

PepsiCo response 20/2/23

PepsiCo continues to condemn the horrific events and loss of life occurring in Ukraine as a result of Russia's aggression. War is never the answer; this is a terrible humanitarian and economic tragedy that we condemn.

*Our priority throughout the conflict has been supporting Ukraine in three different fronts. We focused on supporting our Ukrainian **3,100 associates and** their families. We contributed with \$15 millions in resources for Ukrainian **refugees and communities**. We have also **reactivated certain parts of our businesses** in Ukraine, where it has been safe to do so.*

We have demonstrated our opposition to the Russian invasion with definitive actions. We are committed to the measures announced relating to capital investment, advertising and promotional activities and the suspension of sales of our global beverage brands like Pepsi-Cola, Mirinda and 7-Up.

Ramon L. Laguarda
PepsiCo, Inc.
700 Anderson Hill Road,
Purchase NY 10577, USA.

January 9, 2023

CC: PepsiCo Executive Team and Board

RE: PepsiCo business operations in Russia

Dear Mr. Laguarda,

We write to you as [B4Ukraine](#), a coalition of Ukrainian and international civil society organizations working to curtail the financial resources enabling the Russian invasion of Ukraine. We expect companies to demonstrate opposition to Russia's war of aggression, public support for the people, democracy, and territorial integrity of Ukraine, and alignment with the UN Guiding Principles on Business and Human Rights (UNGPs). At stake is not only the sovereignty and territorial integrity of a democratic Ukraine, but also the continuity of the rules-based international order and the prosperity of the global economy.

We request an urgent dialogue regarding apparent inconsistencies between PepsiCo, Inc. (PepsiCo) stated policies on Russian aggression and human rights more broadly and the company's ongoing business operations and relationships in Russia that may contribute to, or be linked with, human rights harms.

PepsiCo's Global Human Rights Policy formalises the company's commitment "to implementing the UN Guiding Principles on Business and Human Rights throughout our business."¹ Further, PepsiCo has identified 10 salient human rights risks throughout its value chain, developed human rights standards to address these risks, and implemented a grievance mechanism to enable remedy for any impacts PepsiCo has caused or contributed to.² Finally, PepsiCo seeks to use its "leverage to encourage our suppliers and partners to provide remedy where we find impacts directly linked to our business operations, goods, or services."³

PepsiCo has of course played not only an historic commercial but also a cultural and indeed political role in Russia for half a century as the first major western consumer brand to enter the Soviet Union. Therefore PepsiCo's decisions and actions related to Russia amidst its invasion of Ukraine carry a unique symbolic as well as substantive importance. What the company says – and does – in Russia

¹ PepsiCo, "Global Human Rights Policy," May 2022, <https://www.pepsico.com/docs/default-source/sustainability-and-esg-topics/pepsico-global-human-rights-policy.pdf> (accessed December 27, 2022).

² Ibid.

³ Ibid.

matters at a time when this war has challenged the international community and disrupted the global economy.

It has been ten months since Russia invaded Ukraine and the devastating impacts continue to shock the global conscience and shake the global economy. Russia is violating international humanitarian law (IHL), including war crimes and crimes against humanity, through attacks on civilians and civilian infrastructure (e.g., mass executions, sexual violence, torture, and forcible transfer of civilians). More than 17,000 Ukrainians have been killed and injured and millions more have been forced to flee their homes, creating one of the largest humanitarian and refugee crises of modern times.

On September 21, President Vladimir Putin further escalated the war by announcing a “partial mobilisation” of the Russian population. The accompanying legislation ([Article 9 of Federal Law No. 31-FZ](#)) mandates all organisations, including the 1,610 international companies that are currently operating on a full or limited scale in Russia, to conduct military registration of the staff if at least one of the employees is eligible for military service.⁴ They must also assist with delivering the military summons to their employees, ensure the delivery of equipment to assembly points or military units, and provide information, buildings, communications, land plots, transport, and other material means of support to the war effort.

This legislation entails new and significant legal risks for companies remaining in Russia, including potential civil and criminal liability under comprehensive sanctions regimes and recent international jurisprudence holding corporations and their officers responsible for human rights abuses abroad.⁵ Companies may be exposed to financially material risks through operational restrictions, such as limitations of future government contracts.⁶

In response to this unprovoked and unjustified war⁷ many companies have left Russia. According to the respected Kyiv School of Economics Institute's #LeaveRussia [company tracker](#), PepsiCo

⁴ Federal Law No. 31-FZ of February 26, 1997 "On mobilization training and mobilization in the Russian Federation" (as amended), <https://base.garant.ru/136945/> (accessed September 9, 2022).

