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**RESPONSIBLE  
BUSINESS  
CONDUCT  
IN TIMES OF WAR:**  
implications  
for essential goods  
and services  
providers in Ukraine

**2022**

**RESPONSIBLE BUSINESS CONDUCT IN TIMES OF WAR:  
implications for essential goods and services providers in Ukraine**

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# Contents

<b>Summary</b>	<b>4</b>
<b>Foreword</b>	<b>7</b>
<b>Introduction</b>	<b>8</b>
Methodology	11
<b>Value rationale and normative framework to ensure essential services and goods in times of the war by corporate actors</b>	<b>12</b>
Essentiality of services and goods	12
Essential services as public services	13
Provision of essential services and goods in the wartime	15
Access to essential services and goods in enhanced HRDD	17
<b>Essential services and goods in times of war: Case of Ukraine</b>	<b>20</b>
General regulation framework	20
Internet and communication services	23
Access to drinking water, electricity and gas supply, sanitation and garbage collection	26
Food retail	29
Hospitals and medical services, pharmaceuticals, hygiene products and products for children	31
Banking services	33
Public transport	35
<b>General recommendations</b>	<b>38</b>

# Summary

Access to essential goods and services during war is critical. In many cases, people's lives depend on it. The subject introduces many complex questions. What goods and services are essential in the war? Is it the exclusive responsibility of the state to provide access to these services? What role do private providers of essential services and goods play? How can employees' safety be balanced with the need to ensure access to essential goods and services? Do private providers have broad discretion in deciding to stop their work, regardless of the motive for such a decision<sup>1</sup>, and regardless of the degree of influence of such a decision on the local population? What is the impact of the business operating environment (ongoing active conflict; occupied territory; other conflict-affected areas) on the provision of essential goods and services? Does the corporate responsibility to respect human rights include all possible efforts of a company to prevent or mitigate the negative impact of conflict on human rights?

These are not easy questions, and it is impossible to find one universal correct answer to any one of these questions. In each specific situation, the answer must be sought anew. Finding such an answer requires understanding the context and the current situation as much as possible. However, whether companies ask themselves such questions, how they seek answers to them, and what interests they balance are all indicators of their efforts to implement responsible business conduct.

'Essentiality' is context specific. No fixed definition of essential goods/services exists in the strict sense. A frequently used term that can be interpreted more narrowly is the term 'basic goods / services', defined as goods/services in the social domain that should be available and reasonably accessible to everyone in need for them. Proper access to communications, drinking water, food, banking services, transport, electricity, healthcare and medicines, sanitation and garbage collection are important conditions for life. During the war, the basic needs of a person do not change, and in some cases their importance increases significantly – e.g., the ability to access public transport becomes critical for evacuation, access to the Internet becomes vital to obtain up-to-date information about possible threats, evacuation corridors, and humanitarian aid, and access to communication tools are necessary to keep in touch with family, call emergency services if necessary, and more.

Essential services and goods have commonly been perceived as services and goods that are owned, managed and delivered by the state. Nevertheless, access to essential services and goods may be supplied by a private provider. Human rights are neutral as to economic models in general, and to models of service provision in particular.

The privatization of the provision of essential services and goods does not deprive them of an element of public function<sup>2</sup>. Such a public nature of services and goods strengthens the role of the state in providing access to them: in peacetime, the state establishes regulation aimed at ensuring access to essential services for the most vulnerable groups, monitoring the quality of services, etc. In times of war, the state becomes the main addressee of the demand to provide access to essential services and goods, either on its own or through increased regulation of and closer interaction with service providers. The business and human rights framework calls on the state to provide recommendations to business on what risks war entails for human rights, what actions should be taken by business to minimize the risks of a negative impact on human rights, what forms of interaction between business and the state can be ensured to minimize such risks, and secure access to essential goods and services. Within this framework, **business has its own responsibility to make all possible efforts to secure human rights.**

This approach, which can be called the 'respect (plus)' scenario, highlights the tenuous and murky distinction between protecting and respecting human rights and is likely to be somewhat perplexing to companies searching for clarity around their responsibilities. It is based on the understanding that 'more than respect may be required when companies perform certain public functions'.<sup>3</sup> In such a situation, private enterprise should assume a parallel and complementary obligation (along with the State) to protect rights. It should be taken the subsequent step of placing a supplementary responsibility on the corporation to protect human rights where the State is unable or unwilling to do so. The obligations of companies should supplement and not replace State obligations.

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1 i.e, unwillingness to interact with the occupying authorities if the territory is occupied; fear of financial losses in case of continuation of activities; complication of supply chains.

2 Ensuring the minimum necessary access to essential services and goods is not only the private interest of a particular person, but the general interest of the whole society, since it ensures its sustainability and is a necessary for respect for human dignity, a minimum requirement of humanity.

3 Promotion Of All Human Rights, Civil, Political, Economic, Social And Cultural Rights, Including The Right To Development, Business and human rights: Towards operationalizing the «protect, respect and remedy» framework Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, paras 63-65, <https://www2.ohchr.org/english/bodies/hrcouncil/docs/11session/A.HRC.11.13.pdf>.

Companies whose business model includes the provision of essential goods and services initially take on part of a public, socially significant, function. **Enhanced human rights due diligence requires such companies to ask themselves:**

1. *Are you a supplier of essential goods and services? Do you occupy a key role in providing local people with access to essential services?*
2. *Did you continue to supply essential goods and services after the start of war / occupation?*

**IF NOT:** What was the defining barrier that stopped continued operation? Did you have legitimate considerations from a human rights point of view? Has the company taken into account the needs of the local people for access to essential goods and services and the criticality / non-criticality of your company's role in providing such access? Have you continued to communicate with employees? Are they safe?

**IF YES:** Have you assessed the risks to the safety of your employees? Have actions been taken to minimize these risks? (If appropriate: Was access to the bomb shelter secured? Were helmets and bulletproof vests issued? Have you ensured psychological support services for employees? Are employees trained in security measures in a case of a shelling or another high-risk situation? Is the company ready to promptly evacuate employees and their families, if necessary, etc.?) Have you assessed additional gender-based risks, in particular the increased risk of gender-based violence? Have you assessed how the needs of people for access to essential goods and services have changed, and whether the market for the provision of such goods and services and your role in this market has changed? Do you interact with government agencies, municipal authorities, CSOs, volunteers to coordinate efforts to ensure access to essential goods and services and also in relation to providing employee safety? Do you take into account the vulnerabilities of groups, communities and individuals?

3. *Was the above decision made taking into account the local context and its dynamics?*

Regardless of whether the company decides to continue operating or stop, it is important that the decision-making process is consultative and build on local knowledge/information.

Analysis of the situation of war in Ukraine and business conduct shows:

1. The conduct of local business and multinational companies that are providers of essential services and goods differ significantly across available cases. Local companies, because of a better understanding of the needs of the local population and the current situation, continued to operate and often played a critical role (evacuation of the people, provision of food and water, etc.). Many international companies (with rare exclusion) in a similar situation stopped working in the first hours of the war. The main argument of international companies was to ensure the safety of employees.<sup>4</sup> However, in a number of cases, this was following the most simple and safest scenario for the company itself, since the continuation of work meant the need to think about how to maximize the safety of employees, monitor the development of the situation, and take the risks of a possible dangerous situation. Without denying the critical importance of employees' safety, it should be highlighted that companies should take all possible efforts to balance employees' safety and access to essential goods and services.
2. There is a significant difference between the conduct of state-owned and municipality owned enterprises (SOEs and MOEs), on the one hand, and private companies, on the other. SOEs and MOEs that are providers of essential services and goods did not stop their work. In many cases, it shows the priority of the public interest (to provide essential services) over the personal safety of employees. This situation stands in contrast to private companies and shows that SOEs and MOEs lack some capacity to take private interest seriously to balance them with public interests.

<sup>4</sup> See as example of the statement: «Our operations in Ukraine have had to stop because of the war. From the start of this crisis, the safety of our colleagues and their immediate families has been our priority.» ([https://media.business-humanrights.org/media/documents/Unilever\\_response.pdf](https://media.business-humanrights.org/media/documents/Unilever_response.pdf))

3. In the temporarily occupied territories, in a number of cases, access to essential services and goods is used as a weapon of war by the Russian military (the local population receives threats to have electricity and gas supply cut in case of protests against the Russian authorities; the signal of mobile operators is jammed, as a result of which the local population cannot even call an ambulance, etc.). In such situations, a company's ability to use its best efforts to find a way to maintain access to essential goods and services for some, for even a short time, can play a crucial, even lifesaving, role.
4. Small businesses, in particular grocery stores, water delivery companies, and companies providing transportation services, in some cases demonstrated higher resilience compared to large businesses that were unable to quickly rebuild supply chains to adequately respond to the changing local context.
5. Cooperation between the state and municipalities, business and volunteers has been important for maintaining essential goods and services. Volunteers have been able to most quickly identify the main challenges to access to essential services and goods and were able to help coordinate efforts. It is becoming clear that engaging with volunteers is an important component in identifying potential risks to human rights in times of war and identifying the most effective ways to help people access critical services and goods.

In all situations, responsible business conduct is about balancing between conflicting human rights (in most cases, employees' safety vs access to essential goods and services for local people), but not balancing between human rights and the financial interests of company.

# Foreword

The debate about the role of business in the provision of ‘essential services’ has reemerged given the challenges of our times. Both the military coup in Myanmar and the illegal invasion of Ukraine by Russia have prompted the question – does the provision of ‘public goods’ such as medicines, food, water, electricity, transport and even internet access represent a different requirement from business than general services or the provision of non-essential goods? Are the requirements on business in times of conflict different from those at times of peace? Is there an onus on business to remain in situations of conflict, or widespread human rights abuses, to maintain such services, or to seek ‘carve outs’ from broad-based sanction regimes such as in the context of Russia?

There are few existing rules to guide us in relation to these questions but we do have the experience of other conflicts and sanction regimes over the past 70 years to draw on. There is no agreed international list of what essential services are, but we can start by looking at specific UN treaty bodies and special procedures, the Geneva Conventions and other aspects of international humanitarian law as well as national sanction regimes (in particular exemptions issued by the US Office of Foreign Assets Control). The nature of the corporate responsibility to respect human rights can be found within the 2011 UN Guiding Principles on Business and Human Rights (UNGPs) and this anchors discussions about ‘enhanced human rights due diligence’ in relation to ‘responsible exit’ from high-risk situations, or for that matter, ‘responsible remaining’. But the UNGPs do help us distinguish between what are and what are not essential services themselves. The European Convention on Human Rights goes a little in this direction when considering the ‘state-like’ functions that businesses undertake in relation to some civil and political rights but not on rights such as health, water, food, housing or the newly recognised right to a healthy environment.

I congratulate Professor Olena Uvarova on the publication of this important report, written at a time when her own country is under attack. It is timely work and represents one of the most important business and human rights challenges for us all.

*John Morrison*  
*CEO*

*Institute for Human Rights and Business Introduction*

# Introduction

Access to essential services and goods – including safe drinking water<sup>5</sup>, adequate food<sup>6</sup>, housing<sup>7</sup>, healthcare and medicine<sup>8</sup>, electricity and gas supply<sup>9</sup>, rail and urban transport<sup>10</sup>, public utilities<sup>11</sup>, banking services<sup>12</sup>, sanitation<sup>13</sup>, and access to internet and communication services<sup>14</sup> – is a key condition to satisfy basic needs for leading a life with human dignity<sup>15</sup> and well-being.<sup>16</sup> Recognized human rights standards call for ensuring the minimum necessary access to these essential services. During emergency situations, such as armed conflicts, the protection of civil, political, economic, social and cultural rights is crucial.<sup>17</sup>

Many of today's armed conflicts are fought in urban areas, affecting millions of people in cities and towns worldwide. High population density and the proximity of civilians and civilian objects to military objectives greatly increase the risk of civilian death, injury, and displacement, in addition to damage to critical infrastructure, disruption of essential services, and loss of access to essential goods.<sup>18</sup>

There is a growing tendency to use essential resources and infrastructure as targets for attacks as a means of warfare. Military actions in Ukraine clearly confirm this trend. This practice is a gross violation of international humanitarian law, so all states are obliged to respect and ensure respect for and observance of international humanitarian law.<sup>19</sup> Protocols Additional to the four 1949 Geneva Conventions adopted in 1977 prohibit attacks on facilities «necessary for the survival of the civilian population». International humanitarian law obliges the parties to a conflict to ensure adequate conditions of life for the civilian population with regard to matters such as health, food, relief assistance, work, employment and education. Understanding of essentiality can, however, change depending on context.

5 See: OHCHR and the right to water and sanitation, <https://www.ohchr.org/en/water-and-sanitation/about-water-and-sanitation#:~:text=On%2028%20July%202010%2C%20the,RES%2F64%2F292>.

6 See: The Right to Adequate Food, <https://www.ohchr.org/sites/default/files/Documents/Publications/FactSheet34en.pdf>.

7 See: The Right to Adequate Housing, [https://www.ohchr.org/sites/default/files/Documents/Publications/FS21\\_rev\\_1\\_Housing\\_en.pdf](https://www.ohchr.org/sites/default/files/Documents/Publications/FS21_rev_1_Housing_en.pdf).

8 See: The Right to Health, <https://www.ohchr.org/sites/default/files/Documents/Publications/Factsheet31.pdf>.

9 See also 10 Human Rights Priorities for the Power and Utilities Sector, <https://www.bsr.org/en/our-insights/primers/10-human-rights-priorities-power-and-utilities-sector>; Lars Löfquist, Is there a universal human right to electricity?, *The International Journal of Human Rights*, Vol. 24, 2020 - Issue 6; Stephen Tully, The Human Right to Access Electricity, 2006, *The Electricity Journal* 19(3):30-39.

10 See also: 10 Human Rights Priorities for the Transport and Logistics Sector, <https://www.bsr.org/en/our-insights/primers/10-human-rights-priorities-for-the-transport-and-logistics-sector>.

11 See also 10 Human Rights Priorities for the Power and Utilities Sector, <https://www.bsr.org/en/our-insights/primers/10-human-rights-priorities-power-and-utilities-sector>; Lars Löfquist, Is there a universal human right to electricity?, *The International Journal of Human Rights*, Vol. 24, 2020 - Issue 6; Stephen Tully, The Human Right to Access Electricity, 2006, *The Electricity Journal* 19(3):30-39.

