most demanded by people.

### Human rights abuses by companies, October 2022 – February 2023 (after rocket attacks on critical Ukrainian energy infrastructure)

According to an Omnibus study conducted in February 2023, the energy sector was identified as the sector in which a company that abused consumer rights operates, according to those who claimed to have experienced such abuse (59.7%). Other sectors involved were water supply and drainage (18.6%), wholesale and retail sale (16.4%), and ICT (16.3%). The responses from the participants indicated that the abuses were primarily related to damages to energy infrastructure, resulting in consumers being unable to receive energy, water, heating, or Internet services. Furthermore, as a consequence of these damages, shops had to close, and generators were later purchased to restore the services.

71 <https://www.ukrinform.ua/rubric-economy/3445172-v-minekonomiki-rozpovili-aki-galuzi-postrazdali-vid-vijni-naibilse.html>

72 <https://business.dii.gov.ua/cases/novini/stan-ta-potrebi-biznesu-v-ukraini-sektoralnij-rozriz-veresen-2022>

73 <https://www.unian.ua/economics/other/viy-na-proti-rosiji-yak-viy-na-zminyuye-ukrajinskiy-promislovij-sektor-ostanni-novini-11928213.html>

74 <https://www.44.ua/news/3395480/v-kmda-nazvali-galuzi-aki-naibilse-postrazdali-vid-vijni>

75 <https://business.dii.gov.ua/cases/novini/stan-ta-potrebi-biznesu-v-ukraini-sektoralnij-rozriz-veresen-2022>

## INDUSTRY CASE: AGRICULTURE

As of February 24, 2023, the damage and losses for Ukrainian agriculture are estimated to reach US\$40.2 billion, with losses accounting for 78 percent of the total (damage of US\$8.72 billion for the agriculture sector, aggregate losses total US\$31.50 billion). The damage includes partial or full destruction of machinery and equipment, storage facilities, livestock, fisheries and aquaculture, and perennial crops, as well as stolen inputs and outputs<sup>76</sup>.

Another devastating problem is mined agricultural fields<sup>77</sup>, as a third of Ukrainian territory has been mined, as of February 2023. The most mined region is Sumy, where 50% of the land is mined. Before the war, this region was popular among investors; but since the war, most farmers have put their land up for sale, because they cannot pay the rent and have not been subsidized by the State<sup>78</sup>.

**Case:** *The Harvest company was represented in two regions, near Mariupol and in Kyiv Region (mostly near Bucha and Irpen, which was occupied by Russian troops). Out of our 30,000 hectares in the Kyiv Region, about 5,000 hectares were mined, so the company could not carry out work. Other lands were shelled; there were cases of the detonation of agricultural machinery. In Mariupol, the company's land is currently occupied by Russian troops, and a lot of things have been stolen: equipment, grain, and, in fact, the enterprise<sup>79</sup>.*

## HUMAN RIGHTS ABUSES, FEBRUARY 2022 – SEPTEMBER 2022

According to an All-Ukrainian sociological representative study conducted in August-September 2022, the least number of abuses happened in agriculture (2.5%). In pre-war times, the most common violation in this industry was informal seasonal wages. **The study did not document a change, yet the war without doubt has increased the risks of human rights abuses. Informal seasonal employment could possibly have deteriorated, especially in the situation where local farmers (the main customers for such services) have practically gone bankrupt, leaving people in the villages (their employees) without salary or official employment.**

## HUMAN RIGHTS ABUSES, OCTOBER 2022 – FEBRUARY 2022 (AFTER ROCKET ATTACKS ON CRITICAL UKRAINIAN ENERGY INFRASTRUCTURE)

According to an All-Ukrainian sociological representative study conducted in February 2023, human rights abuses in the agricultural sector increased to 10.3%. The study did not uncover the reason for this; but, as a result of focus group discussions, some conclusions as to the causes could be made, including power outages, continuation of the war, and therefore the deteriorating economic situation. Based on this, companies in many sectors practice illegal dismissal, non-payment of wages, and delays in payment.

## INDUSTRY CASE: RETAIL

Retail was among the sectors severely affected by the war due to: business suspension, drop in demand, destruction of warehouses and logistics, inability to conduct operations in the combat

76 <https://documents.worldbank.org/en/publication/documents-reports/documentdetail/099184503212328877/p1801740d1177f-03c0ab180057556615497>

77 <https://www.seeds.org.ua/skilki-poliv-v-ukraini-zaminovano/>

78 <http://agro-business.com.ua/agro/ekspertna-dumka/item/25469-shcho-z-ahrosektorom-naslidky-viiny-otsinky-i-prohnozy.html>

79 <https://www.epravda.com.ua/news/2022/09/29/692035/>

zone, relocation of personnel, and impossibility of fulfilling contracts. Direct losses to the largest retailers amounted to \$9.8 billion in the first two months of the war (September, 2022). Around 23 shopping centres were destroyed or seriously damaged<sup>80</sup>. Taking into account the scale of damages, non-payments of salary and decreases in salary have been the case in the retail industry.

Among retailers, jewellery stores, and fashion and entertainment centres have been affected the worst; while gas stations, pharmacies, and supermarkets have performed the best. A third of jewellery stores and 20% of electronics stores have closed as many men, the key personnel there, have been mobilized.

In October, after massive attacks, a drop in sales up to 50% was observed. To save energy, many shops turned off signs and other outdoor advertising. There was a regulation according to which retailers 'could not work during an air raid alert, and this had a negative impact on business. After negotiations with the State Emergency Service, the government allowed companies to continue working during an air alert if they were in "safe" locations (Scenario 3). **Although from the point of human rights, this action was not about the security and safety of employees and consumers.**

At the same time, during the war, shops and shopping malls have had to ensure enhanced security, purchase additional gas masks, and set up points with fire extinguishers. Some restaurants have been covered with *special protective plates*. Some gave employees emergency trainings on a monthly basis; others recruited additional security guards and trained them to quickly remove people from stores, according to safety protocols for working with children and villages. Another important skill for guards was chaos management, where psychologists taught them to detect a problem before it appeared. Many companies developed guidelines on "how to act during an air raid alert", helping an employee for a limited amount of time to turn off equipment, pay the guest, inform everyone in the restaurant about the nearest shelter and how to get there.

## ⬡ HUMAN RIGHTS ABUSES, FEBRUARY 2022 – FEBRUARY 2023

According to Omnibus studies conducted in August-September 2022 and in February 2023, the least number of abuses happened in the recreation and entertainment area, which demonstrated the desire of companies to care for their employees and consumers, even under the conditions of power outages.

**Case:** *As of July 15, 2022, Multiplex-Holding, a leader among cinemas in Ukraine with a 36% market share, had only 17 cinemas out of 29 in pre-war times, and 7 objects were fully destroyed. In the beginning of the war, the company paid everyone a full month's salary, then the company signalled out three categories of employees: those who could physically go out and work; those with whom it was necessary to legally suspend employment contracts but make payments of certain financial assistance; and, a super-small team needed to make key decisions and perform key functions<sup>81</sup>. Then the company resumed its operations under the condition of the availability of bomb shelters nearby. In case of an alert, the film session was suspended, people were requested to go to the shelter, and tickets were refunded. For example, if the alert lasts less than 20 minutes, people can go back and watch the movie. In extreme cases, the company refunds the money for the ticket.*

## ⬡ INDUSTRY CASE: IT SECTOR

According to the National Bank of Ukraine, in January-May 2022, the IT sector showed signs of stronger growth compared with the same period last year. As of June 2022, the number of IT specialists decreased by 60,000 workers, down to 228,000 (from 285,000), a nearly 21% decrease

80 <https://speka.media/ukrayinskii-riteil-povertajetsya-z-pocatku-viini-ne-pracyovalo-29-magaziniv-zaraz-10-9w6w4v>

81 <https://mbr.com.ua/uk/news/interview/4803-kinoteatri2>

from a year earlier<sup>82</sup>. The 50,000 -57,000 relocated employees spent around \$13.6 million every month in their new locations, and this money went into the local economy. A third of IT company CEOs received notifications from clients about the suspension of projects due to the situation in Ukraine, although in general growth dynamics were positive.

**The IT sector happened to be the most stable sector, with new projects being developed, including projects on mental health support (Eleks), corporate kids' rooms (Intellias), and retraining and training of women for new IT professions (the Project Institute). Taking into account the global context of IT companies' strategies, there is huge potential for them to study the BHR concept and apply it internally.**

## ⬡ HUMAN RIGHTS ABUSES, FEBRUARY 2022 – FEBRUARY 2023

According to an Omnibus study conducted in August-September 2022, there were no human rights abuses found in the IT sector. Although an Omnibus study conducted in February 2023 showed that, after the damage to the Ukrainian energy infrastructure, ICT was mentioned as the sector where people faced human rights abuses (16.3% out of those 6% who faced human rights abuses). One of the reasons for this could be the power outages.

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82 <https://itcluster.lviv.ua/wp-content/uploads/2022/07/IT-Resarch-Resilience-2022.pdf>



## 2.6. ESSENTIAL GOODS AND SERVICES

Essential goods and services are fundamental as their disruption has harmful consequences for the whole or part of the population. The key characteristics of essential goods and services are:

- 1) the essentiality is determined by the relationship between the level of harm that can likely be produced when the provision of that product/service is suspended<sup>83</sup>.
- 2) Some essential goods/services serve to protect lives; others help to attain a basic or adequate standard of living, or ensure that all persons can participate and inclusively develop in society.
- 3) Consumers of essential goods/services are typically not free to decline purchases, as it could result in a worsened quality of life.
- 4) Providers of essential products/services have to provide them to all who need them at a fair and reasonable price, in sufficient quantity and quality, and in a non-discriminatory way, particularly if the providers have a dominant or monopolistic position.<sup>84</sup>
- 5) **Nonessential services and goods may become essential when the delivery of a nonessential service or good is interrupted for enough time to endanger “the life, personal safety, or health of the whole or part of the population.”**<sup>85</sup> (e.g., garbage collection, as a nonessential service, may become essential when it is not collected for an extended period of time)
- 6) As a consequence, the essentiality of a given service is determined by the relationship between the level of harm that may likely be produced when the provision of that service is interrupted and the time of that stoppage.<sup>86</sup>

Among providers of essential goods/services are pharmacies, baby food and hygiene products, including diapers, grocery stores. During power cuts or air raid alerts, there were long lines of people in front of supermarkets (as people were not allowed to enter), which was not safe in case of attack.

Particularly vulnerable in such conditions are people with disabilities and the family members who care for them, people with young children, pregnant women and women who have recently given birth, the elderly (80+), people with chronic diseases (including those in need of a certain diet), and people living below the poverty line.

Providers of essential services and goods in Ukraine are State and municipal companies, private businesses of various sizes (large, medium and small businesses), and local and international companies.

83 Van de Walle, “When is a Service an Essential Public Service?” p. 522; Hans De Bruijn and Willemijn Dicke, “Strategies for Safeguarding Public Values in Liberalized Utility Sectors,” *Public Administration* 84 (2006): 717-35

84 Hallo de Wolf (2012) 541–542. See also, in general, M. Taggart, ‘The Province of Administrative Law Determined?’ in M. Taggart (ed.), *The Province of Administrative Law* (Hart Publishing 1997) 6–8.

85 International Labour Organization, *Freedom of Association*, para. 586.

86 Van de Walle, “When is a Service an Essential Public Service?” p. 522; Hans De Bruijn and Willemijn Dicke, “Strategies for Safeguarding Public Values in Liberalized Utility Sectors,” *Public Administration* 84 (2006): 717-35

Essential goods and services	Type of business
Internet	Private companies, mostly small local companies
Communication services, particularly mobile communications	Private companies, predominantly national; mobile operators represent big business
Drinking water delivery	Mostly local small private companies
Centralized water supply	Municipally-owned companies
Electricity and gas supply	Mostly large Ukrainian private and State-owned companies
Food retail	Large private companies, both national and international, as well as local small shops, family business
Medical services (hospitals)	Private companies, municipally-owned and State-owned enterprises
Sale of medicines	Private companies, Ukrainian and international
Public transport	Mostly municipally owned companies
Taxi services	International and local gig-companies and small local companies
Railway	State-owned company, monopoly
Banking services	Private banks, including those with foreign capital, and State-owned banks
Garbage collection, sewage	Mostly municipally owned companies

**Case:** *Ukrzaliznytsya, the State-owned railway company, has played an important role in the evacuation of people. It evacuated more than 4 million people in the first days of the war<sup>87</sup>.*

## ACCESS TO INTERNET AND DIGITAL RIGHTS

Among the essential services in times of war, access to the Internet and communications is one of the top priorities. People near the frontline indicated that lack of Internet and mobile communication deprived them of information about ‘green corridors’ and evacuation, as well as the opportunity to receive humanitarian aid. Such problem became worse during the winter when the Ukrainian people were facing blackouts and power outages after the energy infrastructure was damaged. Under such conditions, the Internet and mobile phones ‘did not work. Although Internet companies found solutions to the problem via purchasing generators.

Deprivation of access to the means of communication and access to information through the Internet has become one of the war tools used by the Russian army. In territories beyond control of the Government of Ukraine, Russian forces jam the signal of Ukrainian mobile operators and Internet providers. On May 30, 2022, communications were cut off throughout territories beyond control of the Government of Ukraine in southern Ukraine. Entities in areas beyond control of the Government of Ukraine began introducing Russian mobile operators to the Ukrainian market (SIM cards for mobile operators were sold without the name of the mobile operator itself; consumers “did not know which company was providing services to them”). However, for more than 10 days, people were completely without communication, unable even to call emergency services.

