

The Ethics of Human Rights Advocacy in the Ukraine War

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When Russian forces invaded Ukraine in February 2022, Ukrainian president Volodymyr Zelenskyy declared martial law and banned all men between the ages of 18 and 60 from leaving the country. Civilian men—including fathers, brothers, and sons—were separated from their families at the border. Many later died attempting to escape through forests, while families fleeing to Europe without their men faced sexual exploitation, deprivation, and the grief of separation in flight. Many men who remained behind, instead of being recruited, trained, and armed, remained civilians in Ukraine, at risk of bombardment, massacre, unemployment, and psychosocial harm. Others faced press-ganging and coercive recruitment into the armed forces without a right to conscientious objection.

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One might argue that Ukraine resolved a terrible dilemma as any country might under the conditions of an armed invasion by a powerful neighbor committing terrible atrocities as part of an assault on its territorial integrity, without a collective security response from other UN Charter members. If the protection of one's own civilian population depends entirely on the ability of the defender to muster a sustained military response, then to what extent is the defender justified in violating some of its civilians' own rights in order to defend its civilian population as a whole?

To this, international law provides an answer: certain rights *may* be derogated (suspended) in national emergencies, but not all. And such derogations may only take place under strict limits: according to the International Covenant on Civil and Political Rights (ICCPR), derogations cannot occur unless "strictly necessary," cannot violate international law, and cannot be based on attributes such as race and gender. This essay focuses, therefore, not on the dilemma faced by Ukraine itself but rather on the ethical dilemma faced by the human rights community in deciding whether or not to push back on Ukraine's gender-based travel ban, or indeed on any number of policies Ukraine has undertaken that also might fall short of the very international standards upon which Ukraine relies for its moral high ground in this war.

To anticipate an objection, one might argue that this policy does not really violate international norms because, after all, sex-selective conscription policies remain in place in many countries, including the United States. However, this does not explain the human rights community's silence, for two reasons. First, even if one argues sex-selective conscription is still widely practiced, sex-selective travel restrictions in war are not; for example, during the Vietnam War, the last major U.S. conflict subject to conscription, men were drafted but were not prohibited from fleeing abroad by crossing an international border. Second, even if many countries act in ways that fall below international human rights standards, articulating and closing the gap between practice and standard is in theory the key *modus operandi* of the human rights movement. And under international law, until men are actually conscripted, they remain civilians subject to all civilian rights and protections, including the right to cross an international border and seek asylum from war or persecution, and the right to be free of gender discrimination.¹

Instead, I argue that in this case and in other cases of Ukrainian policy during this war (for example, media freedom and the use of cluster munitions) human rights and humanitarian law organizations have faced three overlapping dilemmas of advocacy ethics: First, where should scarce resources be put in a complicated landscape? Second, whose views should be prioritized when citizen groups differ

on which human rights violations are primary? Third, should differentials of power and blame matter? In short, to what extent should human rights groups hold back criticisms of a defender's human rights record out of fear they will be weaponized by a powerful aggressor?

My view is that human rights groups are both ethically and pragmatically bound to push back on both Russia *and* Ukraine wherever they fall short of international standards in prosecuting their war aims—even when doing so is complicated by the preferences of local partners, the bias of external audiences, or asymmetries in culpability between the conflict parties. The idea of human rights takes its moral strength from its ability to be, and appearance of being, applied universally and impartially regardless of such factors. It is the commitment to applying the same standard to those states with which we sympathize as to those we abhor that distinguishes modern human rights law, and the human rights movement, from other older forms of politicized outrage and finger pointing that drive rather than moderate conflicts. This seems particularly important in wars literally being fought and justified as a defense of the liberal international order. To do otherwise risks playing into an authoritarian trap both Ukraine and the West are wise to resist.