12 See also: 10 Human Rights Priorities for the Financial Sector, <https://www.bsr.org/en/our-insights/primers/10-human-rights-priorities-for-the-financial-sector>; Banks and Human Rights, [https://www.banktrack.org/campaign/banks\\_and\\_human\\_rights](https://www.banktrack.org/campaign/banks_and_human_rights).

13 See: OHCHR and the right to water and sanitation, <https://www.ohchr.org/en/water-and-sanitation/about-water-and-sanitation#:~:text=On%2028%20July%202010%2C%20the,RES%2F64%2F292>.

14 10 Human Rights Priorities for the Information and Communications Technology Sector,

15 Sphere Project, *Humanitarian Charter and Minimum Standards in Disaster Response*, 2004. Hereafter: Sphere, *Humanitarian Charter*, 2004.

16 P. J. Brook and S. M. Smith, *Contracting for Public Services: Output-Based Aid and Its Applications* (World Bank 2001) ix; UN Habitat, 'International Guidelines on Access to Basic Services for All' (7 January 2009) UN Doc HSP/GC/22/2/Add. 6 and HSP/GC/22/2/ Add. 6/ Corr.1/Rev.1, Annex, para 1: '[b]asic services contribute to the fulfilment of human sustenance, human dignity, quality of life and sustainable livelihoods'. See also C. Graham, 'Socio-Economic Rights and Essential Services: A New Challenge for the Regulatory State', in D. Oliver, T. Prosser and R. Rawlings (eds), *The Regulatory State: Constitutional Implications* (Oxford University Press 2010) 158. See also Jernej Letnar Černič, *Corporate Accountability under Socio-Economic Rights*, Routledge, 2019, p. 111.

17 Report of the United Nations High Commissioner for Human Rights, 'Protection of economic, social and cultural rights in conflict', submitted pursuant to General Assembly resolution 48/141, the United Nations High Commissioner for Human Rights, <https://www.ohchr.org/sites/default/files/Documents/Issues/ESCR/E-2015-59.pdf>.

18 Summary of OCHA Workshop on Protecting Civilians in Urban Warfare Organized as Part of the Global Humanitarian Policy Forum on 13 December 2017. See also Protection of Civilians in Urban Warfare: High-level Open Debate, 24 January 2022, <https://www.securitycouncilreport.org/whatsinblue/2022/01/protection-of-civilians-in-urban-warfare-high-level-open-debate.php>.



In Ukraine, active hostilities are taking place mainly in settlements. Fierce urban battles were fought for several weeks in Mariupol (about 500.000 people at the time of the outbreak of hostilities; there was practically no evacuation) and many other settlements in the East of Ukraine with their subsequent occupation, Chernihiv (almost 300.000) in Northern Ukraine, as well as in other localities. Regular, including massive attacks, are carried out on such cities as Kharkiv (1.500.000), and Mykolaiv (almost 500.000). Many settlements in Ukraine are periodically shelled with long-range missiles, including Kyiv (almost 3.000.000), Odesa (almost 900.000), Zaporizhzhya (750.000), Dnipro (950.000), and Lviv (700.000). Many settlements in the South and East of Ukraine found themselves under temporary occupation, the largest of which are Kherson (290.000), Melitopol (150.000), Berdyansk (120.000), and Enerhodar (50.000). Infrastructural facilities in many cases become the target of missile strikes; in some settlements, 80-90% of critical infrastructure facilities have been destroyed.

For settlements in the rest of Ukraine that are considered relatively safe, the challenge has been large-scale population displacement – more than 8 million people have become internally displaced, significantly increasing the burden on the consumption of essential services and goods and leaving internally displaced people in a vulnerable position. The situation is exacerbated in some cases due to discriminatory attitudes towards IDPs.

Thus, the situation in different parts of Ukraine at different times differs significantly in terms of access to essential goods and services. Companies that make one general decision for the entire territory of Ukraine are more likely to make a mistake.

## **BUSINESS IN UKRAINE FACES THREE PARALLEL SITUATIONS:**

### **SITUATION 1: Ongoing Active Conflict/Emergency**

In areas where active hostilities are ongoing or regular shelling of the territory is carried out, destruction of critical infrastructure and difficulty (in some cases impossible) of access to critical infrastructure to it for repairs are frequent challenges, and as a result the danger to the life and health of company's employees is extremely high. In most cases, supply chains are disrupted.

Under such conditions, many transnational companies stopped operation (from the first hours of the war, when the scale of the danger was not yet clear). At the same time, local business continued to operate, as it has a much greater connection with the local community, often being part of it, understands the context much better, knows the needs of the local people, and knows how to navigate the current situation.

Municipality-owned and state-owned enterprises also continued to work even at a very high risk to the safety of employees. MOEs continue to carry out repairs to secure water supply, gas supply, and garbage collection, even in situations of active shelling. The SOE Ukrzaliznytsya (railway) carried out the evacuation of people, including from areas with a high level of danger.

### **SITUATION 2: Occupied Territory**

The occupying authorities can 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). Ukraine from its side imposed a ban on economic activity in the temporary occupied territory, up to the threat of criminal liability<sup>20</sup> (this may not be a direct ban, but it is a ban on interaction with the occupying state, a ban on making payments from and to the occupied territory, a ban on paying taxes to the budget of the occupying state, a ban on the import and export of goods from and to the occupied territory, which leads to the impossibility of doing business).

An additional factor that impacts companies' decisions to stop operation in occupied territory is sanctions by third countries, which can signal clearly to companies that economic activity in occupied territory will be considered irresponsible business conduct.

Under such conditions, transnational companies immediately stopped their work. The national private business continued to work as long as it was possible without the need to interact with occupying authorities (i.e., the possibility of payments in the hryvnia remained, there were stocks of medicines in pharmacies, food in stores, etc.). Essential SOE and MOEs (banks, centralized water supply services, electricity) continued to operate until the occupying authorities established full control over the provision of relevant services and goods.

<sup>19</sup> Водопостачання та водна безпека у контексті російської агресії Доктор наук з державного управління, доцент Зелінський С. Е. [Water supply and water safety in the context of Russian aggression Doctor of Science in Public Administration, Associate Professor Zelinsky S.E.].

<sup>20</sup> There are examples of criminal cases «Financing of terrorism» against Kyiv companies whose network of pharmacies operates on the territory of the temporarily occupied territories and pays taxes to the budget of the unrecognized republics (see <https://ssu.gov.ua/novyny/sbu-vykryla-stolychnu-farmkompaniiu-na-finansuvanni-boiovykiv-dnr-cherez-aptechnyi-biznes-u-donetsku>).

**SITUATION 3: Other conflict-affected areas**

In the rest of Ukraine, where it is relatively safe (except for single rocket attacks on certain settlements), the main challenge is the significant presence of internally displaced persons (about 8 million people). This at certain moments creates a shortage of food (in some cases a significant increase in prices for them), a shortage of cash, as well as problems with housing (rental housing prices in some cases increased by 200-300 percent, which made housing unaffordable for many people, especially for IDPs). Vulnerability in access to housing and food significantly increases the risks of human trafficking for IDPs.

Only a few transnational companies stopped working in this type of territory. They decided to stop working on the entire territory of Ukraine until the end of hostilities. For example, Uber provided crucial services for evacuation; it has restarted services in five cities where the security situation has stabilized. McDonalds is not a provider of essential goods and services, but its conduct impacts the local community, in particular through the local budget.

Crisis caused by the war does not change the fundamentals of human rights, but it underscores the urgency of promoting and safeguarding the essential rights of people across the value chain of any business. In some cases, the importance of access to essential services increases significantly – the ability to access public transport becomes critical for evacuation, access to the Internet – to obtain up-to-date information about possible threats and the general situation, evacuation corridors, humanitarian aid; access to communication tools – to keep in touch with family, call emergency services if necessary, etc. War also drives higher expectations for rights-based behaviour by businesses.<sup>21</sup>

This report provides an overview of the role companies play in providing essential services and goods during the war in Ukraine. Three basic situations in which such companies operate in Ukraine are considered: territories of active hostilities, temporarily occupied territories, and relatively safe territories. The report demonstrates the difference in the behavior of large and small companies in the face of challenges caused by war, including State-owned, municipally owned and private companies, as well as international and local businesses.

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<sup>21</sup> Business and human rights dilemmas in the midst of COVID-19 A guide for senior executives May 2020 02 Business and human right, <https://www2.deloitte.com/content/dam/Deloitte/au/Documents/risk/deloitte-au-business-human-rights-dilemmas-midst-of-covid-19-guide-for-senior-executives-23062020.pdf>.

# Methodology

The report uses information collected by the author of the report during more than 3 months of the war (since February 24, 2022) on the territory of Ukraine, as well as through personal interviews with people who are or have been for some time in the occupied territories or territories of active hostilities, a survey in the format of a Google questionnaire (a total of 136 people took part in the survey), and analysis of publicly available information on websites and information channels in social networks.

The idea of the report was presented on March 10, 2022 at the webinar «**Business Conduct in Times of War**»,<sup>22</sup> co-organized by Yaroslav Mudryi National Law University and the Polish Institute for Human Rights and Business. The issues covered by this report were previously discussed during a series of expert events:

- **Rapid Responses: Business, Human Rights, and Ukraine**, 21 March 2022 co-organized by Essex Business and Human Rights and the Global Business & Human Rights Scholars Association<sup>23</sup>;
- **Responsible Business Conduct in the context of the Russian invasion of Ukraine**, 26 April 2022 organized by OECD Centre for RBC;
- session on **HREDD in conflict scenarios** within the ECCJ Annual General Meeting, 19th May 2022;
- NILG Annual Conference on **Business, Human Rights and the Living Environment**, 16 June 2022 co-organized by the LAW group of Wageningen University in collaboration with the Faculty of Law of the University of Groningen;
- **Business and Human Rights in times of war: The provision of essential goods and services**, 20 June 2022 co-organised by the NOVA BHRE and the Yaroslav Mudryi National Law University<sup>24</sup>;
- **War economies, human rights and responsible business practices: Recent challenges from Ukraine, Russia, and beyond**, 21 June 2022 organized by the Academic Forum of the New University;
- session on **Heightened Human Rights Due Diligence** during the UNDP Annual Meeting «Strengthening the Rule of Law and Human Rights for Sustaining Peace and Fostering Development», 22 June 2022.

<sup>22</sup> Webinar report: Business conduct in times of war, <https://www.business-humanrights.org/en/latest-news/webinar-report-business-conduct-in-times-of-war/>.

<sup>23</sup> Video record: <https://www.youtube.com/watch?v=CMDgsYXyKbM>.

<sup>24</sup> <https://novabhre.novalaw.unl.pt/webinar-business-and-human-rights-in-times-of-war-the-provision-of-essential-goods-and-services/>.

# Value rationale and normative framework to ensure essential services and goods in times of the war by corporate actors

## Essentiality of services and goods

Essential services and goods are fundamental insofar as their disruption would have harmful consequences for the whole or part of the population.

'Essential' is context specific. No fixed definition of essential goods/services exists in the strict sense. A frequently used term that can be interpreted more narrowly is the term «basic goods / services», defined as goods/services in the social domain that should be available and reasonably accessible to everyone who has the need for them. There can be various shades of 'essentiality'. Some essential goods/services might directly serve to protect the lives of individuals, while others are 'indispensable' to attain a basic or adequate standard of living or ensure that all persons can participate and inclusively develop in society. Consumers of essential goods/services are typically not free to decline purchases, that is, declining the purchase may result in a serious deterioration of circumstances and have significant long-term costs. Broadly speaking, these concepts require the providers of essential services (suppliers of 'prime necessities') to supply these services to all who need them for a fair and reasonable price, in sufficient quantity and quality and in a non-discriminatory way, in particular if the providers have a dominant or monopoly position.<sup>25</sup>

Nonessential services and goods may become essential ones when the delivery of a nonessential service is interrupted for the time it takes to endanger «the life, personal safety or health of the whole or part of the population.»<sup>26</sup> To take an example: although garbage collection is listed

as a nonessential service, it becomes essential when it is discontinued for an extended period of time and the accumulation of garbage becomes hazardous. As a consequence, we can say that the essentiality of a given service is determined by the relationship between the level of harm that can likely be produced when the provision of that service is interrupted and the time of that stoppage.<sup>27</sup>

Presence or absence of these services does not only have an effect on the individual customer, but also on the wider society. At the European level, 'services of general interest' (SGI) is used as a term to refer to public and private services that have a 'general interest' dimension. It is recognized that these services cannot be left entirely to the market, because of a desire to protect certain values.<sup>28</sup> A core value is the universality of these services. This value reflects the desire to guarantee a certain level of access to these services to all. Some of these services are thus considered as 'essential' services, the lack of which for an individual or a group of individuals is to be considered as problematic, and to be remedied by some type of (government) intervention.<sup>29</sup>

Lives of people literally depend on companies providing life-saving services and products in a high-risk situation. For example, pharmacies that closed in the early days of the war led to a situation where people in dire need of medicines did not have access to them or were forced to travel considerable distances in order to find them. A similar situation took place with baby food and hygiene products, including diapers. Many grocery stores were closed, and

25 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.

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

27 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

28 Hans de Bruijn, Willemijn Dicke (2006). *Strategies For Safeguarding Public Values In Liberalized Utility Sectors*, *Public Administration*, Vol. 84, Issue 3, p. 717-735.

29 Steven Van de Walle. *When is a Service an Essential Public Service?* (2009), *Annals of Public and Cooperative Economics*, Vol. 80, Issue 4, pp. 521-545.

those that were open only accepted cash payments (without cash, people found themselves in a situation where they could not purchase anything) and worked a limited number of hours per day (2-4 hours). Long lines of people formed in front of the working grocery stores, which in the case of shelling led to mass deaths. Ukrzaliznytsya, the state-owned railway company, played an important role in the evacuation of people (the company evacuated more than 4

million people from settlements where there were fighting or regular shelling<sup>30</sup>).

