



# Organization for Security and Co-operation in Europe Office for Democratic Institutions and Human Rights

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## NOTE VERBALE

The OSCE Office for Democratic Institutions and Human Rights (ODIHR) presents its compliments to the Delegations of the OSCE participating States and, in accordance with paragraph 7 of the 1991 Moscow Document, has the honour to herewith transmit the observations of the mission of experts established under the Moscow Mechanism, invoked by 45 OSCE participating States following bilateral consultations with Ukraine, together with a description of action Ukraine has taken or intends to take upon it.

ODIHR avails itself of this opportunity to renew to the Delegations of the OSCE participating States the assurances of its highest consideration.

Warsaw, 11 July 2022



Delegations of the OSCE participating States  
Vienna

# **REPORT ON VIOLATIONS OF INTERNATIONAL HUMANITARIAN AND HUMAN RIGHTS LAW, WAR CRIMES AND CRIMES AGAINST HUMANITY**

**COMMITTED IN UKRAINE (1 APRIL – 25 JUNE 2022)**

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## I. EXECUTIVE SUMMARY

On 2 June 2022, the Delegations of 45 OSCE Participating States, after consultations with Ukraine, invoked the OSCE Moscow Mechanism under paragraph 8 of the Moscow Document to “*consider, follow up and build upon the findings of the Moscow Mechanism report received by OSCE participating States on 12 April 2022*” addressing “*the human rights and humanitarian impacts of the Russian Federation’s invasion and acts of war, supported by Belarus, on the people of Ukraine, within Ukraine’s internationally recognized borders and territorial waters*”. In accordance with the Moscow Document, Ukraine subsequently selected three persons from the list of experts to be part of an expert mission. These three persons are: Ms Veronika Bílková (Czech Republic), Ms Laura Guercio (Italy) and Ms Vasilka Sancin (Slovenia). The mission of experts was officially established on 7 June 2022.

The current mission of experts is the second one established to investigate alleged violations of international humanitarian law (IHL) and international human rights law committed in the territory of Ukraine during the armed conflict triggered by the act of full-fledged aggression carried out by the Russian Federation against Ukraine on 24 February 2022. The first mission was established on 15 March 2022. In its report, submitted on 5 April 2022 and made public on 13 April 2022, the mission covered the period from 24 February until 1 April 2022. The period under scrutiny in the second report is 1 April – 25 June 2022, though occasionally, violations committed prior to 1 April 2022 but which were not reported in the first report, because information about them only became available after this date, are also included in this report.

In the preparation of this report, the mission of experts used several main methods of fact-finding, relying on various sources of information. First, it built on the data contained in the first report on Ukraine produced under the OSCE Moscow Mechanism in April 2022, as well as on other reports, comments and statements produced by international organizations (UN, OSCE, Council of Europe, EU), States, NGOs, and media. Secondly, the mission conducted various interviews, both online and in person. Thirdly, on 20-23 June 2022, two members of the expert mission, Ms Bilkova and Ms Guercio, travelled to Ukraine. During the stay in Kyiv, they met with representatives of various Ukrainian authorities. They also visited the towns of Irpin, Bucha and Hostomel. The visit to Ukraine allowed the mission to collect essential direct information, vital for the drafting of this report, as well as confirmation of information learned from other sources. Through all the different methods of fact-finding, the mission was able to get access to a large amount and variety of evidence and to gain a good oversight of the situation in general and of particular issues under scrutiny.

The second mission has largely confirmed the conclusions reached by the first mission. It has discovered clear patterns of serious violations of IHL attributable mostly to Russian armed forces in many areas which its investigations referred to. A considerable number of civilians have been killed or injured, and civilian objects - like civilian houses, hospitals, cultural property, schools, multi-story residential buildings, administrative buildings, penitentiary institutions, water stations and electricity systems - have been damaged or destroyed in numerous towns and villages. The magnitude and frequency of the indiscriminate attacks carried out against civilians and civilian objects, including in sites where no military facility was identified, is credible evidence that hostilities were conducted by Russian armed forces with disregard to their fundamental obligation to comply with the basic principles of distinction, proportionality and precaution that constitute the fundamental basis of IHL.

The signs of torture and ill-treatment on the corpses of killed civilians also show disregard of the principle of humanity that should guide the application of IHL in military operations. The events concerning the towns of Bucha and Irpin, which were visited by the mission, are two emblematic examples of these grave breaches of IHL under the Geneva Conventions and their Additional Protocols, which constitute war crimes. There is information that all the violations

that the mission was able to ascertain are, or will be, under investigation and the responsible persons, if identified and arrested, under prosecution by the relevant national or international judicial authorities.

The second mission has concluded that international human rights law (IHRL) has been extensively violated in the conflict in Ukraine. Some of the most serious violations include targeted killing of civilians, including journalists, human rights defenders, or local mayors; unlawful detentions, abductions and enforced disappearances of such persons; large-scale deportations of Ukrainian civilians to Russia; various forms of mistreatment, including torture, inflicted on detained civilians and prisoners of war; the failure to respect fair trial guarantees; and the imposition of the death penalty. Most, albeit not all, violations have been committed in the territories under the effective control of the Russian Federation, including the territories of the so-called Donetsk and Luhansk People's Republics, and are largely attributable to the Russian Federation. The mission has identified two new alarming phenomena which were not included or paid sufficient attention in the first report, namely the establishment and use of so-called filtration centres and the tendency by the Russian Federation to bypass its international obligations by handing detained persons over to the two so-called People's Republics and letting them engage in problematic practices, including the imposition of the death penalty.

The second mission has also confirmed that the current conflict in Ukraine has had a very negative impact on the enjoyment of economic, social, and cultural rights, such as the right to education, the right to health, the right to social security, the right to food and water, and the right to a healthy environment. This impact is not limited to instances when these rights have been directly violated but results from the overall state of destruction and disruption of the provision of vital services (education, healthcare, food production, etc.) in the country as well. The mission would moreover like to stress that particular attention has to be paid to individuals belonging to vulnerable groups, such as women, children, older persons, or persons with disabilities. All violations of IHRL entail the responsibility of the relevant State. The most serious among them, moreover, may give rise to individual criminal responsibility for war crimes and crimes against humanity.

The second mission shares the doubts expressed by the first mission as to whether the Russian attack on Ukraine *per se* could qualify as a “*widespread or systematic attack directed against any civilian population*”, which provides the context for crimes against humanity. Yet, it fully upholds the conclusion that some patterns of violent acts violating IHRL, which have been repeatedly documented during the conflict, such as targeted killing, enforced disappearance or abductions of civilians, meet this qualification and that any single violent act of this type, committed as part of such an attack and with the knowledge of it, constitutes a crime against humanity. The second mission also notes that such patterns have become more evident in the period under scrutiny in this report.

## **II. INTRODUCTION AND MANDATE**

On 2 June 2022, the Delegations of 45 OSCE Participating States (Albania, Andorra, Austria, Belgium, Bosnia and Herzegovina, Bulgaria, Canada, Croatia, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Monaco, Montenegro, the Netherlands, North Macedonia, Norway, Poland, Portugal, Romania, San Marino, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, the Republic of Türkiye, the United Kingdom, and the United States of America), after consultations with Ukraine, invoked the OSCE Moscow Mechanism under paragraph 8 of the Moscow Document to “*consider, follow up and build upon the findings of the Moscow Mechanism report received by OSCE participating States on 12 April 2022*” addressing “*the human rights and humanitarian impacts of the*

*Russian Federation's invasion and acts of war, supported by Belarus, on the people of Ukraine, within Ukraine's internationally recognized borders and territorial waters".<sup>1</sup>*

In accordance with the Moscow Document, Ukraine subsequently selected three persons from the list of experts<sup>2</sup> to be part of an expert mission. These three experts are: Ms Veronika Bílková<sup>3</sup> (Czech Republic), Ms Laura Guercio<sup>4</sup> (Italy) and Ms Vasilka Sancin<sup>5</sup> (Slovenia).<sup>6</sup> The mission of experts was officially established on 7 June 2022.<sup>7</sup>

In its letter to the OSCE Office for Democratic Institutions and Human Rights (ODIHR), Ukraine indicated that it would appreciate if the mission of experts "*considers, follows up and builds upon the findings of the Moscow Mechanism Report of 12 April 2022 and for this end:*

- *addresses the human rights and humanitarian impacts of the Russian Federation's invasion and acts of war, supported by Belarus, on the people of Ukraine, within Ukraine's internationally recognized borders and territorial waters;*
- *establishes the facts and circumstances surrounding possible contraventions of OSCE commitments, and violations and abuses of international human rights law and international humanitarian law;*
- *establishes the facts and circumstances of possible cases of war crimes and crimes against humanity, including due to deliberate and indiscriminate attacks against civilians and civilian infrastructure; and collects, consolidates, and analyzes this information with a view to presenting it to relevant accountability mechanisms, as well as national, regional, or international courts or tribunals that have, or may in future have, jurisdiction;*
- *reports on all atrocities committed by the Russian armed forces in Ukraine, including, but not limited to, abuses, violations and crimes in the city of Kyiv and Kyiv region (Bucha, Irpin, Hostomel, Borodyanka and other settlements in the region), the city of Mariupol, Kherson region, Donetsk region, Luhansk region, Sumy region, Kharkiv region, Zaporizhzhia region, Odesa region, Chernihiv region, Mykolaiv region;*
- *takes into account the comments provided by the Ukrainian side to the Report of 12 April 2022;*
- *releases a report on violations of international humanitarian and human rights law, war crimes and crimes against humanity committed amidst Russia's war of aggression against Ukraine, which would replicate the structure (main seven chapters) of the report of 12 April 2022".*

The ***Moscow Mechanism***, established by the Conference on the Human Dimension in 1991, makes it possible to establish missions of experts to assist Participating States in the resolution of a particular question or problem relating to the human dimension. By means of paragraph 8 of the Moscow Document, "*one or more Participating States /.../ may request that the OSCE Institution inquire of another participating State whether it would agree to invite a mission of experts to address a particular, clearly defined question on its territory relating to the human*

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<sup>1</sup> See Ukraine appoints three experts to be part of a mission under the OSCE's Moscow Mechanism, *OSCE*, 7 June 2022, at <https://www.osce.org/odihr/519834>

<sup>2</sup> Moscow Mechanism: List of Experts, *OSCE*, 6 October 2021, at <https://www.osce.org/odihr/20062>

<sup>3</sup> Veronika Bílková – Professor of international law at the Faculty of Law of the Charles University in Prague and head of the Centre for International Law at the Institute of International Relations in Prague.