To develop this argument, I first enumerate the humanitarian impact of Ukraine's gender-specific cross-border restrictions on civilian men, women, children, and transgender individuals; and discuss how this policy runs counter to international legal standards, despite its best intentions. Second, I start by demonstrating the failure of the human rights movement to address this issue thus far, and then discuss ways in which this failure may be understood in the context of the practical constraints and ethical conundrums human rights advocates face in conflict zones generally and Ukraine in particular. And third, I discuss why the best response to that fear *is* an impartial, rights-based response, and why anything else plays into anti-liberal hands. I conclude by describing how human rights advocates can build capacity to mitigate the ethical quandaries evinced by the war in Ukraine, how human rights scholars can help, and what that might look like in this particular case.

HUMAN RIGHTS IMPLICATIONS OF UKRAINE'S BAN ON BORDER CROSSINGS FOR MEN AGED 18–60

The Russian invasion of Ukraine put civilian men, women, and children at extreme risk of massacre, rape, and bombardment by Russian forces.² To defend

the country, President Zelenskyy called for martial law shortly after Russian forces began their illegal invasion.³ Among other restrictions, this law prohibited approximately 9,456,905 civilian men between the ages of 18 and 60 from fleeing an active conflict zone, presumably in order to hold them available for military service.⁴

But for much of the first two years of the war, very few of these men were actually drafted into the military or trained for service—in part because Ukraine began the war with a surplus of reservists and volunteers, and in part because Ukraine lacked sufficient resources to lawfully recruit or sufficiently train troops en masse. As such, many men remained civilians throughout this period, entitled to the protections of human rights and humanitarian law, such as to nondiscrimination based on gender, but unable to exercise their right to flee an active war zone.⁵

As civilians, Ukrainian men without military training were impacted by being forced to stay in the country in three ways.⁶ First, as civilians, they were left vulnerable to the wider impacts of war, such as bombardment, deprivation, torture, or psychosocial harm. Second, as in many conflict zones, male civilians were particularly vulnerable to certain forms of attack. In Ukraine, the Bucha massacre (among others) targeted primarily adult men.⁷ Men have also been coercively conscripted on both sides of the conflict,⁸ in violation of the laws of war on the Russian side,⁹ and without due regard for a right of conscientious objection as required by the ICCPR on the Ukrainian side.¹⁰ Third, the travel restrictions themselves imposed or exacerbated specific risks to which civilian men are vulnerable in wartime, encouraging risky illegal crossings,¹¹ fostering a culture of gendered stigmatization of those who defied the ban,¹² and separating men from their loved ones.¹³

Civilian women have also been harmed by the ban.¹⁴ Indeed, randomized surveys inside Ukraine carried out by Human Security Lab in 2022 and 2023 showed that women are even less likely than men to support keeping the travel ban in place, and this gap is growing over time.¹⁵ The psychosocial effects of family separation affect whole families, and women on their own with small children experience significant hardship in a new country.¹⁶ Women fleeing Ukraine are at risk of being trafficked without their men: a survey by the International Rescue Committee showed 19 percent had experienced some form of physical or sexual violence during the course of their journey.¹⁷ In many cases, women and children have either returned to the war zone or not left at all to avoid being separated from

their men. In addition, transgender women—particularly those who have not undergone the legal process of sex reassignment—have been misidentified as men and refused the ability to flee the conflict.¹⁸

Besides these humanitarian costs, the ban arguably has strategic downsides as well. The Human Security Lab at University of Massachusetts Amherst analyzed hundreds of open-ended answers from random surveys asking Internet users in Ukraine about their attitudes toward the law enforcing this ban. They found that a majority of citizens emphasized practical, strategic reasons for changing the law rather than human rights rationales per se: that the strongest army is a volunteer army, that untrained or unwilling recruits are unhelpful or even dangerous, that men can help more by working abroad than sitting at home unemployed, that families need their men, and that freedom maintains war morale.¹⁹