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

## Essential services as public services

Public services have traditionally been perceived as services that are owned, managed and delivered by the State.<sup>31</sup> Nevertheless, access to essential services and goods may be supplied by a private provider, but the delivery of these services may still need to be universal in nature, to all members of the public, and for the benefit of all these members both individually and for the public interest at large. Such requirements are typically referred to as 'universal service obligations'. The InterAmerican Court of Human Rights considered illustratively, in the case of *Ximenes-Lopez v Brazil*, that:

[r]endering public services implies the protection of public interests, which is one of the objectives of the State. Though the States may delegate the rendering of such services, through so-called outsourcing, they continue being responsible for providing such public services and for protecting the public interest concerned.<sup>32</sup>

Human rights are neutral as to economic models in general,<sup>33</sup> and models of service provision more specifically. The report of the High Commissioner points out that 'the approach of United Nations treaty bodies and special procedures has been to stress that the human rights framework does not dictate a particular form of service delivery and leaves it to States to determine the best ways to implement their human rights obligations' (A/HRC/6/3, para. 52). There are various forms of delegating service provision that are, in fact, viable options that each State can consider. But the delegation of essential goods and services delivery does not exempt the State from its human rights obligations.<sup>34</sup>

Privatization is not per se prohibited by international human rights law, even in areas where the role of the public sector has traditionally been strong, such as the provision of water, electricity, education, or health care. Private providers should, however, be subject to strict regulations that impose on them so-called 'public service obligations': this may include requirements concerning universality of coverage and continuity of service, pricing policies, quality requirements, and user participation.<sup>35</sup>

30 С начала войны «Укрзалізниця» евакуировала на запад Украины 4 млн человек, около 600 000 – в соседние страны [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>.

31 States' Human Rights Obligations Regarding Public Services The United Nations Normative Framework POLICY BRIEF · 19 October 2020 , <https://static1.squarespace.com/static/5a6e0958f6576ebde0e78c18/t/5fc6235e3f75b16643a5bd59/1606820703234/2020-10-19-Policy-Brief-States-HR-Oblig-PS-UN-NormFram.pdf>.

32 Case of *Ximenes-Lopes v Brazil*, Judgment of 4 July 2006 (Merits, Reparations and Costs), IACtHR, Series C No. 149, para 96; A. Hallo de Wolf, *Reconciling Privatization with Human Rights* (Intersentia 2012) 144-145; Hallo de Wolf (2013) 175-176.

33 Committee on Economic, Social and Cultural Rights, general comment No. 3 (1990) on the nature of States parties obligations, para. 8.

34 Report of the independent expert on the issue of human rights obligations related to access to safe drinking water and sanitation, Catarina de Albuquerque 29 June 2010 [https://digitallibrary.un.org/record/686179?ln=zh\\_CN](https://digitallibrary.un.org/record/686179?ln=zh_CN).

35 See the conclusions attached to the resolution concerning decent work in global supply chains, adopted by the General Conference of the International Labour Organization at its 105th session, para. 16 (g).

58 See, for example, Human Rights Council resolution 15/9.

59 See the Committee's general comment No. 22 (2016) on the right to sexual and reproductive health, paras. 14, 42, 43 and 60.

60 See, for example, E/C.12/CHL/CO/4, para. 30; and A/69/402. Of course, important though it is, appropriate regulation of the providers of educational services should respect academic freedom and «the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions» (art. 13 (3) of the Covenant). As regards primary education, States parties must ensure not only that it is affordable, but that it is free, as required by arts. 13 (2) (a) and 14 of the Covenant.

Providers of essential services and goods in Ukraine are state and municipal companies as well as private businesses of various sizes – large, medium and small businesses, as well as local and international companies:

Essential goods and services	Type of business
Internet	Private companies, mostly small local companies
Communication services, in particular 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)	As private companies as well as municipally-owned and state-owned enterprises
Sale of medicines	Private companies, Ukrainian and international
Public transport	Mostly municipally owned companies
Taxi service	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

Hence, the ‘public interest or purpose’ of the service is an important qualifying factor in determining whether a service is a ‘public service’. As a result of this definition, all services with a demonstrable ‘public interest’ are necessary to fulfil human rights, even if privately delivered. These services are, therefore, within the legitimate regulatory sphere of government authorities.<sup>36</sup>

At the same time, our understanding of the ‘private’ or ‘public’ nature of a service might change over time, or with the situation. A few good examples of services that may typically be considered ‘private services’ are ‘private taxi services’, ‘high-quality broadband Internet services’, or accessing a certain set of ‘TV channels’. These are also offered by private providers generally, and typically not necessarily in the wider public interest; in short, we do not assume that all individuals should be able to have access to these

services in their daily lives. A good example of the ‘public’ variant of ‘private taxi services’ might be ‘public transport’. The latter is offered in the public interest (mobility, transportation, safety) to all members of the public and often, but not always, by State authorities. Yet, at the same time, private taxi services can be subject to regulation by the State as well (e.g. when taxi services fulfil particular public interests and needs, such as in emergencies, or transportation of persons with disabilities). Especially in situations where ‘public transport’ is not (sufficiently) available or adequate (e.g. in certain geographical locations and/or at night), it could be considered appropriate for the State to step in and regulate an otherwise ‘private’ service in the public interest. The State can ensure accessibility for the public by imposing restrictions on price or prohibit the denial of customers’ access to the car.<sup>37</sup>

36 A. MacBeth, *International Economic Actors and Human Rights* (Routledge 2010) 152.

37 CESCR ‘General Comment No. 15 (2002): the right to water’ (20 January 2003) UN Doc E/C.12/2002/11; CESCR ‘General Comment No. 19: the right to social security’ (4 February 2008) UN Doc E/C.12/GC/19; CESCR ‘General Comment No. 12: the right to adequate food’ (12 May 1999) UN Doc E/C.12/1999/5; CESCR ‘General Comment No. 14: the right to the highest attainable standard of health’ (11 August 2000) UN Doc E/C.12/2000/4.

Access to essential services and goods is guaranteed by the protection of economic, social and cultural rights ('ESC'). The nature of ESC rights raises the question as to whether 'corporations have more than the duty to respect human rights in general and ESC rights in particular'.<sup>38</sup> The obligation to protect requires businesses to do whatever is possible to ensure the minimum levels of socio-economic

rights for both their employees and communities.<sup>39</sup> The Committee has previously considered the growing impact of business activities on the enjoyment of specific Covenant rights relating to health,<sup>40</sup> housing,<sup>41</sup> food,<sup>42</sup> water,<sup>43</sup> social security,<sup>44</sup> the right to work,<sup>45</sup> the right to just and favourable conditions of work<sup>46</sup> and the right to form and join trade unions.<sup>47</sup>

## Provision of essential services and goods in the wartime

Protection of ESC rights is associated with the «minimum core concept» that 'each [ESC] right must . . . give rise to a minimum entitlement, in the absence of which a State party is in violation of its obligations'.<sup>48</sup> At the same time, the 'minimum core' is legally binding and most likely not subject to derogation (meaning states cannot justify non-compliance).<sup>49</sup> Even when conflicts result in resource constraints, States are required to ensure the availability, accessibility and acceptability of good quality health facilities, goods and services, especially to groups rendered vulnerable by conflict.<sup>50</sup>

In General Comment 19, the Committee stipulates that a minimum right to social security should entail essential health care, basic shelter and housing, water and sanitation, foodstuffs, and the most basic forms of education.<sup>51</sup> Hence, the UN Committee on Economic, Social and Cultural Rights calls states to apply the Covenant to the occupied territories<sup>52</sup> and in the situation of the armed conflict.<sup>53</sup> The Committee has addressed the realization of the Covenant during such complicated circumstances, requiring States parties to do everything in their power to improve the enjoyment of economic, social and cultural rights.<sup>54</sup>

38 Economic, Social and Cultural Rights, Sustainable Development Goals, and Duties of Corporations: Rejecting the False Dichotomies Danwood CHIRWA\* and Nojeem AMODU, *Business and Human Rights Journal*, 6 (2021), pp. 21–41.

The Committee recommends the State party to: (a) Expedite the preparation and adoption of the national action plan on business and human rights; (c) Adopt measures to ensure the legal liability of companies based in or managed from the State party's territory for abuses of economic, social and cultural rights as a result of its their activities, and to provide adequate remedies to victims; (d) Collect information on claims filed by victims of abuses of economic, social and cultural rights committed by business entities. The Committee draws the attention of the State party to its general comment No. 24 (2017) on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities (E/C.12/UZB/CO/3 (CESCR 2022), para 15).

39 Economic and Social Rights in a Neoliberal World, Edited by Gillian MacNauGhtoN, Diane F. Frey, Cambridge University Press, 2018, p. 34.

40 See the Committee's general comment No. 14 (2000) on the right to the highest attainable standard of health, paras. 26 and 35.

41 See the Committee's general comment No. 4 (1991) on the right to adequate housing, para. 14.

42 See the Committee's general comment No. 12 (1999) on the right to adequate food, paras. 19 and 20.

43 See the Committee's general comment No. 15 (2002) on the right to water, para. 49.

44 See the Committee's general comment No. 19 (2007) on the right to social security, paras. 45, 46 and 71.

45 See the Committee's general comment No. 18 (2005) on the right to work, para. 52.

46 See the Committee's general comment No. 23 (2016) on the right to just and favourable conditions of work, paras. 74 and 75.

47 See E/C.12/AZE/CO/3, para. 15.

48 Philip Alston, 'Out of the Abyss: The Challenges Confronting the New UN Committee on Economic, Social and Cultural Rights', (1987) 9 *Human Rights Quarterly* 352.

49 Amrei Müller, 'Limitations to and Derogations from Economic, Social and Cultural Rights' (2009) 9 *Human Rights Law Review* 557 at 654.

50 See Committee on Economic, Social and Cultural Rights, general comment No. 14, para. 43; report of the Special Rapporteur on the right to the highest attainable standard of health (A/68/297, para. 11).

51 Economic and Social Rights in a Neoliberal World, Edited by Gillian MacNauGhtoN, Diane F. Frey, Cambridge University Press, 2018, p. 34.

52 Committee on Economic, Social and Cultural Rights Concluding observations on the fourth periodic report of Israel 12 November 2019 <https://uhri.ohchr.org/en/document/05cbo090-8292-4a85-8f79-5520f225082f>.

53 Committee on Economic, Social and Cultural Rights Concluding observations concerning the initial report of the Central African Republic, 4 May 2018, <https://uhri.ohchr.org/en/document/80c8470a-d309-4653-9720-1e569fadbd62>.

54 Committee on Economic, Social and Cultural Rights, general comment No. 3 (1990) on the nature of States parties' obligations (art. 2 (1) of the Covenant), para. 10; Committee on Economic, Social and Cultural Rights, general comment No. 14 (2000) on the right to the highest attainable standard of health (art. 12), para. 47; and general comment No. 15 (2003) on the right to water (arts. 11 and 12 of the Covenant), para. 40.

The privatization of the provision of such services and goods does not deprive them of an element of public function (meaning that ensuring the minimum necessary access to essential services and goods is not only in the private interest of a particular person, but the general interest of the whole society, since such actions ensure societal sustainability and is a requisite for respect for human dignity, a minimum requirement of humanity). The public nature of services and goods emphasizes the role of the state in providing access to them: in peacetime, the state establishes regulation aimed at ensuring access to essential services for the most vulnerable groups, monitoring the quality of services, and more. In times of war, the state becomes the main addressee of the demand to provide access to essential services and goods, either on its own or through increased regulation of service providers and closer interaction with them. The business and human rights framework calls on the state to provide recommendations to business on what risks war entails for human rights, what actions should be taken by business to minimize the risks of a negative impact on human rights, what forms of interaction between business and the state can be ensured to minimize such risks and secure access to essential goods and services. At the same time, **business has its own responsibility to make all efforts that are possible to secure human rights.**

In situation of essential services and goods during the conflict, the state's ability to provide access to them and/or adequately regulate private actors' conduct to ensure accessibility can be extremely limited. It means that additional positive requirements, beyond the baseline responsibility to respect rights may be imposed on companies. The second pillar of the Guiding Principles – the business responsibility to respect human rights – applies regardless of how governments are meeting their obligations, and indeed applies in all contexts.

This approach, which we call the 'respect (plus)' scenario, highlights the tenuous and murky distinction between protecting and respecting human rights, and is likely to be somewhat perplexing to companies in search of clarity around their responsibilities. The phrase '[m]ore than respect may be required when companies perform certain public functions' does not exactly clarify the limits of such responsibility.<sup>55</sup> In a situation where, for example, a company is exercising elements of governmental authority, or where it is acting under the instructions, direction or control of the State, it is acting in a quasi-governmental role.<sup>56</sup> In such a situation, it should assume a parallel and complementary obligation (along with the State) to protect rights. In a situation where a company is essentially acting as and for the State, it assumes duties to not only respect but also protect human rights. In a second example of the respect (plus) scenario, the Special Representative of the Secretary-General notes that 'operating conditions may impose additional requirements on companies, for example, the need to protect employees in conflict affected areas ... but this is more appropriately considered a specific operationalisation of the responsibility to respect, and not a separate responsibility altogether'.<sup>57</sup> There should also exist the subsequent step of placing a supplementary responsibility on the corporation to protect human rights where the State, in such circumstances, is unable or unwilling to do so. The obligations of companies should supplement and not replace State obligations; in such a situation corporations and States can and should assume a responsibility to protect, not simply respect, human rights.<sup>58</sup>

An effective regulatory system, based on human rights standards, is vital to ensuring the compliance of both State and non-State actors with the human right to essential goods and services.<sup>59</sup>

55 Promotion Of All Human Rights, Civil, Political, Economic, Social And Cultural Rights, Including The Right To Development, Business and human rights: Towards operationalizing the «protect, respect and remedy» framework Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, paras 63-65, <https://www2.ohchr.org/english/bodies/hrcouncil/docs/11session/A.HRC.11.13.pdf>.

56 Robert McCorquodale, Penelope Simons, Responsibility Beyond Borders: State Responsibility for Extraterritorial Violations by Corporations of International Human Rights Law, *Modern Law Review*, Volume 70, Issue 4, July 2007, Pages 598-625.

57 Promotion Of All Human Rights, Civil, Political, Economic, Social And Cultural Rights, Including The Right To Development, Business and human rights: Towards operationalizing the «protect, respect and remedy» framework Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, paras 63, <https://www2.ohchr.org/english/bodies/hrcouncil/docs/11session/A.HRC.11.13.pdf>.

58 Corporate Responsibility for Economic, Social and Cultural Rights: Rights in Search of a Remedy? *Journal of Business Ethics* (2009) 87:433-451.