87 Since the beginning of the war, Ukrzaliznytsia has evacuated 4 million people to the west of Ukraine, about 600,000 to neighboring countries. <https://forbes.ua/ru/news/lyudi-25052022-6218>

In a number of Ukrainian cities under constant shelling, it is very difficult to find a mobile operator's SIM card or get customer service in case of problems with service, since offices and service centres do not work. Lack of mobile communication also deprives citizens of the means to communicate with their relatives and friends. Such actions violate Articles 8 and 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms and the 1949 Geneva Convention related to the Protection of Civilian Persons in Time of War.<sup>88</sup>

**Case:** Mobile operators in Ukraine have joined forces and launched a national roaming system. If one operator's network stops working, consumers can switch to another operator and have connection.<sup>89</sup>

## ◆ ADEQUATE FOOD

All food retailers, both national and international, in Ukraine are private companies small, including family business, medium and large companies. At the governmental level, in February 2022, a working group, which included representatives of largest retail networks, the Cabinet of Ministers, and the President, was formed to coordinate the work of supermarkets as a recognition of the essentiality of the goods they provided. In order to prevent artificial price increases and speculation, the State Consumer Service announced daily price controls for 26 items considered basic, socially significant goods belonging to three groups: food, medicine, and fuel. In total, the list of basic food products included 20 items: flour, pasta, bread, buckwheat, oatmeal, pork, beef, poultry (chicken carcasses), milk, butter, sour cream, chicken eggs, sunflower oil, crystal sugar, white cabbage, onions, beets, carrots, and potatoes.<sup>90</sup>

For food retail companies, the key reason for making the decision whether to continue or stop operations have not been based on a consideration of their own operations as essential services and on heightened HRDD. Small businesses, in particular grocery stores, in some cases demonstrated higher resilience compared to large businesses that were unable to quickly rebuild supply chains to adequately take into account the local context. In the early days of the war, only a few grocery stores operated in territories where hostilities were taking place or where there was a high risk of the outbreak of hostilities (Scenario 1). There were a lot of cases of product being overpriced.

Some large international companies suspended operations in the early hours of the war, when the need for food was critical. As an example, Metro Cash and Carry in Kharkiv was not open on February 24, 2022 when local people tried to stock up on food and drinking water.<sup>91</sup>

In the territories beyond control of the Government of Ukraine many companies, including international ones, stopped their operations due to the lack of communication with the territory. In the safer western territories in the first weeks of the war, there was a significant increase in prices and a demand to pay in cash. Among the human rights abuses there that can be singled out are the speculation in important goods and the commercial sale of humanitarian goods. In many situations, such cases were quickly stopped.

## ◆ FINANCIAL SERVICES AND BANKS

The Ukrainian financial system has endured during the most critical period at the beginning of the war, although still it faces enormous challenges. The National Bank of Ukraine (NBU) stabilized the

88 Telegram channel of Ukrainian Ombudsperson, <https://t.me/denisovaombudsman>.

89 How mobile communications work during the war. During the first weeks of the war, hundreds of base stations of mobile operators were damaged or destroyed. How did you manage to establish communication in most territories? (ukr) THURSDAY, 28 APRIL 2022, <https://www.epravda.com.ua/rus/columns/2022/04/28/686357/>.

90 Про заходи щодо стабілізації цін на товари, що мають істотну соціальну значущість, товари протиепідемічного призначення [On measures to stabilize prices for goods of significant social significance, goods for anti-epidemic purposes], <https://zakon.rada.gov.ua/laws/show/-2020-341%D%0BF#Text>.

91 [https://www.metro.ua/about-metro/pozvtsiya?utm\\_source=main\\_page&utm\\_medium=banner](https://www.metro.ua/about-metro/pozvtsiya?utm_source=main_page&utm_medium=banner)

banking system by digitalising processes, fixing the official exchange rate of the hryvnia, introducing a number of restrictions on settlement transactions in foreign currency, and raising the interest rate to curb inflation. All of this has allowed banks to provide credits to important industries, first of all financing sowing campaigns for farmers.

Among the risks banks face now are mass migration of people abroad, which negatively affects economic activity and the volume of transactions in Ukraine (almost 10% of clients have gone abroad, and 20% to safer regions in Ukraine<sup>92</sup>) and loss of personnel, either due to migration or mobilization. This is why banks have reduced the number of branches, increased requirements for debtor customers, and also switched to short-term planning. On average, each bank closed approximately 12 branches. However, in liberated territories, branches have resumed work. In general, as of September 2022, 85% of bank branches are working, as compared to 55% active in March 2022<sup>93</sup>.

Another challenge has been countering disinformation and informational attacks in social networks, which could lead to some emotional reactions and panic from clients. To avoid panic, the NBU regularly publishes reports about the state of the banking system.

In terms of consumer' rights, the NBU Department of Consumer' Rights Protection has processed around 60,000 written and oral complaints since the beginning of the war<sup>94</sup> about such issues as: **work of the bank and non-bank institutions; and settlement of overdue debt.** To prevent the non-compliance with the work mode, on-site supervision by NBU has been carried out over the websites of banks and non-bank financial institutions, the rules and conditions of providing financial services, contracts, advertising, the facts of non-compliance with the requirements for ethical behaviour, etc.

On March 31, the NBU presented the "Financial Defence of Ukraine" website for consumers to get information about seven main blocks: the hryvnia, foreign currency, cards, loans, deposits, insurance, and provision of other financial services<sup>95</sup>.

**A common violation was non-compliance with the terms of payment of insurance compensation, especially in the first months of the war, among companies that were forced to evacuate their employees from zones of active hostilities and/or territories beyond control of the Government of Ukraine. Currently, there are still appeals regarding violations of payment terms, refusals of insurance compensation, or failure to provide insurance compensation.**

Microcredit service agents<sup>96</sup> practically ceased their activities. Pawnshops, especially those located in the territories beyond control of the Government of Ukraine, faced looting and theft of property. Due to the threat to the lives of personnel and the impossibility of organizing work processes, institutions were forced to relocate to safer places or simply stop their work. Since many companies still use paper documents, there were difficulties with employee' access to primary documents. This caused problems with the preparation and timely submission of reports, and conducting mandatory audits; and made it impossible to provide high-quality services to consumers of financial services. Hence, consumers remained without cash.

92 <https://www.unian.ua/economics/finance/vivna-v-ukrajini-yak-zminilas-robotu-bankivskoji-sistemi-11964504.html>

93 <https://nabu.ua/ua/yaroslav-matuzka.html>

94 <https://interfax.com.ua/news/blog/871021.html>

95 <https://bank.gov.ua/ua/news/all/natsionalniy-bank-zapustiv-sayt-pro-robotu-finansovoyi-sistemi-pid-chas-viyni>

96 <https://news.dtki.ua/finance/bank-system/76974-yak-pracyuyut-finansovi-kompaniyi-lizingodavci-ta-lombardi-pid-cas-viyni>

## 3. SALIENT HUMAN RIGHTS ISSUES

### Key takeaways for Chapter 3

1. Based on the data analysis, key-informant interviews, and focus group discussions, it is evident that the Russian invasion has increased the risks of human rights abuses and worsened the situation if abuses had previously existed.
2. The most salient issues are safety and labour discrimination, and the most vulnerable groups of people during the war are people with disabilities, people with family and caregiving responsibilities, those of pre-retirement age and pensioners, and people with incurable diseases.
3. Labour abuses are most common in wartime, and regulations provide a more favourable environment for the existence of risks of such abuses under martial law from the employers' side. Among the common human rights abuses are health and safety in the workplace, illegal dismissal, unpaid leave, decrease or increase (in critical sectors) in workload with or without remuneration (in critical sectors), and non-payment of salary, salary in "envelope", or delays in payment.
4. The real challenge for Ukrainians and companies was the period from October 2022 to February 2023, due to massive Russian shelling of Ukraine's critical infrastructure, massive blackouts, and power outages. Access to energy and therefore to Internet, mobile communication, and water and heating became some of the key human rights issues for Ukrainians.

With the beginning of the full-scale war in Ukraine and the introduction of martial law, experts have observed many cases of human rights abuses in the workplace. On the other hand, focus group participants stated that most Ukrainian commercial companies tried to minimize the impact of the war on their activities and, as far as possible, to observe the rights of employees. If such abuses happen, they have been caused by the difficulties caused by the wartime; and many employers try to keep the number of their employees and their salaries at a pre-war level. Both experts and focus group participants agree that the Russian invasion has increased the risks of human rights abuses and worsened the situation if abuses had existed before.

Employers cite financial difficulties (35%) and high levels of stress among workers (29%) as the biggest challenges facing businesses at the start of the full-scale war. Therefore 16% of businesses provided employees with free psychological help to support mental health, and 17% with one-time payments<sup>97</sup>. For many months, a large number of people combined full-time work with hours of volunteer work, which constituted a significant burden. There are only a few examples of companies that, considering the active involvement of employees in volunteer work, reviewed the employees' workload.

97 Ibid.

### 3.1. VULNERABLE PEOPLE AND ISSUES OF DISCRIMINATION

During evacuations, companies did not determine the special needs or possible vulnerabilities of employees and their families, including limited mobility or mental health issues, that could lead to impossibility of evacuation for the entire family. In addition, as a result of the insufficient number of shelters in residential quarters of large Ukrainian cities and their location in objects of inaccessible architecture, the majority of people with disabilities could not fully enjoy protection from airstrikes and rocket attacks<sup>98</sup>. This applied to inaccessible shelters located in the basements of apartment buildings, schools, administrative buildings, metro stations in large cities, etc. And if some issues of the barrier environment could be quickly solved with the help of digital technologies, such as duplicating the announcement of an air alert through mobile applications and SMS, which helps, for example, people with hearing problems to orientate, then solving the issue of an inaccessible bomb shelter for wheelchair users was impossible in such a short period of time. This is what forced a large number of people to stay in their homes during rocket attacks and shelling.

Other neglected issues are employees with family responsibilities and an inability to work full-time immediately after relocation, especially when kindergartens in Ukraine did not operate until the beginning of June 2022. It's important to underline that women are usually considered as the main bearers of family responsibilities; thus they are less competitive in the labour market. As internally displaced people, such women often face discrimination, including lower wages and denial of employment because an employer assumes that the IDP may return home soon.<sup>99</sup> Although some employers are ready to recruit internally displaced people in order to make a claim for State support. According to focus groups, older people who are pre-retirement are at the greatest risk of discrimination: those who cannot yet count on a pension or when people are entitled to social benefits, however, they have significant difficulties with employment. In addition, focus group participants mentioned people with incurable diseases as vulnerable, especially during the power cuts and blackouts and when pharmacies did not operate in the first days after October 11, 2023. Most respondents agreed that missile attacks on Ukraine's critical infrastructure created significant restrictions on life and business activities.

In terms of providing essential products and services, including access to communication, drinking water, food, banking services, transportation, electricity, healthcare and medicines, sanitation, and garbage<sup>100</sup>, local companies, especially SMEs, have displayed much better understanding of the local context, which is crucial for ensuring respect of human rights. Also State- and municipality-owned enterprises have continued working but sometimes with the risk of safety to their employees as their workers have had to continue to fulfil their obligations during the risks of bombings. In some sectors, the risks to personal safety have been increased, including those in the agricultural sector. Work in the field is now associated with high risks to life, with several cases of tractor drivers' dying because of mine explosions. Another salient issue in the sector is informal employment for rural people when people are deprived of any guarantees of their labour rights.

98 <https://drive.google.com/file/d/1ZZQVIWz4nS9Kr5nw5U8IKyWWH90uxof/view>.

99 <https://business.rayon.in.ua/news/501552-bez-paniki-yak-vizhiti-lokalnomu-biznesu-v-umovakh-vijni>.

100 See Uvarova, O., Responsible Business Conduct in Times of War: implications for essential goods and services providers in Ukraine; 2022.

A separate issue is the safety of workers who have remained in the areas beyond the control of the Government of Ukraine to provide access to critical services and goods for the local population. The most striking example is Energoatom, whose employees at the Zaporizhzhia Nuclear Power Plant were not allowed to leave because this could have led to a catastrophic nuclear incident. Furthermore, it is reported that workers have succumbed to violence and torture by representatives from entities on the territories beyond control of the Government of Ukraine,<sup>101</sup> and several workers were killed or have died during shelling.<sup>102</sup>

Although some companies have demonstrated better staff protection and retention practices during the war – such as the evacuation of employees, relocation support, payment of salaries in advance, increase in payment for working under risky conditions, flexible working, and provision of psychological assistance – sometimes companies seek balance between financial survival and respect of corporate responsibilities for the employees. Sometimes the people in the company, including middle management, forget about safety rules or just ignored them.

