

# Ukraine Heightened Due Diligence

The following Ethical Trade Initiative (ETI) and Fair Wear joint guidance is made for brands that source in Ukraine. It outlines ETI and Fair Wear’s expectations and recommendations on how to conduct human rights due diligence in Ukraine.

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## Situation Ukraine

The conflict in Ukraine escalated on 24 February 2022 when the Russian military entered the country and invaded Ukraine. Since then, heavy fighting is reported throughout the country, particularly in Kyiv, but also across bigger cities in the east, south, and north part of Ukraine. Fighting is resulting in civilian casualties and has caused significant damage to infrastructure, social services, and buildings.

Insecurity is forcing people to leave their homes; most of them are women, children, and older adults. About 66% of the displaced people fled to Poland, Moldova, Hungary, Slovakia, and Romania. Over 5.5 million refugees left their homes in Ukraine and headed toward other countries as of April 29, 2022, and another 7.7 million people are thought to be displaced inside the war-torn country itself<sup>1</sup>. The numbers are expected to increase quickly because of the hostilities. It is estimated that women and children make up 90% of those who have already fled the country, and 60% of the adult displaced population is female<sup>2</sup>. Some people choose to stay or cannot flee, hiding in basements or subway stations. Shelling has led to water and electricity cuts, limiting people’s movement and ability to access essential goods and services.

As a result of the Russian invasion, many Ukrainian businesses have been destroyed, have stopped work or their workers have been forced to flee from hostilities to other regions in Ukraine or abroad. Another number of enterprises and employees have ended up in territory occupied by Russian forces, where the implementation of Ukrainian labour legislation has been curtailed. In addition, many Ukrainian enterprises are involved in defence activities coordinated by local military administrations, and their employees are doing work not covered by regular employment contracts.

<sup>1</sup> Rapid gender analysis of Ukraine, Care – UN Women, 4 May 2022, at <https://www.unwomen.org/sites/default/files/2022-05/Rapid-Gender-Analysis-of-Ukraine-en.pdf>; Ukraine internal displacement report, general population survey, round 3, 17 April 2022, IOM, at <https://displacement.iom.int/reports/ukraine-internal-displacement-report-general-population-survey-round-3-11-17-april-2022>

<sup>2</sup> Rapid gender analysis of Ukraine, Care – UN Women, 4 May 2022 (see footnote 1)

## Gendered implications

While men are fighting against the Russian army, this dramatic situation poses additional risks to women and children, who remain among the population's most vulnerable and exploitable groups. In the last years, Ukraine has made some gains in gender equality, but these achievements have been under constant threat since the start of the conflict in the eastern region of the country and the outbreak of Covid-19. For example, UN Women and CARE<sup>3</sup> found that whilst 'women are performing vital roles in the immediate humanitarian response in local communities with an increased leadership and decision-making role 't the family level and partially at the community level', their participation at the formal decision-making level has decreased. This means that 'issues of social development and gender equality tend to be sidelined', and the different needs and priorities of women and men are not adequately considered.

While the Ukrainian population is doing its best to withstand the war, women, who were already primarily responsible for securing food and taking care of the children and the elderly, are now, in many cases, the sole family breadwinners, parents, and caretakers. Due to martial law, men were supposed to be fighting for their country. At the same time, women took on all household responsibilities, adding an additional burden on them, being also responsible for earning an income to meet their family's basic needs. This situation is even more exacerbated by the disruption of social services and infrastructures, such as education and childcare facilities. In addition, gender-based and domestic violence have increased significantly since the beginning of the war<sup>4</sup>, with reports of conflict-related sexual abuses and rape mostly against women (but also against men and minors<sup>5</sup>).

## Labour Law implications

On 24 February 2022, martial law in Ukraine was imposed as a response to the Russian invasion. Martial law implies the limitation of certain constitutional rights, *inter alia*, the right to work and the right to rest.