59 K.M. Krchnak, 'Improving Water Governance through Increased Public Access to Information and Participation' (2005) 5 (1) *Sustainable Development Law & Policy* 34-48, 34-39; HRC, Resolution: Human rights and access to safe drinking water and sanitation (6 October 2010) A/HRC/RES/15/9 paras 6 and 7; General Comment No. 15 para 44 (b); Catarina de Albuquerque, 'Report of the Special Rapporteur on the Human Rights to Water and Sanitation on Non-State Service Provision' (17 June 2010) A/HRC/15/31; OECD, Private sector participation in water infrastructure (2009) p.25; Non-State Service Provision, 2010 (n 103) para 63f.



The public nature of essential services and goods enhances corporate human rights responsibility. A **business that performs public functions also assumes the duty to fulfil and promote (extra corporate responsibility to secure human rights in times of conflict)**. The weakness of the state in implementing the business and human rights framework in times of the war does not relieve the

responsibility of business to behave responsibly, especially in a situation where the state lacks the ability to provide access to essential services and goods.

So, companies whose business model includes the provision of essential goods and services, initially take on a part of a public, socially significant, function’.

## Access to essential services and goods in enhanced HRDD

‘The most egregious human rights abuses take place in conflict-affected areas and other situations of widespread violence and, conversely, that human rights abuses spark or intensify conflict.’<sup>60</sup> This means that many businesses face difficulties in upholding human rights while operating in such environments because their activities require a presence in conflict-affected areas.

In his 2011 Report, John Ruggie, speaking as the United Nations Special Representative for Human Rights and Transnational Corporations and Other Business Entities, stressed while speaking about the territories affected by conflicts or post-conflict that ‘responsible business is particularly expected by governments to avoid harming human rights, when working in difficult circumstances.’<sup>61</sup> Indeed, conflict or post-conflict situations are addressed in Principle 7 of the UN Guiding Principles.<sup>62</sup>

In July 2020, the UN Working Group on Human Rights and Transnational Corporations and Other Enterprises published a report: «Business, human rights and conflict-affected regions: towards heightened action»<sup>63</sup>. In the Report, the Working Group notes, inter alia, that:

‘Human rights are protected by States through the establishment of frameworks and institutions. States are still fully bound by their obligations even when such structures are inadequate or simply do not exist. However, reality dictates an acknowledgement that their ability to fulfil those obligations is significantly diminished and that the human rights regime cannot be expected to function as intended. This aspect of State weakness is significant, as many businesses operate, with wilful blindness, on the basis that such States will act in the same way as States that are well governed. However, this leaves populations vulnerable to those who exploit ‘law-free zones’ and the dysfunction of State machinery, including the State itself, or to those that may opt for violence to respond to real or perceived threats. The weakness of State structures can be assessed through the severity of factors such as the lack of an independent and impartial judiciary, the lack of effective civilian control of security forces and high levels of corruption..’ (п. 17)

60 Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises - Business, human rights and conflict-affected regions: Towards heightened action (A/75/212), <https://rm.coe.int/report-on-business-and-human-rights-in-conflict-ukr/1680a595f4>.

61 § 11, 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, 2011.

62 Guiding Principles on Business and Human Rights Implementing the United Nations «Protect, Respect and Remedy» Framework, [https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinessshr\\_en.pdf](https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinessshr_en.pdf): «Supporting business respect for human rights in conflictaffected areas

7. Because the risk of gross human rights abuses is heightened in conflictaffected areas, States should help ensure that business enterprises operating in those contexts are not involved with such abuses, including by:

(a) Engaging at the earliest stage possible with business enterprises to help them identify, prevent and mitigate the human rights-related risks of their activities and business relationships;  
 (b) Providing adequate assistance to business enterprises to assess and address the heightened risks of abuses, paying special attention to both gender-based and sexual violence;  
 (c) Denying access to public support and services for a business enterprise that is involved with gross human rights abuses and refuses to cooperate in addressing the situation;  
 (d) Ensuring that their current policies, legislation, regulations and enforcement measures are effective in addressing the risk of business involvement in gross human rights abuses».

63 Доповідь Робочої групи з питань прав людини та транснаціональних корпорацій та інших підприємств: «Бізнес, права людини та охоплені конфліктами регіони: на шляху до активізації дій», 21.07.2020, <https://rm.coe.int/report-on-business-and-human-rights-in-conflict-ukr/1680a595f4> (переклад українською забезпечено).

To prevent and reduce high-risk human rights threats, companies need to exercise ‘enhanced’ human rights due diligence. Enhanced due diligence on human rights goes beyond what is required by the UN Guiding Principles. Such due diligence requires the continued involvement of stakeholders, forward-looking trend analysis, mitigation and decision-making measures at the local level.

Traditional human rights due diligence helps businesses to know and show how to avoid 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 their activities do not contribute to violence.<sup>64</sup> As the risk of gross human rights abuses is heightened in conflict-affected contexts, businesses should carry out heightened human rights due diligence: to identify and assess not only their actual or potential adverse impacts on human rights, but also their actual or potential adverse impacts on conflict<sup>65</sup> as well as all possible efforts to prevent or minimize the negative impact on human rights by conflict (in other words, to secure human rights). The conflict could change significantly the scope of corporate responsibility to respect human rights and highlight the role of business to address human rights challenges that the conflict creates.

### Enhanced human rights due diligence requires companies to ask themselves:

1. *Are you a supplier of essential goods and services? Is your role in providing local people with access to essential services and goods a critical one?*

In a conflict, especially at its initial stages, the answer to this question requires a rapid analysis of the current situation. It is necessary to know and take into account the local context, understand how the situation is developing, and what impact it has on consumers of services and goods, and on the market for these services and goods.

2. *Did you continue to supply essential goods and services after the start of war / occupation of the territory?*

**IF NOT:** What was the defining barrier to continue operating?

Did you have legitimate considerations with a view towards human rights?

Has the company taken into account the needs of the local people for access to essential goods and services and the criticality/non-criticality of your company’s role in providing such access?

Have you continued to communicate with employees? Are they safe?

**IF YES:** Have you assessed the risks to the safety of your employees?

Have actions been taken to minimize these risks? (If appropriate: Was access to bomb shelters secured? Were helmets and bulletproof vests issued? Have you ensured psychological support services for employees? Are employees trained in security measures in the case of a shelling or other high-risk situations? Is the company ready to promptly evacuate employees and their families if necessary, etc.?)

Have you assessed additional gender-based risks, in particular the increased risk of gender-based violence?

Have you assessed how the needs of people for access to essential goods and services have changed, and whether the market for the provision of such goods and services and your role in this market has changed?

Do you interact with government agencies, municipal authorities, CSOs, and/or volunteers to coordinate efforts to ensure access to essential goods and services and also in relation to providing employee safety? Do you take into account the vulnerabilities of groups, communities and individuals?

3. *Was the decision made taking into account the local context and its dynamics?*

Regardless of whether the company decides to continue operating or stop, it is important that the process to get to a decision should be consultative and build on local knowledge/information.

<sup>64</sup> Heightened Human Rights Due Diligence for Business in Conflict Affected Contexts. A Guide, UNDP, 2022, p. 10.

<sup>65</sup> Ibid., p. 13.

The main challenge for companies is balancing of employees' safety and access to essential services and goods for local people. These rights are often in conflict in situation of emergency, and each provider should make all efforts to balance them. If the role of company to provide access to essential services and goods is crucial, the decision to stop operating can be made only if there is no feasible alternative.

In cases where companies refer to employees' safety as a reason to stop operating, interlocutors should analyze the decision from the perspective of whether a company made all possible efforts to balance employees' safety and access to essential services and goods. For responsible business conduct, it is not enough just voice such reason.

Companies use also other reasons to justify halting operations to provide essential services and goods:

- *unwillingness to cooperate with the occupying authorities in a situation where goods and services were supplied in territory that is now temporarily occupied.*

The company should conduct a broader assessment of the situation in the market for the provision of essential goods and services. For example, if access to medicines in the occupied territory is established by the occupying power and the exit of the company from the local market does not lead to a lack of access to medicines for the local population, the exit of the company can be considered as responsible. If a company holds a monopoly in the provision of essential services or covers a large percentage of the population—as is often the case, for example, with mobile operators—its withdrawal could significantly affect the population's access to essential goods and services, even if the occupying authorities provide access to alternative providers that they control;

- *technical impossibility to continue work due to the establishment of actual control over the enterprise by the occupation authorities.*

In this case, the company must execute a responsible exit (facilitate the evacuation of workers to the territory controlled by Ukraine, if they wish; provide compensation; warn customers about the forced stoppage of work etc). In addition, the termination of the company's work in the temporarily occupied territory does not terminate the company's obligation to provide access to remedies in the case of claims regarding previously provided goods and services. The company must ensure that information about remedies to protect is accessible, and consider how to make it as accessible as possible, taking into account the factor of temporary occupation;

- *technical impossibility to continue work due to shelling.*

In this situation, responsible behavior requires businesses to coordinate their efforts with the efforts of public authorities, including the military;

- *the need to minimize financial losses.*

Thus, some companies stopped (or temporarily stopped) their activities due to a sharp drop in the number of customers, which made doing business unprofitable. At the same time, the company must assess access to the essential goods and services it provides in the marketplace. If its role in such access is essential, the company should continue to operate as long as possible. The balancing of human rights (access to essential services and goods) and financial interests of company is not appropriate for responsible business conduct. For example, in some localities, the population has lost access to milk formulas and diapers due to the fact that stores with children's goods and pharmacies have closed because of financial considerations.

# Essential services and goods in times of war: Case of Ukraine

## General regulation framework

In Ukraine, the state has taken a number of measures to regulate access to essential services and goods during the war.

The Law of Ukraine «On the legal regime of martial law» provides a list of necessary powers that are vested in military administrations in order to ensure «measures of the legal regime of martial law, defence, civil defence, public safety and order, protection of the rights, freedoms and legitimate interests of citizens.»<sup>66</sup> With regard to access to essential goods and services, the Law points to the authority of the Cabinet of Ministers of Ukraine to determine the procedure for the normalized provision to the population of basic food and non-food products (para 20, part 1, article 8).

Additional regulation of certain goods and services have been adopted during the war. In May 2022, the National Commission, which carries out state regulation in the fields of energy and utilities, adopted the Interim Procedure for the actions of business entities in the field of centralized water supply.<sup>67</sup> However, this order does not provide any detailed recommendations. The only requirement that was enshrined in this Order was the procedure for carrying out repair work during and after hostilities.<sup>68</sup>

Also, a draft law on compensation in the event of the death of a critical infrastructure worker in the performance of his/her duties during the war is under consideration by the Parliament of Ukraine.<sup>69</sup>

Special attention in the legislation of Ukraine is paid to the legal regime of the temporarily occupied territories. According to the Law of Ukraine «On Ensuring the Rights and Freedoms of Citizens and the Legal Regime in the Temporarily Occupied Territory of Ukraine»<sup>70</sup> (art. 5):

‘Ukraine takes all necessary measures to guarantee human rights and freedoms provided by the Constitution and laws of Ukraine, as well as international treaties, to all citizens of Ukraine living in the temporarily occupied territory.

The main areas of protection of the rights and freedoms of civilians in the temporarily occupied territories are:

1) protection of fundamental political and civil, economic, social, cultural and other human rights and freedoms;

<...>

4) promoting the provision of socio-economic, environmental and cultural needs;

5) provision of legal and humanitarian assistance, including with the involvement of international assistance, in particular the provision of medical and social services in the territories controlled by Ukraine’.<sup>71</sup>

66 Закон України «Про правовий режим воєнного стану» [Law of Ukraine «On the legal regime of martial law»], <https://zakon.rada.gov.ua/laws/show/389-19#Text>.

67 ТИМЧАСОВИЙ ПОРЯДОК дій суб’єктів господарювання у сфері централізованого водопостачання та централізованого водовідведення, ліцензування діяльності яких здійснюється Національною комісією, що здійснює державне регулювання у сферах енергетики та комунальних послуг, з відновлення об’єктів централізованого водопостачання та/або централізованого водовідведення, пошкоджених (зруйнованих) внаслідок бойових дій, у період дії в Україні воєнного стану ЗАТВЕРДЖЕНО Постановою Національної комісії, що здійснює державне регулювання у сферах енергетики та комунальних послуг 03.05.2022 № 427 [TEMPORARY PROCEDURE of actions of economic entities in the field of centralized water supply and centralized drainage, licensing of which is carried out by the National Commission for State Regulation of Energy and Utilities, restoration of centralized water supply and / or centralized drainage, damaged (damaged) as a result of hostilities, during the martial law in Ukraine APPROVED Resolution of the National Commission for State Regulation of Energy and Utilities 03.05.2022 № 427], <https://zakon.rada.gov.ua/rada/show/vo427874-22#Text>.

68 Ibid.

69 Проект Постанови про прийняття за основу проекту Закону України про виплату одноразової грошової допомоги за шкоду життю та здоров’ю, завдану спричиненими військовою агресією проти України пораненням або загибеллю під час проходження публічної служби, виконання обов’язків на об’єктах критичної інфраструктури та здійснення професійної журналістської діяльності [Draft Resolution on Adoption of the Draft Law of Ukraine on Payment of One-Time Financial Assistance for Damage to Life and Health Caused by Injury or Death Caused by Military Aggression Against Ukraine during Public Service, Performance of Duties at Critical Infrastructure Facilities and Professional journalistic activity], <https://itd.rada.gov.ua/billInfo/Bills/Card/39682>.

70 Про забезпечення прав і свобод громадян та правовий режим на тимчасово окупованій території України [On ensuring the rights and freedoms of citizens and the legal regime in the temporarily occupied territory of Ukraine], <https://zakon.rada.gov.ua/laws/show/1207-18#Text>.

In April 2022, the significant changes in the legal regime governing relations to economic activity in the temporarily occupied territory of Ukraine were introduced by Ukrainian parliament.<sup>72</sup> These are that:

- carrying out economic activity is allowed only after changing the tax address to controlled territory of Ukraine;
- all agreements to which a business entity whose domicile is the temporarily occupied territory, is a party are null and void (do not create legal consequences);
- licenses and permitting documents are not valid in the temporarily occupied territories, but remain valid in another «controlled» territory, after the change of tax address;
- a ban on the transfer of funds between the temporarily occupied territory and another territory of Ukraine.