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101 Tortured and silenced<sup>101</sup>: ZNPP workers told The Telegraph how Russia is preparing them for the arrival of the IAEA, 26 August 2022. <https://zn.ua/UKRAINE/pytajut-i-zastavljajut-molchat-robotniki-zaes-rasskazali-the-telegraph-kak-rossija-hotovit-ikh-k-priezdu-mahate.html>

102 At least six shots: the Russians hit Energodar, a ZNPP employee died. <https://news.liga.net/politics/news/minimum-shest-vystrellov-rossiyane-udari-li-po-energodaru-pogib-sotrudnik-zaes>

## 3.2 LABOUR RIGHTS ISSUES

Regulation of labour relations during martial law by the State is aimed at making the situation for businesses better, however such approach could lead to a weakening of the guarantees of employees' rights. Under the regulations, the following employer's practices are legal:

- probation period for any category of employees;
- transfer of employees to another job not stipulated in the employment contract and without their consent (except for transfer to an area with active hostilities and health issues), with wages not lower than the average wages for previous work, with notification of no later than the introduction of such conditions (pre-war, 2 months' notice was required);
- working hours during the period of martial law may be increased to 60 hours per week for employees employed at critical infrastructure facilities (in the defence sector, the sphere of ensuring the livelihood of the population, etc.);
- introduction of a five-day or six-day work week, the start and end times of daily work (shifts) are set by the employer;
- during the period of martial law, the effect of certain provisions of collective agreement may be suspended at the initiative of the employer;
- the possibility of suspending an employment contract is allowed as a result of the Russian invasion on Ukraine, which excludes the possibility of both sides of the employment relationship from fulfilling the obligations stipulated by the employment contract. At the same time, the Law stipulates that the compensation of wages and of guarantee and compensation payments to employees during the suspension of the employment contract is fully entrusted to the State carrying out armed aggression against Ukraine.

The law stipulates that during the period of martial law, unscheduled inspections may be carried out at the request of an employee or a trade union regarding compliance with the requirements of the Law "On the Organization of Labour Relations in the Conditions of Martial Law", as well as on issues of identifying unregistered labour relations and the legality of terminating employment contracts.

On August 10, 2022, the Law "On Amendments to Certain Legislative Acts of Ukraine on the Regulation of Labour Relations with Unfixed Working Hours" entered into force. The law introduces a new type of contract: an employment contract with unfixed working hours. This is a special type of employment contract, where an employer independently determines the necessity and time of the employee's involvement in the work and the scope of work, and agrees with the employee on the mode of work and how much time is needed for its implementation.

There could be identified the following abuses related to the human rights in business: illegal dismissal; unpaid leave; decrease in workload and therefore in remuneration; non-payment or partial non-payment of salaries; payment of salaries "in envelopes" or unofficial employment; health and safety; discrimination by age, family responsibilities.



### The most common abuses, February 2022 – September 2022

According to the results of the first wave of the All-Ukrainian representative sociological study conducted in August-September 2022, the most common abuses among 6.5% of respondents who faced abuses were: suspension of previously provided wage supplements (financial bonuses) (56%), non-payment of salaries (53.8%), and salary decrease (50.9%). Other abuses regarded going on forced unpaid leave (39.9%), not ensuring the security and safety of employees (38.8%), and pressure from an employer to work more (31.7%). Almost a third of respondents were dismissed (28.2%). The majority of abuses were observed in such industries as: transportation (19.2%), financial or insurance services (18.6%), water supply and waste management (15.4%), healthcare (14.7%), and wholesale and retail trade (12.8%). The least number of violations were reported in the extractive industry (2.2%), recreation and entertainment (2.3%), agriculture (2.5%), and legal services (2.9%).

According to the results of the second wave of the study conducted in February 2023, after damage to critical Ukrainian energy infrastructure, among the 6% of respondents who faced abuses, 64.2% mentioned salary decrease and 54.6% stoppage of salary payment. 46.9% complained that companies did not help with power outages but demanded results. 43.5% mentioned unpaid leave, and 42.8% about no measures for employee's safety. The majority of abuses were observed in the energy sector (59.7%).

**Illegal dismissal is the most common abuse.** This occurs when employees are forced to sign a voluntary resignation. Workers (mainly women) who have left Ukraine or moved within Ukraine have become a particularly vulnerable group for firing. The situation became especially acute after the adoption of the Cabinet of Ministers of Ukraine resolution "Some issues of the organization of the work of employees of economic entities of the State sector of the economy during the period of martial law" dated April 26, 2022, which says that employees of State-owned enterprises (SOE) can leave the territory of Ukraine only for business trips; even if work is organized remotely, SOE employees should work from the territory of Ukraine. Employees also report the facts of dismissal due to absence at the workplace while evacuating families, or staying home under bombing and shelling. In some cases, employees report that they were dismissed for the specified reason (absenteeism) due to the employer's intention to employ their relatives or acquaintances for a vacant position, as the unemployment rate has increased significantly in war times.

**Unpaid leave is quite a common case** when employees were pressured to go on unpaid leave for a long period of time (six months or more) without pay (during martial law, the permissible duration of unpaid leave is not limited to a specific period). In some cases, being on paid annual leave only formally and working instead, people face the situation of non-payment or incomplete payment of wages. Sometimes such leave has turned into a case of hidden dismissal (from focus group discussion results).

**Decrease in workload, and therefore in remuneration,** is also common. In some situations, there is a nominal decrease in workload with a parallel decrease in remuneration, even under conditions when the company's work resumes fully or even with higher intensity. At the same time, such stories have been more of an exception than an average practice.

**Non-payment or partial non-payment of salaries have been seen after the beginning of the Russian invasion** due to objective issues (from a focus group discussion). In some cases, employees were not warned about such company's difficulties in advance.

**Payment of salaries "in envelopes", or unofficial employment, is quite widespread.** Receiving salaries in envelopes has an impact on the employee, because if this practice is suspended, they won't be eligible for State support.

**Health and safety in the workplace are important.** Even before the Russian invasion, some respondents faced non-compliance with safety requirements in the workplace, especially at production facilities. There are facts that enterprises operating in areas with constant shelling

(Scenario 1), e.g., Kharkiv and Chernihiv, did not adopt appropriate measures to ensure the safety of their employees. This is against the requirements of the current regulation: setting the beginning of the working day before the end of the curfew or the end of the working day after the beginning of curfew; failure to provide transport for travel from the place of residence to the place of work in conditions where public transportation does not work or operates in a limited capacity, which does not allow the employee to get to work; violation of the requirement to suspend service during an air alert with the removal of all those in the trading premises to the street or to a shelter.

**Evacuation** is a complex process. In the beginning, businesses did not arrange centralized evacuation plans, or plans for the employment of displaced persons at their facilities in other regions or at competitors' enterprises.

### 3.3. ENVIRONMENTAL RIGHTS ISSUES

Adverse human rights impacts that link the environment and health were reported as some of the most common violations by business operations that impact the community. This occurs especially at times of shelling when chemicals are discharged into the water or soil. There has been destruction across many Ukrainian regions, with incidents at nuclear power plants and facilities, energy infrastructure (including oil storage tankers, oil refineries, drilling platforms, and gas facilities) and distribution pipelines, mines and industrial sites, and agro-processing facilities.<sup>103</sup> Despite some initiatives to involve business in discussion about environmental damage caused by the war,<sup>104</sup> there is no evidence that the war has had any impact on how business' approaches their responsibilities in environmental due diligence. Yet, the research has found that a number of companies have been involved in calculating damages to the environment, and also that they provide calculations of damages caused to their facilities for the justification of reparations later.<sup>105</sup> **As companies state, it is now impossible to carry out environmental due diligence measures because of the danger to employees and/or contractors caused by unexploded ammunition, a and lack of bomb shelters, ongoing hostilities, and areas beyond control of the Government of Ukraine.**

103 UN warns of toxic environmental legacy for Ukraine, region, 4 July 2022. <https://www.unep.org/news-and-stories/press-release/un-warns-toxic-environmental-legacy-ukraine-region>

104 The Ministry of Environmental Protection and Natural Resources of Ukraine, the State Environmental Inspection of Ukraine and the UN Global Compact called on business in Ukraine to document and report the facts of crimes against the environment caused by Russia's military aggression. (<https://globalcompact.org.ua/news/%d0%b7%d0%b1%d1%96%d1%80-%d1%81%d0%b2%d1%96%d0%b4%d1%87%d0%b5%d0%bd%d1%8c-%d0%bf%d1%80%d0%be-%d0%bb%d0%be%d1%87%d0%b8%d0%bd%d0%b8-%d0%bf%d1%80%d0%be%d1%82%d0%b8-%d0%b4%d0%be%d0%b2%d0%ba%d1%96/>)

105 According to the interview. This information is not publicly disclosed anywhere.

## 3.4. ACCESS TO ENERGY

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A real challenge for Ukrainians and companies was the period from October 2022 to February 2023, due to massive attacks on Ukraine's critical infrastructure, massive blackouts, and power outages. According to the second wave of the All-Ukrainian representative sociological study conducted in February 2023, 55% of respondents were affected by power outages due to missile attacks on the energy infrastructure. The majority (61%) of respondents who felt the impact of power outages say that some or most companies near them allowed people to use power during outages, and only 13% of respondents said that businesses did not allow it. Among the employed who felt the impact, 90% received assistance. The top forms of assistance were employers providing a workplace with electricity, more flexible working hours, and generators, etc. for power supply.

After the bombing of energy infrastructure, 6% of respondents faced some abuses of their rights by companies/enterprises. Before October 2022, the figure was 6.5% (results of the first wave of the Omnibus study). Of these, 3% faced abuses by service delivery companies/enterprises, 2% by their employers, and 1% by companies/enterprises operating at the respondent's place of residence. Instead, 65.5% of respondents claimed that their rights were not abused during this period, and another 25% were not sure whether the situation could be considered an abuse of rights. Respondents who faced abuses of their rights by an employer primarily mentioned wage reductions, termination of payments of previously provided wages, lack of assistance with electricity/Internet but demanding results, being forced to go on unpaid leave, and failure to ensure the safety of employees. Respondents who faced abuses of their rights as consumers primarily say that the company did not take measures to ensure safety in the event of a missile threat, that a low-quality product/service was provided, and that a paid product/service was not provided. At the same time, in most cases this was about the energy sector.

In the case of the most serious abuse, 66% of respondents tried to protect their rights. 23% of them fully or partially succeeded in this, while 37% claim that the remedy was unsuccessful. Another 6% is in the process of the applying for remedies. The rest of the respondents did not try to protect their rights. In the period after 24 February 2022 and until September 2022, 58% of respondents who faced a violation of rights tried to protect them, including 14% of respondents who reported at least partial success. Among those who tried to protect their rights (successfully or not), 75% approached the company's management, 34% a supervisory authority, and 20% public activists.

## 4. HEIGHTENED HUMAN RIGHTS DUE DILIGENCE

### Key takeaways from Chapter 4

1. Companies in Ukraine were not aware about heightened human rights due diligence (hHRDD) and operated intuitively rather than based on human rights considerations.
2. As a part of hHRDD, a Business Continuity Plan can be considered which includes actions regarding people, processes, and finances.
3. Some of the best hHRDD tools identified are the following:
  - Preparation of a Business Continuity Plan with a focus on the safety and security of employees and clients
  - Creating an Internal Crisis Management Team to lead response
  - Establishing a toolkit with guidance for employees on various support options
  - Setting up a hotline for emergency issues and twice-daily communications with employees to account for their safety
  - Launching an Employee Assistance Programme for medical and mental health support for employees and their families
  - Completing a detailed employee needs assessment
  - Providing financial and relocation assistance
4. Responsible exit and responsible return are important processes companies should take into account in hHRDD steps.

War and conflict can significantly change the scope of corporate responsibility to respect human rights and highlight the role of business in addressing human rights challenges that the conflict creates. To prevent and reduce high-risk human rights threats in times of conflict/war, companies are recommended to exercise ‘enhanced’ human rights due diligence. **Regular and traditional human rights due diligence** helps businesses “to know and show” how to prevent or minimize human rights risks to people. **Heightened human rights due diligence** strengthens the understanding of the context where businesses operate and, by identifying flash points, potential triggers, and/or the forces that are driving the conflict, ensures that business activities do not contribute to violence.<sup>106</sup> As the risk of gross human rights abuses is heightened in conflict-affected contexts, businesses should identify and assess not only their actual or potential adverse impacts on human rights, but also their actual or potential adverse impacts on the conflict<sup>107</sup> as well as all possible efforts to prevent or minimize the negative impact on human rights by the conflict (in other words, to secure human rights).

The conducted research revealed the most common hHRDD components among companies operating in Ukraine, including a Business Continuity Plan.

<sup>106</sup> Heightened Human Rights Due Diligence for Business in Conflict-Affected Contexts. A Guide, UNDP, 2022, p. 10.

<sup>107</sup> Ibid., p. 13.

## 4.1. BUSINESS CONTINUITY PLAN

A Business Continuity Plan (BCP) is a system of prevention and recovery from potential threats for a company, such as from natural disasters, cyber-attacks, and other conflicts. The plan ensures that personnel and assets are protected and can function quickly in the event of a disaster. For companies in Ukraine, a BCP was a system of preparation for the worst war scenario with the task to guarantee employee safety and the continuity of business processes.

Many IT companies have invested up to ten thousand dollars in BCP preparations. Many companies have had such plans since 2014. Some companies developed BCPs at the demands of international clients or investors, or with the desire to save the lives and health of their employees. Before the war, the European Business Association (EBA) developed a BCP checklist that included three elements: processes, people, and finances.