To implement these limitations, on 15 March, the Parliament of Ukraine adopted the Law "On Organizing of Employment Relations During Martial Law" (the "**Law**"), which entered into force on March 24, 2022. It is worth reviewing its main provision based on the currently available text.

The Law introduces certain limitations of labour and employment rights and envisages specific regulation for some aspects of employment relations. The new law significantly curtails employees' rights (on working hours, working conditions, dismissal, and compensation after dismissal) and increases employers' leverage over their workforce. The said act will be in force only during martial law and will cease to exist after martial law is terminated. (*see more information: Annex II*)

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<sup>3</sup> Rapid gender analysis of Ukraine, Care – UN Women, 4 May 2022 (see footnote 1)

<sup>4</sup> Sexual Violence 'Most Hidden Crim' Being Committed against Ukrainians, Civil Society Representative Tells Security Council, UN, 6 June 2022, at <https://www.un.org/press/en/2022/sc14926.doc.htm>

<sup>5</sup> Reports of sexual violence in Ukraine rising fast, Security Council hears, United Nations, at <https://news.un.org/en/story/2022/06/1119832>

## Heightened Due Diligence

Fair Wear and ETI's Human Rights Due Diligence Policies outline the responsibility of brands in relation to human rights due diligence, including prevention of harm to workers and improvement of working conditions where rights are at risk or violated. The policies are driven by the definition as introduced in the [United Nations Guiding Principles on business and human rights \(UNGPs, 2011\)](#), where the concept of human rights due diligence is described in guiding principles 17 and 18 of the UNGP.

The UNGPs are built around a concept of proportionality: the higher the risk, the more complex the processes. Hence, "because the risk of gross human rights abuses is heightened in conflict-affected areas", action by States and due diligence by businesses should be heightened accordingly. Related to doing business in conflict areas, the UN has provided specific principles for **heightened actions** for governments and brands. For business, the UN principles relevant to heightened due diligence in conflict zones are:

- ✦ **Principle 12** clarifies that the scope of the corporate responsibility to respect may be broader in conflict-affected contexts, as "in situations of armed conflict enterprises should respect the standards of International Humanitarian Law (IHL)<sup>6</sup>." For more information on the implications of IHL on business, see: <https://www.icrc.org/en/doc/resources/documents/misc/business-ihlhttps://www.icrc.org/en/doc/resources/documents/misc/business-ihl-150806.htm150806.htm>
- ✦ **Principle 17** addresses the question of corporate "complicity" (legal and otherwise)<sup>7</sup>.
- ✦ **Principle 23** recommends business enterprises to treat the risk of causing or contributing to gross human rights abuses as a legal compliance issue.

Considering the current situation in Ukraine, ETI and Fair Wear require members to conduct human rights due diligence as much as possible and to:

- 1 Be assured of which suppliers and subcontractors are being used for their production and where they are located.
- 2 Continue with responsible purchasing practices and support suppliers as much as possible in this crisis. Good communication with suppliers and customers is essential. Ask them about their needs. Some regions lack food, some electronics, some medicine. Ask your business partners how you can support them. Agree a protocol and process for supplier communication with you to keep updated on the impact of the conflict. This could include for example use of direct messaging via WhatsApp or alternative encrypted platforms. *(Please check Annex I for examples of questions for suppliers).*

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<sup>6</sup> International Humanitarian Law (IHL) is a set of rules that seek to limit the effects of armed conflict. It protects people who are not or are no longer participating in hostilities and restricts the means and methods of warfare. IHL has important implications on business that operate in countries experiencing armed conflict.