Business entities are also prohibited from moving goods to the temporarily occupied territories and from such territories. Exceptions are established only for: foodstuffs, medicines and medical devices, which are transported as part of humanitarian cargoes; goods and products of metallurgical, mining, coal and energy generating industries, and critical infrastructure facilities in terms of list and volume (cost, weight, quantity), which are approved by a joint decision of the Ministry of Reintegration and the Ministry of Economy.<sup>73</sup>

The regulation of business activities in the temporarily occupied territories, introduced by Ukraine, forces companies, including those providing essential services, to stop their work in such territory.

The main position of the state in relation to companies operating in the temporarily occupied territory is that companies should relocate to the territory under Ukrainian control. The state actively promotes the relocation of business to territories controlled by the Ukrainian government.<sup>74</sup> The state does not provide any recommendations on how to conduct a business that provides essential services and goods, or on whose work the provision of such services and goods depends, where termination may significantly complicate access to essential goods and services.

If it is impossible to relocate the business, ‘the only way out may be to temporarily close part of the business. It is possible to resume work after de-occupation (Liberation

from occupation).’ This position is voiced by the first vice-president of the Chamber of Commerce and Industry Mikhail Nepran. At the same time, he adds:

‘However, there are companies that provide for the critical needs of residents, such as pharmacies, grocery stores, bakeries, etc. For them, continuing to work is a social responsibility.

If it is a business that is connected with the livelihood of people – bakeries, cafes or companies that produce food, then let them work. Due to empty shelves in the shops of Kherson and other temporarily occupied cities, the Russians are not able to provide food, and there our people and they need to be supported’.

For example, the owner of the Medtekhnik chain, one of whose stores is located in Kherson, which was occupied after 24 February 2022), indicates that the store continues to operate, selling products for hospitals, first aid kits, and other medical products. The institution is cut off from logistics with the territory controlled by Ukraine, but it works selling goods, accepts payments in hryvnia, and has no contact with the occupiers, although they have already appointed their authorities in the city, actively import goods from the occupied Crimea and are preparing to install the ruble as the currency of exchange (information as of the end of May 2022).

But even for companies that provide life-saving services and goods, the state draws a red line. This line is the payment of taxes to the budget of the occupying power and cooperation with the suppliers of the aggressor country. In fact, (the payment of taxes qualifies as financing of terrorism under Ukrainian law. There is practically no connection with the controlled territory of Ukraine in temporarily occupied territories in Southern Ukraine, so the only way to supply products is from the occupied Crimea:

‘It’s one thing when you sell bread or milk to fellow villagers, and another thing when you start paying money to the budget of the aggressor country. The red line is the official work of paying taxes. If this is the case - it is better to close the business. As soon as you paid the tax to the aggressor country, you became a collaborator, and this is a criminal offense,’ said Mykhailo Nepran, Chamber of Commerce and Industry of Ukraine.

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

72 <https://zakon.rada.gov.ua/laws/show/1207-18#Text>.

73 <https://uacouncil.org/uk/post/var-spilno-iz-usaid-agro-proanalizuvali-zakon-akim-reguluetsa-pravovij-rezim-gospodarskoi-dialnosti-na-okupovanih-teritoriah>.

74 Програма релокації підприємств, <https://me.gov.ua/Documents/Detail?lang=uk-UA&id=3e766cf9-f3ca-4121-8679-e4853640a99a&title=ProgramaRelokatsiiPidprimstv>.

In March this year, the Verkhovna Rada amended the Criminal Code, supplementing the document with Article 111-1 «Collaborative Activities». This article classifies as a crime the act of ‘conducting economic activities in cooperation with the aggressor state, illegal authorities established in the temporarily occupied territory, including the occupation administration of the aggressor state.’ The sanction 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.

In the temporarily occupied territory, the occupiers demand a «temporary permit» from local entrepreneurs, and in its absence threaten to confiscate the business.

As for the work of state-owned companies in the temporarily occupied territories, there are no clear instructions on how to act.

‘We have 7-8 years of experience when state-owned companies, including infrastructure companies, operated differently in the occupied Donbass. For example, water supply, railways. I know that the international community was involved in organizing a politically acceptable form of payment for water and electricity.

Can these methods be transferred to the current state of open war? I think, no. Therefore, in the place of employees of state-owned companies, I would rather resign than follow the orders of the Russian occupation authorities,’ advises Business Ombudsman Roman Vashchuk.

Human rights activists have also drawn attention to the lack of clarifications from the state:

‘As for the people in the occupied territories, both in 2014 and now they do not have an algorithm of actions from the state on how to live in the occupation. Unfortunately, the only response from the state to the inhabitants of the occupied territories so far has been new articles in the Criminal Code – about collaborationism and aiding and abetting the aggressor state.

There is no safe border to enter the controlled area, because it is, in fact, the front line.

So now people are actually remaining in the occupied territories under siege. And there is responsibility for collaboration, people who work in hospitals, schools, critical infrastructure, and other MOEs are at risk because they may be collaborators under Ukrainian law.<sup>75</sup>

At the same time, taking into account the explanations provided by the Ministry of Reintegration of the Temporarily Occupied Territories of Ukraine, under the conditions of temporary occupation Ukrainian law allows: carrying out the educational process according to the Ukrainian educational programs, ensuring the provision of medical institutions’ own services to the population, and the implementation of measures to eliminate the consequences of emergencies and firefighting.<sup>76</sup>

75 Держава має всілякими способами підтримувати зв'язки з людьми в окупації – Альона Луньова, 24 травня 2022 р. [The state must keep in touch with the people in the occupation in every possible way - Alyona Luneva, May 24, 2022], <https://zmina.ua/event/derzhava-maye-usilyakymy-sposobamy-pidtrymuvaty-zvyazky-z-lyudmy-v-okupacziyi-alona-lunova/>.

76 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-teritoriji-ta-yih-diyalnist-ye-nezakonnimi>.

## Internet and communication services

### RIGHTS IMPACTED:

- Access to information, in particular in situation of emergency, access to recommendations from responsible authorities and volunteers how to behave in dangerous situation, information on locations of shelters, ways to be evacuated etc.
- Freedom of opinion and expression, including the right to seek, receive, and impart information and ideas through any media. In times of war, however, the margin of appreciation of the state to restrict freedom of opinion and expression increases.
- Protection of privacy.
- Right to education (in situation of emergency, almost all educational institutions work online).

All providers of internet and communication services in Ukraine are private companies. But the state has increased the regulation of this service sector since the war started. The main purpose of the state regulation is to strengthen state control of this sector of services and provide for the coordination of state actions to ensure safety of people and service providers' operations.

### REGULATORY FRAMEWORK

According to the Law<sup>77</sup>, providers of communication services are obliged:

- to comply with the orders of the National Center for Operational-Technical Management of Electronic Communication Networks of Ukraine (NCMECN) in conditions of a state of emergency or war;
- to ensure the transmission of notifications about the threat and the occurrence of emergency situations, state of emergency and martial law from state authorities to the population;
- to provide for the connection of users with emergency services and the connection between emergency services and state authorities and/or local self-government bodies during emergency situations.

The management of electronic communication networks and the responsibility for ensuring their stability in the conditions of emergency and martial law is entrusted to the central body of the executive power [NCMECN].

The NCMECN of Ukraine interacts with the control centers of service providers, including foreign ones. Providers are obliged to provide information about the electronic communication networks they operate and their condition.

The NCMECN is obliged, together with the service provider, to develop a plan for restoring the functioning of the service provider's electronic communication network in the event of a state of emergency and war, including a plan for the prompt replacement of damaged electronic communication lines and channels provided for use by special service users, and plans for the use

of reserves in the event of overloading of the provider's network services.

Service providers are also obliged to take measures to ensure the stable functioning of electronic communication networks used for the provision of electronic communication services in emergency situations, states of emergency and martial law.

In emergency situations, state of emergency and martial law, all electronic communication networks, regardless of the form of ownership, are used to ensure the needs of national security, national defense, and law enforcement.

In an emergency situation, a state of emergency and a state of war, providers for the purpose of notifying and providing electronic communication services to participants to mitigate the consequences of emergencies, engage in reconstruction works, and otherwise the implementation of relevant measures, may establish temporary restrictions on the provision of electronic communication services to consumers until the mitigation of consequences and cancellation of the state of emergency.

The provider is not responsible for the condition and performance of its electronic communication network, if the network was completely or partially removed from its control or management in order.

In order to stop terrorist activity, the provision of electronic communication services to consumers located in the specified area of the anti-terrorist operation may be temporarily restricted.

<sup>77</sup> Закон України «Про електронні комунікації» [Law of Ukraine «On Electronic Communications»], <https://zakon.rada.gov.ua/laws/show/1089-20#n2246>.

<sup>78</sup> 17 травня – Всесвітній день телекомунікацій та інформаційного суспільства [May 17 - World Telecommunications and Information Society Day], <https://cip.gov.ua/ua/news/17-travnja-vsесvitnii-den-telekomunikacii-ta-informacii-nogo-suspilstva-22>.

Among the essential services in times of war, respondents ranked access to the Internet and communications as the top priority. The State Service for Special Communications and Information Protection of Ukraine has repeatedly drawn attention to the importance of this service, which provides up-to-date information on the work of providers of these services operating in Ukraine:

‘Access to truthful information. The ability to call rescuers or find out about a planned evacuation. Ask how your family is doing. All this is provided to us by means of telecommunications, and also by hundreds of thousands of Ukrainian specialists in this field, who often work in extremely difficult conditions of hostilities.’<sup>78</sup>

Residents of the settlements where hostilities were fought indicated that in a situation where they were deprived of access to the Internet and means of communication, they were deprived of information about ‘green corridors’ and evacuation, as well as the opportunity to receive humanitarian aid.

Deprivation of access to the means of communication and access to information through the Internet has become an instrument of war used by the army of the Russian Federation. In all the occupied territories, Russian forces jammed the signal of Ukrainian mobile operators and Internet providers. On May 30, 2022, communications were cut off throughout the occupied territory of southern Ukraine. The occupation authorities began the introduction of Russian operators to the Ukrainian market (without naming brands, sim cards of mobile operators are sold without the name of the mobile operator itself; consumers do not know which company provides services for them). However, during more than 10 days, people were completely without communication, unable even to call emergency services.

According to the Ukrainian Ombudsperson, the actions of the Russian military violate the rights of Ukrainian citizens to receive socially important information, especially about dangers to life and health. Citizens need promptly receive information about the need and ways of evacuation, transportation, medical and psychological assistance. Disabling 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 relative to the Protection of Civilian Persons in Time of War.<sup>79</sup>

All Internet access service providers and mobile operators in Ukraine are private companies. However, they work in close cooperation with the state regulator. Thus, the State Service for Special Communications and Information Protection of Ukraine informs the public about the risks that exist and what actions need to be taken to ensure access to communication services and the Internet.<sup>80</sup> Employees of mobile operators and Internet providers remained in the occupied territories for a long time, making every possible effort to maintain communication for the inhabitants of such territories. In combat areas, personnel often risked their lives repairing damaged equipment under fire in order to restore communications.

It should also be noted that mobile operators in Ukraine have joined forces and launched national roaming. If the network of one operator in the settlement stopped working, its subscribers could connect to the network of an active operator and have a connection. This launch was technically very difficult: each network is configured differently, and the ability to switch between operators requires significant improvements. Kyivstar, Vodafone and Lifecell technical teams made this possible.<sup>81</sup> At the same time, in a number of cities that are periodically shelled, it is very difficult to find a mobile operator’s SIM card or get a service in case of problems with service, since offices and service centers do not work.

To conclude, the state establishes centralized state control over the operation of Internet and communication providers during the war. The main purpose of such regulation is to ensure national security. The experience of Ukraine shows that such centralized management and coordination of the actions of state bodies and service providers is really essential in war or other states of emergency.

At the same time, the current regulation remains blind to the issues of particularly vulnerable categories of people in an emergency, and does not make reservations about the need for the most inclusive context assessment by the service providers for making a decision to terminate or restrict access to services in certain areas. Also, state regulation does not take into account that, during a war,

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

80 Російські окупанти відключили зв’язок на півдні України, 31.05.2022 [The Russian occupiers cut off communications in southern Ukraine], <https://cip.gov.ua/ua/news/rosiiski-okupanti-vidklyuchili-zv-yazok-na-pivdni-ukrayini>.

81 Как работает мобильная связь во время войны. За первые недели войны были повреждены или уничтожены сотни базовых станций мобильных операторов. Как удалось наладить связь на большинстве территорий? (укр) ЧЕТВЕРГ, 28 АПРЕЛЯ 2022 [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/>.



it can be vital not only to alert the population about a threat and call emergency services, but also access to the possibility of calling a taxi, obtaining information about shelters, green corridors, evacuation opportunities and receiving humanitarian aid. Moreover, there are no special rules regarding access to internet and communication

services in the temporarily occupied territories, which means that there are general rules on the prohibition of business operating in the occupied territories, if this requires interaction with the occupying authorities or paying taxes to the budget of the occupying authorities, without any exception for services.

## RECOMMENDATIONS

1. State authorities and companies, despite hard times and challenges of war, should remember that state regulation in times of war is not free from need to meet with international human rights standards and international humanitarian law. The purpose of ensuring national security or public order should not deprive people from guarantees of access to vital information, communication with family, or the right to privacy. Both state and companies should make all possible efforts to ensure these guarantees in all territory of Ukraine, controlled and non-controlled. Regulation of business operating in temporary occupied territories should make exceptions for essential services, such as internet and communication services.
2. Service providers in cooperation with state authorities, local governments and CSOs should make all possible efforts for context assessment and taking into consideration additional vulnerabilities of certain group of people (people with disabilities, older people, people without knowledge of national language, families with young children) to access information and opportunities to communicate.
3. There are no special rules for the case if a service provider decides to stop operate. Authorities should consider introducing requirements to continue to operate, where it is possible from a technical perspective and consideration of employees' safety, by the end of the war.
4. Service providers should make statements on their human rights commitments and understanding of human rights risks in times of war, and their possible impact as internet and communication providers on the conflict, and conflict's impact on human rights. They should give priority to international human rights standards in cases where national regulation doesn't meet such standards.
5. Accessibility of operational grievance mechanisms can be especially crucial in times of the war when state legal remedies are less accessible, and when prompt response to a problem is especially important.