<sup>4</sup> Laura Guercio – Professor of Sociology of Human Rights and of International Cooperation to Development at the University of Perugia, member of the Council of the European Law Institute in Wien.

<sup>5</sup> Vasilka Sancin - Professor of international law, Head of Department of International Law and Director of Institute for International Law and International Relations at the Faculty of Law, University of Ljubljana.

<sup>6</sup> The experts would like to thank their assistants and colleagues, in particular Federica Cristiani, Elia Chervier and Nela Laryšova and Simona Lanzellotto, for their valuable support.

<sup>7</sup> See Ukraine appoints three experts to be part of a mission under the OSCE's Moscow Mechanism, *OSCE*, 7 June 2022, at <https://www.osce.org/odihr/519834>

*dimension of the OSCE*". If the Participating State concerned agrees to invite such a mission, it selects up to three persons from the list of experts and informs without delay the OSCE about the establishment of the mission. The OSCE notifies all Participating States and it also, whenever necessary provides appropriate support to such a mission.

The purpose of a mission of experts is *"to facilitate resolution of a particular question or problem relating to the human dimension"*.<sup>8</sup> The mission may *"gather the information necessary for carrying out its tasks and, as appropriate, use its good offices and mediation services to promote dialogue and co-operation among interested parties"*.<sup>9</sup> The inviting State has the obligation to cooperate fully with the mission of experts and facilitate its work. *"The mission may also receive information in confidence from any individual, group or organization on questions it is addressing."*<sup>10</sup> By means of paragraph 7 of the Moscow Document, the mission of experts shall submit its observations to the inviting State as soon as possible, preferably within three weeks after its establishment.

The current mission of experts is the second one established to investigate alleged violations of international humanitarian law and international human rights law committed in the territory of Ukraine during the armed conflict triggered by the act of full-fledged aggression carried out by the Russian Federation against Ukraine on 24 February 2022. The *first mission* was established on 15 March 2022. In its report, submitted on 5 April 2022 and made public on 13 April 2022,<sup>11</sup> the mission covered the period from 24 February until 1 April 2022. It came to the following conclusions:

- The mission found clear patterns of violations of international humanitarian law (IHL) by the Russian forces. The violations mainly concerned the conduct of hostilities, the treatment of inhabitants of occupied territories and the treatment of prisoners of war. The mission concluded that it was not conceivable that so many civilians would have been killed and injured and so many civilian objects (including hospitals, cultural property, or schools) would have been damaged or destroyed if Russia had respected its IHL obligations in terms of distinction, proportionality, and precautions in conducting hostilities in Ukraine. Some problems were also identified regarding practices of Ukraine.
- The mission found credible evidence suggesting that violations of international human rights law (IHRL), including the most fundamental human rights (right to life, prohibition of torture, right to security) were committed, mostly in the areas under the effective control of Russia. Moreover, by causing a high level of destruction and by interfering with the provision of vital services (education, healthcare), the conflict had an impact on the enjoyment of human rights by the Ukrainian inhabitants. Vulnerable groups, such as women, children, older persons or persons with disabilities were particularly strongly affected and the conflict produced new vulnerable groups (refugees, internally displaced persons).
- The mission identified numerous violations of IHL which constitute war crimes, if the responsible individuals can be found. These violations included mistreatment of prisoners of war, deliberate killing of civilians, deliberate attacks against civilians and against civilian objects, including schools, hospitals or cultural property, or the failure to respect the principles of distinction, proportionality, and precautions.

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<sup>8</sup> Paragraph 5 of the Moscow Document.

<sup>9</sup> Paragraph 5 of the Moscow Document.

<sup>10</sup> Paragraph 6 of the Moscow Document.

<sup>11</sup> Wolfgang Benedek, Veronika Bílková, Marco Sassòli, *Report on Violations of International Humanitarian And Human Rights Law, War Crimes And Crimes Against Humanity Committed In Ukraine Since 24 February 2022*, OSCE, Vienna, 13 April 2022.

- The mission also concluded that some of the violations of IHRL were likely to amount to crimes against humanity. It found credible evidence suggesting that at least some patterns of violent acts which had been repeatedly documented during the conflict, for instance targeted killing, rape, abductions, or massive deportations of civilians, qualified as a widespread or systematic attack against a civilian population.
- The mission identified legal obligations that arise in connection with the alleged violations of IHL and IHRL and the alleged commission of war crimes and crimes against humanity. Those include the obligation to investigate such allegations, the obligation to respect and ensure respect of IHL, the obligation to repress war crimes and crimes against humanity and the obligation to provide reparation to victims of violations of IHL or IHRL. The mission also provided an overview of accountability mechanisms that exist at the global, regional, and national level and considered proposals aimed at establishing new mechanisms of this type (a special tribunal for Ukraine, new accountability platform, etc.).

The current mission of experts has been tasked to consider, follow up and build upon the findings of the first report. In line with the request issued by the inviting State, Ukraine, the mission has decided to replicate in this report the structure of the previous report with its seven main chapters. The mission has taken into account the comments made by Ukraine with respect to the first report.

### **III. METHODOLOGY**

#### **A. SCOPE OF THE MANDATE**

The temporal mandate of the mission of experts covers the period between 1 April 2022 and 25 June 2022, when the report was finalized. At the moment of the finalization of the report, the conflict in Ukraine was unfortunately still ongoing. This report therefore could not provide a final overview of all incidents which would have occurred during this conflict. Geographically, the mission focuses on the alleged violations of IHL and IHRL committed in the whole territory of Ukraine, within its internationally recognized borders (including the Autonomous Republic of Crimea, the City of Sevastopol, the Donetsk and Luhansk regions and all the regions which have come under the temporary occupation by the Russian Federation since 24 February 2022). The mission has no limitations concerning the personal scope of its mandate, i.e., it investigated all potential contraventions of international standards regardless of the nationality of the person having committed them and the identity of the actor to which they are attributed.

In line with paragraph 7 of the Moscow Document, the mission of experts had three weeks to produce its report. Such a limited time span, together with the ongoing nature of the conflict and the permanent inflow of new information, did not make it possible for the mission to verify all the allegations of violations of IHL and IHRL received from various sources and to “*report on all atrocities committed by the Russian armed forces in Ukraine*” /emphasis added/, as requested by the inviting State. Similar to the first report, however, this second report identifies the main patterns of behaviour incompatible with international standards and provides concrete examples documenting these patterns. It also indicates which violations of international standards give rise not only to the responsibility of the relevant party to the conflict but also to individual criminal responsibility (for war crimes or crimes against humanity). At the same time, the mission was not in the position, and did not have the mandate, to conduct criminal investigations and to identify specific individuals responsible for such crimes. It is for national and international prosecutorial offices and judicial bodies to assume this task.



## **B. METHODS OF FACT-FINDING**

In the preparation of this report, the mission of experts used several main methods of fact-finding, relying on various sources of information.

First, it built on the data contained in the report on Ukraine produced under the OSCE Moscow Mechanism in April 2022. It also used other written reports, comments and statements produced by international organizations (UN, OSCE, Council of Europe, EU), States, non-governmental organizations, and media. Moreover, after the establishment of the mission, the OSCE renewed the special online channel of communication through which those in possession of relevant information could share, and did indeed share, such information.

Secondly, the mission conducted various interviews, both online and in person. The experts would like to express their gratitude to all the interlocutors who took time to talk to them, share with them relevant information and provide them with evidence. They would particularly like to thank the UN Human Rights Monitoring Mission in Ukraine (HRMMU), for excellent cooperation and information sharing. As in the first mission, valuable information and analysis was provided by the Humanitarian Research Lab at Yale School of Public Health, as well as by various NGOs.

Thirdly, on 20-23 June 2022, two members of the expert mission, Ms Bilkova and Ms Guercio, visited Ukraine. During the visit, they met the representatives of the Ministry of Defence, the Ministry for Reintegration of the Temporarily Occupied Territories of Ukraine, the Office of the Ukrainian Parliament Commissioner for Human Rights, the Mission of the President of Ukraine in the Autonomous Republic of Crimea, the Ministry of Justice, the Office of the Prosecutor General and the Ministry of Foreign Affairs. They also visited the towns of Irpin (Ірпінь), Bucha (Буча) and Hostomel (Гостомель), which were between the end of February and the end of March 2022 for several weeks under the temporary occupation of the armed forces of the Russian Federation and various atrocities were reportedly committed during that period. The experts also met several witnesses who could report about the events in some of the temporarily occupied territories. For security reasons, the names of such persons may not be disclosed. The experts would like to thank the Ukrainian authorities for all the assistance provided for the organization of the visit and in its course.

Through all the different methods of fact-finding, the mission was able to get access to a large amount and variety of evidence and to gain a good oversight of the situation in general and of particular issues under scrutiny. During the preparation of the report, the mission enjoyed administrative and logistic support from the ODIHR. The experts wish to stress that, in line with the rules of the Moscow Mechanism, the OSCE did not in any way interfere with the substantive work of the mission, which operated in a fully independent and impartial way.

The mission regrets to note the lack of cooperation manifested by the Russian Federation. Following the example of the first mission, on the day of its establishment, the mission sent a letter to the Permanent Representation of the Russian Federation to the OSCE, inviting the Russian Federation to collaborate with the mission and to share with it all the relevant information that the Russian Federation might be in possession of and that might help the mission to take the position of the Russian Federation into account in its investigation. Unfortunately, the letter remained unanswered. Despite that, the mission was able to get access to, and rely on, statements and positions of the Russian Federation and it took note of them in the report.

Moreover, the mission faced the obvious challenges linked to the dissemination of propaganda, disinformation and fake news that always accompanies armed conflicts. The mission sought to overcome this challenge by carefully weighting all the pieces of evidence at its disposal and by seeking, to the extent possible, to cross-check any information through various mutually independent sources.

## C. APPLICABLE INTERNATIONAL STANDARDS

The mission of experts was tasked to investigate and report on potential violations of international humanitarian law and international human rights law, war crimes and crimes against humanity, as well as possible contraventions of OSCE commitments. Four main sets of international standards were therefore applied in the legal assessment of the situations and cases documented in this report, namely those of international humanitarian law, international human rights law, international criminal law and the OSCE commitments. These sets of legal standards are not mutually separated but, rather, show important overlaps. A single incident, for instance the killing of a detained civilian, may at the same time constitute a violation of all the four sets and it may give rise to the responsibility of the State to which this killing would be attributed, and to the individual criminal responsibility of concrete individuals who carried out or ordered such killing, simultaneously.