<sup>7</sup> 'In addition to the risk of becoming a military target, brands operating in conflict zones are exposed to the surrounding conflict dynamics. Not only their operations, but also their personnel, products or services may become part of the ongoing conflict. In the worst-case scenario, any of these could result in or facilitate violations of international humanitarian law. Business enterprises therefore run legal risks, whether based on criminal responsibility for the commission of or complicity in war crimes or on civil liability for damages. The nature, implications and extent of these risks are of particular importance to business enterprises operating in conflict zones' International Committee of the red cross. 2022. <https://www.icrc.org/en/doc/resources/documents/misc/business-ihl-150806.htm>

- 3 Continue assessing the impact on workers, for instance by tracking worker turnover, job- and wage loss, discrimination, gender-based violence, and explore means for access to remedy. FW and ETI members should;
  - a Seek to actively raise awareness of grievance mechanisms (and the FW complaint helpline for FW members). Re-affirm expectations with regards to no discrimination (e.g., Roma community), violence and harassment, including gender-based violence and harassment.
  - b Ensure that the safety of workers, livelihoods and income are protected. On sight considerations: – check on safe spaces, emergency preparedness and procedures to protect workers and physical assets.
  - c Establish active consultation with women representatives of trade unions or workers' committees to ensure that women's voices, needs, and priorities are considered in the decision-making processes.
- 4 Anticipate changes or delays in production and be flexible about delivery dates, payment terms, and financial liability. Do not cancel orders that are (almost) ready to be shipped, that are already in production or where applicable for which fabric and/or components are already bought and/or cut.
- 5 If possible, review accommodation and transportation services for workers, as women are at greater risk of gender-based violence and human trafficking in this/a conflict-ridden environment.
- 6 Ensure that workers with family responsibilities are not negatively evaluated or dismissed if they cannot rely on affordable and safe care facilities.
- 7 If production is no longer viable due to escalation of conflict and/or physical damage, a responsible exit needs to be prepared with planning done in dialogue with the supplier and other stakeholders such as trade unions or worker representatives. Whenever deciding to stop, decrease or pause sourcing from a supplier, the utmost care must be taken to assess the impact on workers. Workers' rights need to be respected and, in case of lay-offs, workers need to receive their legal entitlements, including severance pay. The timeline for exiting a factory should be proportional to the percentage volume the brand has within the factory. For further guidance on responsible exit, please see UNDP's guidance on '[Heightened Human Rights Due Diligence for Business in Conflict-Affected Contexts](#)', ACT's '[Responsible Exit Policy and Checklist](#)', Fair Wear's '[Responsible Exit Strategy](#)' and further reading (Annex III). Check with suppliers whether they follow martial law (if this still applies). Under martial law, Ukrainian men aged 18-60 have mandatory military service. When men get drafted for the war, their jobs and income must be protected. This is also required by law:

"All places of work are required by law to keep records of employed civil defense conscripts. The employer of a woman conscripted for civil defense must keep her position for her until she returns – including if she's injured or declared missing. She will be paid a salary, covered by the state" ([Slipchenko 2021](#)).

Compliance with the law is required, but leniency towards workers beyond the legal requirements is also recommended.

Furthermore, ETI and Fair Wear recommend their members to:

✦ **Investigate and stay updated on the situation.**

Work closely with other brands and local stakeholders to collect all relevant documentation. If possible and safe, perform on-site monitoring. Pay close attention to the risks and concerns being flagged by local trade unions.

✦ **Provide advance payment to suppliers**

Suppliers may be making advance payments of wages to workers which may put more pressure on their own financial liquidity. By providing advance payments to your supplier in Ukraine this pressure may be relieved and the continuation of payment of wages is ensured.

✦ **Provide financial support**

If a factory is forced to close or is struggling to pay its workers, assess whether it is possible to support your supplier financially to help pay wages, especially if you take up a high percentage of their production capacity or if you own the factory. Brands must share the responsibility of ensuring that wages already earned by workers are paid and that arrangements are made to provide support for workers. The protection of jobs and income is also important for workers who cannot travel to work due to safety, sickness, care responsibilities, or drafting.