### ◆ EBA BCP CHECKLIST:

#### Processes

1. *What types of activities and processes can be attributed to the key types of your activity?*
2. *How could disruption of your work affect your business and what would be the consequences?*
3. *Have you digitized your core processes (business, HR, accounting, etc.) to continue with current operations?*
4. *Do you have plans to secure your office building?*
5. *Do you have the ability to rapidly relocate key business/operational processes during a potential crisis? What will the work process look like there?*
6. *What could be your actions in the event of an outage of power, gas, water, communication, etc.?*
7. *Do you have the ability to back up key documents/processes etc.?*
8. *Is your business cyber secure? What actions can be taken in case of cyberattacks?*

#### People

1. *Do you have an employee protection plan? For their families? What could be the main steps in this direction?*
2. *Who will be responsible for operational communication, immediate response, and worker safety?*
3. *Do you have policies and guidelines for crisis communications (who will send, how, etc.)? For example, notifying employees, communicating with media (including social media), communicating with stakeholders (customers, financial institutions, suppliers, shareholders, employee families, etc.).*
4. *Do you have alternative ways of communicating (with team, customers, stakeholders, etc.)?*
5. *Will you plan to work with the emotional needs of employees? How?*

### Processes

1. *What resources/assets/documents are required to support key activities?*
2. *What assets would you be willing to close/sell?*
3. *Did you analyse/adjust cash flows, for example to pay employees on time salaries, pay bills, etc.? Or maybe considered alternative payment methods?*
4. *Do you have business insurance?*
5. *Do you have cash savings? Any other types of finance?*
6. *Will these reserves be enough to fund core activities if there is no income? How long?*

**Case:** *During hostilities, Geo Comply, a Canadian company with offices in Lviv and Kharkiv, moved to a renovated office in Lviv and opened a new space in Warsaw. A BCP was tested in advance (in 2021): specialists were sent with families to find out what difficulties might arise during relocation. The BCP worked out effectively and from the first days of the war, the company focused on relocating specialists and their families to safe places: from the Kharkiv office, people were moved to Lviv, and then to Warsaw in Poland.*

## 4.2 RELOCATION

Business relocation can help prevent or minimize a business' adverse human rights impact by ensuring the safety to its employees and the security to its property and business operation. In Ukraine, the State relocation program was developed and covered physical relocation of all production facilities and assistance with installation of equipment and setting up activities, recruitment and procurement of raw materials, and logistics and selling, including export chains. Transportation of equipment for relocated enterprises was carried out free of charge by “Ukrzaliznytsia” (national train company) and “Ukrposhta” (national post office); or companies were compensated for the costs incurred. Local authorities assisted with premises and with gas, electricity, and water supply connection at the new offices. They also helped find housing for employees and arrange logistics routes.

So far, 770 enterprises that have taken part in the relocation program have completed their relocation, and 599<sup>108</sup> of these have already resumed work at new sites in the western regions of Ukraine. The largest number of enterprises relocated to Lviv (30%), Zakarpattia (17%), and Chernivtsi (11%) Regions. In total, 1,612 applications for business relocation have been registered on the digital platform. The new term “a double relocation” was coined to describe the situation when businesses first moved to another region and then had to move back due to several reasons: not all equipment could be transported, not all employees wanted to move, there are no customers in the new region, or the business model did not work under the new conditions. For people, a double relocation could cause a new stress factor, resulting in the employment and safety.

It's obvious that relocation for service providers (e.g., IT companies) is much easier than for other companies. As a result, 60% of Ukrainian IT workers have moved from their permanent place of residence, while 90% returned to work.

In terms of agriculture, the relocation of agricultural enterprises had certain difficulties as land can't be physically transported, but there are companies that transported elite livestock and poultry for safety and will return the livestock later. For example, four cattle-breeding enterprises relocated more than three thousand animals to the Kyiv Region and more than three hundred sheep to the Dnipropetrovsk Region to preserve the livestock.

**Case:** *The large bicycle manufacturer, VeloTrade, managed to transport 40,000 ready-made bicycles from Kharkiv to Western Ukraine. Before the war, VeloTrade had produced more than 1,000 bicycles per day. But a Russian missile destroyed the production site. The company lost more than \$4 million but kept the team and its development facilities<sup>109</sup>.*

108 <https://www.ukrinform.ua/rubric-economy/3609521-u-bezpecni-regioni-relokuvali-vze-770-pidpriemstv.html>

109 [https://ipress.ua/articles/yak\\_biznes\\_oblashtovuietsya\\_na\\_zahodi\\_ukrainy\\_5\\_pravyl\\_dlya\\_uspishnoi\\_relokatsii\\_vid\\_fahivtsya\\_334946.html](https://ipress.ua/articles/yak_biznes_oblashtovuietsya_na_zahodi_ukrainy_5_pravyl_dlya_uspishnoi_relokatsii_vid_fahivtsya_334946.html)



## 4.3. PEOPLE'S SAFETY RESPONSES

A significant number of companies conducted **pre-war communications** with employees regarding the feasibility of hostilities. Large companies, such as DTEK, a major energy provider, used their hotlines to inform employees about changes and provide each employee with a clear and detailed action plan. Some employers have organized separate trainings for their employees to get them prepared for wartime conditions.

**FGD-2\_Iryna.** *Although we work remotely, we have had several online trainings during these 6 months. These are trainings on providing first aid. There were also trainings on how to behave in the event of an air raid alert, which rules must be followed, and others that relate specifically to martial law. We have already had about 3 to 4 trainings.*

**Case:** *In the beginning of the war, Unilever maintained twice-daily communications with the employees who wished to be contacted to account for their safety. Detailed employee needs assessments had been carried out to determine whether any medical or psychological support was needed. The company arranged evacuation or relocation, offering temporary housing and financial support to employees<sup>110</sup>*

In general, the following issues were important for companies during the first days and months of the war: employee safety, stable employment and financial support (salaries and bonuses), pre-medical assistance, and mental health issues.

**Case:** *A.P. Moller – Maersk set up an **Internal Crisis Management Team** working in close dialogue with the Regional Team and with employees based in Ukraine. The following activities were implemented: developing guidance for employees on various support options, setting up a hotline and encouraging employees to use the Employee Assistance Programme for mental health support for themselves and their families, supporting employees and their families in evacuation, setting up aid hubs in Romania and Poland and providing interim accommodation, and providing financial and relocation assistance to employees.*

Employee safety: some companies relocated employees and their families, and provided additional financial support to move to safer places, e.g., 10% of annual salary in advance<sup>111</sup>. International companies helped their employees to be evacuated abroad and get employment in other countries, while national companies mostly relocated their staff and their families, including people with limited mobility, to safer regions in Ukraine.

110 [https://media.business-humanrights.org/media/documents/Unilever\\_response.pdf](https://media.business-humanrights.org/media/documents/Unilever_response.pdf)

111 <https://www.epravda.com.ua/publications/2022/02/16/682414/>

**Case:** Meest, international postal operator, organized a coordination centre to help employees with evacuation, housing, traveling abroad, and psychological support. In the Lviv office, a shelter was established for employees who were evacuated from the east of Ukraine. Humanitarian food boxes were sent to those people who decided not to leave their homes.

**FGD-1(2)\_Tamila.** We had only one difficult case: Bucha, where we evacuated our employee. We hired a special company, which were ex-military, who evacuated our employee with her sick mother from Bucha when it was occupied.

Certain wartime security regulations are not strictly followed sometimes, but not always, as a result of employees' reluctance to follow safety recommendations:

**FGD-2\_Vitalii.** After the commencement of the war, we resumed our work; and a customer had a requirement that, during an air raid alert, the people who work, including the crane operator, must go to a bomb shelter. But there is no bomb shelter nearby, and the workers had to go to a basement. But in principle, almost no one complies with these requirements.

**Financial support:** A large number of Ukrainian companies approached crisis processes responsibly, and 63% of them<sup>112</sup> continue to pay employees in full; while 45% do so plus additional or advance payments. Most companies 'did not make staff reductions, but when this happened, they tried to make it in minimal volumes. In terms of small and medium enterprises, only 22% of SMEs provided financial support to employees and their families. To support their employees, 68% paid wages for a month or more in advance, 29% compensated a team's relocation expenses, 23% rented housing in western Ukraine or abroad, and 1% introduced insurance for those who continued to go to work.<sup>113</sup> The majority of SMEs reduced salaries, and some sent their employees on unpaid leave or vacations<sup>114</sup>. International companies have had more opportunities to pay full salaries.

**Case:** Henkel Ukraine arranged full payment of salaries for three months in advance. In addition, more than 600 employees received one-time financial assistance independently. An aid package for Ukraine from the Henkel headquarters arrived in the first 48 hours of the war - almost UAH 44 million for humanitarian missions and support for employees. Subsequently, this package was expanded to almost UAH 170 million (with UAH 80 million for funding humanitarian projects).

**Mental health:** According to the Ministry of Health, about 15 million Ukrainians will need psychological support in the future, of which about 3-4 million will need prescribed medication. In addition, every tenth Ukrainian may experience the consequences of a moderate or serious illness. Interestingly, companies from the IT sector have paid more attention to these issues; as, too, have international companies or those with foreign capital.

**FGD-1(1)\_Natalia2.** ...psychological and mental health support is what we spent our efforts on, but traditionally the oil and gas sector, the manufacturing sector, and other large manufacturers are industries in which psychological and mental health support may not yet be as widespread and demanded as in other industries, such as IT or retail.

**Case:** IT company Eleks opened a Psychological Centre, where 15 internal specialists and 10 external psychologists, psychiatrists, psychotherapists, and crisis specialists work.

Pre-medical assistance: Large companies arranged courses on paramedical care so employees would be able to provide first aid.

**Case:** The Kernel company organized theoretical and practical training in paramedical care. Before the training, participants receive an online course and additional video materials according to the M.A.R.C.H. protocol. The main task of practical classes is to develop the skills to stop bleeding in 45 seconds, because this type of injury is the most common on the battlefield. The curriculum also included tools for working with explosive injuries and penetrating wounds.

112 <https://eba.com.ua/pidtrymuyut-komandy-ta-armiyu-yak-pratsyuve-biznes-v-umovah-vijny/>

113 Ibid.

114 Ibid.

## 4.4. RESPONSIBLE EXIT

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Due to the war in Ukraine, businesses have had to make decisions to suspend or terminate operations, although “businesses should always be aware of any risks that a particular course of action may pose to relevant stakeholders and consider those risks in their decisions”. The need to leave a location usually is the result of deterioration in the situation over a certain period of time. Therefore, companies must develop a responsible exit strategy, which will allow the enterprise to identify and assess the consequences of terminating work with relevant stakeholders, in particular, business partners and communities, and to develop mitigation strategies. Such a strategy may include providing advance notice to communities, suppliers, employees, and other partners about the anticipated shutdown; ensuring that workers continue to receive income in the event of a temporary suspension of work or training, and building capacity to mitigate the effects of job loss; and, ensuring the safety of the remaining employees who cannot be evacuated. If the enterprise offers support services or charitable programs, it should mitigate the consequences of the termination of its activities by transferring these functions to an appropriate structure, for example, a civil society organization.

The conflict started in 2014 has provided a lot of lessons to national Ukrainian companies, which build their resilience on these lessons. For example, Oshadbank has had a Business Continuity Plan since 2014, which has been tested and 90% implemented since February 24, 2022. Oshadbank also included a responsible exit in their BCP.

**Case:** *Vodafone, a mobile operator, configured its network in such a way that it was possible to remotely disconnect any area.*

## 4.5. RESPONSIBLE RETURN

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In Ukraine, there is only Strategy for de-occupation and reintegration of temporarily occupied Crimea adopted in 2021 where some issues of economic development in the de-occupied territories were mentioned. In April 2023,<sup>115</sup> amendments to the Action Plan for the Implementation of the Strategy for the De-occupation and Reintegration of the Temporarily Occupied Territory of the Autonomous Republic of Crimea and the City of Sevastopol was adopted. Unfortunately, the document did not contain clear guidelines for companies on how to act while returning.

As of April 12, 2023, about 14,000 enterprises have resumed work in the areas retaken by the Government of Ukraine<sup>116</sup>. In these territories, the State is preparing to launch pilot projects to restore the abovementioned territories. The State has selected one settlement each in Kyiv, Sumy, Kharkiv, Kherson, and Chernihiv Regions, where large-scale reconstruction will begin under the principle “build back better”. It will refer not only to rebuilding housing, but also hospitals, schools, kindergartens, cultural facilities, etc. Everything will be restored in accordance to safety requirements and modern practices<sup>117</sup>.

At the same time, research has shown that businesses need to understand when and how they can return. This process will include a lot of questions that could be answered only in partnership with governmental actors. Responsible return guidelines should include the following issues: when it is safe to return for a company and its employees; who will help with a return (there was a governmental program assisting companies with relocation but no information about such assistance with return); where employees can live if there is a lot of damage; how to ensure access to energy, water, communications, and many other issues, including recruitment of the people who stayed at the territory beyond the control of the Government of Ukraine. Company staff should be trained in terms of business and human rights and due diligence issues to minimize any human rights abuse.