### 1. INTERNATIONAL HUMANITARIAN LAW

International humanitarian law (IHL) is a branch of public international law which applies specifically in the context of armed conflicts, and which seeks to limit the humanitarian and other effects of such conflicts. IHL applies both in international and non-international armed conflicts and it addresses its norms to State or non-state parties to the conflict. The conflict under scrutiny in this report constitutes an international armed conflict, generally defined as “*all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them*”.<sup>12</sup> In line with this definition, the internal qualification of the situation by the parties to the conflict and the label they attach to it do not have any effect on its qualification under IHL, which relies solely on objective criteria, namely whether “*a resort to armed forces between States*”<sup>13</sup> has taken place. In the conflict between the Russian Federation and Ukraine, it undoubtedly has and IHL is thus fully applicable there. IHL does not allow for derogation.

IHL consists of two main branches. The first one is the *Geneva Law*, which protects victims of war, i.e., those who are not, or no longer, taking part in hostilities and find themselves in the hand of the other party to the conflict (wounded, sick, shipwrecked, prisoners of war, alien civilians in the territory of another party to the conflict, civilians in the occupied territories, etc.). The Geneva Law is regulated by the four Geneva Conventions (1949) and three Protocols Additional to these Conventions (1977, 2005). All the four Geneva Conventions (GC) and Additional Protocol I (AP) are applicable in international armed conflicts. The Russian Federation and Ukraine are both States parties to all these instruments. The most fundamental rules of the Geneva Law are considered part of customary international law.<sup>14</sup>

The second branch of IHL is the *Hague Law*, which restricts means and methods of warfare, i.e., it indicates which military tactics and which weapons may be used by the parties to the conflict on the battlefield. The Hague Law is regulated by the Hague Conventions (1899, 1907) and by many other, more specific treaties, such as the *Hague Convention on the Protection of Cultural Property in the Event of Armed Conflict* and its two Protocols (1954, 1999), the *Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction* (1972), the *Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be deemed to be Excessively Injurious or to have Indiscriminate Effects* (1980, CCW) and its five Protocols (1980, 1995, 2003), the *Convention on the Prohibition of the Development,*

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<sup>12</sup> Common Article 2(1) of the four Geneva Conventions.

<sup>13</sup> ICTY, *Prosecutor v. Duško Tadić*, Case No. IT-94-1-AR72, Appeals Chamber, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995, par. 70.

<sup>14</sup> Jean-Marie Henckaerts, Louise Doswald-Beck (Eds.), *Customary International Humanitarian Law, Volume I: Rules, Volume II: Practice*, Cambridge University Press, Cambridge, 2005.

*Production, Stockpiling and Use of Chemical Weapons and on their Destruction* (1993), the *Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction* (1997), the *Convention on Cluster Munitions* (2008) and the *Treaty on the Prohibition of Nuclear Weapons* (2017). The Russian Federation and Ukraine are State parties to some of these treaties.<sup>15</sup> Again, some rules of the Hague Law are considered part of customary international law.

All parties to the conflict have the obligation to respect and ensure respect for IHL by their armed forces and other persons or groups acting in fact on its instructions or under their direction or control.<sup>16</sup> This obligation is in no way linked or conditioned upon reciprocity.<sup>17</sup> Violations of IHL entail responsibility of the party to the conflict to which such violation are attributed.<sup>18</sup> In line with the general rules on the responsibility of States for internationally wrongful acts,<sup>19</sup> the responsible State is under the obligation to cease the violation, to offer appropriate assurances and guarantees of its non-repetition, if circumstances so require, and to provide reparation for the injury caused by the internationally wrongful act.<sup>20</sup>

## 2. INTERNATIONAL HUMAN RIGHTS LAW

International human rights law (IHRL) encompasses a set of rules through which States have committed themselves to respect, protect and fulfil human rights of all individuals on their territory or under their jurisdiction. The main sources of IHRL are universal and regional treaties, though the most fundamental rules of IHRL make part of customary international law.

At the **universal** level, these are the *International Covenant on Civil and Political Rights* (1966, ICCPR), the *International Covenant on Economic, Social and Cultural Rights* (1966, ICESCR) and seven treaties focusing on a particular human rights violation or on the protection of certain groups of vulnerable persons. Ukraine is State party to all these instruments except for the *International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families* (1990, CMW). It has also ratified virtually all optional protocols (OP) to these conventions, except for the OP to the ICESCR. The Russian Federation is State party to all these instruments except for CMW and the *International Convention for the Protection of all Persons from Enforced Disappearance* (2006, ICPED). It has ratified the first OP to the ICCPR, the first two OP to the UN Convention on the Rights of the Child (CRC) and the OP to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

At the **regional** level, both Ukraine and the Russian Federation were, at the outburst of the conflict, members of the Council of Europe. On 16 March 2022, however, the membership of the Russian Federation in the organization was discontinued by decision of the Committee of Ministers.<sup>21</sup> In 1997 and 1998, respectively, Ukraine and the Russian Federation ratified the European Convention on Human Rights (1950, ECHR). In consequence of its exclusion from the Council of Europe, the Russian Federation “*shall cease to be a High Contracting Party to*

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<sup>15</sup> Ukraine is party to all those treaties except for the *Convention on Cluster Munitions* (2008) and the *Treaty on the Prohibition of Nuclear Weapons* (2017). The Russian Federation is not party to these two treaties either and, moreover, it has not ratified the Second Protocol to the *Convention on the Protection of Cultural Property in the Event of Armed Conflict* (1999) and the *Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction* (1997)

<sup>16</sup> Rule 139 CIHL.

<sup>17</sup> Rule 140 CIHL.

<sup>18</sup> Rule 149 CIHL.

<sup>19</sup> *Draft articles on Responsibility of States for internationally wrongful acts*, in UN Doc. A/56/10, *Report of the International Law Commission on the work of its Fifty-third session*, Official Records of the General Assembly, Fifty-sixth session, Supplement No. 10, November 2001, pp. 43-59.

<sup>20</sup> Rule 150 CIHL.

<sup>21</sup> *Resolution CM/Res(2022)2 on the cessation of the membership of the Russian Federation to the Council of Europe*, 16 March 2022.

*the ECHR on 16 September 2022*".<sup>22</sup> The European Court of Human Rights (ECtHR) remains competent to deal with applications directed against Russia relating to alleged violations of the ECHR that occur before 16 September 2022 (Article 58(2) of the ECHR).

On 11 June 2022, the Russian Federation adopted a law stipulating that the country “*will not implement decisions of the European Court of Human Rights entering into force after 15 March 2022*”.<sup>23</sup> In 2006 and 2009 respectively, Ukraine and the Russian Federation ratified the *Revised European Social Charter* (1961, RESC). Again, in consequence of its exclusion from the Council of Europe, the Russian Federation will cease to be State party to the RESC by 16 September 2022.<sup>24</sup> Also at the regional level, the Russian Federation is member of the Commonwealth of Independent States and State party to the *CIS Convention on Human Rights and Fundamental Freedoms* (1995, CHRFF).

As was explained in the first report, IHRL continues to apply in times of armed conflict. In such times, however, many human rights guarantees may be suspended by means of a **derogation** (Article 4 of the ICCPR, Article 15 of the ECHR). The Russian Federation has not adopted any derogation in the context of the current conflict. Ukraine, conversely, has extensively derogated from its obligations under the ICCPR and the ECHR. The older derogations (2015-2019 but still in force) relate to the situation in the Autonomous Republic of Crimea and the City of Sevastopol and in the Donetsk and Luhansk regions. The recent derogations (2022) have been made in connection to the Russian attack on Ukraine and the introduction of a state of emergency in most regions of Ukraine (23 February) and of martial law on the entire territory of Ukraine (24 February, extended for other 30 days from 26 March and again on 21 April and for other 90 days on 25 May). The recent derogations concern a broad range of human rights, namely those granted by Articles 2(3), 3, 8(3), 9, 12-14, 17, 19-22, 24-27 of the ICCPR, Articles 4(3), 5-6, 8-11 and 13-14 of the ECHR, Article 1-3 of the Additional Protocol to the ECHR and Article 2 of Protocol 4 to the ECHR.<sup>25</sup>

The mission recalls that States have the obligation to respect and ensure the human rights of all individuals within their jurisdiction and that, as established under the case-law of international human rights bodies, jurisdiction is not limited to the territory of the State<sup>26</sup> but extends to the territories under the effective (*de facto*) control of the State, exercised directly or through non-state entities,<sup>27</sup> and to individuals under the specific control of the State (typically individuals in detention).<sup>28</sup> While the State exercising effective control over an area has the responsibility to secure to individuals within this area the full range of recognized human rights, the State

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<sup>22</sup> *Resolution CM/Res(2022)3 on legal and financial consequences of the cessation of membership of the Russian Federation in the Council of Europe*, 23 March 2022, para 7.

<sup>23</sup> Федеральный закон № 183-ФЗ *О внесении изменений в отдельные законодательные акты Российской Федерации и признании утратившими силу отдельных положений законодательных актов Российской Федерации*, 11.06.2022, para 7(a).

<sup>24</sup> *Resolution CM/Res(2022)3 on legal and financial consequences of the cessation of membership of the Russian Federation in the Council of Europe*, 23 March 2022, para 8.

<sup>25</sup> Status of the Treaties, *UN Treaty Collection*, at [https://treaties.un.org/Pages/ViewDetails.aspx?chapter=4&clang=\\_en&mtdsg\\_no=IV-4&src=IND](https://treaties.un.org/Pages/ViewDetails.aspx?chapter=4&clang=_en&mtdsg_no=IV-4&src=IND); Reservations and Declarations for Treaty No.005, *Council of Europe*, at <https://www.coe.int/en/web/conventions/full-list?module=declarations-by-treaty&numSte=005&codeNature=0>

<sup>26</sup> ECtHR, *Al-Skeini and Others v. United Kingdom*, Application no. 55721/07, Judgment (GC), 7 July 2011, para 132.

<sup>27</sup> ECtHR, *Loizidou v. Turkey (preliminary objections)*, Application no. 15318/89, Judgment, 23 March 1995, para 62; *Cyprus v. Turkey*, Application no. 25781/94, Judgment (GC), 10 May 2001, para 76.