✦ **Local civil society**

Suggest factories to provide workers with contact information for local civil society organisations that can help them with additional concerns they may be facing at this time. If available, support your suppliers in spreading information on national hotlines supporting victims of gender-based violence, or local organisations that provide support services, such as physical and mental health, reproductive health assistance, childcare, food and medical supplies, and legal assistance. *(Please check Annex IV for a list of suggested local organisations).*

✦ **Social Dialogue**

Employers' and workers' organisations have a vital role in remediation, mitigation, and prevention. As always, please make sure to include and promote Social Dialogue in all your HRDD efforts. Please find more background information on including social dialogue in your crisis remediation in ILO Recommendation 205, part IX<sup>8</sup>.

ETI and Fair Wear encourage their members to:

✦ **Look for humanitarian actions to join, or start one yourself**

There are a lot of great initiatives already, including some started by our member brands. Follow their example or take the lead!

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<sup>8</sup> ILO Recommendation 205 Employment and decent work for peace and resilience [https://www.ilo.org/wcmsp5/groups/public/---ed\\_emp/---emp\\_ent/---ifp\\_crisis/documents/publication/wcms\\_631491.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_emp/---emp_ent/---ifp_crisis/documents/publication/wcms_631491.pdf)

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### Population movement, refugees internally displaced (Ukraine)

The ongoing conflict has forced numerous Ukrainians to flee to regions with less conflict or other countries. This has implications for the worker population in Ukraine and neighbouring countries. In Ukraine, this could lead to a shortage of workers in the workplace, which could lead to a delay in orders. Please be aware of the situation and try to accommodate suppliers in this context. For neighbouring countries, we have heard examples from suppliers accommodating Ukrainian refugees and offering them a job. The influx of immigration may also bring increased risks that we ask you to be mindful of, like human trafficking, or the exploitation of displaced migrant workers in other forms. Please find more background information on working with migrant workers in ILO Recommendation 205, part X<sup>9</sup>.

To reduce the risk to workers displaced due to the war in Ukraine, both ETI and Fair Wear Foundation established a working group with its members shortly after the Russian invasion, in early Spring 2022. Built upon input from allied organisations (International Organisation for Migration, International Trade Union Confederation, Fair Wear Foundation and AIM-Progress) the ETI working group has developed [practical guidelines for suppliers on how to support the integration and employment of refugees and displaced people](#).

These guidelines provide a detailed list of specific dos and don'ts when it comes to providing secure, decent, safe, and fair work with mainstreaming of gender considerations. The guidelines also outline measures to reduce the risk of abuse of workers who may be in a vulnerable situation, including risks of trafficking for the purpose of labour exploitation. These guidelines are available in English, Italian, Polish, Romanian and Ukrainian, below.

Under these circumstances, we envisage that brands may consider moving their production to neighbouring countries. The risk of overtime for workers in the newly contracted factories is probable. We expect members who will responsibly exit from Ukraine supply chains to fully comply with the ETI / Fair Wear HRDD policies when starting new business relationships and conduct a proper assessment before starting new business relationships.

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<sup>9</sup> ILO Recommendation 205 Employment and decent work for peace and resilience (see footnote 8)



# Annex I

## Examples of questions you can ask your supplier

- Is there fighting in your area?
- To what extent has your factory operation been affected by this invasion?
- Has the worker population in the factory changed? If so, how?
- Are all workers still coming to the factory? If not, why not?
- Are there workers that have been drafted for the military?
- Is the factory able to assure safety to workers during working hours?
- Is the factory able to assure safe transport for the workers?
- Is the factory able to pay timely monthly wages for all workers?
- Is the factory able to ensure workers' voice is heard during this war situation?
- What is the situation with workers' children? (This is especially relevant for families of which a parent got drafted). Can they still go to school? Can they go to a day-care? Can they come to the factory and is there a safe space for them there?
- Do workers have access to basic needs (like water and food)?
- What is the situation related to raw materials to continue with production?
- Are you facing with in-process, or pre-order cancelations due to this invasion?
- Do you have outstanding invoices?
- What are the other challenges your workforce is facing?
- What kind of support do you need?