But even if not for these negative strategic impacts, Ukraine's gender-based travel ban on "battle-aged" men is in conflict with several sets of international standards governing how nations may treat their own citizens in time of war.²⁰ In particular, the freedom to leave one's country for any reason is protected under Article 12 of the ICCPR.²¹ This right *can* be derogated in national emergencies, but only to the extent that it is "strictly necessary"—a difficult bar for Ukraine to argue for given that for the first eighteen months of the war most affected men were not mobilized and indeed many foreign and domestic volunteers to Ukraine's foreign legion were turned away.²² Moreover, even if this balance could be argued to have tipped as the war drags on, derogations are unlawful if undertaken on the basis of gender.²³ Both refugee law and international humanitarian law require "non-adverse distinction on the basis of sex" in humanitarian access for civilians and include the right to evacuate from the dangers of war.²⁴ And even civilian men who voluntarily remain cannot be forced into combatant status: the right of conscientious objection is a *nonderogable* right under the ICCPR, so important that it is considered a basis for asylum and refugee claims when it is violated.²⁵

Given the above, it is less surprising that Ukraine established this prohibition than that the human rights and humanitarian community have not challenged this action.²⁶ To be fair, some UN officials called for a more "humane" policy in the war's early days, and the Office of the United Nations High Commissioner for Human Rights noted in a report that Ukraine had not justified its blanket derogation from the right to freedom of movement.²⁷ But major organizations in the human rights and humanitarian law space, such as Human Rights

Watch, Amnesty International, and the UN Commissions of Inquiry—all of which are in receipt of advocacy claims from those negatively affected by this policy—have not openly called for the law to be repealed.²⁸ Organizations in the civilian protection and gender space, such as the International Committee of the Red Cross, PAX, and the Center for Civilians in Conflict, have also been notably silent on this matter, while voicing grave concerns about the actions of Russia in Ukraine. A recent infographic by the Gender in Humanitarian Action Working Group, cochaired by UN Women and CARE, ostensibly having surveyed the gendered impacts of the war on civilians, makes no mention of Ukraine’s gender-based restrictions on civilian men and their impact on families in this war.²⁹

It is easy to see this as a pure case of gender bias in humanitarian affairs, but my research and many consultations with the humanitarian sector over the years (on this issue) suggest it is more complex than that. Civilian men are being neglected in Ukraine not because practitioners are gender blind and oblivious, but because human rights and humanitarian advocates are grappling with at least three ethical dilemmas in Ukraine: dilemmas of efficacy, of localization, and of weaponization.

These quandaries, combined with the practical politics of human rights advocacy that already predisposes human rights organizations to “see” some issues and not others, make it easy for some human rights issues to fall through the cracks in conflict zones. Nonetheless, mitigating these ethical dilemmas so as to support wider varieties of rights claims in a more evenhanded way remains a crucial moral imperative for the human rights community going forward, as this case suggests.

THE POLITICAL NEGLECT OF CIVILIAN MEN AND THE ETHICS OF IMPARTIALITY

In theoretical terms, when any state creates a law violating a large number of its citizens’ rights to freedom of movement on the basis of gender, thereby causing harm to a large number of its own civilians in a war, and when those civilians cry out to international organizations (IOs) for help, it might be expected to create a “boomerang effect” whereby international actors come to the defense of international rules, *particularly* when that state’s claim to a moral high ground in a war rests on its adherence to Western-based international standards.³⁰ We would expect that not only because it is how theory tells us human rights activism does work but also because, at least in theory, it is how it *should* work. The

problem is that politics complicates the human rights movement's ability to act in this way in all cases, because of three ethical imperatives at play in conflict situations, the tensions among which create several ethical dilemmas for human rights groups.

The first imperative—the “impartiality imperative”—is at the core of both human rights and humanitarian law, those two branches of international law whose nexus is meant to guide state practice in times of war, as well as be a guiding principle of major human rights NGOs.³¹ In a perfect world, human rights standards, when violated by states, should be advocated for by human rights activists without regard for the identity of the perpetrator or victim.³² Equivalent attention should go to democracies and autocracies, friends and foes, and the West and Global South without bias based on gender, race, religion, or nationality of the victims and irrespective of which party is to blame for a given conflict. Where disproportionate attention is allocated to some causes and victims, it should be based on humanitarian need rather than geopolitics, implicit bias, or fickle media attention.