⁵ International companies remaining in Russia are now at a greater risk of violating sanctions regimes as implementation of the legislation will likely involve transacting with sanctioned individuals or entities. Furthermore, new domestic civil and criminal cases against companies involved in violations of international law demonstrate the risk of significant liability for facilitating state-sponsored human rights abuses abroad (e.g., Lafarge case, Lundin case, Castel Group indictment, Nevsun holding, and Dassault Aviation, Thales, and MBDA France criminal complaint.) Victoria Riello and Larissa Furtwengler, “Corporate Criminal Liability for International Crimes: France and Sweden Are Poised To Take Historic Steps Forward,” *Just Security*, September 6, 2021, <https://www.justsecurity.org/78097/corporate-criminal-liability-for-human-rights-violations-france-and-sweden-are-poised-to-take-historic-steps-forward/> (accessed December 27, 2022); The Sentry, “Breaking: France Opens War Crimes Inquiry Focused on Iconic Food and Beverage Conglomerate,” July 1, 2022, <https://thesentry.org/2022/07/01/7216/breaking-france-opens-war-crimes-inquiry-focused-iconic-food-beverage-conglomerate/> (accessed December 27, 2022); *Rfi*, “French technology firm charged over Libya cyber-spying,” July 2, 2022, ; Preston Lim, “Canadian Supreme Court Allows Corporate Liability for International Law Violations,” *Lawfare*, March 12, 2022, <https://www.lawfareblog.com/canadian-supreme-court-allows-corporate-liability-international-law-violations> (accessed December 27, 2022); Sherpa, “Aiding and abetting war crimes in Yemen: Criminal complaint submitted against French arms companies,” June 2, 2022, <https://www.asso-sherpa.org/aiding-and-abetting-war-crimes-in-yemen-criminal-complaint-submitted-against-french-arms-companies> (accessed December 27, 2022).

⁶ Venable LLP, “Do You Contract with State Governments? If So, Beware of Emerging State Sanctions' Obligations Related to Russia and Belarus,” *JD Supra*, June 3, 2022, <https://www.jdsupra.com/legalnews/do-you-contract-with-state-governments-6537229/> (accessed December 27, 2022).

⁷ The UN General Assembly condemned Russia's "aggression against Ukraine" and demanded that Moscow “unconditionally withdraw all of its military forces from the territory of Ukraine within its internationally recognized borders.”

announced in March that it would be stopping “the sale of Pepsi-Cola, and our global beverage brands in Russia, including 7Up and Mirinda,” and “suspending capital investments and all advertising and promotional activities in Russia.”⁸ However, PepsiCo publicly declared that it will continue to provide “daily essentials such as milk and other dairy offerings, baby formula, and baby food,” citing humanitarian justifications.⁹ While we commend PepsiCo’s commitments to exit the Russian beverage market, our research indicates that PepsiCo has been slow to uphold these commitments and still maintains proximity to Russia and its violations of international law.

Prior to the invasion, PepsiCo had significant operations in Russia, including 20,000 associates, 40,000 agricultural employees, 24 manufacturing plants, and three R&D centres, representing 4 percent of the company's overall revenues.¹⁰ While PepsiCo announced in March 2022 that it was suspending the sale of Pepsi-Cola, 7Up, and Mirinda, *Reuters* reported that as of September these PepsiCo brands were available in local supermarkets – some products had production dates as late as August 17.¹¹ PepsiCo responded that its concentrates had been exhausted and production in Russia had ended.¹² PepsiCo also continues to sell milk, cheese, and yoghurt dairy products, baby formula and food, and an assortment of chip brands, which include Lays, Khrustim, Cheetos, and Doritos.¹³ PepsiCo claims it is obligated to provide these goods to the Russian market out of humanitarian concerns and to support the livelihood of its Russian agricultural workers. Finally, PepsiCo reports 15 subsidiaries incorporated in Russia and three other subsidiaries affiliated with Russia in its 2021 annual disclosures.¹⁴ According to its quarterly reporting, PepsiCo’s operations in Russia accounted for 6 percent of its “consolidated net revenue for the 12 weeks ended September 3, 2022.”¹⁵ To date, PepsiCo has not released clear information reconciling its commitments to stop sales of non-essential goods in Russia with its extensive operations and network of subsidiaries.