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115 <https://www.kmu.gov.ua/en/news/aktualizovano-plan-zakhodiv-z-realizatsii-stratehii-deokupatsii-ta-reintehratsii-ar-krym-rishennia-uriadu>

116 <https://ubn.news/about-14000-enterprises-have-resumed-work-in-the-de-occupied-territories/>

117 <https://mind.ua/en/news/20255446-government-prepares-to-launch-projects-to-restore-de-occupied-territories>

## 51. ACCESS TO REMEDIES DURING THE WAR

### Key Takeaways from Chapter 5

1. The constitutional right to access justice was not limited, and all courts, where possible, as long as they did not have significant technical or institutional damage, were operational. Although, because of the situation, quite often video conference mode was used if there were technical facilities.
2. Among non-judicial remedies, the following measures should be mentioned: the role of State Labour Service of Ukraine including unscheduled inspections regarding labour rights appeals; activity of the Secretariat of the Parliamentary Commissioner for Human Rights – in terms of human rights violations, role of the National bank of Ukraine – in terms of financial abuses, and National Commission for State Regulation of Energy and Utilities (NCSREU) – in terms of unfair power outages.
3. Large companies developed formal mechanisms for protecting the rights of employees, which were implemented through whistle blower policies, anonymous hotlines, and other formal ways of reporting abuses.
4. During wartime, most Ukrainians 'did not try State remedies to protect their rights, although many used corporate grievance mechanisms.

Access to an effective remedy is a core component of the UN Guiding Principles on Business and Human Rights (UNGPs), providing an opportunity for victims of abuse to seek redress from the company that caused or contributed to the abuse. For companies, access to remedy is part of the due diligence process.

According to the first wave of the All-Ukrainian representative sociological survey conducted in September-October 2022, since 24 February 2022, 77% of respondents have not tried to protect their rights or tried unsuccessfully. 14% of respondents reported that they managed to protect their rights fully or partially. One of the reasons for such a high number of people who have not tried to make an appeal is lack of legal literacy. Thus, a free legal aid system is important in cases of potential abuse of labour legislation, as well as corporate grievance mechanisms. At the same time, 65% indicated that they turned to the company's management to protect their rights, 29.5% to State bodies, only 8% to the court, and 9% to trade unions. 15% of respondents tried to turn to mass media and public activists to draw attention to the situation.

## 5.1. STATE REMEDIES

During martial law, according to Article 10 of the Law of Ukraine, “On the Legal Regime of Martial Law,”<sup>118</sup> the powers of the courts cannot be suspended. The constitutional right to access justice is not limited and all courts, where possible, if they do not have significant technical or institutional damage, are operational.<sup>119</sup> The only exception is the location of courts in the areas not under control of the Government of Ukraine or in the zone of active hostilities. The Supreme Court publishes a list of such territories as territories where the administration of justice has been suspended.

At the beginning of the legal regime of martial law, the Council of Judges of Ukraine recommended courts to postpone the consideration of cases whenever possible, with the exception of urgent court proceedings, due to the following reasons: inability to come to the court because of a lack of safety, work at critical infrastructure facilities, or deployment in the Armed Forces of Ukraine, territorial defense, etc.<sup>120</sup> Currently, participation in a court session through video conference mode is actively practiced. This mode had become common since the introduction of COVID-19 quarantines. Although in the case of availability of the appropriate technical facilities, the video conference mode could be allowed. However, in many courts in Ukraine such facilities are not present<sup>121</sup>. In addition, attacks on the Ukrainian energy system and then power cuts have made the situation even more complicated.

An analysis of court practice shows many labour disputes during the period of martial law, some of them related to application of the Law on the Organization of Labour Relations in Wartime in Ukraine (Chapter 2.2. and Chapter 3). The courts refused to satisfy such employees’ claims regarding application of the law without questioning whether the law, in particular the provision on suspending an employment contract, complies with international human rights standards.<sup>122</sup>

118 Закон України «Про правовий режим воєнного стану» [the Law of Ukraine «On the Legal Regime of Martial Law»]. <https://zakon.rada.gov.ua/laws/show/389-19#Text>

119 Звернення до суду: позовне провадження у цивільному процесі [Appeal to court: civil proceedings]. <http://surl.li/pymw>

120 <http://rsu.gov.ua/ua/news/usim-sudam-ukraini-rsu-opublikovala-rekomendacii-sodo-rooti-sudiv-v-umovah-voennogo-stanu>

121 <https://qolaw.ua/ua/insights/publication/sudochinstvo-pid-chas-vijni-yak-voyennij-stan-vplinuva-na-rozqljad-sudovih-sprav/>

122 Unified State register of court decisions. <https://reyestr.court.gov.ua/>

## 5.2. NON-JUDICIAL REMEDIES

### ⬡ LABOUR ISSUES

At the beginning of the full-scale invasion, the State Labour Service of Ukraine introduced a complete moratorium on inspections of business entities, both scheduled and unscheduled; and those inspections that had been started but not completed by February 24, 2022 were cancelled. After obtaining many employees' appeals<sup>123</sup>, unscheduled inspections on compliance with labour legislation during the period of martial law were resumed but only on a limited list of grounds including:

- appeals of employees or trade unions regarding the verification of employers' compliance with the provisions of the Law of Ukraine "On the Organization of Labour Relations in the Conditions of Martial Law", the legality of the termination of labour contracts, as well as the detection of unregistered labour relations;
- upon the application of an individual in which the facts of an employer's violation of labour rights will be stated;
- in the event of an accident, or the death of an employee as a result of an accident, or an occupational disease that was related to the employer's activities;
- at the request of Kyiv city military administration, a regional military administration, or officials of local self-government bodies;
- in case of non-compliance by the employer with orders to eliminate violations of legal requirements issued after May 1, 2022.

If an employer fulfils, in full and within the prescribed period, the order to eliminate violations discovered during an inspection, fines shall not apply to them. Otherwise, fines will be charged in full.

The role of trade unions has decreased during martial law. One of the reasons may be that for the period of martial law, the effect of Article 44 of the Law on Trade Unions and the corresponding norms of collective agreements has been suspended. This exempts employers from the right to deduct funds to primary trade union organizations for cultural, mass, physical, and health work in the amount stipulated by the collective and other agreements, but not less than 0.3 percent of the wage fund. However, at the same time, employers can do this voluntarily if they have the funds. Given wartime, there is an assumption that most companies do not have such funds and do not pay deduct funds for trade unions, which has significantly weakened their activities.

Appeals regarding abuse of human rights are sent to the Secretariat of the Parliamentary Commissioner for Human Rights. After consideration, if an abuse has been established, the Commissioner forwards the case to the controlling State authorities for response.

Both the labour inspectorate and the Secretariat of the Parliamentary Commissioner for Human Rights pointed out that "the main issues that citizens address are violations of labour legislation

123 [https://biz.ligazakon.net/analytcs/213551\\_trudov-perevrki-v-umovakh-vonnogo-stanu-shcho-potrjno-znati-pdprintsyam](https://biz.ligazakon.net/analytcs/213551_trudov-perevrki-v-umovakh-vonnogo-stanu-shcho-potrjno-znati-pdprintsyam)

by employers. These include non-payment and calculation of wages, dismissal, work without registration of labour relations, and improper registration of labour relations. During martial law, such issues as suspension of labour relations, underpayment of money, and failure to warn about a significant change in working conditions were added.”<sup>124</sup>

During focus groups, representatives of local self-government bodies emphasized the constructive role of the system of free legal aid regarding potential abuses of labour legislation. Such a system includes onsite consultations or via Skype. Since the beginning of the war, various mobile brigades for free aid have been operating in Ukraine, including social workers, psychologists, and lawyers.

## FINANCIAL ISSUES

The practice of the National Bank of Ukraine should be noted, which issued a separate clarification regarding the ‘ethical behaviour’ of lenders during martial law to respect the rights of debtors after receiving many calls from consumers <sup>125</sup>.

## ENERGY ISSUES

Starting from November 2022, when blackouts began, until January 20, 2023, the National Commission for State Regulation of Energy and Utilities (NCSREU) considered more than 2,500 appeals and complaints from consumers about unfair power outages<sup>126</sup> Based on complaints, the commission conducted unscheduled on-site inspections. Based on the results, the NCSREU issued fines to regional energy providers and their managers if it was established that energy companies did not ensure an even distribution of volumes of consumption reduction among consumers, and also improperly informed consumers about outages in electricity supply, in particular, through their own websites.

124 <https://suspilne.media/315348-za-simejnim-receptom-ziteli-prikarpatskogo-sela-radca-prigotovali-na-front-priblizno-piv-tisaci-banok-masnih-strav/>

125 <https://interfax.com.ua/news/blog/871021.html>

126 <https://www.epravda.com.ua/news/2023/01/20/696189/>



## 5.3. GRIEVANCE MECHANISMS

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Before the war, large companies had developed formal mechanisms for protecting the rights of employees, which were implemented **through whistle blower policies, anonymous hotlines, and other formal ways of reporting abuses**. After receiving such calls and complaints, companies studied and checked them and provided a solution. Focus group respondents confirmed that such investigations were relevant and effective, especially for improving working conditions (from focus group discussion results).

During the focus group discussions (FGD), the research team 'did not get any confirmation regarding grievance mechanisms in small and medium enterprises. The majority of FGD respondents were confident that abused rights could be restored almost always, especially within the existing labour code, but people did not do this. Although workers who were not officially employed were in a particularly vulnerable position as they were not subject to State support. A low legal culture and, more significantly, the fear of going against the team or management are indicated as a barrier for a person to turn to grievance mechanisms for the protection of their rights. According to the second wave of the All-Ukrainian representative sociological study conducted in February 2023, among those who tried to protect their rights (successfully or not), 75% approached company' management; others used public mechanisms and local activists.

Workers, consumers, and residents of communities who remained in territories beyond control of the Government of Ukraine are in the most difficult situation. They are deprived of the guarantee of access to remedies. One of the most alarming examples is the situation with employees at the Zaporizhzhia nuclear power plant. The station has been beyond the control of the Government of Ukraine since the end of February 2022. Since then, emotional, and physical pressure has been exerted on the employees. Several employees have died during shelling, and some employees have been abducted or forcibly detained on the premises. Employees are also at risk of being mobilized into the Russian armed forces. Neither their Ukrainian employer nor the Ukrainian State can provide access to legal remedies.

## 6. CONCLUSIONS AND RECOMMENDATIONS

As evidenced by the research on how businesses have acted during conflict and war, it is evident that many businesses have not been neutral and have contributed to adverse human rights impacts. In fact, international and Ukrainian companies should have applied enhanced corporate responsibility for human rights as early as 2014, when the conflict first started.

The research finds that the ability of companies to cope with business and human rights challenges depends on many factors including the following:

- industry affiliation (service providers or manufacturing),
- size (large companies with more resources were more efficient than small and medium enterprises),
- location of production facilities or offices (territories beyond control of the Government of Ukraine / where the Government of Ukraine regained control/ territory with hostilities, or safer regions)
- and previous experience (as happened to Ukrainian companies after 2014).

Before the full-fledged Russian invasion on February 24, 2022, some **large companies** in Ukraine, both international and national, started to pay attention to human rights issues by developing human rights policies and signing human rights-related documents from international organizations, including the CEO Guide to Human Rights developed by the World Business Council for Sustainable Development (WBCSD), UN Global Compact, Women's Economic Empowerment Principles (initiated by UN Women and UN Global Compact), and the Declaration on Gender Equality and Against Domestic Violence (initiated by CSR Ukraine and UNFPA Ukraine). According to FGDs conducted in 2022, most corporate policies were quite formal and their effectiveness was unproven, especially among companies that have continued their work in the aggressor country. Currently, some large companies carry out internal surveys aimed at determining the real state of compliance with human rights in the company and identifying the main human rights challenges, including discriminations and the effectiveness of grievance tools (FGD' results).

For **SMEs operating in Ukraine during wartime**, the collective bargaining agreement and internal labour regulations are often the main documents that regulate human rights issues. Thus, informal communication between different team members plays a big role (results of FGD). Trade unions currently have practically no influence or opportunities to defend the rights of employees, which is related to the financial limitations they are experiencing in wartime.

The key human rights preventive and mitigation efforts of companies during the war in 2022, regardless of the sector, have been devoted to the **safety of employees and their families**. In the conditions of a difficult economic situation, any business that provides jobs is perceived positively by the community; therefore, part of the requirements for responsible business practices and the responsibility to respect human rights have been ignored or minimized.

## ◆ PRE-WAR BUSINESS AND HUMAN RIGHTS DEVELOPMENT

1. There have been no State recommendations for companies on how to operate responsibly or make a responsible exit from the territories not under control of the Government of Ukraine and/or territories affected by the conflict.
2. The majority of companies in Ukraine have little awareness or understanding of the BHR concept, including the ability to identify, assess, and prioritize human rights issues in their operations. Hence, most companies did not know how to adhere to responsible business in practice, especially at the time of the full-fledged invasion.

## ◆ BUSINESS AND HUMAN RIGHTS AGENDA IN TIMES OF WAR IN UKRAINE

1. The Russian invasion has increased the risks of human rights abuses and has worsened the situation if abuses existed before. One of the most cross-cutting human rights issues relevant for all sectors affected by the war is the safety of employees and consumers.
2. There are four scenarios for companies in Ukraine to operate during the war: operating under constant bombardment and active hostilities; operating in areas not under the control of the Government of Ukraine; operating in other war-affected areas and relocation towards the safer Western regions of Ukraine or abroad; and/or, operating in areas retaken by the Government of Ukraine. Each of mentioned scenarios could relate to a different list of human rights risks.
3. The response of companies towards business and human rights in wartime depends on the sector, size, and location of the companies.
4. The key role during the war and conflicts is played by companies that provide essential services and goods to consumers. During the war, nonessential services and goods may become essential ones when the delivery of a nonessential service is interrupted for long enough to endanger “the life, personal safety, or health of the whole or part of the population”. Included in essential goods in times of war are access to the Internet and communications, banking services, and food providers.