<sup>28</sup> ECtHR, *Al-Skeini and Others v. United Kingdom*, Application no. 55721/07, Judgment (GC), 7 July 2011, para 136. See also UN Doc. CCPR/C/CG/36, *General comment No. 36 (2018) on the right to life*, 30 October 2018, para 63.

exercising specific control over an individual has the obligation to secure to that individual those rights that are relevant to his/her particular situation.<sup>29</sup>

The mission shares the view expressed in the first report that some parts of the Ukrainian territory are, or were for a certain period, under the effective control of the Russian Federation. This is the case of the Autonomous Republic of Crimea and the City of Sevastopol, which have been temporarily occupied and (unlawfully) annexed by Russia since 2014. Certain parts of the Donetsk and Luhansk regions have also been under the effective control of Russia since 2014. This control is exercised through a subordinate local administration of the so-called Donetsk and Luhansk People's Republics, over whose acts Russia exercises (at least) overall control. Since 24 February 2022, moreover, Russia has secured (and sometimes subsequently lost) effective control over certain other areas of the Ukrainian territory, especially other parts of the Donetsk and Luhansk regions and the Kherson region.

The mission also recalls that in times of armed conflict, IHRL applies in parallel to IHL. In this situation, as declared by the International Court of Justice (ICJ), “*some rights may be exclusively matters of international humanitarian law; others may be exclusively matters of human rights law; yet others may be matters of both these branches of international law*”.<sup>30</sup> It is largely accepted that when the last scenario materializes, the standards of IHRL have to be interpreted in light of IHL, which in most instances constitutes the applicable *lex specialis*. At the same time, as stipulated by the UN Human Rights Committee (HRC), “*while, in respect of certain /.../ rights, more specific rules of international humanitarian law may be specially relevant for the purposes of the interpretation of /.../ rights, both spheres of law are complementary, not mutually exclusive*”.<sup>31</sup> Thus, the two sets of legal standards – those of IHL and IHRL – both have to be taken into account in the legal evaluation of many incidents which occur in times of armed conflict. This also explains why the same incident can simultaneously violate IHL and IHRL.

Violations of IHRL have the same legal consequences as violations of IHL, i.e., they give rise to the obligation to cease the violation, to offer appropriate assurances and guarantees of its non-repetition, if circumstances so require, and to provide reparation for the injury caused by the internationally wrongful act. Specific human rights treaties, such as the ICCPR and the ECHR, regulate these legal consequences in more detail and also partly modify them, in view of the right of individual victims to challenge the violations before national and international (quasi)judicial bodies autonomously.

### **3. INTERNATIONAL CRIMINAL LAW**

International criminal law (ICL) is a branch of public international law aimed at identifying violent acts which are generally considered as absolutely unacceptable, and at making sure that individuals responsible for those acts are held criminally responsible before competent national or international bodies. So far, the international community has agreed on a list of four crimes under international law, namely the crime of aggression, the crime of genocide, crimes against humanity, and war crimes. The mandate of the mission refers specifically to crimes against humanity and war crimes; this report therefore limits its attention to these two crimes.

The definitions of crimes against humanity and war crimes are contained in the Rome Statute of the International Criminal Court (1998, as amended in 2010 and 2017) and shall reflect the rules of customary international law. Neither the Russian Federation, nor Ukraine is State party

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<sup>29</sup> ECtHR, *Al-Skeini and Others v. United Kingdom*, Application no. 55721/07, Judgment (GC), 7 July 2011, para 137.

<sup>30</sup> ICJ, ICJ, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, ICJ Advisory Opinion, 9 July 2004, para 106.

<sup>31</sup> UN Doc. CCPR/C/21/Rev.1/Add.13, *General comment no. 31, The nature of the general legal obligation imposed on States Parties to the Covenant*, 26 May 2004, para 11.

to the Rome Statute. Yet, on 9 April 2014 and 8 September 2015, respectively, Ukraine, by means of two declarations made under Article 12(3) of the Rome Statute, accepted the jurisdiction of the ICC with respect to crimes against humanity and war crimes, committed on its territory from 21 November 2013 onwards.<sup>32</sup>

**Crimes against humanity** are violent acts, such as murder, extermination, rape, deportation or forcible transfer, torture or enforced disappearance “*when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack*”.<sup>33</sup> Ukraine has accepted this definition implicitly, through the two declarations issued under Article 12(3) of the Rome Statute. The Russian Federation, while not State party to the Rome Statute, has never raised objections against this definition. In fact, during the discussions about a new instrument on crimes against humanity at the UN International Law Commission, the Russian Federation explicitly supported “*the verbatim reproduction /.../ of the definition of crimes against humanity found in the Rome Statute*”.<sup>34</sup>

All States have, under customary international law, the obligation to prevent, prosecute and punish crimes against humanity.<sup>35</sup> For those purposes, they must take the necessary measures to ensure that these crimes constitute offences under their criminal law and that their organs have jurisdiction over such crimes based on the principles of territoriality, personality, and universality. Each State must also “*ensure that its competent authorities proceed to a prompt, thorough and impartial investigation whenever there is reasonable ground to believe that acts constituting crimes against humanity have been or are being committed in any territory under its jurisdiction*”.<sup>36</sup> Unlike many other States, neither Ukraine, nor the Russian Federation have included the category of crimes against humanity as such into their criminal codes.<sup>37</sup> When implementing the obligation to punish crimes against humanity, the two countries would thus need to resort to more general offences (murder, rape, hostage taking, etc.).

**War crimes** amount to violations of the most fundamental rules of IHL which are applicable both to parties to the conflict and to individuals. Such violations entail at the same time the responsibility of the relevant party to the conflict and individual criminal responsibility of the individual. War crimes consist either in grave breaches of the Geneva Law, such as wilful killing, torture or extensive destruction, directed against persons or property protected under the GC and API; or in other serious violations of the laws and customs of war, especially qualified violations of the Hague Law, such as intentionally directing attacks against the civilian population or civilian objects or employing prohibited means or methods of warfare. War crimes have their legal basis in IHL treaties and IHL customary rules.

The Geneva Conventions and API explicitly impose on States the obligation to “*enact any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed, any of the grave breaches of the present Convention /.../*”.<sup>38</sup> They furthermore establish the obligation to “*search for persons alleged to have committed, or to have ordered*

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<sup>32</sup> See the Declaration by Ukraine lodged under Article 12(3) of the ICC Statute, 8 September 2015, at [https://www.icc-cpi.int/iccdocs/other/Ukraine\\_Art\\_12-3\\_declaration\\_08092015.pdf](https://www.icc-cpi.int/iccdocs/other/Ukraine_Art_12-3_declaration_08092015.pdf)

<sup>33</sup> Article 7 of the Rome Statute of the ICC.

<sup>34</sup> UN Doc. A/C.6/70/SR.23, *Sixth Committee. Summary record of the 23rd meeting*, 27 November 2015, para 18.

<sup>35</sup> *Draft articles on Prevention and Punishment of Crimes Against Humanity*, in UN Doc. A/74/10, *Report of the International Law Commission on the work of its Seventy-first session*, Official Records of the General Assembly, Seventy-first session, Supplement No. 10, August 2019, pp. 11-21.

<sup>36</sup> *Ibidem*, Article 8.

<sup>37</sup> In Ukraine, a legal act implementing the Rome Statute, which shall include into the Ukrainian legal order the category of crimes against humanity, was adopted by the Verkhovna Rada in May 2021 but so far has not been signed into Law by the President of Ukraine. See *Проект Закону No. 2689 про внесення змін до деяких законодавчих актів України щодо імплементації норм міжнародного кримінального та гуманітарного права*.

<sup>38</sup> Article 49 GCI, Article 50 GCII, Article 50 GCIII, Article 129 GCIV, Article 145 API.

*to be committed, such grave breaches, and /.../ bring such persons, regardless of their nationality, before /their/ own courts*".<sup>39</sup> Customary international law extends these obligations to other serious violations of the laws and customs of war, specifying that States *must* establish and exercise territorial and personal jurisdiction over war crimes (crimes committed by their nationals or armed forces, or on their territory) and *may* establish but if they do so *must* exercise universal jurisdiction.<sup>40</sup> Both Ukraine and the Russian Federation have introduced certain war crimes into their criminal codes.<sup>41</sup>

It is important to highlight that crimes against humanity and war crimes are not mutually disjunctive categories and a single act can therefore meet the qualifications of both of them.

#### 4. OSCE COMMITMENTS

Within the CSCE and OSCE, under the human dimension, numerous commitments have been adopted since the 1970s that relate to, and further develop, legal standards contained in IHL, IHRL and ICL.<sup>42</sup> The Russian Federation and Ukraine both committed themselves to these standards.

With respect to IHL, the Participating States have undertaken "*in all circumstances respect and ensure respect for international humanitarian law including the protection of the civilian population*" and have recalled "*that those who violate international humanitarian law are held personally accountable*" (Helsinki, 1992, paras 47-48). They have also stressed the importance of protecting, in times of armed conflict, members of certain vulnerable groups, such as journalists (Moscow, 1991, para 34), refugees and displaced persons (Budapest, 1992, para 32), children (Istanbul, 1999, para 28) or women (Ljubljana, 2005).

With respect to IHRL, already back in 1975, the Participating States declared that they would "*promote and encourage the effective exercise of civil, political, economic, social, cultural and other rights and freedoms all of which derive from the inherent dignity of the human person and are essential for his free and full development*" (Helsinki, 1975). Since then, they have repeatedly confirmed their commitment to the respect for and promotion of the full range of human rights. While virtually all human rights have been invoked and commented upon in the CSCE/OSCE documents, particular attention has been paid to certain issue areas. One of them is the right to freedom of expression, including the protection of media and safety of journalists, in the support of which numerous declarations and statements have been issued, especially since the establishment in 1997, of the OSCE Representative on Freedom of Media.<sup>43</sup> Another is the promotion of gender equality and the effort to eliminate gender-based violence in all its forms, including conflict-related violence<sup>44</sup> and trafficking in women and girls.<sup>45</sup> Many other rights and groups of persons have features prominently in the CSCE/OSCE commitments.

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<sup>39</sup> *Ibidem*.

<sup>40</sup> Rules 157-158 CIHL.

<sup>41</sup> See, especially, Section XX of the Ukrainian Criminal Code and Section XII of the Russian Criminal Code.

<sup>42</sup> See *OSCE Human Dimension Commitments, Vol. I Thematic Compilation, 3<sup>rd</sup> Edition, Vol. II. Chronological Compilation*, Vol. III, OSCE-ODIHR, Warsaw, 2012.

<sup>43</sup> Permanent Council Decision No. 193, Mandate of the OSCE Representative on Freedom of the Media (Copenhagen, 1997).