## Access to drinking water, electricity and gas supply, sanitation and garbage collection

### RIGHTS IMPACTED:

- right to safe, clean, accessible and affordable drinking water and sanitation as a human right that is essential for the full enjoyment of life and all human rights<sup>82</sup>
- right to adequate standard of living for self and family
- right to health

All providers of centralized water supply, electricity and gas supply in Ukraine are municipality owned or state-owned companies. And, as in case of internet and communication services, state regulation increases the role of centralized administration of the provision of water supply, electricity, and gas supply in times of emergencies.

### REGULATORY FRAMEWORK

According to the Law<sup>83</sup>, local self-government bodies, together with drinking-water supply enterprises, must develop and approve special measures in the case of human-made or natural emergency situations that lead to the termination of centralized water supply. These must ensure:

- use of backup sources and drinking water supply systems;
- use of individual and group cleaning and disinfection of drinking water;
- supply of packaged drinking water and water in containers for individual and group use.

In the event of human-made or natural emergency situations that lead to the termination of water supply to consumers, managers of drinking water supply enterprises are obliged to immediately notify the bodies that exercise state control in the field of drinking water and drinking water supply and take measures to

protect sources and systems of centralized water supply. They must also endeavor to eliminate the causes and consequences of these emergency situations and organize drinking water filling points.

In emergency situations of human-made and natural nature, the financing of costs for providing the population with drinking water is carried out at the expense of state and local budgets and other sources not prohibited by law. After the beginning of the war, one of the first regulations adopted by the National Commission for State Regulation in the fields of Energy and Utilities was the resolution to stop conducting all kinds of inspections of business entities operating in the energy and utility sectors for the duration of the war plus one month after its end.<sup>84</sup>

The state has forbidden, until the end of martial law in Ukraine, the termination or suspension of the provision of utilities in the case of non-payment or incomplete payment.<sup>85</sup>

<sup>82</sup> The human right to water and sanitation, Resolution adopted by the General Assembly on 28 July 2010 [without reference to a Main Committee (A/64/L.63/Rev.1 and Add.1)] 64/292, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/No9/479/35/PDF/No947935.pdf?OpenElement>.

<sup>83</sup> Закон України «Про питну воду, питне водопостачання та водовідведення» [‘On drinking water, drinking water supply and drainage’], <https://zakon.rada.gov.ua/laws/show/2918-14#Text>.

<sup>84</sup> Постанова від 01.03.2022 № 335 «Про врегулювання деяких питань на строк запровадження (введення) воєнного стану в Україні» [Resolution March 1, 2022 No. 335 ‘On the settlement of certain issues for the period of the introduction (introduction) of martial law in Ukraine’], <https://www.nerc.gov.ua/acts/pro-vregulyuvannya-deyakih-pitan-na-strok-zaprovadzheniya-vvedennya-voyennogo-stanu-v-ukrayini>

<sup>85</sup> See: <https://www.nerc.gov.ua/news/nkrekp-nagoloshuye-na-zaboroni-vidklyuchennya-naselennya-vid-poslug-na-period-voyennogo-stanu>.

Intense hostilities in Ukraine devastated water and electricity networks, leaving over 4.6 mln people with limited access to water. In total, over 6 million people in Ukraine are struggling every day to have drinking water, one of the most essential human needs.<sup>86</sup>

The delivery of drinking water conducted non-centrally—by private small companies that deliver water where centrally supplied water is used for technical needs—stopped from the first days of the war in some settlements where hostilities were fought, or the risk of their outbreak was very high. This made the situation of the people very vulnerable. For example, in Kharkiv, people were forced to walk for several kilometres under shelling (public transport did not work) to get water from a spring. But there are also reverse examples, where small local companies continued to deliver drinking water, including distributing it for free.

In some cities, a particularly critical situation has developed: for example, in Mariupol, in the early days, when private companies stopped delivering water, the supply of water was organized by the municipal authorities and the military. After that, during the period of active hostilities, people drank technical water collected from batteries in houses, melted snow, etc. When the city was captured by Russian troops, it was not possible to restore the centralized water supply due to significant damage, and cholera was discovered in the city. Centralized water supply has not been restored as of end of June 2022.

To ensure at least minimal access to water, the cooperation of the state—both central and local authorities, but most often was local authorities)—business, and volunteers

played a critical role in a number of cases. Indeed, MOEs' employees continue to work both under conditions of temporary occupation and under conditions of hostilities in order to maintain the livelihood of Ukrainian settlements.<sup>87</sup> In communities under shelling or fighting, MOEs' workers repair critical infrastructure at high risk to their own lives, many of them did not leave the communities even in a high-risk situation. Until June 2022, in most cases, workers were not equipped with body armor or high-strength helmets.<sup>88</sup> Information about obtaining body armor to protect critical infrastructure workers began to arrive only at the end of June - beginning of July.<sup>89</sup>

In settlements that are temporarily occupied, the occupying authorities, with the support of the military, threatened to cut off electricity and gas supply in the case of protests by the local population against the occupation authorities. Enterprises continued to operate until the establishment of actual control over the enterprises by the occupying authorities.

In the conditions of hostilities, a long accumulation of waste can occur, which poses a threat to epidemiological safety. In Ukrainian cities where there was active fighting, in many cases MOEs continued to take out the garbage, except in situations of very active fighting. For example, in Mariupol, due to constant fierce street fighting, garbage was not taken out, which created a difficult epidemiological situation in the city.<sup>90</sup> Despite the constant shelling of Kharkiv, MOEs continue to work constantly. «Every day about 130 units of equipment of the MOE «Complex for the removal of household waste» go to the streets of the city.»<sup>91</sup> According to the mayor of the city, private companies that provided garbage collection services in peacetime stopped doing so from the first days of the war.

86 UNICEF Ukraine, [https://twitter.com/UNICEF\\_UA/status/1516048830009122816?ref\\_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed%7Cterm%5E1516048830009122816%7Ctwgr%5E%7Ctwcon%5E%5Es1\\_&ref\\_url=https%3A%2F%2F](https://twitter.com/UNICEF_UA/status/1516048830009122816?ref_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed%7Cterm%5E1516048830009122816%7Ctwgr%5E%7Ctwcon%5E%5Es1_&ref_url=https%3A%2F%2F)

87 Валерія Коломієць: Якщо людина навіть в окупації продовжує виконувати свої обов'язки, покладені на неї Україною, – тут про колабораціонізм не йдеться, 25-04-2022 [Valeria Kolomiets: If a person, during the occupation, continues to fulfill his / her responsibilities assigned to him / her by Ukraine, this is not about collaborationism, 25-04-2022], <https://minjust.gov.ua/news/ministry/valeriya-kolomiets-yakscho-lyudina-navit-v-okupatsii-prodovjue-vikonuvati-svoi-obov'язki-pokladeni-na-nei-ukrainoyu-tut-pro-kolaboratsionizm-ne-ydetsya>.

88 За тиждень КП «Комплекс з вивозу побутових відходів» вивезло понад 58,2 тисяч кубометрів побутових відходів всіх видів, 07.07.2022 [During the week, MOE «Complex for the removal of household waste» removed more than 58.2 thousand cubic meters of household waste of all types, 07/07/2022], <https://musor.kharkov.ua/2022/07/07/za-tizhden-kp-kompleks-z-vivozu-pobut-5/>; Працівники КП «Комплекс з вивозу побутових відходів» на маршрутах перевіряють, чи не встановлені під контейнерами «розтяжки», 30.06.2022 [Employees of MOE «Complex for the removal of household waste» on the routes check whether there are «stretchers» installed under the containers, 30.06.2022], <https://musor.kharkov.ua/2022/06/30/pracivniki-kp-kompleks-z-vivozu-pobu-3/>; «Recently, the intensity of shelling of Kharkiv has increased, but our workers, as before, perform their duties and go to dangerous areas of the city to remove household waste. Our crews (consisting of a driver and two loaders) pay special attention to the containers themselves. Under them, enemy DRGs can install «stretchers» and mine them», - said Oleksiy Artikulyenko, director of the MOE.

89 Municipal enterprises of Mykolayiv will receive body armor and helmets for their employees, 6 July 2022, <https://www.0512.com.ua/news/3420793/komunalni-pidpriemstva-mikolaeva-otrimaut-bronezileti-ta-kaski-dla-svoih-pracivnikiv-foto>; Municipal workers under protection: volunteers gave armor vests to the communities of Zaporizhzhya, 14 June 2022, <https://www.zoda.gov.ua/news/61527/komunalniki-pid-zahistom-volonteri-peredal-bronezileti-zaporizkim-gromadam.html> and others.

90 Оккупанты шантажируют мариупольцев: если горожане не будут разбирать завалы, то захватчики прекратят поставки питьевой воды в город, – советник мэра, 27 мая, 2022 [Invaders are blackmailing Mariupol residents: if the townspeople do not dismantle the rubble, the invaders will stop supplying drinking water to the city, - mayor's adviser, May 27, 2022], <https://ru.espresso.tv/okkupanty-shantazhiruyut-mariupoltsev-esli-gorozhane-ne-budut-razbirat-zavaly-to-zakhvatchiki-prekratyat-postavki-pitevoy-vody-v-gorod-sovetnik-mera>.

91 Как в Харькове вывозят мусор во время войны, 28 мая 2022 [How garbage is taken out in Kharkiv during the war, May 28, 2022], <https://gx.net.ua/obshchestvo/region/kak-v-harkove-vyvozyat-musor-vo-vremya-vojny-27052022.html>.

To conclude, the general trend is strengthening of state regulation of centralized water supply enterprises during the war. At the same time, there is no special attention to employees' safety ensuring in cases when they need to work in high risk environment. SOEs and MOEs concentrate on public interests (to ensure access to essential services) with lack of attention of employees' safety in many cases. Also, there is no special regulation of the provision of drinking water and other

utilities in temporary occupied territories, mostly because this is a politically sensitive issue. In fact, the only thing that was officially explained by Ukrainian state authorities was the payment issues: (Ukrainian residents in temporary occupied territories should continue to make payments on bank accounts of Ukrainian providers and should not pay to entities which are proposed by occupying authorities.

## RECOMMENDATIONS

1. Both state and service providers should take all possible efforts to balance the public need to access drinking water, electricity and gas, other utilities with employees' safety. Employees should be equipped by protective means to enable them to continue critical work and all actions in high risks territories should be coordinated with military forces and responsible state authorities. Where it is impossible to balance these values, the priority should be given to employees' safety.
2. There is a need to revise the absolute ban of inspections of providers of drinking water, electricity and gas suppliers for all territory of Ukraine and during all wartime + 30 days. This rule is not proportional to the situation and creates risks for consumers of their services.
3. Providers of drinking waters, electricity and gas should take into consideration if there are vulnerable individuals among their clients (e.g., persons with low mobility could not transport water where centralized water supply was cut off, and/or where they needed to obtain well-water.) and propose additional options, if possible, to provide services and goods for them.
4. The operational grievance mechanisms in SOEs and MOEs are traditionally poorly developed. This could increase human rights risks in wartime, especially because of lack of legal remedies in case of negative impact on human rights by SOEs and MOEs. These businesses should develop and / or strengthen grievance mechanisms, and make all possible efforts to ensure their effectiveness.

## Food retail

### RIGHTS IMPACTED:

- right to adequate food and the right to be free from hunger
- right to adequate standard of living for self and family
- right to health

All food retailers in Ukraine are private companies, both national and international, small, including family, business and large companies.

### REGULATORY FRAMEWORK

In order to prevent artificial price increases and speculation, the State Consumer Service announced daily price controls for 26 items of basic socially significant goods belonging to three groups: food, medicine and fuel. In total, the list of basic food products includes

20 items: flour, pasta, loaf, 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>92</sup>

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. There were massive cases of overpricing. Chain supermarkets were much slower to rebuild supply chains than SMEs, and, therefore, in the first weeks they presented a very limited range of products. SMEs in such conditions proved to be more flexible.

Some large international companies stopped operating in the early hours of the war, when access to food and the ability to stock up on essential supplies was critical. So, in Kharkiv, Metro Cash and Carry did not open on February 24, 2022 in a situation where the local population really needed access to food (because of the critical situation, everyone tried to stock up on food and drinking water). The decision to stop working at that moment, indicated a misunderstanding by the company of the contemporary situation.<sup>93</sup>

The situation is similar with McDonald's restaurants. They stopped working all over Ukraine from the first day of the war, and they will not work until the end of hostilities. According to the company, «all the products stored in the chain's restaurants were handed over to humanitarian headquarters. The company is now engaged in humanitarian aid and continues to pay salaries to 10,000 of its employees in Ukraine.»<sup>94</sup>

However, this withdrawal (even temporary) from the Ukrainian market cannot be considered responsible. To be sure, the company demonstrated a poor understanding of the local context. Territories that are not covered by active hostilities continue to live an active life; cafes and restaurants are open. People need to have a job, there are those people among the local population for whom visiting one or another cafe is a family tradition and could bring joy in difficult times. In addition, the cessation of work before the end of the war has a negative impact on the local budget – the company stopped paying taxes. Interestingly, McDonald's did not stop its work in Ukraine even during the times of COVID 19 – then, McDonald's continued to work through delivery and McDrive.

As for the operation of grocery stores in the temporarily occupied territory, large chains stopped working almost immediately. In some cases, local companies continue to operate. The Russian supermarket chain Mere have opened in the occupied cities (in particular, in Melitopol and Energodar). Mere is a Russian chain of discount stores that acts as an international brand of the Russian chain 'Svetofor'. The Mere, Mayak and Svetofor chain of stores has more than 2,200 outlets in Russia, Europe and China. In Europe, the stores of this supermarket chain operate in Germany, Poland (more than 100 stores), Lithuania, Serbia, Romania, Spain, Italy, and the United Kingdom.

92 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/341-2020-%D0%BF#Text>

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

94 [https://zaxid.net/mcdonalds\\_ne\\_vidkrivaye\\_svoyi\\_restorani\\_v\\_ukrayini\\_cherez\\_zagrozi\\_atak\\_n1542229](https://zaxid.net/mcdonalds_ne_vidkrivaye_svoyi_restorani_v_ukrayini_cherez_zagrozi_atak_n1542229).