## ◆ PROBLEMS AND CHALLENGES

1. During wartime, the State made business operations easier through deregulation, which could also lead to significant weakening of the guarantees of employee’ rights and the strengthening of the freedom of employer’s discretion. The most common topics of appeals include issues of illegal dismissal, non-payment of salaries or delays in payment, reduction of salaries while maintaining the number of working hours, and “salaries in envelopes”. Age- and, to some extent, gender-based discrimination remains common.
2. Particularly vulnerable in wartime conditions are internally displaced people, people with disabilities and the family members who care for them, people with young children, pregnant women and women who have recently given birth, the elderly (80+), people with chronic diseases (including those in need of certain diet), and people living below the poverty line.
3. The war significantly changes the scope of corporate responsibility to respect human rights and highlight the role of business to address the human rights challenges that the conflict creates. To prevent and reduce high-risk human rights threats in times of conflict/war, companies must exercise ‘enhanced’ human rights due diligence. Although companies in Ukraine were not aware of heightened human rights due diligence and operated mostly intuitively rather than based on human rights approaches.

4. Non-judicial remedies included the role of the State Labour Service of Ukraine and unscheduled inspections for companies regarding labour rights appeals; activity of the Secretariat of the Parliamentary Commissioner for Human Rights, in terms of human rights abuses; role of the National Bank of Ukraine, in terms of financial abuses; and, the National Commission for State Regulation of Energy and Utilities (NCSREU), in terms of unfair power outages. During wartime, most Ukrainians have not tried State remedies to protect their rights, although some have used corporate grievance mechanisms.

## ◆ HUMAN RIGHTS DUE DILIGENCE DURING WARTIME

1. In large companies, or in companies with foreign capital, there are often written policies formulated for human rights in many aspects. Respondents have different attitudes towards the effectiveness of formal regulation, as much depends on management; but establishing key principles and policies is a powerful way to normalize a company's work. In small and medium-sized companies, the collective bargaining agreement and internal labour regulations are often the main documents that regulate human rights in the company.
2. Businesses try to ensure the minimum security for their employees, in part by arranging shelters and relocating production and other facilities to safer regions. At the same time, formal security instructions, including conduct during air raid alerts, are not always observed. Such rules are often ignored not because of employer's pressure but because of the reluctance of both parties to respond to what they believe is a low level of danger.
3. Among the most relevant and effective hHRDD tools during wartime, the following stand out:
  - Preparation of a Business Community Plan with a focus on the safety and security of employees and clients
  - Setting an Internal Crisis Management Team to lead response
  - Establishing a toolkit with guidance for employees on various support options
  - Setting up a hotline for emergency issues and twice-daily communications with employees to account for their safety
  - Launching an Employee Assistance Programme for medical and mental health support for employees and their families
  - Completing a detailed employee needs assessment
  - Providing financial and relocation assistance
  - Creating responsible exit and return plans
4. In large companies, there are often effective grievance mechanisms for protecting the rights of employees, which are implemented through hotlines and other formal ways of reporting abuses. Thus, employees more often have approached their employers in cases of human rights abuse, than State or other non-State mechanisms.

## ◆ RUNNING RESPONSIBLE BUSINESS DURING THE WAR

1. The efforts of companies to be socially responsible during the war are represented by closely interconnected actions, which can be considered corporate social responsibility in its narrowest sense (purchasing and providing goods for the needs of local communities, hospitals, etc.; charitable contributions, providing humanitarian aid, etc.); and corporate responsibility to respect human rights when companies (often, intuitively, rather than on the basis of pre-developed policies and procedures) try to determine the potential and

real impact of their actions on human rights, take into account possible scenarios for the development of military action, and prevent or minimize possible negative consequences for their employees, customers, and local community residents.

2. Some of the most common socially responsible practices include: assistance to international and local NGOs, volunteering, assistance to communities, provision of services and goods pro bono, and change in products produced by companies.

## RECOMMENDATIONS

Societies that face the war or armed conflict should make special efforts to build awareness about business impacts on human rights and on the conflict situation itself. It is therefore important that human rights are perceived as an end-to-end standard for all business activities, both during and after conflict.

The importance of developing a regulatory framework at the State level should be especially noted. States should clearly communicate their expectations for responsible business conduct and provide support that businesses can count on to promote respect for human rights and prevent their violations. States should develop recommendations for businesses regarding the potential risks associated with the relevant types of economic activity, as well as considering the conflict situation.

In a situation of ongoing conflict, it is difficult to plan a post-conflict process for transitional justice. But 'it is important to learn from the experience of other countries, especially the procedure and processes for remedies described in the UN WG Report "Implementing the Third Pillar: Lessons from Transitional Justice"<sup>127</sup>. In particular, the Report **provides an overview of the different forms of reparation recognised in international law and shows international standards on reparation to be applied to businesses, human rights abuses, and violations committed during periods of armed conflicts. Under such condition 'it is also of critical importance** that the State is aware of the need to investigate and identify human rights violations by business during a conflict, e.g., through Truth Commissions. And on this issue, as well as in many other aspects, the State, civil society institutions, and business should be able to agree and coordinate efforts to avoid duplication.

## FOR THE STATE:

1. The State should provide the corporate sector with guidelines to set priorities on human rights issues, determine the type of assistance provided, and implement procedures for preventing negative impacts on human rights and protecting human rights in conflict situations;
2. The State should develop clear guidelines for companies on how to operate responsibly or make an exit from territories beyond control of the Government of Ukraine and/or territories affected by the war.
3. The State should reconsider its legislation adopted during martial law from the perspective of Business and Human rights, including labour-related legislation.
4. The State should guarantee access to remedy and increase the legal literacy of people so they will be able to protect their rights under any conditions.

<sup>127</sup> Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises "Implementing the third pillar: lessons from transitional justice guidance by the Working Group". <https://daccess-ods.un.org/tmp/31384.0620219707.html>

## FOR BUSINESS:

1. Companies should understand when and where the principles of international humanitarian law apply<sup>128</sup> and provide trainings for their employees, security workers, and management, as well as for their suppliers, including small and medium businesses.
2. Companies should integrate human rights due diligence (hHRDD) into their work, and use a conflict-sensitive approach to impact analysis and engage with communities, especially those in vulnerable situations<sup>129</sup>. Companies should carefully assess the human rights implications of ceasing (suspension) operations and leaving relevant territory (on the territories beyond control of the Government of Ukraine or with active hostilities), and the human rights implications of staying.
3. Business associations and associations of key sectors (including IT, agriculture, retail, and others) should study best practices and develop policies and practices to help companies to act responsibly in the context of business and human rights in times of war. There is especially a need for sector-specific guidelines for sectors with a high level of informal employment (retail, construction companies, etc.) that have been forced to halt operations. Such actions have had a negative impact on employees and providers of essential goods and services.
4. In situations of transitional justice, “businesses have a responsibility to remedy their past behavior”. Thus, companies must understand the four pillars of transitional justice (truth, justice, reparation, and guarantees of non-recurrence), to reconsider their actions during the war and their impact on human rights and the conflict itself. And, in case of found abuses and/or violations, companies “should engage with the relevant transitional justice processes and contribute to truth, reparation, and guarantees of non-recurrence where appropriate<sup>130</sup>”.

## FOR CIVIL SOCIETY AND HUMAN RIGHTS ACTIVISTS

1. Human rights activists and civil society organisations (CSOs) should learn the best business and human rights practices of companies in Ukraine and abroad in times of war; develop the guidelines for companies on how to act responsibly in wartime.
2. Human rights activists and CSOs should improve the legal literacy of the populations, help people to protect their rights (both at national or at corporate levels), and encourage people to use State and non-State remedy instruments.
3. Human rights activists should fix the abuse and violations of human rights performed by businesses, collect evidence, and provide this information to the truth commissions that could be established as a part of transitional justice process.

128 Australian Red Cross recommendations on Business and IHL. <https://www.redcross.org.au/globalassets/cms-assets/documents/ihl--no-ihl/doing-responsible-business-in-armed-conflict-final-publication-web.pdf>

129 ECCJ Corp due diligence in armed conflict. [https://corporatejustice.org/wp-content/uploads/2022/09/ECCJ\\_Due-Diligence\\_in\\_Armed\\_Conflict\\_v03.pdf](https://corporatejustice.org/wp-content/uploads/2022/09/ECCJ_Due-Diligence_in_Armed_Conflict_v03.pdf)

130 Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises “Implementing the third pillar: lessons from transitional justice guidance by the Working Group”. <https://daccess-ods.un.org/tmp/31384.0620219707.html>

# ANNEX 1.

## THE RESEARCH METHODOLOGY

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### THE PURPOSE OF THE STUDY:

- 1) Map and analyze the human rights context of companies (including SMEs) and their impact on rights holders through hostilities and consequences, as well as in post-conflict reconstruction and reconciliation. Particular attention is paid to the needs, risks and barriers of vulnerable groups during war, such as members of conflict-affected communities, their families, people with disabilities, internally displaced persons, ethnic minorities, women, youth and children.
- 2) Based on the mapping of risks to human rights, identify and map available approaches and solutions in solving challenges related to in-depth due diligence on human rights by business and communities, formulate recommendations on expanding the opportunities of rights holders, raise awareness of the UN Guiding Principles on Business and Human Rights and provide rights holders with the necessary tools and knowledge.
- 3) Assess the effectiveness of state and non-state remedies, including operational complaint mechanisms, to prevent and protect against human rights violations in business during wartime.

### KEY CONSIDERATIONS:

#### A. Sector / market in focus:

- Conduct of providers of critical services and goods during the war;
- IT, retail and agriculture sectors: These sectors were studied in a previous study by UNDP (2021), and this study will conduct a comparative analysis of doing business in peacetime and wartime.

All industries and sectors were analyzed taking into account differences in the behavior of large companies and SMEs, international and local enterprises, private and public (municipal) organizations, companies that were forced to relocate and companies that operate without changing their location.

#### **B. The perspective of rights holders covers vulnerable groups during war, such as members of conflict-affected communities, their families, persons with disabilities, internally displaced persons, the elderly, ethnic minorities, youth and children. Gender mainstreaming is a cross-cutting element of research<sup>131</sup>**

The needs, risks and barriers of vulnerable groups in wartime are analyzed in the context of the following possible situations: 1) prolonged active conflict/emergency; 2) territories beyond control of the Government of Ukraine; 3) other (relatively safe) conflict zones; 4) relocation within the territory of Ukraine or abroad.

131 <https://www.undp.org/ukraine/publications/business-and-human-rights-ukraine-accelerating-sustainable-and-equitable-development-through-implementation-un-guiding>

## THE RESEARCH METHODOLOGY INCLUDES:

### 1. Desk research covering:

- analysis of national and international law, with a special emphasis on international human rights law, international humanitarian law and legislative regulation in Ukraine during the war
- sector and market analysis through analysis of statistics, business surveys, data from business associations, as well as analysis of business policies and practices through companies' websites and social channels, as well as media analysis
- determination of best business practices.

The research team used the key findings of the UNDP Study (2021) and the Report "Responsible Business Conduct in Wartime: Implications for Suppliers of Basic Goods and Services in Ukraine" (2022) , as well as other sources.

### 2. Two waves of focus group discussions (first wave – September 2022, second wave – March 2023) with rights holders:

- employees of companies (non-managerial employees who had experience working in relatively safe territories / territories affected by military actions / territories beyond control of the Government of Ukraine)
- decision makers in companies responsible for policy making, including wartime policy
- internally displaced persons who left their communities due to war, were affected by war and had to integrate into new communities, including finding work
- representatives of local councils who, in partnership with companies, provide support during wartime
- trade unions, civil society organizations and volunteers working in partnership with companies to provide wartime support.

The focus groups included people with disabilities and women as potentially more vulnerable groups. The focus groups also included employees of private companies, state-owned enterprises, local companies and international companies, large companies and SMEs.

A total of 12 focus groups were held.

Research questions and criteria for the selection of experts and representatives of focus groups had the following dimensions:

- a) The secure geographic dimension, including areas free of hostilities, areas with hostilities and territories beyond control of the Government of Ukraine
- b) Company level: national, international companies and their suppliers
- c) Size of companies: small, medium and large
- d) Impact of war on companies: displaced companies, companies operating in safe areas and companies that lost a lot during the war
- e) Sectoral dimension including IT, agribusiness and retail companies – the same sectors were analyzed before the war in the UNDP Study (2021) so for these sectors human rights aspects will be demonstrated in the development process.

**3. Key interviews with business and human rights experts**, including representatives of trade unions, business associations, organizations representing the rights and interests of people with disabilities, public organizations and volunteers involved in providing humanitarian aid to victims. war; local government. A total of 14 semi-structured interviews were conducted.

**4. Expert discussion with regional representatives of the Commissioner for Human Rights in Ukraine.** All regions of Ukraine were represented. Regional representatives work directly



with residents, including displaced persons, accept their appeals, and constantly communicate with them. During the discussion, special attention was paid to the following urgent human rights issues: illegal dismissals during the war, reduction of wages while maintaining the volume of work, workload without remuneration, lack of bomb shelters and training of employees in emergency situations; increased threat of forced labor; discrimination against IDPs, especially in those areas where many IDPs arrived, etc.