<sup>44</sup> See *Decision No. 14/04, 2004 OSCE Action Plan for the Promotion of Gender Equality* (Sofia 2004); *Decision No. 15/05 on Preventing and Combating Violence against Women* (Ljubljana, 2005).

<sup>45</sup> *Decision on Enhancing the OSCE'S Efforts to Combat Trafficking in Human Beings* (Vienna, 2000); *Declaration on Trafficking in Human Beings* (Porto, 2002); *Decision No. 2/03 on Combating Trafficking in Human Beings: OSCE Action Plan to Combat Trafficking in Human Beings* (Maastricht, 2003); or *Decision No. 8/07 on Combating Trafficking in Human Beings for Labour Exploitation* (Madrid, 2007).

## IV. ALLEGED VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW

### A. TREATMENT OF PERSONS IN THE POWER OF THE ENEMY

#### 1. WOUNDED, SICK AND SHIPWRECKED AS WELL AS MEDICAL PERSONNEL

The mission gathered a large amount of evidence on attacks on hospitals, medical personnel, medical units and medical transports. This implies violations of the duty to respect and protect the wounded and the sick combatants and non-combatants, together with the medical personnel assisting them. The wounded and sick, as well as members of the medical personnel and chaplains, may in no circumstances renounce in part or in entirety the rights secured to them by IHL.<sup>46</sup>

According to the Associated Press, Russian forces repeatedly attacked Ukrainian medical facilities, striking at hospitals, ambulances, medics, patients, and even newborns, with at least 34 assaults independently documented as of 29 May 2022.<sup>47</sup> Hundreds of hospitals and other medical institutions were destroyed leaving doctors without medicine to treat cancer or the instruments to perform necessary surgeries. According to the Ukrainian Health Ministry, Russian troops completely destroyed 101 hospitals in Ukraine, damaging or capturing nearly 200 ambulances.<sup>48</sup> As of 3 May 2022, President Zelenskyy denounced that, considering all medical facilities, Russian troops had destroyed or damaged nearly 400 healthcare institutions including hospitals, maternity wards, and outpatient clinics.<sup>49</sup>

Such actions constitute breaches of IHL since the first Geneva Convention of 1864, founded on the principle of protecting the sick and wounded during armed conflict, and later included in 1949 GC I, GC II and GC IV,<sup>50</sup> and they can amount to war crimes according to the Rome Statute.<sup>51</sup>

As of 22 June 2022, Médecins Sans Frontières (MSF), reported that it medically evacuated 653 patients by train from war-torn eastern Ukraine to hospitals in safer parts of the country. Over the course of two months, namely between 31 March and 6 June 2022, it evacuated by train from war-torn eastern Ukraine and cared for over 600 patients, 355 of whom were injured as a direct result of the war. Over 40 percent of war-wounded people medically evacuated by MSF from war-affected parts of Ukraine have been elderly people and children.<sup>52</sup>

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<sup>46</sup> GC I, Art. 7.

<sup>47</sup> Michael Biesbecker, Erica Kinets, Beatrice Dupuy, War crimes watch: Russia's onslaught on Ukrainian Hospital, *AP News*, 29 May 2022, at <https://apnews.com/article/russia-ukraine-war-crimes-tracker-b39137c3a96eef06f4ba1793fd694542>; Oleksandra Panasytska, The Geneva Conventions: How Russia breaches them and blames Ukraine for it. VoxCheck explains, *Vox Ukraine*, 14 March 2022, at <https://voxukraine.org/en/the-geneva-conventions-how-russia-breaches-them-and-blames-ukraine-for-it-voxcheck-explains/>.

<sup>48</sup> Russian army destroys 101 hospitals in Ukraine since invasion, *Ukrinform*, 11 May 2022, at <https://www.ukrinform.net/rubric-society/3480416-russian-army-destroys-101-hospitals-in-ukraine-since-invasion.html>.

<sup>49</sup> Alessandra Prentice and Natalia Zinets, Nearly 400 Ukrainian medical centres destroyed damaged by russian attacks, *Global News*, 5 May 2022, at <https://globalnews.ca/news/8814156/ukraine-russia-war-hospitals-destroyed-zelenskyy/>.

<sup>50</sup> Convention (I) on Wounded and Sick in Armed Forces in the Field, Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea and Convention (IV) relative to the Protection of Civilian Persons in Time of War (in particular Art. 16, 18, Art. 20-22). It is worth recalling also that common Article 3 of the Geneva Conventions obliges the parties to, as a minimum, collect and care for wounded and sick in all armed conflicts.

<sup>51</sup> ICC Statute, Art. 8(2)(b)(ii)(ix)(xxiv).

<sup>52</sup> 'інформаційний-бюлетень, без-милосердя до цивільних тривожні-свідчення людей, яких-евакуують-медичним-потягом-msfv україні, *MSF*, 22 June 2022, at C:/Users/User/Downloads/інформаційний-бюлетень-



During the nearly three months siege of the Azovstal steel plant, wounded Azovstal soldiers lived in filthy conditions, with open wounds bandaged with non-sterile bandage remnants, lacking medication and even food.<sup>53</sup> The United Nations and Ukrainian institutions claimed that the said sick or wounded combatants should be allowed to leave Ukraine's Azovstal steel plant.<sup>54</sup>

The second mission, during its visit to Ukraine, learned that civilians and wounded combatants feared that they were not going to enjoy respect and protection under IHL by Russian forces. This information is also the basis for the media report of 9 June 2022, in which military patients at a military hospital in eastern Ukraine confirm that they, along with other hospital patients, are afraid of being directly targeted by Russian air strikes.<sup>55</sup>

## 2. RESPECT FOR THE DEAD

During the mission, experts discovered images of soldiers and civilians on social media clearly showing that their remains were not being treated respectfully and buried as they should be under IHL.<sup>56</sup>

The mission managed to confirm the failure of both belligerents to respect the dead. Before leaving the city of Bucha in March 2022, the Russians bombed a convoy of people that were leaving the city and they also targeted people who were on foot. They left their bodies twisted, broken and incinerated where they had fallen.<sup>57</sup>

Among the cases gathered, it is worth recalling the images shown by the media on 17 May 2022, of the body of a Russian soldier lying amidst abandoned objects and detritus in Mala Rohan,<sup>58</sup> or the picture showing a Ukrainian taking a selfie in front of a refrigerated train used to store the remains of Russian soldiers in Kharkiv on 13 June 2022.<sup>59</sup> Regardless, the mission, during its visit to Ukraine, talked to relevant State authorities about the facts reported in the media and received assurances that Ukrainian military personnel receives periodic and continuous IHL trainings in order to avoid any violations, such as the violation of the obligation to respect the dead. In any case, any alleged violations are being investigated.

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без-милосердя-до-цивільних—тривожні-свідчення-людей,-яких-евакуують-медичним-потягом-msf-в-україні.pdf.

<sup>53</sup> John Ray, Photographs show 'wounded defenders of Mariupol' trapped in Azovstal steel plant, *ITV news*, 11 May 2022, at <https://www.itv.com/news/2022-05-11/photos-show-wounded-defenders-of-mariupol-trapped-in-azovstal-steel-plant>; Jennifer Hassam, Mariupol fighters — faces bruised, limbs missing — plead for rescue, *The Washington Post*, 11 May 2022, at <https://www.washingtonpost.com/world/2022/05/11/mariupol-fighters-ukraine-wounded-azovstal-steel-plant-photos/>; Taylor Ardrey, Ukrainian fighter says conditions are 'awful' for injured soldiers still trapped in Mariupol's Azovstal steel plant, report says, *Insider*, 14 May 2022, at <https://www.insider.com/ukrainian-fighter-details-awful-conditions-for-wounded-soldiers-2022-5>

<sup>54</sup> Peter Kenny, Once flourishing city of Mariupol 'lies in ruins,' says UN rights chief, *AA*, 12 May 2022, at <https://www.aa.com.tr/en/russia-ukraine-war/once-flourishing-city-of-mariupol-lies-in-ruins-says-un-rights-chief/2586064>; Denisova calls on UN to take measures to evacuate wounded soldiers from Azovstal plant, *Ukrinform*, 11 May 2022, at <https://www.ukrinform.net/rubric-ato/3480441-denisova-calls-on-un-to-take-measures-to-evacuate-wounded-soldiers-from-azovstal-plant.html>

<sup>55</sup> Guys are dying: Inside a fortified hospital full of wounded soldiers braced for Russian attack, *Sky news*, 9 June 2022, at <https://news.sky.com/story/guys-are-dying-inside-a-fortified-hospital-full-of-wounded-soldiers-braced-for-russian-attack-2630204>

<sup>56</sup> GC I, Art.17; AP I, art.34(1).

<sup>57</sup> Irma Khan, Reporter's notebook, recalling deaths in Ukraine's Bucha, *AlJazeera*, 29 May 2022, at <https://aljazeera.com/news/2022/5/29/reporters-notebook-killings-in-ukrainian-town-of-bucha>

<sup>58</sup> Lauren Egan, 'The stench of death is the 'smell of victory' for Ukrainians who guard bodies of Russian troops. "They're not people to us anymore," one soldier said as he helped move corpses from a refrigerated train car onto a truck, *NBC News*, 13 June 2022, at <https://www.nbcnews.com/news/world/ukraine-russia-soldiers-corpses-war-morgue-makeshift-rcna32255>.

<sup>59</sup> *Ibidem*.

Another issue that has arisen during the ongoing conflict is the return of the remains of deceased persons to their home countries. As reported by the first mission, Ukraine accused Moscow of refusing any agreement to return the dead, according to IHL.<sup>60</sup> Ukraine argues this was done in order to conceal the extent of the country's losses. On the other hand, the rapidly shifting front lines have made it difficult to determine how many dead soldiers have been left behind by either side in enemy-controlled territory. On 4 June 2022 Ukraine said, in its first public acknowledgment of an exchange of the dead since the war began, that 320 bodies had been swapped on the front line in the Zaporizhzhia region, with each side receiving 160 of their dead.<sup>61</sup> The remains include members of forces who died fighting at the Azovstal steel plant in Mariupol.

During its visit to Ukraine, the mission could ascertain the information that there is the will on the Ukrainian side to proceed with the restitution of the remains of deceased persons, although difficulties remain. Dozens of the dead taken from the now-Russian-occupied ruins of the bombed-out mill have been transferred to the Ukrainian capital, Kyiv, where DNA testing is underway to identify the remains.