Many shops were forced to stop working in the occupied territories due to the lack of communication with the controlled territory. The population of the occupied settlements has extremely limited access to food, mostly food can be purchased at markets where ordinary people sell produce from their own vegetable gardens.

In the territories not covered by hostilities, in the first weeks of the war, there was a significant increase in prices, there were cases of refusal to sell products with payment by card – only cash was accepted. The rising prices in wartime in Ukraine is often speculative, against the background of general consumer panic.

To conclude, for food retail companies, key consideration for making the decision to continue or stop operating have not been based on a consideration of their own operations as essential services. But in many contexts in time of the war, food retail is essential service. The situation demands that companies provide enhanced 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.

## RECOMMENDATIONS

1. Food retail companies should conduct a context assessment to indicate if their operations are essential for territories where there is war. Such assessment should, as much as possible, be inclusive, which means involving all actors who understand the current situation and its possible further development.
2. Food retail companies, as other providers of essential services and goods, should make all possible efforts to support their suppliers, to ensure safety of their employees, to provide payments for them etc.
3. Food retail companies should make all possible efforts to take into consideration vulnerabilities of subgroups within their clientele and provide additional options for these subgroups to buy food.
4. Companies should ensure the safety of their own employees. Multinational companies have closed their stores, which negatively affects the access of local people to food and also impacts negatively local budgets, although in some cases additional security measures for employees would be sufficient and would balance the value of employees' safety and the value of access to food for the local population.
5. A business that comes to work in the occupied territory must check whether its operations violate international humanitarian law.

## Hospitals and medical services, pharmaceuticals, hygiene products and products for children

### RIGHTS IMPACTED:

- right to adequate standard of living for self and family
- right to health

Medical and health care services are provided in Ukraine MOEs and SOEs and private companies as well.

### REGULATORY FRAMEWORK

On 24 February 2022, the Ministry of Health of Ukraine issued an order<sup>95</sup>:

Health care institutions (hospitals) should:

- ensure temporary suspension of planned hospitalizations of patients;
- provide a medical and social examination for adults and children according to a simplified procedure and in absentia;
- prepare additional surgical teams to help victims of the Russian Federation's military aggression against Ukraine;

- take measures to increase the provision of medical assistance using telemedicine;
- ensure the reception of patients with signs of acute respiratory disease in separate rooms in compliance with the requirements of infection control;
- provide full emergency medical care.

This regulation covers state owned and municipality owned hospitals, but not private hospitals.

In cities where hostilities took place or there was a high threat of fighting breaking out, almost all private medical centers were closed due to the need to ensure the safety of employees. Municipal medical institutions, on the other hand, continued to work, including in a situation of active hostilities. A striking example is the work of municipal medical institutions in Mariupol during the conduct of active hostilities.<sup>96</sup>

In the first days and weeks of the war, there was practically no access to medicines, hygiene products, or goods for children in settlements where hostilities were taking place or where there was a high risk of hostilities. All pharmacies in Ukraine are private, some of them belong to large pharmaceutical companies. In the first hours of the war, almost all drugstores in Kharkiv, Kyiv, and some other cities

were closed. Access to medicines was limited in pharmacies throughout Ukraine. In a particularly vulnerable position were people whose health depends on the regular intake of medicines.

The occupied settlements have become dependent on humanitarian aid, which is delivered to these territories in very limited quantities due to the fact that today there is practically no communication between the controlled territory of Ukraine and the uncontrolled territories (only one transport corridor remains, but the access control works in such a way that cars are forced to stand in the grey zone for 5-6 days under shelling). Medicines that arrive in the city with a humanitarian convoy are sent to hospitals. There are practically no deliveries of medicines to city pharmacies.<sup>97</sup>

95 Про затвердження Тимчасових заходів у закладах охорони здоров'я з метою забезпечення їх готовності для надання медичної допомоги постраждалим внаслідок військової агресії Російської Федерації проти України [On the approval of Temporary measures in health care institutions in order to ensure their readiness to provide medical assistance to victims of the military aggression of the Russian Federation against Ukraine], <https://moz.gov.ua/article/ministry-mandates/nakaz-moz-ukraini-vid-24022022-374-pro-zatverdzhennja-timchasovih-zahodiv-u-zakladah-ohoroni-zdorovja-z-metuju-zabezpechennja-ih-gotovnosti-dlja-nadannja-medichnoi-dopomogi-postrazhdalim-vnaslidok-vijskovo-agresii-rosijskoi>.

96 Три тижні Маріупольського пекла: розповідь лікаря, який вирвався з міста, 29 Березня 2022 [Three weeks of Mariupol hell: the story of a doctor who escaped from the city, March 29, 2022], <https://medicine.rayon.in.ua/news/501280-tri-tizhni-u-mariupolskogo-pekla-rozpovid-likarya-yakiy-virvavsya-z-mista>; див. також Як лікарі рятують життя під час війни, 1 травня 2022 [see also How Doctors Save Lives in War, May 1, 2022], <https://ukrainer.net/likari-viyna/>.

97 В Мелітопольском районі в аптеке появились жизненно необходимые препараты, 18 мая 2022 [Life-saving drugs appeared in the pharmacy in the Melitopol district, May 18, 2022], [https://ria-m.tv/news/286745/v-melitopolskom\\_rayone\\_v\\_apteke\\_poyavilis\\_jiznenno\\_neobhodimyie\\_preparaty.html](https://ria-m.tv/news/286745/v-melitopolskom_rayone_v_apteke_poyavilis_jiznenno_neobhodimyie_preparaty.html).

«The situation with medicines is particularly difficult in the temporarily occupied Kherson region. Almost all pharmacies – 90%, do not work. Some pharmacy chains, according to pharmacists, plan to completely stop their work in the region. Medicines are currently being transported from the occupied Crimea and Russia and sold from the trunks of cars in local markets. These medicines are not certified and can be counterfeit. A separate problem for pregnant women is a near-inability to purchase of drugs and pharmaceuticals in the maternity hospital. There is also information about significant problems with children’s drugs, most acutely antipyretics.»<sup>98</sup>

To conclude, there is a significant difference in the behavior of SOEs and MOEs, on the one hand, and private companies,

on the other. SOEs and MOEs that are providers of essential services and goods did not stop their work. In many cases, it shows the priority of the public interest to provide essential services over the personal safety of employees.

An important role is played by the interaction of the state (and municipalities), business, and volunteers. Absolutely all respondents noted the key role of volunteers, since it was them who were able to most quickly identify the main challenges in access to essential services and goods, and coordinate efforts. It is becoming clear that engaging with volunteers is an increasingly important component in identifying potential risks to human rights in times of war and identifying the most effective ways to help people access critical services and goods.

## RECOMMENDATIONS

1. Municipality owned hospitals prioritize the public interest of access to medical services. They need to revise this approach. Every effort should be made to balance of public interest and employees’ safety. But if balance cannot be achieved, priority should be given to the employees’ safety.
2. Private hospitals, pharmacies, on the contrary, give priority to the employees’ safety. They are also expected to take all possible measures to balance of public interest to access essential services and goods and employees’ safety.
3. Given the importance of access to medical services and medicines, especially for vulnerable groups of people, providers of these services and goods need to consider possible ways to provide such goods and services while taking into account the particular needs of vulnerable groups, such as home delivery, specialist visits, online consultations, interaction with taxi services, coordination of efforts with volunteers.
4. The state should take all possible measures to provide corridors for the delivery of medicines to the occupied territories.

<sup>98</sup> КрымSOS: 90% аптек в Херсоні та області не працюють, 24 / 05 / 2022 [CrimeaSOS: 90% of pharmacies in Kherson and in the region do not work, 24/05/2022], <https://krymsos.com/krymsos-90-aptek-v-hersoni-ta-oblasti-ne-praczyuyut/?fbclid=IwAR2YWmiqISyo-tvuhG41quPNJI PHaN6lvmsHVX9JrliBaFyWFdareOo26Rc>.



## Banking services

### RIGHTS IMPACTED:

- access to banking, right to adequate standard of living for self and family

### REGULATORY FRAMEWORK

At the beginning of May 2022, the National Bank developed a special procedure for banks that ended up on the territory of Ukraine temporarily occupied by Russia. Thus, according to this regulation, banks independently decide on a temporary cessation of work in such territories, taking into account the priority of the safety of life and health of employees and customers of the bank. They can also minimize cash holdings by loading ATMs and dispensing cash from the cash register to customers. If it is technically possible, banks

are recommended to ensure that merchants accept non-cash payments, provide for the possibility for citizens to receive cash at the checkouts through non-cash payment, and also continue to serve their customers remotely. It is noted that Ukrainian banks make non-cash payments until 'the occurrence of circumstances precluding their implementation.' After the de-occupation, banks will resume the work of branches as soon as possible, ensure non-cash payments, and replenish ATMs.<sup>99</sup>

Bank branches were closed in the territories directly affected by hostilities (those captured by Russian troops with subsequent occupation, about 20% of the entire territory of Ukraine; settlements where hostilities are taking place, or which are completely or partially blocked by Russian troops), on the first day of the war. The work of some of them has been restored in those settlements that were liberated from Russian troops (primarily in Northern Ukraine)<sup>100</sup>, as well as in settlements where the risk of hostilities has decreased (for example, Zaporizhzhia). In Kharkiv, all bank branches remain closed, despite the fact that more than 1 million people remain living in the city, according to the mayor of the city.

In many territories of Ukraine from the very beginning of the war, only cash payments have been available. In many cities affected by active military actions, all bank branches are closed. In occupied territories, people need to stay in lines for 6-7 hours to obtain 1000 hrn (~25 EUR), if they even have such an opportunity. Persons without cash cannot buy any food or other vital goods and services.

Another way to have «live money» is to get cash at the checkout in a store or pharmacy. At the beginning of the war, the NBU recommended that trade enterprises give people

the opportunity to withdraw cash at checkouts. Banks and payment systems supported the initiative. According to the National Bank, UAH 3.8 billion in cash was issued in March through the checkouts. 25 Ukrainian banks have also set up such an opportunity for their clients. Today, more than a thousand trade enterprises across Ukraine are ready to issue cash directly at the checkouts.

In the occupied territories, banks do not have the physical ability to import hryvnia in the form of cash. Almost all branches of Ukrainian banks are closed. However, there is also a difference in the behavior of banks. Private banks closed their branches in the first days of the war, preventing the population from withdrawing cash with cards. State-owned banks continued to operate, and even after 3 months of occupation, these banks are making every effort to ensure that bank customers can withdraw cash.<sup>101</sup>

The INTERNATIONAL SETTLEMENT BANK from South Ossetia has begun its work in the temporarily occupied territory. At the moment, Russian banks have not started working in the Ukrainian territories seized by the Russian Federation, as they are still afraid of the imposition of additional sanctions against them.<sup>102</sup>

99 НБУ утвердил план действий для оказавшихся во временной оккупации банков, ПЯТНИЦА, 6 МАЯ 2022 [National Bank of Ukraine approved an action plan for banks in temporary occupation, FRIDAY, 6 MAY 2022], <https://www.epravda.com.ua/rus/news/2022/05/6/686721/>; ПРАВЛІННЯ НАЦІОНАЛЬНОГО БАНКУ УКРАЇНИ ПОСТАНОВА 05.05.2022 № 94, Про діяльність банків у територіальних громадах, що розташовані в районі проведення військових (бойових) дій або які перебувають в тимчасовій окупації, оточенні (блокуванні) [BOARD OF THE NATIONAL BANK OF UKRAINE RESOLUTION 05.05.2022 № 94, On the activities of banks in territorial communities located in the area of military (combat) operations or which are in temporary occupation, surrounded (blocked)], <https://zakon.rada.gov.ua/laws/show/v0094500-22#Text>.

100 См. например, УКРГАЗБАНК ПЕРШИМ СЕРЕД БАНКІВ ВІДКРИВАЄ ВІДДІЛЕННЯ У БУЧІ, 04.05.2022 [See, for example, UKRGASBANK IS THE FIRST AMONG BANKS TO OPEN A BRANCH IN BUCH, 04.05.2022], <https://finbalance.com.ua/news/ukrhazbank-pershim-sered-bankiv-vidkriva-viddilennya-u-buchi>.

101 <https://www.epravda.com.ua/publications/2022/05/5/686680/10>.

102 <https://forbes.ua/inside/viyna-naybilshogo-banku-privatbank-rakhue-zbitki-vse-shche-pratsyue-u-okupovanikh-mistakh-ta-mae-novini-pro-sudi-z-kolomoyskim-intervyu-seo-gerkharda-bosha-03062022-6357>.

To conclude, in the banking sector, as in other essential sectors, state owned banks give priority to public interest to ensure access to essential service, sometimes, without appropriate attention to employees' safety. By contrast, private bank make decisions from the perspective of employees' safety, without considering their services as essential. This was clearly shown in the situation of occupied territories.

## RECOMMENDATIONS

1. Banks should be ready to react in emergency situations rapidly, and based on a human rights approach. A general strategy and operational instruction should be developed.
2. Banks should try to provide information for consumers as much as possible, with a particular emphasis on web-based modes of information distribution. Examples of important information are how the bank balances employee safety and public interest to access bank services; and what options there are for vulnerable people to access bank services during the war etc).
3. Special attention should be paid to bank services in occupied territories. A bank should make all possible efforts to provide bank services as long as possible, because such services could be crucial to people's lives.

## Public transport

### RIGHTS IMPACTED:

- non-discrimination
- adequate living conditions.

### REGULATORY FRAMEWORK

According to the Law, transport companies are obliged to provide the state authorities with means of transport for the evacuation of the population from the emergency zone, which are areas of possible hostilities. Compensation for the cost of providing services and

actual expenses to economic entities whose vehicles were used for evacuation is carried out at the expense of funds allocated from the relevant budget for the elimination of the consequences of an emergency situation or the elimination of the threat of its occurrence.<sup>103</sup>

Non-functioning public transport in cities that were under the threat of active hostilities or were occupied often made it impossible to evacuate people. Departure from temporarily occupied territories—such as Kherson and part of the Zaporizhzhya region, Donetsk and Luhansk regions—to controlled territories is possible only by private transport or with informal carriers. Sometimes evacuation is organized by volunteers. Several evacuation trips were organized by the Red Cross, but the exit point of the evacuation convoy was often extremely difficult to reach. The private companies that provided regular bus transportation in these territories before the war stopped operating.