Additionally, a new report by the Moral Rating Agency names PepsiCo as one of the most egregious offenders on its “Dirty Dozen” list of companies failing to exit Russia or limit business operations, despite condemning the invasion of Ukraine.¹⁶ The report notes that PepsiCo is one of the Western companies with the heaviest involvement in Russia, indicating specifically the production of dairy products and the general retention of employees.¹⁷

⁸ PepsiCo, “PepsiCo suspends production and sale of Pepsi-Cola and other global beverage brands in Russia,” March 08, 2022, <https://www.pepsico.com/our-stories/press-release/pepsico-suspends-production-and-sale-of-pepsi-cola-and-other-global-beverage-brands-in-russia> (accessed December 27, 2022).

⁹ Ibid.

¹⁰ Jennifer Maloney, Heather Haddon, and Emily Glazer, “Coca-Cola, PepsiCo Pull Back From Russia as Ukraine Crisis Deepens,” *The Wall Street Journal*, March 8, 2022, <https://www.wsj.com/articles/pepsico-explores-options-for-russian-business-as-ukraine-crisis-deepens-11646767277> (accessed December 27, 2022).

¹¹ Jessica DiNapoli and Alexander Marrow, “Exclusive: PepsiCo ends Pepsi, 7UP production in Russia months after promising halt over Ukraine,” *Reuters*, September 20, 2022, <https://www.reuters.com/markets/europe/exclusive-pepsico-ends-pepsi-7up-production-russia-months-after-promising-halt-2022-09-20/> (accessed December 27, 2022).

¹² Ibid.

¹³ TAdviser, “Frito Lay Manufacturing,” https://tadviser.com/index.php/Company:Frito_Lay_Manufacturing (accessed December 27, 2022).

¹⁴ PepsiCo, “Form 10-K, Exhibit 21 12,” June 17, 2022, <https://www.sec.gov/Archives/edgar/data/77476/000007747622000010/pepsico202110-kexhibit21.htm> (accessed December 27, 2022).

¹⁵ PepsiCo, Form 10-Q, Quarterly Report,” October 11, 2022, <https://www.sec.gov/Archives/edgar/data/77476/000007747622000052/pep-20220903.htm> (accessed December 27, 2022).

¹⁶ Louis Goss, “BP, Unilever, and HSBC have failed to properly exit Russia after Ukraine war, new report warns,” January 2, 2023, <https://www.cityam.com/bp-unilever-hsbc-have-failed-to-properly-exit-russia-new-report-warns/> (accessed January 3, 2023).

¹⁷ Moral Rating Agency, <https://moralratingagency.org/> (accessed January 4, 2023).

These activities risk enabling and financing Russia's violations of IHL and human rights law during the ongoing invasion and occupation of Ukraine and violating PepsiCo's Global Human Rights Policy and the company's stated commitment to abiding by the UNGPs. It remains to be seen how directly PepsiCo will be impacted by the partial mobilisation and the heightened legal, regulatory, operational, and financial risks associated with companies being required to provide direct support to the internationally sanctioned Russian military.

We seek to understand how PepsiCo has conducted and continues to conduct heightened HRDD, per its stated policy and the UNGPs concerning due diligence in conflict-affected areas, and how the findings of such a process has resulted in these continued business activities and relationships. As noted by the UNGPs:

...the more severe the abuse, the more quickly the enterprise will need to see change before it takes a decision on whether it should end the relationship. In any case, for as long as the abuse continues and the enterprise remains in the relationship, it should be able to demonstrate its own ongoing efforts to mitigate the impact and be prepared to accept any consequences – reputational, financial or legal – of the continuing connection.

With the above points in mind and in consideration of B4Ukraine's [Declaration](#), we request an urgent dialogue with PepsiCo's relevant senior management and staff to discuss the company's ongoing activities and relationships in Russia, associated risks to the people of Ukraine and the company, and potential steps to prevent and where necessary mitigate these risks. Please contact B4Ukraine at contact@b4ukraine.org to schedule a call. We kindly ask for your response by 5:00pm CET, January 23rd, 2023.

Please do not hesitate to get in touch if you require any further information.

Sincerely,

The B4Ukraine Coalition