**5. All-Ukrainian representative sociological survey “Opinions and views of the population of Ukraine” (Omnibus).** The survey was conducted by the Kyiv International Institute of Sociology as part of the regular “Omnibus”.

The survey was conducted in two waves:

Wave 1: The field phase ran from September 7 to 13, 2022.

Wave 2: The field phase ran from February 6 to March 1, 2023.

The survey was conducted by the method of computer-assisted telephone interviews (CATI) based on random generation of mobile phone numbers. In the Luhansk and Donetsk regions, the survey was conducted only in the territory controlled by the Ukrainian authorities. In general, the survey was conducted only with respondents who lived in Ukraine at the time of the interview.

A total of 2,002 respondents living in all regions of Ukraine and in the city of Kyiv (except the Autonomous Republic of Crimea) were interviewed.

The sample is representative for Ukraine as a whole and for individual 4 macro-regions:

- West - Volyn, Zakarpattia, Ivano-Frankivsk, Ternopil, Khmelnytskyi and Chernivtsi regions, Lviv, Rivne,
- Center - Vinnytsia, Zhytomyr, Kirovohrad, Kyiv, Poltava, Sumy, Chernihiv regions and the city of Kyiv,
- South - Dnipropetrovsk, Zaporizhzhya, Mykolaiv, Odesa and Kherson regions,
- East - Donetsk, Luhansk and Kharkiv regions.

The statistical sampling error (with a probability of 0.95 and a design effect of 1.1) under normal circumstances does not exceed 2.4%.

## LIMITATIONS

The findings of the report are limited to the identification of only the most salient potential and actual human rights risks facing companies operating in Ukraine during the war. Actual human rights risks faced by companies and their partners/suppliers are presented where possible. The findings are based upon the evidence and information available and collected at the time of compilation and are therefore subject to change depending on the situation in Ukraine.

The discussion of the preliminary results of the study took place on September 20, 2022 as part of the panel discussion “Conducting responsible business in conditions of war and post-war recovery: risk assessment, search for solutions and tools” with the participation of 28 representatives of the Secretariat of the VRU Commissioner for Human Rights, trade union organizations, representatives of the State Regulatory Service of Ukraine on issues of digital development, digital transformations and digitalization, Chamber of Commerce and Industry of Ukraine, UkraineInvest, European Business Association, academic community, public organizations.

## ANNEX 2.

# QUESTIONNAIRES AND RESULTS OF THE ALL-UKRAINIAN REPRESENTATIVE SOCIOLOGICAL SURVEY (OMNIBUS)

### FIRST WAVE: SEPTEMBER 2022

The study was conducted by the Kyiv International Institute of Sociology from August 25 to September 16, 2022. By the method of telephone interviews using a computer (computer-assisted telephone interviews, CATI) based on a random sample of mobile phone numbers (with random generation of phone numbers and subsequent statistical weighting), 2,000 respondents living in all regions of Ukraine (except Crimea AR) were interviewed. The survey was conducted with adults (aged 18 and older) citizens of Ukraine who, at the time of the survey, lived on the territory of Ukraine (within the boundaries controlled by the authorities of Ukraine until February 24, 2022). The sample did not include residents of territories that were not beyond control of the authorities of Ukraine until February 24, 2022 (AR Crimea, the city of Sevastopol, certain areas of the Donetsk and Luhansk regions), and the survey was not conducted with citizens who left the country after February 24, 2022.

The field stage lasted from September 7 to 13, 2022.

Scales were constructed to compensate for deviations from official statistical data (State Statistics as of January 1, 2021). To calculate indicators, the array of data must be weighted (variable weights2000).

The statistical sampling error (with a probability of 0.95 and taking into account the design effect of 1.1) does not exceed: 2.4% for indicators close to 50%, 2.1% — for indicators close to 25%, 1.5% — for indicators close to 10%.

### Questions

⬡ **P1. Have you encountered a violation of your rights by companies / enterprises after February 24, 2022? SEVERAL ANSWER OPTIONS ARE POSSIBLE**

<b>Yes, violations from my employer</b>	4.3
<b>Yes, violations of the company/enterprise that provided me/my family with services/ performed work</b>	1.8
<b>Yes, violations by the company/enterprise operating in my place of residence</b>	1.0
<b>No, there were no cases of violation of my rights by companies/enterprises during this period</b>	82.8
<b>Not sure if the situation can be considered a violation of my rights</b>	6.9
DIFFICULT TO SAY/DON'T KNOW	2.3
REFUSAL TO ANSWER	1.6

QUESTION P2.1. TO THOSE RESPONDENTS WHO SELECTED ANSWER OPTION 1 IN QUESTION P1

⬡ **P2.1 Which labor rights from this list were violated by the employer?** RANDOMIZATION OF STATEMENT READING. SEVERAL ANSWER OPTIONS ARE POSSIBLE

Wages were not paid	53.8
The salary was reduced	50.9
The company did not ensure the safety of employees	38.8
The company did not help with the move	19.0
I was fired from my job	28.2
I was forced to go on unpaid leave	39.9
The previously provided for wages and salaries have been unreasonably terminated	56.0
My employer made me work more	31.7
I am denied annual paid leave	21.0
Other	7.3
DIFFICULT TO SAY/DON'T KNOW	5.2
REFUSAL TO ANSWER	0.0

QUESTION P2.2. APPRECIATE RESPONDENTS WHO CHOOSE ANSWER OPTION/S 2 AND/OR 3 IN QUESTION P1.

⬡ **P2.2 Which consumer rights from this list were violated by the company/enterprise?** RANDOMIZATION OF STATEMENT READING. SEVERAL ANSWER OPTIONS ARE POSSIBLE

I have to pay rent even though I don't live / work there	3.1
I was given poor service / poor product and my money was not returned	27.3
I made a prepayment for services/goods, but they ask me to pay more	7.9
I made an advance payment for services/goods, but the services were not provided and the funds are not returned	18.0
I was not provided with a paid service or product	32.0
Other	50.0
DIFFICULT TO SAY/DON'T KNOW	2.7
REFUSAL TO ANSWER	0.0

QUESTION P3 IS ASKED TO THOSE RESPONDENTS WHO SELECTED ANSWER OPTION/S 2 AND/OR 3 IN QUESTION P1.

- ⬡ **P3. If there were violations by companies/enterprises, in which sector does this company/enterprise operate?** RANDOMIZATION OF STATEMENT READING. SEVERAL ANSWER OPTIONS ARE POSSIBLE

Agricultural sector	2.5
Construction	7.7
Recreation and/or entertainment	2.3
Mining industry	2.2
Water supply and waste management	15.4
Hotel business and/or catering	3.6
Energy industry	7.7
Information and/or telecommunication services	8.7
Forestry	0.0
Wholesale and retail trade	12.8
Education	7.5
Health care	14.7
Advertising	0.0
Processing industry	6.9
Postal and/or courier services	8.8
Transport	19.2
Tourism	0.0
Financial services and/or insurance services	18.6
Legal Services	2.9
Other	23.6
DIFFICULT TO SAY/DON'T KNOW	6.8
REFUSAL TO ANSWER	0.0

- ⬡ **P4. Please mention the case of the most serious violation of such rights. Were you able to protect your violated rights?** ONE ANSWER

Yes, completely	7.4
Yes, but only partially	6.5
Yes, I have started the protection procedure, but it is still ongoing	11.4
No, I tried, but without success	33.1
No, I didn't try / didn't try	40.2
DIFFICULT TO SAY/DON'T KNOW	1.4
REFUSAL TO ANSWER	0.0

⬡ **P5. How did you defend your rights?** RANDOMIZATION OF STATEMENT READING. SEVERAL ANSWER OPTIONS ARE POSSIBLE

I contacted the company's management	65.1
I applied to the trade union	9.4
I applied to the controlling state body	29.5
I appealed to the court	8.1
I have turned to public activists and/or mass media to draw attention to the situation	15.1
Other	13.4
DIFFICULT TO SAY/DON'T KNOW (DO NOT READ)	11.3
REFUSAL TO ANSWER (DO NOT READ)	0.1

⬡ **P6. Tell me, please, are you currently employed? IF SO: Did you receive support in any form from your employer during the war (from February 24, 2022)?** RANDOMIZATION OF STATEMENT READING. SEVERAL ANSWER OPTIONS ARE POSSIBLE

Assistance with moving within the country	2.1
Help with moving abroad	1.1
Evacuation from dangerous regions	2.3
Provision of food and basic necessities	7.5
Professional psychological support	7.5
Arrangement of a bomb shelter	6.5
Additional financial support	9.5
Payment of wages in advance	6.4
Linking salary to the dollar exchange rate	3.0
Help for children and families	5.2
Other	1.3
Did not receive support from the employer	21.9
No, I am currently unemployed	55.4
DIFFICULT TO SAY/DON'T KNOW	0.4
REFUSAL TO ANSWER	0.1

⬡ **P7. Approximately how many employees work in your organization/company?**

Small (up to 50 people)	46.3
Medium (from 50 to 250 people)	21.5
Large (from 250 or more people)	26.3
DIFFICULT TO SAY/DON'T KNOW (DO NOT READ)	5.1
REFUSAL TO ANSWER (DO NOT READ)	0.7

## SECOND WAVE: FEBRUARY 2023

The study was conducted by the Kyiv International Institute of Sociology from 6 February 2023 to 1 March 2023. 2,002 respondents residing in all regions of Ukraine (except for the Autonomous Republic of Crimea) were interviewed by the method of computer-assisted telephone interviews (CATI) based on a random sample of mobile phone numbers (with random generation of phone numbers and subsequent statistical weighting). The survey was conducted with adult (18 years of age and older) citizens of Ukraine who, at the time of the survey, lived in the territory of Ukraine (within the borders controlled by the authorities of Ukraine before 24 February 2022). The sample did not include residents of territories that were beyond control of the Government of Ukraine before 24 February 2022 (the Autonomous Republic of Crimea, the city of Sevastopol, certain areas of Donetsk and Luhansk oblasts), and the survey was not conducted with citizens who went abroad after 24 February 2022.

The field stage lasted from 14 to 22 February 2023.

Weights were built to compensate for deviations from official statistical data (State Statistics Service of Ukraine as of 1 January 2021). To calculate indicators, the array of data should be weighted (variable weights2000).

The statistical sampling error (with a probability of 0.95 and taking into account the design effect of 1.1) does not exceed: 2.4% for indicators close to 50%, 2.1% for indicators close to 25% and 1.5% for indicators close to 10%.

### Questions

○ **Q1. Have you experienced an abuse of your rights by companies/enterprises after 10 October 2022, when the attacks on energy infrastructure began? SEVERAL ANSWERS ARE POSSIBLE.**

<b>Yes, with abuses by my employer</b>	1.8
<b>Yes, with abuses by the company/enterprise that provided me/my family with services/performed works</b>	3.0
<b>Yes, with abuses by the company/enterprise operating at my place of residence</b>	1.4
<b>No, there were no cases of abuse of my rights by companies/enterprises during this period</b>	65.5
<b>Not sure if the situation can be considered an abuse of my rights</b>	25.3
HARD TO SAY/DON'T KNOW	3.2
REFUSAL TO ANSWER	0.0



**Q2.1 Which labour rights from this list were abused by the employer? SEVERAL ANSWERS ARE POSSIBLE.**

Wage was not paid	31.9
Wage was reduced	64.2
The company did not ensure the safety of employees	42.8
The company did not help with the move	21.1
I was fired	16.1
I was forced to go on unpaid leave	43.5
The payment of the previously provided wage was stopped for no reason	54.6
My employer made me work more	31.5
I was denied annual paid leave	14.2
I am forced to go to work despite the existing danger	18.9
The company did not help with a room with light and Internet, and demanded results after missile attacks on the infrastructure	46.9
Other	14.1
HARD TO SAY/DON'T KNOW	0.0
REFUSAL TO ANSWER	0.0



**Q2.2 Which consumer rights from this list were abused by the company/enterprise? SEVERAL ANSWERS ARE POSSIBLE.**

I have to pay rent even though I do not live/work there	17.7
I received poor service/product and no refund	26.8
I made a prepayment for services/goods but I am being asked to pay more	17.5
I made a prepayment for services/goods but the services were not provided and the money was not refunded	17.4
I was not provided with a paid service or product	26.0
The company that provides services/goods does not take measures to ensure the safety of consumers in the event of a missile threat	33.2
Other	30.3
HARD TO SAY/DON'T KNOW	6.7
REFUSAL TO ANSWER	0.0



**Q3. If there were abuses by the company/enterprise, in which sector does this company/enterprise operate? SEVERAL ANSWERS ARE POSSIBLE.**

Agricultural sector	10.3
Construction	7.3
Recreation and/or entertainment	9.2
Mining industry	4.1
Water supply and drainage	18.6
Hotel business and/or public catering	10.8
Energy sector	59.7
Information and/or telecommunications services	16.3
Forestry	7.4
Wholesale and retail trade	16.4
Education	13.9
Health care	7.6
Advertising	2.8
Processing industry	3.4
Postal and/or courier services	13.4
Transport	7.3
Tourism	2.7
Financial and/or insurance services	10.4
Legal services	3.9
Other	8.9
HARD TO SAY/DON'T KNOW	3.9
REFUSAL TO ANSWER	4.3



