A picture containing text

Description automatically generated  
University of Massachusetts Amherst | 532 Thompson Hall | Amherst MA 01003 | 413-559-1872 | http://www.humansecuritylab.net |@HSecurityLab

**MEMORANDUM**

**From:** Human Security Lab, University of Massachusetts-Amherst[[1]](#footnote-1)  
**Attn**: Humanitarian/Human Rights NGOs Operating in Ukraine   
**Re:** Protection of Civilian Men/Boys’/Transgender Women’s Human Right to Freedom of Movement   
**Date:** July 13, 2022

**Executive Summary:**   
  
President Volodymyr Zelensky of Ukraine called for martial law shortly after Russian forces began their invasion, prohibiting civilian men ages 18 to 60 from fleeing an active conflict zone. These restrictions violate civilians’ international legal rights to freedom of movement on the basis of sex, which is not permitted by the ICCPR; is not “strictly necessary” given the availability of volunteer fighters; and puts civilians at risk.[[2]](#footnote-2) We recommend formal appeals to the Ukrainian Foreign Minister, embassy, and President to loosen gender-specific restrictions on approximately 9,456,905 young civilian men, boys, and transgender women.

**Problem for PoC Community:**

Humanitarian organizations are mandated to provide and encourage protection to all war-affected civilians without discrimination on the basis of sex, and the specific vulnerabilities of civilian men and boys in conflict zones are well-documented.[[3]](#footnote-3) In Ukraine, martial law puts as-yet-unmobilized civilian men and boys at risk of a sex-selective massacre by Russian forces, economic deprivation, indiscriminate shelling, and psychosocial harm.[[4]](#footnote-4) Transgender women are equally at risk from this policy.[[5]](#footnote-14154) Family separation also adversely affects women and children fleeing a conflict zone.[[6]](#footnote-5)   
  
There is a question for humanitarian/human rights NGOs about *how* to approach this issue since conscription is not prohibited under international law. While addressing the human rights of conscripts is outside the lane of humanitarian NGOs, men, boys, and transgender women are not *yet conscripted* and thus remain civilians*.* As such, they are entitled to the protection and advocacy of the PoC community and to enjoy their human rights without discrimination based on gender.[[7]](#footnote-6) We bullet-point legal and practical arguments for use in advocacy on this issue below.

**Legal Analysis:**

Article 12 of the ICCPR states, “Everyone shall be free to leave any country, including his own.” Ukraine derogated from this right on March 8. Derogations are permitted “to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.”   
  
The blanket travel ban on civilian men and boys does not meet the ICCPR Article 4 standard for “strict necessity” as the majority of affected men, boys, and transgender women are not being conscripted but held.[[8]](#footnote-18064) Holding civilians in a shooting war when they are not as yet needed for mobilization cannot be understood as strictly necessary. Moreover, the derogation discriminates based on gender, which is inconsistent with both IHl and IHRL.

Other rights under the ICCPR are non-derogable even in national emergencies, including the right to life (Article 6), the ban on cruel and inhumane treatment (Article 7), and the right to freedom of thought and belief (Article 18) which underlies the UN-recognized human right to conscientious objection.[[9]](#footnote-8) A blanket ban on certain civilians’ freedom to leave the country during a war in which civilians are being directly targeted but in which these civilians are not being trained and mobilized to fight, threatens their right to life. Surveys and petitions show that civilians experience this (coupled with the inability to work to support their families and country) as cruel and inhumane.[[10]](#footnote-12949) Holding in place even those who qualify as conscientious objectors violates the right to freedom of thought and belief and cannot be ‘strictly necessary.[[11]](#footnote-9)

Finally, customary international humanitarian law requires states involved in a conflict to “facilitate rapid and unimpeded passage of humanitarian relief for civilians in need,” adding that this must be done impartially and without “adverse distinction,” or discrimination; and requires states to take measures to avoid separating families.[[12]](#footnote-20608)

**Practical Analysis Relevant to Advocacy Strategies:**

* Significant opposition to the travel ban is evident in Ukraine. A survey conducted by Human Security Lab shows a majority of the country prefers the policy to change.
* Ukrainian morale and standing are weakened relative to Russia by this policy. Ukraine has more than enough volunteers; our surveys show volunteerism would likely increase by repealing the travel ban, whereas maintaining the ban strengthens Russia who is using it as a wedge issue.
* President Zelensky and his advisor Oleksii Arestoyvich have indicated they are open to amending the policy and are sensitive to human rights pressure. Zelensky has recently resisted the military’s effort to expand the travel ban and may benefit politically from pressure by human rights NGOs in countering his generals to maintain civilian morale.[[13]](#footnote-11)
* Ukraine’s bid for EU / NATO membership is strengthened by aligning with EU / NATO countries that have abandoned male-only consiptionand implementing human rights laws without fail.

**Recommendations:**

Humanitarian NGOs associated with Interaction should publicly proclaim support for the rights of all civilians irrespective of gender, with statements like those made by UNHCR.[[14]](#footnote-12)

Human rights NGOs should approach the Ukrainian embassies, the Foreign Ministry, and the President’s office to discuss the legal and strategic benefits of amending this law.