***Please be aware that the situation may be different for different people. To be gender inclusive, please try to collect information on the different situations for men, women and other gender minorities.***

## Annex II

### **Details on the new law addressing the workers' rights**

To implement limitations imposed with the Martial law, on March 24, 2022, the Law of Ukraine "On Organization of Labor Relations under Martial Law," dated March 15, 2022, entered into force. This Law, save for a few exceptions, is effective for the duration of martial law. Martial law has been extended until August 23, 2022, and on 13 August Ukrainian President has proposed to Parliament to prolong the current martial law and general mobilization in the war-torn country for another 90 days

The proposed "Law" introduces certain limitations of labour and employment rights and envisages specific regulation for some aspects of employment relations. The said act will be in force only during Martial law and will cease to exist after Martial law is terminated.

The [new law has been criticised by labour rights organisations, and](#) trade unions, as it significantly increases the rights of both private business owners and state-run services and institutions while reducing the rights of employees.

If, as a result of the hostilities, a company is destroyed or can no longer function, it can dismiss employees with ten days' notice (instead of two months) and the payment of one month's salary.

One of the most controversial provisions of the bill concerns the ability to involve women in physically strenuous labour and work underground (in mines, for example), which is currently prohibited by Ukraine's labour laws. This could lead to a violation of the 45th convention of the International Labour Organisation, dating from 1935, which prohibits underground work for all women.

### ***Suspension of employment agreements and CBAs***

Employers may suspend employment agreements with their employees for reasons triggered by the military aggression. They will not have an obligation to render work to employees and pay salaries or provide other employment benefits. The Law provides that the obligation to pay salaries and other employment-related payments will rest with the Russian Federation.

Likewise, employers may suspend certain provisions of collective bargaining agreements, for instance, those related to certain benefits or extra payments.

### ***Termination of employment***

The Law envisages special relaxed rules for involuntary termination of employment, but only for those entities that face liquidation in view of destruction of all their facilities or property due to army actions. Such employers will be able to dismiss employees with 10 days' notice and payment of a severance of one monthly salary. Current limitations on prohibitions of dismissals during an employee's sick leave or vacation would not apply.

In return, employees who work in territories that suffer from military actions would be entitled to resign voluntarily without any notice period (usually, two weeks' notice period applies to voluntary resignations in Ukraine). However, this rule would not apply if the employee is involved in the performance of socially useful works in connection with military actions or works at an object of critical infrastructure, for example, a hospital.



### ***Temporary and verbal employment agreements***

The Law allows employers to enter into temporary employment agreements for the duration of martial law or to replace a temporary absent employee (e.g., an employee who fled the territory or location of the entity or who is unavailable for unknown reasons).

The parties may execute verbal employment agreements, if they agree, irrespective of the category of the employee. Employers are also allowed to set probation for all employees, whom they hire during Martial law.

### ***Temporary transfer of employees and change of essential work conditions***

Employers may temporarily transfer employees to another job without the employee's consent if this is necessary to prevent or extinguish consequences of army actions or other related matters. However, it is not allowed to transfer employees to territories, where active army action is currently taking place (e.g., Kyiv Region).

Also, during Martial law, the usual two-weeks' notice period for change of essential work conditions by employers does not apply.

### ***Extended working day and limited time of rest***

The Law stipulates that during martial law, the normal duration of the working week may be 60 hours instead of the common 40 hours. Employers would have a right to establish a five or six-day working week and establish specific times for the beginning and end of the workday.

Weekly time of rest may be limited to 24 hours. Also, the provisions of the Labour Code on public holidays would not apply during martial law. In addition, employers are authorised to refuse to provide leave to employees who work at objects of critical infrastructure (except for maternity and parental leave).