**Q4. Please indicate the case of the most serious abuse of such rights. Were you able to protect your abused rights? ONE ANSWER**

Yes, completely	6.2
Yes, but only partially	17.0
Yes, I started the protection procedure but it is still in progress	5.7
No, I tried but without success	36.9
No, I did not try	33.4
HARD TO SAY/DON'T KNOW	0.8
REFUSAL TO ANSWER	0.0





**Q5. How did you protect your rights? SEVERAL ANSWERS ARE POSSIBLE.**

I approached the management of the enterprise	75.3
I approached the trade union	4.7
I approached the supervisory public authority	34.2
I took legal action	9.7
I approached public activists and/or mass media to draw attention to the situation	20.3
Other	7.9
HARD TO SAY/DON'T KNOW	2.9
REFUSAL TO ANSWER	0.0



**Q6. Have you been affected by power outages due to attacks on Ukraine's energy system?**

Yes	55.4
No	44.0
HARD TO SAY/DON'T KNOW	0.5
REFUSAL TO ANSWER	0.0



**Q7. Tell me, please, are you currently employed? IF YES: Have you received support from your employer to minimize these harmful effects on you? SEVERAL ANSWERS ARE POSSIBLE.**

Yes, the employer made working hours more flexible	27.5
Yes, the employer arranged the workplace and provided electricity with the help of a generator	32.3
Yes, the employer provided generators, Ecoflows and other means for power supply	24.2
Yes, the employer purchased and provided Starlinks	7.6
So, the employer created "corporate points of invincibility" for employees and their families	16.3
Other	5.4
No, the employer does not take into account power outages in any way	5.2
No, I am currently unemployed	46.9
HARD TO SAY/DON'T KNOW	2.1
REFUSAL TO ANSWER	0.8



**Q8. Approximately how many employees work in your organization/company?**

Small number (up to 50 people)	49.8
Medium number (50 to 250 people)	24.3
Large number (250 and more)	21.2
HARD TO SAY/DON'T KNOW	3.4
REFUSAL TO ANSWER	1.2



**Q9. Please tell me, do the companies near your place of residence (we are talking about supermarkets, retail stores, post offices, delivery points, cafes, restaurants, etc.) allow or do not allow the use of their electricity during periods of power outages?**

<b>Yes, all or almost all companies near my place of residence allow me to use their electricity during periods of power outages</b>	40.6
<b>Some companies near my place of residence allow me to use their electricity during periods of power outages, and some do not</b>	20.2
<b>No, the companies near my place of residence do not allow me to use their electricity during periods of power outages</b>	13.0
HARD TO SAY/DON'T KNOW	25.9
REFUSAL TO ANSWER	0.3

# ANNEX 3.

## METHODOLOGY OF FOCUS GROUPS DISCUSSIONS

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### FOCUS GROUPS OBJECTIVES:

- 1) Provide mapping and analysis of human rights risks and challenges of companies (including SMEs, national, international) operating in Ukraine, and their impact on rights holders due to the military hostilities and consequences, as well as within as recovery and post-conflict reconciliation – before and after the massive attacks on the critical infrastructure which cause severe blackouts and power cuts.
- 2) Provide mapping and analysis of needs, risks, and barriers of vulnerable groups during wartime, such as members of conflict-affected communities, their families, people with disabilities, internally displaced persons, ethnic minorities, women, youth, and children - before and after the massive attacks on the critical infrastructure which cause severe blackouts and power cuts.
- 3) Provide mapping and analysis of existing approaches and solutions in addressing hHRDD challenges by businesses and communities - before and after the massive attacks on the critical infrastructure which cause severe blackouts and power cuts.
- 4) Develop recommendations on encouraging businesses to implement UNGP principles and empowering rights holders, increase UNGPs awareness, and equip businesses and rights holders with necessary tools and knowledge, as well as on the integration of hHRDD principles to the road map of further integration of Business and Human Rights principles to national human rights, and recovery and peacebuilding strategic documents.

### Process

Two waves of focus group discussions were conducted:

- First wave: September 2022.
- Second wave: March 2023.

The research questions and criteria for selection of the experts and focus group representatives will have the following dimensions:

- a) Safe geographical dimension including territories where no military actions take place, a territory with active hostilities and territories beyond control of the Government of Ukraine.
- b) Companies level: national, international with a special focus on Japanese companies and their suppliers.
- c) Companies' size: small, medium and large.
- d) Impact of the war on companies: relocated companies, companies with operations in safe areas and companies that lost a lot during the war; challenges because of the electricity system destruction.

<p><b>Focus group</b> Decision makers of companies (1 group per wave)</p>	<p><b>Number of participants – at least 6 persons</b></p> <ul style="list-style-type: none"> <li>▪ HRs/CSR/compliance managers of large, medium-sized and small companies, at least 2 years of work experience</li> <li>▪ women and men, mixed by age and marital status, living in Ukraine, incl. in conflict affected areas (GCA), for at least 1 representative of youth (up to 35 years)</li> <li>▪ Geography: national</li> </ul>
<p><b>Focus group</b> Employees (1 group per wave)</p>	<p><b>Number of participants – at least 6 persons</b></p> <ul style="list-style-type: none"> <li>▪ employees from different sectors of the economy, including former employees (non-managerial employees who have had an experience in relatively safe territories / war- affected territories / territories beyond control of the Government of Ukraine) at least 2 years of work experience</li> <li>▪ women and men, mixed by age and marital status, incl. in conflict affected areas (GCA), for at least 1 representative of youth (up to 35 years)</li> <li>▪ Geography: national</li> </ul>
<p><b>Focus group</b> Employees of the providers essential services, including critical infrastructure  (1 group)</p>	<p><b>Number of participants – at least 6 persons</b></p> <ul style="list-style-type: none"> <li>▪ Employees providers of electricity, heating and water. Employees of providers other essential services such as mobile communication, Internet, post services, transport services and bank services could be also included.</li> <li>▪ at least 2 years of work experience</li> <li>▪ women and men, mixed by age and marital status, living in Ukraine, incl. in conflict affected areas (GCA), for at least 1 representative of youth (up to 35 years)</li> <li>▪ Geography: national</li> </ul>
<p><b>Focus Group</b> HRs/CSR/compliance managers of companies which provide essential services (1 group)</p>	<p><b>Number of participants – at least 6 persons</b></p> <ul style="list-style-type: none"> <li>▪ HRs/CSR/compliance managers of companies which provide essential services (critical infrastructure)</li> <li>▪ at least 2 years of work experience</li> <li>▪ women and men, mixed by age and marital status, living in Ukraine, incl. in conflict affected areas (GCA), for at least 1 representative of youth (up to 35 years)</li> <li>▪ Geography: national</li> </ul>
<p><b>Focus group</b> IDPs (1 group)</p>	<ul style="list-style-type: none"> <li>▪ representatives of vulnerable groups, i.e. of internally displace people (IDPs) affected by war and possible adverse human rights impact by businesses, incl. in conflict affected areas (GCA);</li> <li>▪ women and men, mixed by age and marital status, living in Ukraine, incl. in conflict affected areas (GCA), for at least 1 representative of youth (up to 35 years)</li> <li>▪ Geography: people from war- affected territories / territories beyond control of the Government of Ukraine / etc.</li> </ul>

### Questions for the focus groups discussions with employees

The questions included the following issues:

1. Introduction
2. Perception of BHR situation in Ukraine in the wartime

3. BHR Policies and existing practices and approaches of companies in addressing hHRDD challenges of companies and communities in the wartime
4. Human rights risks and challenges of companies in the wartime vs needs and barriers of vulnerable groups.
5. Recommendations for companies, rightsholders, local and national governments on BHR.

**General questions:**

1. Please introduce yourself.
2. Have you experienced any violation of your rights in connection with the war (as an employee, as a consumer) before the powercuts? After the powercuts?
3. If yes, could you provide examples of your own or other people?
4. What additional benefits companies provided in the wartime before the powercuts?? After the powercuts? Could you provide examples of your own or other people?
5. Was you / your company affected by the energy systems destruction? What kind of support, if any, did you receive from your employer?
6. Which groups of people are at most risk to human rights violations by businesses during the war? before the powercuts?? After the powercuts?  
\*Please provide examples and/or evidence. (if there are difficulties with the answers, it is possible to suggest categories (women, migrants, people with disabilities, young people, older people, LGBT+, people with HIV, people with family responsibilities, incl. children, etc. (the list will be continued)
7. Were you able to defend your rights if they were violated? What mechanism / procedures did you use used? Are such mechanisms / procedures effective or not? Please provide examples or evidence.
8. Have you encountered situations when a person in such a case successfully defended his/ her rights, or, conversely, was defeated? Please explain how and be specific.
9. Shops and shopping malls: are you satisfied with the work of shops and shopping malls after the powercuts have been started? Pls explain your reply.
10. What recommendations would you give to businesses, in terms of respecting business rights?

*Additional questions for certain respondents' groups*

**For employees:**

1. Do you know about human rights policies that your company developed during the wartime, if any?
2. In case of new policies, how did your company inform people about them? Has it organized special training to raise your human rights awareness? Any other special activities?
3. Do you know if your company had a business continuity plan in place in case of
4. emergency (war) until February 24, 2022? If your answer is yes, could you please describe the main issues that were addressed in this document? (for example, remote work, etc.) Do you know whether you company did in accordance with such plan when the war started?
5. Do you feel secure at the workplace (both physically and mentally) now, in the context of the Russian invasion impact? Could you explain why and provide examples?
6. What new issues related to BHR appeared in your company? How does it work?
7. If your company had to leave some territories in Ukraine, what problems did you personally have? How did you solve them?
8. How likely is it that your complaint would be heard and taken into account now? Please provide examples, if you or other employees have tried this and if there is a grievance mechanism at place at your workplace.

**For employees of the essential services providers (critical infrastructure):**

1. Do you face high risk situations at your workplace? Please provide examples.
2. Does your company provide additional safety policies for employees in the war time? If so, what measures these policies provide?
3. Had your work time changed after the war started? before the powercuts? After the powercuts?
4. Had the scope of your work tasks changed after the war started? before the powercuts? After the powercuts?
5. Did employer consult with employees about changes at the workplace during the war? before the powercuts? After the powercuts?
6. What additional did employer provide after the air raids and hitting the critical infrastructure?

**For IDPs affected by war**

1. Employment: have you faced any discrimination at the labour market since the war started? After the powercuts?
2. What are the main barriers for IDPs to get a job now? Do you know any positive or negative cases of IDP's employment?
3. What groups at the labour market are the most vulnerable in terms of employment?
4. Do business allow people to form trade unions?
5. Health and security: have you faced any discrimination at the Health and safety area
  - as an employee? (at the workplace – individual protection, shifts, work in accordance with the security protocols, etc, psychological support, bombshelter, work during air raid alerts, etc)
  - as a consumer? (in terms of expired food, in the shopping mall- what to do if this is an air raid alert, bombshelters, stoppage of energy supply)
6. Communities: is it comfortable for IDPs to stay in the host communities? Are all their human rights respected? Pls provide examples.
7. What human rights were or could be impacted by business in your community? What instruments to minimize risks of negative impact could be used? Provide examples please.
8. Are there some groups within your community that are at heightened risk for adverse human rights impact from businesses at the labour market (IDPs, persons with disabilities, people with family responsibilities, men who can be mobilized or others)? Can you give examples of how they are at heightened risk and how their rights may be violated by businesses?
 

\*It could be detailed by additional questions, e.g. could be age / sex / any other personal characteristics considered as barrier to be employed? could family responsibilities be considered as such a barrier? Does the respondent assess a possible workplace through the lenses of a decent job?
9. What efforts could be done by companies to minimize these risks (risks mentioned in Q8)?

**For decision-makers from companies**

1. Which BHR risks are extremely high in the times of war, after the war started? After the powercuts and blackouts started?
2. Which actions did companies undertake to minimize them?
3. What tools does your company use to understand the impact of their activities on vulnerable groups? Can you provide us with examples?
4. Which actions did companies in the industry implement in this regard in the times of war?
5. Does (did) your company operate in conflict affected areas (active military actions, territories beyond control of the Government of Ukraine)? Did you company develop an 'exit strategy'?

6. What impact did power cuts have on your business? How was your company affected by the attacks to the energy system of Ukraine?
7. What plans and policies did company have which helped it to overcome war and energy challenges (business continuity plan, human rights policies, operational grievance mechanisms) and how?
8. Have partners and suppliers informed you about their plans and policies (business continuity plan, human rights policies, operational grievance mechanisms)?
9. Does your company apply human rights due diligence?
10. What cases have you known regarding violations of human rights by any company in the sector? After war started? After powercuts started?
11. What role of business associations/CSOs /local government and government could play in promoting BHR in the wartime? before the powercuts? After the powercuts?
12. If your premises in Ukraine have been damaged, have you had damage claims? How did you solve them?
13. If your company had to leave some territories in Ukraine, what problems did you have? How did you solve them?

**Additional questions for decision-makers of the companies which provide essential services (in addition to the questions above - For decision-makers from companies)**

1. How does your company balance the public interest to have access to essential services (critical infrastructure) and safety of your employees? Could you provide us with some examples?
2. Do you consult with employees about safety measures during the war? After the powercuts?
3. Does your company face the pressure from consumers after the war started? After the powercuts? What was this pressure about? How did you solve them?