Human rights and humanitarian NGOs should engage in fact-finding on the impact of the travel ban on civilian men and boys in Ukraine, on the protection of families fleeing without their men, and on the extent to which women and children remain in danger to avoid abandoning their male loved ones.

1. This brief was prepared by LIST ALL TEAM NAMES CORRECTLY SPELLED, ALPAHBETICAL ORDER [↑](#footnote-ref-1)
2. Amy Maguire, “[Why Banning Men from Leaving Ukraine Violates Their Human Rights](https://theconversation.com/why-banning-men-from-leaving-ukraine-violates-their-human-rights-178411),” *The Conversation*, 24 Mar, 2022 [↑](#footnote-ref-2)
3. Joshua Goldstein, *War and Gender*, 1996. [↑](#footnote-ref-3)
4. # Charli Carpenter, “------“;

   [↑](#footnote-ref-4)
5. Enrique Anarte, “[Trans and on-Binary People Trapped in War-Torn Ukraine](https://news.trust.org/item/20220304182133-8fjhu)” *Thomson Reuters Foundation*, Friday, 4 March 2022 [↑](#footnote-ref-14154)
6. Describing the separation as “A little death” many Ukrainian women feel a sense of guilt as they leave without their men. See Jeffrey Gettleman and Monika Pronczuk, "['Falling Into Emptiness': Ukrainian Families Feel the Pain of Separation."](https://www.nytimes.com/2022/03/06/world/europe/ukraine-poland-families-separation.html;), *NYT*, 6 March 2022. The ICRC surveyed women who fled to Poland to find that 28% of them had experienced being at high risk for sex trafficking, while 19% experienced sexual or physical violence. "[Ukraine: Grave Mental Toll on Women and Children as One Third of ....](https://www.rescue.org/press-release/ukraine-grave-mental-toll-women-and-children-one-third-people-surveyed-irc-are-worried)" *ICRC*,14 Apr. 2022. [↑](#footnote-ref-5)
7. Pia Lotta Storf, et al, “[Ukraine's Travel Ban, Gender and Human Rights](https://voelkerrechtsblog.org/ukraines-travel-ban-gender-and-human-rights/).” *Völkerrechtsblog Ukraines Travel Ban Gender and Human Rights Comments*, 18 Mar. 2022. [↑](#footnote-ref-6)
8. HUNTER: EXPLAIN IN ONE SENTENCE WHAT ‘PROPORTIONALITY’ MEANSHERE. United Nations. (n.d.). *General comments adopted by the Human Rights Committee under article 40, paragraph 4, of the International Covenant on Civil and Political Rights*. United Nations Digital Library. Retrieved July 11, 2022, from https://digitallibrary.un.org/record/366604?ln=en [↑](#footnote-ref-18064)
9. Marie-France Major, “[Conscientious Objection and International Law: A Human Right](https://scholarlycommons.law.case.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1632&context=jil).” *Case Western Reserve Journal of International Law*, vol. 24, no. 2, 1992; “[Conscientious Objection to Military Service](https://www.ohchr.org/sites/default/files/Documents/Publications/ConscientiousObjection_en.pdf).” *United Nations Human Rights, Office of the High Commissioner*, 2012. [↑](#footnote-ref-8)
10. Human Security Lab, “Ukrainian Attitudes Toward Civilian Men’s Right to Flee,” UMass-Amherst, 2022;

    Rostyslav Sotnychenko “[ALLOW MEN AGED 18-60 WITHOUT MILITARY EXPERIENCE TO LEAVE UKRAINE](https://www.openpetition.eu/petition/kommentare/allow-men-aged-18-60-without-military-experience-to-leave-ukraine?sortierung=gewichtung&seite=2#petition-main),” *openPetition*, March 19, 2022 [↑](#footnote-ref-12949)
11. Numerous civil society organizations have called attention to the need to protect conscientious objectors specifically.

    Connection e.V. und PRO ASYL, “[Broad alliance calls for protection/asylum for deserters and conscientious objectors from Russia, Belarus and Ukraine](https://www.proasyl.de/en/pressrelease/protection-and-asylum-for-conscientious-objectors-and-deserters-from-the-states-involved-in-the-war-in-ukraine/#:~:text=In%20Ukraine%2C%20too%2C%20only%20a,have%20no%20possibility%20to%20apply)”, PRO ASYL, May 4, 2022 [↑](#footnote-ref-9)
12. ICRC, *Customary IHL Database**,* “[Rule](https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule55) 55. Access for Humanitarian Relief to Civilians in Need”, “[Rule 105. Respect for Family Life](https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule105)” [↑](#footnote-ref-20608)
13. Andrew Stanton, “[Zelensky Frustrated Generals Made Decision Without Him](https://www.newsweek.com/volodymyr-zelensky-ukraine-military-decision-personnel-movement-1721947),” *Newsweek,* July 5, 2022 [↑](#footnote-ref-11)
14. Lorenzo Tonda, “[Ukraine Urged to Take ‘Humane Approach’ as Men Try to Flee War](https://www.theguardian.com/global-development/2022/mar/09/ukraine-urged-to-take-humane-approach-as-men-try-to-flee-war),” *The Guardian,* March 9, 2022 [↑](#footnote-ref-12)