### ***Suspension of guarantees for women and employees with children***

The Law allows involving women in heavy and underground work, as well as work with dangerous and harmful conditions, except for pregnant women or those who have a child below one year of age. The Law also suspends certain restrictions regarding overtime, night, weekend and holiday works and business trips of employees with small children.

### ***Payment of salary and unpaid leave***

Employers (except for those that suspend employment agreements) shall continue paying salaries. However, if an employer is affected by military action, it may suspend payment of salary and repay relevant amounts later.

Upon agreement with employees, employees may take unpaid leave for the whole duration of martial law.

### ***Trade union rights***

The Law also limits certain rights of trade unions. Specifically, employers do not need to seek for consent of a trade union before dismissal of a trade union member, unless the relevant employee is a member of the trade union management. Also, employers may suspend financial contributions for trade unions' activities.

Source: <https://www.opendemocracy.net/en/odr/ukraine-suspends-labour-law-war-russia/>

## Annex III

### Suggested reading

- [ILO's Recommendation No. 205 on Employment and Decent Work for Peace and Resilience](#)  
*The ILO's normative guiding principles for taking measures to generate employment and decent work in crisis situations.*
- [ETI's Guidelines on employment and integration of people displaced from Ukraine](#)  
*Guide developed by ETI for suppliers that are (thinking about) employing displaced workers from Ukraine, available in multiple languages (English, Italian, Polish, Romanian and Ukrainian).*
- [ETI's Ukraine refugee local resource database](#)  
*Containing contacts for refugee services in surrounding countries and beyond.*
- [OECD Due diligence guidance for responsible supply chains in the garment and footwear sector](#) and [OECD Due diligence guidance for responsible supply chains of minerals from conflict-affected and high-risk areas](#)  
*To be considered as part of the decision making process leading to a decision to exit responsibly.*

## Annex IV

### Local organisations offering support services

- [La Strada Ukraine](#) (1997) is a public human rights organisation working to ensure gender equality, peacebuilding, prevention of gender-based violence, including domestic violence, combating human trafficking and ensuring the rights of children, and promoting human rights standards in all spheres of society and the state. National Toll-Free Hot Line on preventing domestic violence, human trafficking and gender-based discrimination - Works 24/7 by calling 0 800 500 335 (from landlines) or 116 123 (from mobile) – calls are free, anonymous and confidential. More information on their helplines and means of communication can be found here: <https://www.lastradainternational.org/la-strada-ukraine/>.
- The Ukrainian government has set up a hotline (number 1547) for combatting human trafficking, preventing, and combatting domestic violence, gender-based violence and violence against children. Anonymous requests can be submitted. More information can be found at: <https://1547.ukc.gov.ua/>.
- The government has also created specific leaflets and guiding documents for victims of war-related sexual violence crimes. These can be found at: <https://1547.ukc.gov.ua/dovidkova-informatsiya/seksualne-nasylstvo-pid-chas-vijny/> and <https://koda.gov.ua/wp-content/uploads/2022/04/leaflet-p-1.pdf> (only in the Ukrainian language).

- The 'Break the cycle' initiative (supported by UNFPA Ukraine along with the British Government and the Office of the Deputy Prime minister for European and Euro-Atlantic Integration) created an online platform for providing specialised psychotherapeutic support to persons who have experienced violence, including war-related sexual violence. More information on this service can be found at: <https://rozirvykolo.org/mental-support/>. A help request can be submitted here: <https://docs.google.com/forms/d/e/1FAIpQLSdOBYEegV1xAbr5t1IKsZNP12n7Qd-KDINBKqOqNURGbvXnuQ/viewform>.
- The Centre 'Women's Perspective', established on April 6, 1998, has created in response to war a shelter for women and children in Lviv (eastern area of Ukraine) along with additional services, including off-line or online psychological counselling, as well as telephone psychological support to victims (concerning the consequences of psychological and physical violence, restoration of social contacts, skills of psychological self-help or stabilization after a traumatic experience). They can be reached at the following phone number: +38 067 000 1 911.