

Human rights due diligence in conflict-affected areas: the provision of essential goods and services

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Question 1: When we talk about conflict-affected areas in the BHR context, we stress the importance of conducting heightened HRDD. But is it the same HRDD for all corporate actors? What are the implications for essential goods and services providers?

First of all, when we are talking about the human rights due diligence we are talking about high risk environments. And high-risk environment is always about balancing some public interests, collective human rights, on the one side, and individual human rights, on the opposite side. In normal life, this dilemma is also possible, but it's not so crucial. High risk environments are always about this dilemma. And actually the lawyers know how hard it is to find a balance between conflicting rights and public interests.

In this context proportionality is very important, we need to pay attention to proportionality, but in many cases, proportionality does not help to solve the issue if there is no way to find a balance public interest and individual human rights. I can give you some examples from a Ukrainian perspective. If a private mobile company operates, let's say, in Kharkiv, eastern Ukraine, before the war the population of Kharkiv was of 1.5 million. Now there are 600,000 people, and all of these people need to have access to communication, to Internet, to just know the situation, to know what danger might be approaching, to communicate with relatives and to have access to information about humanitarian aid, and so on. And if Kharkiv is regularly under attack and the equipment of this mobile company is destroyed regularly, we have a situation when employees of this company are forced to repair equipment at great risk to their lives. Are we able to ensure a balance of public interest to have access to communication and individual human rights to be safe for these employees?

The same situation might occur with municipality owned companies which provide access to drink water, to electricity, and to gas. The municipality owned companies continues to

provide garbage collection services. Should we ask this company to protect their employees, or should this company continue to provide its services?

Currently, we have this situation with a state-owned company and its guards which control a nuclear station in the south of Ukraine occupied by the Russian military forces. The employees of this company have remained in this part of Ukraine. These employees are in an extremely dangerous situation, some of them have been killed and some have been tortured. They work without any proper conditions. And again, we can ask this company and actually ourselves, what is correct? What is the right decision? Should a company actually evacuate their employees from the nuclear station? This decision means to leave the nuclear station without the control.

My second point is that companies whose business model includes the provision of essential goods and services initially take part in a public socially significant function. And it means that such companies have their own responsibility to make all possible efforts to secure human rights, especially in situations of high-risk environments. What are all possible efforts? Again, it should be indicated in each situation individually, and it demands deep understanding of local contexts. And local context should not be interpreted as national context because mainly international companies made their decision for Ukraine in whole. But we can't apply the same approach.

Question 2: What about the state duty to protect? From Ukrainian perspective, does state impact on responsible business conduct by the essential services and goods providers?

It is crucial and we have a challenge ahead. Ukraine can be in this context more responsible I would say, because there are still no recommendations from the state, even for providers of essential goods and services. And also, we have a very complicated situation in the occupied territories, and it is a political tricky issue since Ukraine actually has adopted the general approach that paying taxes to occupied areas is a crime according to Ukrainian legislation, and there are no exceptions for providers of essential goods and services. I believe that in practice we will have a different approach to different businesses. But in general, it's a really, really sensitive and complicated issue for our society.

We have had discussions last week with some Ukrainian business associations, and they maintain communications with the local businesses which actually need to operate on the temporary occupied territories because the local population still needs to have access to essential services and goods. And yes, these local businesses are feeling that they are responsible for this local population, and so they continue to operate. And this why we should put on the table this question and open the debate.

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