### 3. PRISONERS OF WAR (POWS)

The conflict resulted in thousands of combatants on both sides being taken captive. Both sides appear to be using prisoners of war (POWs) in ways that breach IHL.<sup>62</sup>

Videos on social media and messaging apps show soldiers on both sides being captured and humiliated and forced to disclose their names and other information, including their home addresses and the names of their parents.

As far as Ukrainian prisoners' cases are concerned, on 8 June 2022, following a farce trial by the so-called Donetsk People's Republic's Supreme Court, three Ukrainian Armed Forces members, the Britons Aiden Aslin and Shaun Pinner, and the Moroccan Brahim Saadoun were found to be mercenaries and sentenced to death by firing squad. The two men from the UK were captured in Mariupol in April 2022. The sentence was deemed to be illegal because the defendants were classified as prisoners of war under IHL and were not charged with war crimes.<sup>63</sup> Based on media reports, Aslin and Pinner appear to have been integrated into the Ukrainian armed forces, serving in the Marines, having apparently been in Ukraine for several years. This would suggest that they fall squarely within the definition of persons entitled to

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<sup>60</sup> API I, Art.34(2)(c).

<sup>61</sup> Ukraine and Russia exchange bodies of dead soldiers, *Pravda*, 4 June 2022, at <https://www.pravda.com.ua/eng/news/2022/06/4/7350532/>; Lauren Egan, The stench of death is the 'smell of victory' for Ukrainians who guard bodies of Russian troops. "They're not people to us anymore," one soldier said as he helped move corpses from a refrigerated train car onto a truck, *NBC News*, 13 June 2022, at <https://www.nbcnews.com/news/world/ukraine-russia-soldiers-corpses-war-morgue>; Ukraine War: Dead Bodies Recovered From Steel-Plant Siege, DNA Test Results Awaited, *Outlookindia*, 7 June, 2022, at <https://www.outlookindia.com/international/-ukraine-war-dead-bodies-recovered-from-steel-plant-siege-dna-test-results-awaited-news-200739>; Ukraine and Russia Hand Over Bodies of Dead Soldiers in Frontline Exchange, *US News*, 8 June 2022, at <https://www.usnews.com/news/world/articles/2022-06-08/ukraine-and-russia-hand-over-bodies-of-dead-soldiers-in-frontline-exchange#>.

<sup>62</sup> GC III, Art.13.

<sup>63</sup> Crisp, James, Vasilyeva, Nataliya, Penna, Dominic, Captured British fighters Aiden Aslin and Shaun Pinner sentenced to death, *The Telegraph*, 9 June 2022, at <https://www.telegraph.co.uk/world-news/2022/06/09/british-fighters-aiden-aslin-shaun-pinner-sentenced-death-russian/>; Moroccan sentenced to death in Donetsk has Ukrainian nationality and isn't a mercenary, fat her says, *Reuters*, 13 June 2022, at <https://www.reuters.com/world/europe/moroccan-sentenced-death-donetsk-has-ukrainian-nationality-not-mercenary-father-2022-06-13/>; Ukraine war: Britons Aiden Aslin and Shaun Pinner sentenced to death, *BBC news*, 9 June 2022, at <https://www.bbc.com/news/uk-61745556>; Hill-Cawthorne, Lawrence, British POWs sentenced to death after 'show trial' which appears to violate Geneva Conventions, *The Conversation*, at <https://theconversation.com/ukraine-british-pows-sentenced-to-death-after-show-trial-which-appears-to-violate-geneva-conventions-184777>

POW status, according to the Third Geneva Convention of 1949 and the First Additional Protocol of 1977.<sup>64</sup>

On 10 June 2022, the Office of the United Nations High Commissioner for Human Rights condemned the death penalty and the trial, stating that "such trials against prisoners of war turn into a war crime" and emphasized that all of the defendants were members of Ukraine's armed forces and thus they should not have been considered mercenaries.<sup>65</sup>

When Ukrainian POWs in May 2022 left the giant Azovstal steel plant in the city of Mariupol, after enduring a weeks-long confrontation with Russian siege forces, Russia, according to the media, stated it had captured nearly 2500 Ukrainian soldiers from the steel plant,<sup>66</sup> although some media sources talk about more than 1700.<sup>67</sup> During its visit to Ukraine, the mission realized that, in general, determining the exact number of all POWs remains difficult. International institutions and NGOs denounce that throughout Russia's aggression against Ukraine, Ukrainian soldiers deployed in the Mariupol area have been dehumanized by Russian media and portrayed as 'neo-Nazis' by Russian propaganda, which raises serious concerns about their fate as POWs.<sup>68</sup> Russia's defence ministry also released videos purportedly of Ukrainian Azov fighters being treated in the Russian-controlled town of Novoazovsk after surrendering at the besieged Azovstal steelworks. In one of the videos, in which it is impossible to tell whether the soldier was speaking freely, a soldier stated that he was being treated "normally".<sup>69</sup>

On 2 June 2022, President Zelenskyy stated that prisoners from the Azovstal steel plant in Mariupol may be detained in the eastern Ukrainian regions of Donetsk and Luhansk. According to media, officials in the so-called Donetsk People's Republic have spoken of putting some of the Azovstal defenders on trial for alleged human rights violations in Ukraine.<sup>70</sup> On the Russian side, Leonid Slutsky, chairman of the Duma Committee on International Affairs and a member

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<sup>64</sup> Article 4 of the GC III, which focuses on POWs, defines them as any member of armed forces or militias — including organized resistance movements — in a conflict who “who have fallen into the power of the enemy.” It also includes non-combatant crew members, war correspondents and even “inhabitants of a non-occupied territory who, on the approach of the enemy, spontaneously take up arms to resist the invading forces.” The Geneva Conventions set out requirements to ensure that POWs are treated humanely. They include issues such as where they can be held; the relief they should receive, including medical help for wounded ex-fighters; and legal proceedings they might face. POWs can only be tried under certain circumstances, most notably if an individual fighter is accused of committing one or more war crimes. Such an accusation must be supported by publicly available evidence. POWs cannot be punished for taking part in hostilities because that is a privilege granted to both combatants and prisoners of war.

<sup>65</sup> Death sentence for Ukraine foreign fighters is a war crime: UN rights office, *UN News*, 10 June 2022, at <https://news.un.org/en/story/2022/06/1120102>.

<sup>66</sup> Fate of 2,500 Ukrainian POWs from steel plant stirs concern, *NPR*, 22 May, 2022, at <https://www.npr.org/2022/05/22/1100582879/fate-of-2-500-ukrainian-pows-from-steel-plant-stirs-concern?t=1656101129339>; Ukraine war: fate of 2,500 POWs from Mariupol steel plant stirs concern, *SCMP*, 22 May, 2022, at <https://www.scmp.com/news/world/russia-central-asia/article/3178697/ukraine-war-fate-2500-pows-mariupol-steel-plant>; Aditi Sangal, Mike Hayes, Meg Wagner, Andrew Raine, Amy Woodyatt, Jack Guy and Ed Upright, Zelensky: More than 2,500 prisoners from Mariupol's Azovstal plant may be held in Donetsk and Luhansk regions, *CCN*, 7 June 2022, at [https://edition.cnn.com/europe/live-news/russia-ukraine-war-news-06-06-22/h\\_c19194ae00598b352088f27691bf6a88](https://edition.cnn.com/europe/live-news/russia-ukraine-war-news-06-06-22/h_c19194ae00598b352088f27691bf6a88).

<sup>67</sup> Oleksandar Stashevskyi, Ciaran McQuillian, Ukrainian troops surrendering at Mariupol registered as POWs, *AP News*, 20 May, 2022, at <https://apnews.com/article/russia-ukraine-putin-kyiv-nato-4cf194da8b1870d26cbcdc0a7ec69ed6>.

<sup>68</sup> Ukraine/Russia: The rights of Ukrainian prisoners of war from Azovstal must be respected, *Amnesty International*, 12 May 2022, at <https://www.amnesty.org/en/latest/news/2022/05/ukraine-russia-the-rights-of-ukrainian-prisoners-of-war-from-azovstal-must-be-respected/>.

<sup>69</sup> Pjotr Sauer, Russia says 900 Ukrainian troops sent to prison colony from Mariupol, *The Guardian*, 18 May, 2022, at <https://www.theguardian.com/world/2022/may/18/ukraine-mariupol-azovstal-soldiers-russia>.

<sup>70</sup> More than 2,500 prisoners from Mariupol's Azovstal plant may be held in Donetsk and Luhansk regions, *CNN*, 7 June 2022, at [https://edition.cnn.com/europe/live-news/russia-ukraine-war-news-06-06-22/h\\_c19194ae00598b352088f27691bf6a88](https://edition.cnn.com/europe/live-news/russia-ukraine-war-news-06-06-22/h_c19194ae00598b352088f27691bf6a88).

of Russia's negotiating team in talks with Kyiv, has proposed putting members of the Azov Battalion on trial and lifting Russia's 1996 moratorium on capital punishment. According to IHL, in any case, prisoners of war cannot be punished simply for being participants in armed conflict but may be if they engage in war crimes. In those instances, they nevertheless have the right to an orderly and fair trial in a court of law.<sup>71</sup> It is important to emphasize that according to GC III,<sup>72</sup> “a prisoner of war shall be tried only by a military court, unless the existing laws of the Detaining Power expressly permit the civil courts to try a member of the armed forces of the Detaining Power in respect of the particular offence alleged to have been committed by the prisoner of war” and “in no circumstances whatever shall a prisoner of war be tried by a court of any kind which does not offer the essential guarantees of independence and impartiality as generally recognized, and, in particular, the procedure of which does not afford the accused the rights and means of defence provided for in Article 105.”

It is worth also recalling that despite promising to uphold Protocol 13 to the European Convention for the Protection of Human Rights (ECHR), which prohibits the death penalty, Russia has never ratified it. Also, Russia ceased to be a Member State of the Council of Europe in March 2022, implying that it no longer abides by the ECHR, although the Convention remains in effect for six months.<sup>73</sup>

On the other side, the mission considered videos circulating on social media since 27 March 2022, filmed by Ukrainian soldiers, that show them inflicting wounds on and executing Russian prisoners of war. On 6 April 2022, a video of Ukrainian soldiers from the Georgian Legion executing captured Russian soldiers was posted on Telegram, showing a wounded Russian soldier lying on the ground after being shot twice by a Ukrainian soldier.<sup>74</sup> Three dead Russian soldiers, including one with a head wound and his hands tied behind his back, were shown lying next to the soldier. The video, which was confirmed by the New York Times and Reuters, appeared to have been shot on a road north of Dmytrivka, approximately 12 kilometers south of Bucha.<sup>75</sup>

Furthermore, Mamouka Mamoulashvili, commander of the Georgian Legion, stated in an interview with the "Vozdukh" YouTube channel that his unit "will no longer take Russian military prisoners." He justified this violation of the Geneva Conventions governing the treatment of prisoners of war as a "response" to the "Bucha massacre".<sup>76</sup> On 7 April 2022, the head of the Russian investigative committee charged Mamoulashvili with violating the rules of warfare against Russian military personnel.<sup>77</sup> This is the second case of a video showing violations against POWs on the Ukrainian side.