But political science research shows that the reality is different.³³ Advocacy elites grapple with limited resources and the feeling that they must use what little power they have carefully. They also navigate within the political economy of donor funding and the pressure to prioritize among different vulnerable populations, types of issues, and myriad perpetrators, managing optics with many different audiences.³⁴ These dynamics create the first of three ethical dilemmas for human rights advocacy elites, where the impartiality imperative conflicts with the second ethical imperative, what might be called the “efficacy imperative”—the impetus to have a positive impact in both the short and long term, to be effective as well as right. This first dilemma becomes: Should advocates put attention and resources to the most neglected issues and populations *because* they are overlooked and therefore in the most need of attention (the impartiality imperative), or should they focus on issues where they are the most likely to be effective because the issues are already the most resonant, and their efforts thus likeliest to yield praise, positive media attention, and more resources to do more good in the future (the efficacy imperative)?

For example, advocacy organizations and networks are more likely to focus on certain populations conventionally seen as vulnerable because they pull the heart-strings, resulting in greater resources and humanitarian access that allow lives to be saved.³⁵ Civilian men have not historically been viewed through that lens. For some

activists, there is a genuine confusion about whether gender discrimination applies to men, but even those practitioners who understand it does may rightly wonder whether this is a framework that will play well with the media, with donors, and with advocacy targets: would they therefore be wasting their time, resources, and political capital?³⁶ They have reason to worry: as Anne-Kathrin Kreft and Mattias Agerberg's work has shown, the public intuitively sees "innocent civilians" when they look at women and children but sees "conscripts" when they look at men.³⁷ Elites and the public in wealthy countries intuitively recognize gender apartheid when Afghan women are denied the right to leave the house, but not when Ukrainian or Syrian men are denied the right to leave their own country.³⁸ This background of bias is not inconsequential for bureaucracies that rely for funding on donations and goodwill, without which they could scarcely do good at all.

For the same reason, rights groups tend to focus on certain laws and types of issues most obviously resonant with the widest-possible audience, given the way that an audience is likely to view a particular situation. For example, in armed conflicts, audiences are not only likelier to focus on "women and children" than they are to focus on "civilian men" due to age-old gendered scripts, but they are also likelier to focus on the laws of war, which regulate how the combatants treat one another's people, than on how either country is treating its *own* citizens. To some extent, international law itself is compartmentalized in this way, and networks of IOs and NGOs exacerbate this tendency by dividing themselves up externally and internally along these conceptual lines as well, with some organizations or units within organizations focusing on human rights and others on the laws of war.³⁹ This means that if organizations are incentivized to look the other way on a particular issue, they can, if confronted about it, argue about *what kind of problem* "the right to flee a war zone" even is and whether it falls into "their" lane or another organization's. It becomes all too easy to "pass the buck" on such issues.⁴⁰ Thus the first dilemma for human rights advocates comes from a tension between the impartiality and efficacy imperatives.

A second dilemma stems from the additional tension between both of these first two imperatives and a third imperative, what might be called the "localization imperative." Transnational advocacy elites are not only concerned about how international audiences (publics, donors, advocacy elites) will react. They are also sensitive to the views of their civilian NGO partners *within* the conflict context. This sensitivity is for a sound ethical reason: the international community has a checkered history of parachuting into conflict zones in ways that marginalize

rather than empower local civilians.⁴¹ As a corrective, many UN agencies and NGOs now rely on “implementing partners” drawn from local civil society, or populate their area studies teams with civilian professionals drawn from the country context itself.⁴² These individuals then have a significant impact on how IOs set their agenda for a conflict context—as they should.

But the other side of this coin is that such local civil society elites, like any actors, are influenced in their understandings and preferences by their own social networks within the country context and their particular orientation to the conflict, often causing “reverse boomerangs” or even “reverse-gatekeeping” effects.⁴³ Where international groups rely on the views of these elites rather than their own independent research (which uses confidential, country-level surveys, for example) for knowledge about what is important to a wider population, it can reinforce a local “agenda-vetting” effect if some topics (such as the right of civilian men to refuse the draft or flee the war) are stigmatized, domestically taboo, or simply less important to the civil society organizations (CSOs) that happen to be the IO’s implementing partners.