The state railway company carries out transportation only in the territory controlled by Ukraine. The Office of the Prosecutor General of Ukraine seeks to indict officials of Ukrzaliznytsia who agree to cooperate with the occupation authorities under the article «Treason committed in wartime» (part 2 of article 111 of the Criminal Code of Ukraine).<sup>104</sup>

Evacuation from settlements covered by hostilities was actively carried out by rail. At the same time, it was very difficult for people who did not have personal transport to get to the railway station, since public transport did not work from the first days of the war. Taxi services were the

only mode of transport that partially continued to operate. But, for example, Uber announced the termination of work in Ukraine on the first day of the war, explaining this move with concerns for the safety of drivers and passengers.<sup>105</sup> The company also indicated that it is constantly monitoring the situation in order to restore travel as soon as it becomes safe. The decision to stop the provision of transportation services at a time when people vitally needed it had the opposite effect – people were deprived of the opportunity to evacuate from the most dangerous places. Subsequently, Uber announced a number of initiatives aimed at helping Ukrainians during the war, like humanitarian aid, free travel for Ukrainian refugees from the Ukrainian border with Poland to Polish cities.<sup>106</sup> At the same time, such support, which is close to corporate social responsibility in peacetime, does not negate the fact that Uber's decision did not take into account the potential negative impact on people.<sup>107</sup>

There were also examples of the opposite behavior from local companies. The taxi service Uklon didn't stop working. In addition, the company cooperates with volunteers and workers of critical infrastructure. Since March 1, 2022, this taxi service has been providing transportation free of charge for the needs of the military, territorial defense and hospitals, as well as to maintain the life support of cities.

<sup>103</sup> Закон України «Про транспорт» [On Transport], <https://zakon.rada.gov.ua/laws/show/232/94-%D0%B2%D1%80#Text>.

<sup>104</sup> Допомога у відновленні сполучення між окупованими територіями Донеччини та РФ – посадовцю «Укрзалізниці» повідомлено про підозру у держзраді, 15.05.2022 [Assistance in restoring communication between the occupied territories of Donetsk and Russia - Ukrzaliznytsia official reported on suspicion of treason, 15.05.2022], <https://gp.gov.ua/ua/posts/dopomoga-u-vidnovlenni-spolucennya-miz-okupovanimi-teritoriyami-doneccini-ta-rf-posadovcy-ukrzaliznici-povidomleno-pro-pidozru-u-derzradi>.

<sup>105</sup> Uber response <https://www.business-humanrights.org/en/latest-news/uber-response/>.

<sup>106</sup> <https://www.uber.com/newsroom/supporting-ukraine/>.

<sup>107</sup> Разбор | Клиентов меньше, водителей больше. Как война изменила сервисы такси Uklon, Bolt и Uber, 28.06.2022, <https://biz.liga.net/all/all/article/klientov-menshe-voditeley-bolshe-kak-voyna-izmenila-servisy-taksi-uklon-bolt-i-uber>.

With the taxi service Bolt, an Estonian company, passengers can make an emergency trip for only 1 hryvnia. Also, for evacuation to the West of Ukraine or abroad, Bolt allows Ukrainians to use their car parks for free. Bolt also removed driver fees for the duration of the war. In neighboring countries, the service encourages its drivers to take trips to the Ukrainian border to take Ukrainians to safe places.<sup>108</sup>

In the temporarily occupied territory, some services, in particular the Ukrainian company Uklon, worked until amendments were made to the Law of Ukraine on temporarily occupied territories.<sup>109</sup>

In some period of time, small local taxi services set very high prices for their services (UAH 2000-3000, i.e. 60-90 euros, for a trip that normally cost 90-120 hryvnias, i.e. 3-4 euros).<sup>110</sup>

With regard to evacuation, a problem that is well known in peacetime became acute during the war and cost many lives. Transport in Ukraine is poorly accessible or completely inaccessible for people with disabilities. Family members who care for people with disabilities often did not evacuate either because they needed to stay with the person with a disability.

Evacuation and ensuring the movement of people within settlements—in particular those who needed medical care—in most cases were provided by volunteers. Volunteers also ensured the evacuation of people with disabilities.

Local authorities play an important role in ensuring the operation of public transport. Restoring the operation of public transport in a situation where it was stopped due to hostilities is one of the priority tasks of local authorities. At the same time, public transport can only be launched if the military administration allows it.<sup>111</sup>

There are interesting examples of interaction between state authorities and Ukrzaliznytsia. The President's Office, Ukrzaliznytsia, and the Ministry of Digital Transformation have created a project «Where You Are Waited for» with a website that offers free resettlement of IDPs. Also at

the stations, the stewards will register the evacuees in a single system to help determine the location of temporary settlement.<sup>112</sup>

Since the beginning of the war, Ukrzaliznytsia has evacuated 4 million people to the West of Ukraine, of which about 600,000 persons were evacuated to neighboring countries.<sup>113</sup>

Foreigners living in Ukraine have faced unequal treatment and delays as they attempt to flee the war alongside hundreds of thousands of Ukrainians. Many of these were international students. There was a pattern of blocking or delaying foreigners from boarding buses and trains, apparently to prioritize evacuating Ukrainian women and children.<sup>114</sup>

To conclude, the behavior of local business and multinational companies that are providers of essential services and goods differ significantly. Local companies, thanks to a better understanding of the needs of the local population and the current situation, continued to operate. International companies in a similar situation stopped working from the first hours of the war. The main argument of international companies was to ensure the safety of employees. However, in a number of cases, this was following the most simple and safest scenario for the company itself, since the continuation of work meant the need to think about how to maximize the safety of employees, monitor the development of the situation, and take the risks of a possible dangerous situation. Such companies considered the cessation of work and the provision of humanitarian aid to be the «golden solution» for themselves. Local business continued to work, which in some cases played a critical role.

There is also significant difference in the behavior of MOEs, on the one hand, and private companies, on the other. Municipality owned transport did not stop their work in the most cities in Ukraine. In many cases, it shows the priority of the public interest to provide essential services over the personal safety of employees.

108 Как во время войны работают такси Uber, Uklon и Bolt: названы условия бесплатного проезда, Лобанова Елизавета, 10 мар, 2022 [How Uber, Uklon and Bolt taxis work during the war: the conditions for free travel are named, Lobanova Elizaveta, 10 Mar, 2022], <https://biz.today.ua/ru/kak-vo-vremya-voyny-rabotayut-taksy-uber-uklon-y-bolt-nazvany-uslovyaya-besplatnogo-proezda/>.

109 <https://biz.nv.ua/economics/taksi-vo-vremya-voyny-kak-menyayutsya-tarifny-uklon-v-kieve-lvove-harkove-novosti-ukrainy-50241401.html>.

110 <https://kharkov.comments.ua/news/society/accidents/10600-v-harkove-taksisty-ustanavlivayut-zaoblachnye-ceny-na-uslugi-kak-s-nimi-budut-borotsya.html>.

111 «Прекрасно, когда мы подставляем плечо друг другу»: мэр Харькова о работе общественного транспорта и отмене коммунальных счетов, 21 мая 2022 [«It's great when we lend a shoulder to each other»: the mayor of Kharkiv on the operation of public transport and the abolition of utility bills, May 21, 2022], <https://zn.ua/UKRAINE/prekrasno-kohda-my-podstavljaem-plecho-druh-druhu-mer-kharkova-o-rabote-obshchestvennoho-transporta-i-otmene-kommunalnykh-schetov.html>.

112 В Україні запрацював проєкт для пошуку помешкання та отримання гуманітарної допомоги для переселенців, 03 Травня 2022 [Ukraine has launched a project to find housing and receive humanitarian aid for displaced persons, 03 May 2022], <https://zmina.info/news/v-ukrayini-zapraczyuvav-proyekt-dlya-poshuku-pomeshhkannya-ta-otrmannya-gumanitarnoyi-dopomogy-dlya-pereselenciv/>.

113 <https://forbes.ua/ru/news/lyudi-25052022-6218>.

114 Ukraine: Unequal Treatment for Foreigners Attempting to Flee Pattern of Blocking, Delaying Non-Ukrainians, March 4, 2022, <https://www.hrw.org/news/2022/03/04/ukraine-unequal-treatment-foreigners-attempting-flee>.

## RECOMMENDATIONS

1. As in many other fields of essential goods and services, in public transport, there is an imbalance between employees' safety and public need to have access to transport. Municipally owned transport should pay more attention to employees' safety. They should be equipped with protective means, trained on conduct in case of emergency situation etc. In opposite, private companies should develop an operating strategy to balance of employees' safety and public need to access transport services, especially in emergency situations.
2. Transport companies should take into consideration vulnerabilities of certain groups of people. The accessibility of means of transportation should be ensured for all.
3. The state should make all possible efforts to ensure evacuation corridors from temporary occupied territories and emergency territories.
4. Each public transport company should provide for an effective operational grievance mechanism.

# Conclusions and General recommendations

There is a need to rethink the role of business as providers of essential goods and services in high-risk environments.

Businesses bear a parallel responsibility to respect human rights in their own responses to the crisis, exceeding government guidance where necessary. The public nature of essential services and goods enhances corporate human rights responsibility. A business that performs public functions also assumes the duty to fulfil and promote human rights. The weakness of the state in implementing the business and human rights framework for times of the war does not remove the responsibility from business to conduct itself responsibly, especially in a situation where the state is deprived of the ability to provide access to essential services and goods.

Based on this, the general recommendations are:

1. Ukrainian state authorities should develop recommendations and regulations for business conduct in times of war with special focus on essential goods and services. The business community is now focused on humanitarian aid, supporting employees and development strategies for business survival. Civil society organizations are not equipped with knowledge to provide companies with appropriate capacities and/or monitor their conduct in times of war.
2. Companies whose business model includes the provision of essential goods and services initially take on a part of a public, socially significant, function. They should provide enhanced human rights due diligence requires companies, in particular to ask themselves:
  - *Are you a supplier of essential goods and services? Do you occupy a key role in providing local people with access to essential services and good?*
  - *Did you continue to supply essential goods and services after the start of war / occupation of the territory?*

**IF NOT:** What was the defining barrier to continued operation? Did you take legitimate considerations from a human rights point of view? Has the company taken into account the needs of the local people for access to essential goods and services and the criticality / non-criticality of your company's role in providing such access? Have you continued to communicate with employees? Are they safe?

**IF YES:** Have you assessed the risks to the safety of your employees? Have actions been taken to minimize them? (If appropriate: Was access to the bomb shelter secured? Were helmets and bulletproof vests issued? Did you ensure psychological support services for employees? Are employees trained in security measures in a case of a shelling or other high-risk situation? Is the company ready to promptly evacuate employees and their families if necessary?) Have you assessed additional gender-based risks, in particular the increased risk of gender-based violence? Have you assessed how the needs of people for access to essential goods and services have changed, and whether the market for the provision of such goods and services and your role in this market has changed? Do you interact with government agencies, municipal authorities, CSOs, volunteers to coordinate efforts to ensure access to essential goods and services and also in relation to providing employee safety? Do you take into account the particular vulnerabilities of groups, communities and individuals?

- *Was the decision made taking into account the local context and its dynamics?*

Regardless of whether the company decides to continue operating or stop, it is important that the process to get to a decision should be consultative and build on local knowledge/information.

3. Understanding of the heightened human rights due diligence as identifying potential and actual impacts on people (human rights) as well as on the context (conflict) should be supplemented with one more component, i.e. preventing or minimization of the conflict's impact on people (human rights). The conflict could change significantly the scope of corporate responsibility to respect human rights. It's not about a company's impact on human rights, but it's about its role in responding to human rights challenges that conflict creates. In some cases, we should talk about corporate responsibility to respect, fulfil, and promote human rights in situations of conflict. For example, should a company make every effort to help employees and their families with evacuation? Or should a company assess the essentiality of its products and services for local people in situations of conflict (for example, providers of internet and communication services could play vital role because their services provide people with a possibility to be informed about the situation, humanitarian aid etc)?
4. Companies should make all possible efforts to engage stakeholders. In particular, it's important for understanding of the context of conflict and its dynamic. And in conflict situations, local companies in many cases demonstrate much more responsible business conduct than multinational companies just because local companies are in direct communication with stakeholders who are impacted by conflict.

In more general context that impacts on provision essential goods and services significantly, it is recommended that:

5. Human rights policy coherence should be built in peacetime. Policy incoherence makes it much less likely that human rights based guidance of corporate conduct to respond to war exists or can easily be created in times of war. A state without a stable tradition of building regulation on a human rights based approach puts economic and political goals first; in particular, Ukraine has significantly simplified the procedure for dismissal or suspension of an employment contract during martial law in order to stimulate business activity (but making workers much more vulnerable and placing the burden of negative consequences on them); Ukraine provides for criminal liability for economic activity in the occupied territory, without making exceptions for essential goods and services and without giving any recommendations on how the inhabitants of the occupied territories can secure access to essential goods and services.
6. The state should avoid the policy approach of «business-friendly» regulation, which has been carried out over the past several years. Such an approach did not develop in business, even if they are providers of essential services and goods, an understanding of its social role. There are isolated positive exceptions, but in general, the corporate culture is still based on Milton Friedman doctrine «the social responsibility of business is to increase its profits»<sup>115</sup>.
7. Both business and state should build capacity to apply vulnerability lenses; for example, buildings, transport remained inaccessible to people with limited mobility in peacetime, despite the existence of legal requirements to ensure such accessibility. In many cases, this made it impossible to evacuate people with disabilities when war started. In addition, the lack of gender and work-life balance sensitivity made business decisions during wartime more burdensome for women and people with family responsibilities.
8. The practice of coordination of efforts between state bodies, business and civil society organizations should be enhanced; ensuring access to essential services and goods in times of war requires such coordination in most of cases.
9. The state, striving to ensure the provision of essential goods and services by SOEs and MOEs, should raise the issue of ensuring the personal safety of employees of such companies and provide additional payments for work in high-risk conditions. Employees and heads of SOEs and MOEs in the territories that were temporarily occupied after February 24, 2022, are in a particularly vulnerable position, since any interaction with the occupying authorities could be considered as collaborationism and encompass the threat of being held accountable. On the other hand, if such companies cease to operate, then this jeopardizes the access of local population to essential goods and services.

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<sup>115</sup> Milton Friedman, «The Social Responsibility of Business Is to Increase Its Profits,» New York Times Magazine (1970): 33.