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<sup>71</sup> Deutsche Welle, Prisoners of war from Azov: Do the fighters face the death penalty in Russia?, *Taiwan News*, 21 May, 2022, at <https://www.taiwannews.com.tw/en/news/4546285>.

<sup>72</sup> GC III, Art. 84.

<sup>73</sup> Prisoners of war from Azov: Do the fighters face the death penalty in Russia? Prisoners of war from Azov, *DW*, 21 May 2022, at <https://www.dw.com/en/prisoners-of-war-from-azov-do-the-fighters-face-the-death-penalty-in-russia/a-61883690>.

<sup>74</sup> Shull, Abbie. Video appears to show Ukrainian soldiers executing Russian soldier captured in an ambush outside Kyiv, *New York Times* reports *Business Insider*, 4 April 2022, at <https://www.businessinsider.com/video-appears-to-show-ukrainian-soldiers-executing-captured-russian-soldier-nyt-2022-4?r=US&IR=T>; Evan Hill, Video appears to show Ukrainian troops killing captured Russian soldiers, *New York Times*, 6 April 2022, at <https://www.nytimes.com/live/2022/04/06/world/ukraine-russia-war-news>.

<sup>75</sup> Emmanuel Grynspan and Faustine Vincent, Military accused of war crimes against Russian troops, *Le Monde*, 9 April 2022, at [https://www.lemonde.fr/en/international/article/2022/04/09/ukraine-s-military-accused-of-war-crimes-against-russian-troop\\_5980121\\_4.html](https://www.lemonde.fr/en/international/article/2022/04/09/ukraine-s-military-accused-of-war-crimes-against-russian-troop_5980121_4.html).

<sup>76</sup> *Ibidem*.

<sup>77</sup> Russia's top investigator orders to bring Georgian legion commander in Ukraine to justice, *TASS*, 7 April 2022, at [https://tass.com/defense/1434305/?utm\\_source=en.wikipedia.org&utm](https://tass.com/defense/1434305/?utm_source=en.wikipedia.org&utm).

Further, on 13 May 2022, media outlets confirmed a video shot in Mala Rohan, southeast of Kharkiv, and posted on Telegram on 27 March 2022, showing Ukrainian soldiers torturing Russian prisoners by shooting them in the knees.<sup>78</sup> Several captured soldiers are shown lying on the ground, many of whom appear to be bleeding from leg wounds and are being questioned by their captors. At one point, three prisoners are brought out of a vehicle and shot in the legs with a rifle. The accents and uniforms of the kidnappers match those of Ukrainians from the country's east. Independent journalist investigations later confirmed the incident's location and revealed that volunteers from the Ukrainian Slobozhanshchyna battalion were on site at the time.<sup>79</sup>

The video caused an immediate response from the Head of the UN Human Rights Monitoring Mission in Ukraine, who stated on 29 March 2022 that she was "very concerned" and urged Russia and Ukraine to launch investigations into alleged ill-treatment of prisoners on both sides, reminding the two countries that they are obligated to treat POWs humanely and ensure they "are not exposed to public curiosity and are treated with dignity".<sup>80</sup>

Despite the Ukrainian armed forces chief issuing a statement saying that Russians had created fake videos to discredit Ukraine's defence forces, the adviser to the Head of the Office of the President of Ukraine, said that the case is being taken "very seriously" and will be investigated immediately because it would be "absolutely unacceptable behavior".<sup>81</sup> The chairman of the Russian Federation's investigative committee has also stated that an investigation will be launched.

During its visit to Ukraine, the mission learned about the military forces' compliance with the IHL program, which included specific trainings. The mission was also assured that each reported case will be forwarded to investigation and, if there is evidence of a potential violations, to judgment.

#### **4. CIVILIANS**

In the section dedicated to the IHL of military occupation the mission report, like the first one, analyzes violations of IHL in the treatment of Ukrainian and foreign civilians, as nearly all these violations occurred in places controlled by the Russians. The results of the mission brought to the conclusion that, as in the first mission report, a special section for vulnerable categories, particularly children, should be included and analysed under IHRL in order to avoid duplication.

##### **a) Humanitarian assistance**

As the international armed conflict in Ukraine continues, the level of death, destruction, and suffering that continues to be inflicted on civilians is terrible and unacceptable.

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<sup>78</sup> Arthur Carpentier, Marceau Bretonnier, Elisa Bellanger et Adrien Sahli, Prisonniers russes torturés: des vidéos vérifiées par "Le Monde" mettent en cause un bataillon de volontaires ukrainiens, *Le Monde*, 13 May 2022, at [https://www.lemonde.fr/international/video/2022/05/13/prisonniers-russes-tortures-des-videos-verifiees-par-le-monde-mettent-en-cause-un-bataillon-de-volontaires-ukrainiens\\_6125904\\_3210.html](https://www.lemonde.fr/international/video/2022/05/13/prisonniers-russes-tortures-des-videos-verifiees-par-le-monde-mettent-en-cause-un-bataillon-de-volontaires-ukrainiens_6125904_3210.html); Ukraine: Apparent POW Abuse Would Be War Crime, *Human Rights Watch*, 31 March 2022, at <https://www.hrw.org/news/2022/03/31/ukraine-apparent-pow-abuse-would-be-war-crime>.

<sup>79</sup> *Ibidem*.

<sup>80</sup> Does video show Russian prisoners being shot?, *BBC News*, 30 March 2022, at <https://www.bbc.co.uk/news/60907259>.

<sup>81</sup> Tim Lister, Celine Alkhalidi, Katerina Krebs and Josh Pennington, Ukraine promises "immediate investigation" after video surfaces of soldiers shooting Russian prisoners. *CNN*, 27 March 2022, at [https://edition.cnn.com/europe/live-news/ukraine-russia-putin-news-03-27-22/h\\_6e158d3fc5bc5efe7fc3f10b69b7aeec](https://edition.cnn.com/europe/live-news/ukraine-russia-putin-news-03-27-22/h_6e158d3fc5bc5efe7fc3f10b69b7aeec); Ukraine To Investigate Reports Of War Crimes Against Russian Troops, *RFE/RL*, 28 March 2022, at <https://www.rferl.org/a/ukraine-investigating-torture-video/31774747.html>; Daniel Boffey, Ukraine government investigates video alleged to show torture of Russian PoWs, *The Guardian*, 28 March 2022, at <https://www.theguardian.com/world/2022/mar/28/ukraine-government-investigates-video-alleged-torture-russian-prisoners-of-war>.

As reported on 6 June 2022, to prevent cholera and dysentery outbreaks, a quarantine was imposed in Mariupol, a Russian-controlled area of Donetsk oblast. Several UN agencies, including the World Health Organization (WHO), have previously expressed concern about the deteriorating sanitary conditions in Mariupol and the possibility of a cholera outbreak.<sup>82</sup> Isolated cases of cholera have been reported since May 2022.<sup>83</sup>

According to the WHO mission findings, the uncountable number of bodies left to rot in streets and building rubble is now contaminating the city's water supply;<sup>84</sup> the occupying power is unable to cope with the number of deaths and to bury the dead in mass graves. Aside from the bodies, there is the issue of all the decaying garbage that ends up in the water, the sea, and the sources of drinking water. Access to safe drinking water, internet access and phone services in Mariupol, as in other Russian-occupied areas of Ukraine, remains extremely difficult. A lack of medicines and labs that can be used to fight infection has exacerbated the situation.<sup>85</sup>

On 1 April 2022, the mayor of Mariupol claimed that Russia was preventing aid from reaching the besieged city and refusing to allow the opening of the planned "humanitarian corridor" that would have enabled civilians to flee heavy fighting in the town.<sup>86</sup> On 13 April 2022, the Ukrainian Deputy Prime Minister Iryna Vereshchuk claimed that Russian soldiers were blocking buses in violation of cease-fire agreements. The buses should have carried humanitarian aid and transported civilians into and out of occupied territories in Ukraine's eastern Luhansk and southern Zaporizhzhia regions.<sup>87</sup> This situation is confirmed also by other countries that accused Russia of obstructing their humanitarian assistance to Ukraine. Greece claimed that Russia obstructed its delivery of humanitarian aid to Mariupol, besieged by Russian forces.<sup>88</sup>

Other cities, namely the occupied Kherson, are likely to face a critical humanitarian crisis due to the shortage of medicines.<sup>89</sup> According to the Ukrainian Commissioner for Human Rights,

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<sup>82</sup> UN Office for the Coordination of Humanitarian Affairs, 'Ukraine Situation Report', 9 June, 2022, at <https://reports.unocha.org/en/country/ukraine/>

<sup>83</sup> Mick Krever, Tara John, Maria Kostenko, Taras Zadorozhnyy, Kostan Nechyporenko and Yulia Kesaieva, Mariupol at risk of cholera outbreak as Russia struggles to provide basic services, says UK intelligence, *CNN news*, 10 June 2022, at <https://edition.cnn.com/2022/06/10/europe/ukraine-mariupol-potential-cholera-outbreak-intl/index.html>; Dasha Zubkova, Epidemic Begins In Mariupol, First Cases Of Cholera And Dysentery Recorded, *Ukrainian News*, 6 June 2022, at <https://ukranews.com/en/news/861229-epidemic-begins-in-mariupol-first-cases-of-cholera-and-dysentery-recorded>; Ben Tobias, Cholera in Mariupol: Ruined city at risk of major cholera outbreak - UK, *BBC News*, 10 June 2022, at <https://www.bbc.com/news/world-europe-61762787>.

<sup>84</sup> Tariq Tahir, City of the dead. Piles of unburied bodies spark deadly cholera outbreak in Russia-held Mariupol after Putin's genocidal rampage, *The Sun*, 6 June 2022, at <https://www.thesun.co.uk/news/18800108/bodies-cholera-outbreak-mariupol-putin/>

<sup>85</sup> *Ibidem*.