This means global actors that once were valorized for aiding and amplifying individuals or groups unable to prevail through domestic appeals may now be less willing to hear or respond to such boomerangs created by claimants not first hooked into the networks of locally recruited staff of IOs and international nongovernmental organizations, or INGOs, or of local “implementing partners” or “community-based CSOs” with established relationships to the international sector. Even if such claimants *could* organize, they might lack the advocacy skills or networks to counteract layers of institutionalized hierarchy and resistance domestically. “Taboo” issues that by their nature may affect many civilians (but are difficult to organize around domestically) might get the least attention of all.⁴⁴

There is also a deeper, third dilemma for the international human rights movement in conflict zones, one not simply about the trade-offs between breadth and efficacy or about who speaks for imperiled civilians in a given country context. Rights groups that criticize a weaker actor, rather than focusing opprobrium solely on a more powerful aggressor, may be seen as picking on the underdog in an unjust fight, and thereby throwing power to the bully. Rightly or wrongly, perceived power imbalances matter in audiences’ moral assessments of which rights take precedence, as do perceptions of which groups are more to blame.⁴⁵ Even among those who understand well that the laws on conducting a war apply equally to both sides regardless of which is to blame for starting the war, many realize other audiences often do not grasp these distinctions (or view them as academic at best).

As such, it has been difficult and risky for organizations to point the finger at Ukraine after an illegal invasion in which the country is widely viewed as having mustered an inspiring defense, particularly when others would not do so on its behalf. For example, when Amnesty International criticized Ukraine for housing soldiers too close to civilian targets, the consequence was a flurry of negative media attention, resignations by Ukrainian employees, and outrage by the Ukrainian government and other members of the human rights community alike.⁴⁶ Whether or not Amnesty got it wrong, the backlash created a chilling effect among human rights NGOs. Since then, criticism of Ukraine's war policy has been largely limited to issues (such as Ukraine's decision to use cluster munitions) where international norms are most incontrovertible, the evidence base most abundant, and the network of human rights and humanitarian organizations most cohesive in their views, thereby finding safety in numbers.

In part, international human rights advocates fear Russia *weaponizing* any criticism of Ukraine. This fear is not unfounded: actors in many contexts have at times capitalized on human rights criticism of their enemies to further justify their own terrible acts, complicating human rights advocacy. To continue with the previous example, Russia indeed pointed to Amnesty's reporting to claim that the civilian deaths it was causing were Ukraine's fault, to provide itself cover for further indiscriminate bombardment. This practice creates the potential for a perverse side effect: criticizing Ukraine creates ammunition Russia can weaponize, but holding back criticism for fear of that weaponization provides Ukraine cover for missteps as well, and undermines the space for human rights conversations—exactly what countries like Russia prefer.

This set of wider dynamics creates a nexus of ethical dilemmas, well beyond the simple matter of gender bias, that has made it especially difficult to address Ukraine's martial law and freedom of movement restrictions. And this case illuminates the bind human rights groups are in more generally, beyond the Ukraine theater or this specific issue. From this, they must extract themselves for the long-term credibility and independence of the human rights movement in an era of increasing appropriation and weaponization of human rights not only by great powers but also by actors on all sides of multiple conflicts.

RECASTING WEAPONIZATION, ADVOCACY, AND RIGHTS

It helps to keep in mind that human rights are *meant* to be weapons: weapons of the weak.⁴⁷ While human rights are inherently political, and NGOs cannot escape

the ways in which human rights will always be politicized by powerful states and conflict actors alike, the reference point of human rights must always remain the individual human being in relation to his or her own government (or other institution, corporation, or transnational organization), including (in times of war) that foreign party under whose power that individual falls. In this sense, the appropriate yardstick is always the conflict actor's adherence to international standards vis-à-vis the individual, not where that actor's record stands relative to the nearest dictator or to its enemy. With that in mind, to mitigate these dilemmas in a world of weaponized human rights and audiences increasingly influenced by propagandistic media, rights groups can broaden their repertoires of contention—and scholars can provide analyses that can assist—in three ways.

First, since conflict actors will naturally weaponize human rights and human rights criticism, human rights advocates must get better at defending their ideational space for impartial rhetorical maneuver.⁴⁸ Many groups—such as Bellingcat, Human Rights Watch, and the Human Rights Data Analysis Group—are excellent at using open-source intelligence to challenge human rights propaganda.⁴⁹ Human rights groups can also make criticism less likely to be weaponized by “naming and praising,” or pointing out problems in the context of positive feedback for one actor relative to another.⁵⁰ For example, in the Ukraine case, rights groups could combine encouragement to relax the travel ban with praise for Ukraine's overall efforts to maintain a strong human rights record even in the face of a national emergency.

Second, with states that are receptive to human rights arguments like Ukraine, advocates can engage in backdoor diplomacy on matters such as freedom of movement, conscientious objection, and gender equality, turning to public shaming campaigns only when the former are ineffective. In the Ukraine case discussed here, Ukrainian activists have asked major international NGOs to support the country in appealing to the U.S. State Department, the U.S. Department of Defense, and Ukraine's other NATO allies to put pressure on Zelenskyy and his generals regarding the importance of complying with the ICCPR, the Refugee Convention, and norms of gender equality, then openly praise him if he shifts gears accordingly.

Finally, human rights organizations can broaden their repertoires of action beyond naming and shaming perpetrators to include active public education of audiences, donors, and elites about the vulnerability of more diverse groups. Kreft and Agerberg's work shows that while the public is biased in favor of

women and children, members of the public change their minds when provided information on the vulnerability of adult civilian men and the interdependence between their protection and the well-being of families. Knowing this, rights groups could anticipate and actively address the sorts of bias in their messaging, reporting, and language used to discuss the war and civilians.

Scholars should consider what kind of research questions could help provide an evidence base to support CSOs in selling a more impartial approach to donors and publics, or to be effective through mechanisms other than naming and shaming. Scholarship to address how actors can hold their allies, rather than their adversaries, to account on human rights standards would both provide practical resources to advocates and reinforce the idea that human rights are not just tools to demonize adversaries.

Regardless of the strategies used, finding ways to alleviate these ethical conundrums rather than cave to them will be crucial in shoring up the human rights regime going forward. If credible, professional, and neutral human rights NGOs fail to call out both sides in armed conflicts in an evenhanded way regardless of power differentials, then we risk a situation in which (for example) Ukrainian abuses (such as family separation, press-ganging, and repression of dissent) will be pointed out *only* by Russian propagandists twisting the facts to serve their own war aims, *only* by the anti-war movement calling for a ceasefire, or *only* by those unskilled in framing their message in ways that avoid co-optation and that buttress human rights and gender equality as more general concepts. This, in turn, would create the appearance that human rights are *simply* politicized weapons utilized by states, undermining the human rights enterprise. And this would make it more difficult to restrain conflict actors on both sides in Gaza, Afghanistan, Yemen, Nigeria, and elsewhere.

NOTES

¹ For an elaboration of the relevant international legal standards, see Jenna Norosky and Charli Carpenter, “The Right to Flee the Dangers of War: Rethinking Ukraine’s Gender-Based Restriction on Civilian Men’s Freedom of Movement,” *Human Rights Quarterly* 46, no. 3 (August 2024), pp. 461–91.

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Abstract: Amid Russia's illegal invasion of Ukraine, the human rights community has understandably focused its attention on human rights violations committed by the Russian state. This has, however, left the human rights implications of the martial law Ukraine has put in place for civilians largely unexamined. This essay highlights the ways Ukraine's travel restriction on "battle-aged" civilian men has harmed three overlapping groups—civilian men, the families of the men (including women and children), and trans and nonbinary individuals—and shows that the restriction runs counter to important principles in international human rights and humanitarian law. It then considers the ethical dilemmas faced by the international human rights community in addressing such harms, and the political psychology of rights advocacy that may explain the tendency to underplay this particular set of human rights issues. Nonetheless, the essay ultimately argues that advocates should hold actors—including and perhaps especially those with which they may sympathize—accountable to the human rights standards to which they have pledged.

Keywords: Ukraine war, human rights law, human rights advocacy, protection of civilians