<sup>86</sup> Ukraine Says Russia Is Blocking Aid To Mariupol, Civilians Still Trapped, *Radio Free Europe*, 1 April, 2022, at <https://www.rferl.org/a/ukraine-russia-blocking-mariupol-aid/31781075.html>; Ukraine accuses Russia of blocking aid convoy to besieged port city of Mariupol, *Devidcourse*, 14 March, 2022, at <https://www.devidcourse.com/article/law-order/1962442-ukraine-accuses-russia-of-blocking-aid-convoy-to-besieged-port-city-of-mariupol>; Pavel Polityuk and Natalia Zinets, Ukraine accuses Russia of blocking aid convoy to besieged Mariupol', *Reuters*, 15 March, 2022, at <https://www.reuters.com/world/europe/ukraine-aims-deliver-aid-mariupol-open-more-humanitarian-corridors-2022-03-15/>.

<sup>87</sup> Matthew Luxmoore, Ukraine Says Russia Obstructing Humanitarian Corridors for Residents Fleeing, *The Wall Street Journal*, 13 April 2022, at <https://www.wsj.com/livecoverage/russia-ukraine-latest-news-2022-04-13/card/ukraine-says-russia-obstructing-humanitarian-corridors-for-residents-fleeing-war-yHpwAoUJqrRsQf2GEj8X>.

<sup>88</sup> Greece claims Russia blocked humanitarian aid to Ukraine's Mariupol, *AA*, 11 April 2022, at <https://www.aa.com.tr/en/europe/greece-claims-russia-blocked-humanitarian-aid-to-ukraine-s-mariupol/2560713>.

<sup>89</sup> Mick Krever, Tara John, Maria Kostenko, Taras Zadorozhnyy, Kostan Nechyporenko and Yulia Kesaieva, Mariupol at risk of cholera outbreak as Russia struggles to provide basic services, says UK intelligence, *CNN*

as of 26 May 2022, the occupiers were illegally importing drugs from the temporarily occupied Crimea into the Kherson region and selling them in local markets. These drugs are not approved and may endanger people's lives and health.<sup>90</sup> The situation has since been confirmed, and it is deteriorating. On 22 June 2022, the Head of the Kherson Regional State Administration adviser claimed that the occupants do not allow people to bring medication into the city. Previously, all of these medicines and even hemodialysis could be supplied with medication, but this is no longer possible.<sup>91</sup> The Russians are accused of having eliminated any possibility of supplying medicine to the occupied Kherson region. As a result, people die because they are unable to obtain the appropriate medicine in a timely manner.

Generally speaking, the situation in areas occupied by Russian forces is catastrophic. This equates to cancer patients being left completely without medication; for diabetics, it means extreme difficulties or a complete lack of insulin. Many areas in eastern and southern Ukraine, the main battlegrounds, lack even basic antibiotics.<sup>92</sup>

All of the above-mentioned conduct violates Ukrainians' right to medical care, as guaranteed by IHL.<sup>93</sup>

It is worth noting that the adviser to the Head of the Kherson Regional State Administration also stated that, in the face of this critical humanitarian situation, the Russians are forcing Ukrainian citizens to accept Russian passports, specifically forcing entrepreneurs to submit lists of people to obtain Russian passports under threat of looting and appropriation of their enterprises.<sup>94</sup>

As a terrible by-product of the war, millions of Ukrainians are suffering from mental health problems. According to the Ministry of Health of Ukraine, 15 million people may need psychological support and treatment as a result of war-related trauma and stress, with 3 to 4 million possibly needing medication-assisted treatment.<sup>95</sup> Several UN agencies have also expressed concern about Ukraine's long-term mental health consequences, especially on children.<sup>96</sup>

#### **b) Treatment of Ukrainians believed to sympathize with Russia**

The mission was able to collect data regarding the treatment of Ukrainian citizens considered to sympathize with Russia. As of the end of April 2022, Ukraine's State Bureau of Investigations said more than 200 criminal cases on collaboration have been opened and a

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*News*, 10 June 2022, at <https://edition.cnn.com/2022/06/10/europe/ukraine-mariupol-potential-cholera-outbreak-intl/index.htm>

<sup>90</sup> In the temporarily occupied Kherson region the humanitarian crisis deepens because of a lack of medicines – Denysova, *LBUA*, 26 May 2022, at [https://en.lb.ua/news/2022/05/26/15489\\_temporarily\\_occupied\\_kherson.html](https://en.lb.ua/news/2022/05/26/15489_temporarily_occupied_kherson.html).

<sup>91</sup> Occupying Russian forces prevent vital medical supplies from entering Kherson city, causing preventable deaths - Head of the Regional State Administration adviser, *Espresso TV Channel*, 22 June 2022, at <https://global.espresso.tv/occupying-russian-forces-prevent-vital-medical-supplies-from-entering-kherson-city-causing-preventable-deaths-head-of-the-regional-state-administration-adviser>.

<sup>92</sup> Alessandra Prentice and Natalia Zinets, Nearly 400 Ukrainian medical centres destroyed damaged by Russian attacks, *Global News*, 5 May 2022, at <https://globalnews.ca/news/8814156/ukraine-russia-war-hospitals-destroyed-zelensky/>.

<sup>93</sup> GC IV, Art.23.

<sup>94</sup> Occupying Russian forces prevent vital medical supplies from entering Kherson city, causing preventable deaths - Head of the Regional State Administration adviser, *Espresso TV Channel*, 22 June 2022, at <https://global.espresso.tv/occupying-russian-forces-prevent-vital-medical-supplies-from-entering-kherson-city-causing-preventable-deaths-head-of-the-regional-state-administration-adviser>.

<sup>95</sup> UN Office for the Coordination of Humanitarian Affairs, Ukraine: Situation Report, 9 Jun 2022, 9 June 2022, at <https://reliefweb.int/report/ukraine/ukraine-situation-report-9-jun-2022-enruuk>.

<sup>96</sup> War in Ukraine Presenting Child Protection, Child Rights Crisis, Senior United Nations Official Tells Security Council (Security Council 9032ND Meeting), *UN Press*, 12 May 2022, at <https://www.un.org/press/en/2022/sc14889.doc.htm>.

“registry of collaborators” is being compiled and will be released to the public. According to national media, around 400 people in the Kharkiv region alone have been detained under anti-collaboration laws enacted quickly by Ukraine’s Parliament and signed by President Zelenskyy after Russia’s invasion.<sup>97</sup> With martial law in effect, authorities have banned 11 pro-Russian political parties, including the largest, the Opposition Platform For Life, which had 25 seats in the 450-member parliament and was founded by Viktor Medvedchuk, a jailed oligarch with close ties to President Putin.<sup>98</sup>

As of 17 June 2022, the media reported the State Bureau of investigations affirmed that 399 criminal proceedings have been opened and received from other law enforcement agencies for treason (Article 111 of the Criminal Code), and 127 proceedings have been instituted for collaboration (Article 111-1 of the Criminal Code), and against 4 accomplices of the aggressor (Article 111-2 of the Criminal Code). According to the Bureau, 140 suspects have already been notified of the suspicion, and 79 have been declared wanted. Another 924 people are being screened for participation in collaboration activities. The largest number of cases under these articles was initiated in Luhansk, Donetsk, and Zaporizhzhia oblasts.

The mission learned that the Center for Civil Liberties, one of Ukraine's largest human rights organizations, claimed that "dozens" of pro-Russian activists have been detained in Kyiv alone since the new laws were passed, but how many have been targeted nationwide is unknown; all are classified by Ukraine's State Security Service (SBU). According to the Center, a person in Ukraine can be detained for up to 30 days without a court order, and antiterrorism legislation under martial law allows authorities to withhold information about their clients' remand. These people vanish, and there is no access to them for 30 days.<sup>99</sup>

The majority of the cases mentioned above are embargoed and, as a result, could not be discussed during the mission's meetings in Ukraine. In any case, the mission mentioned this issue and was assured by the institutions to respect judicial guarantees and full respect for human rights. Furthermore, it was clear during the visit that the Ukrainian government is aware that, particularly in occupied territories, Ukrainian citizens are often obligated to sympathize with the occupying force in order to maintain their property and remain safe. The Ukrainian government is also aware of the public consequences of detaining people for their opinions, including the risk of feeding Moscow's narrative that Kyiv represses Russian speakers. As Foreign Minister Dmytro Kuleba stated, "the balance of national security and ensuring freedom of speech is endless".<sup>100</sup> Russian mistreatments of civilians in occupied territories are described further below.

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<sup>97</sup> Ukrainians detain suspected Russian sympathizers, *Arkansas Democrat Gazette*, 1 May 2022, at <https://www.arkansasonline.com/news/2022/may/01/ukrainians-detain-suspected-russian-sympathizers/>; Mstylav Chernov and Yuras Karmanau, Ukraine cracks down on ‘traitors’ helping Russian troops, *AP News*, 29 April 2022, at <https://apnews.com/article/russia-ukraine-putin-europe-kharkiv-51c514b6dc9cc1f935e018e4877222cc>. According to the current law, offenders who collaborate with Russian forces, make public denials about Russian aggression, or support Moscow face up to 15 years in prison. Anyone whose actions result in the death of another person could face life in prison.

<sup>98</sup> Mstylav Chernov and Yuras Karmanau, Ukraine cracks down on ‘traitors’ helping Russian troops, *AP News*, 29 April 2022, at <https://apnews.com/article/russia-ukraine-putin-europe-kharkiv-51c514b6dc9cc1f935e018e4877222cc>. The same article has been reported by other media, like Mstylav Chernova, Yuras Karmanau, Ukrainian authorities crack down on ‘traitors’ helping Russian troops, *Los Angeles Times*, 29 April 2022, at <https://www.latimes.com/world-nation/story/2022-04-29/ukraine-traitors-helping-russian-troops>; Ukraine's wartime fight includes pushing back on support for Russia at home, *CBC News*, 29 April 2022, at <https://www.cbc.ca/news/world/ukraine-suspected-collaborators-arrests-russia-war-1.643594>

<sup>99</sup> Mstylav Chernov and Yuras Karmanau, Ukraine cracks down on ‘traitors’ helping Russian troops, *AP News*, 29 April 2022, at <https://apnews.com/article/russia-ukraine-putin-europe-kharkiv-51c514b6dc9cc1f935e018e4877222cc>.

<sup>100</sup> *Ibidem*.



### c) Treatment of Detainees

Before the visit to Ukraine, the mission could gather information showing violations and abuses in civilian detainees' treatment in violation of the IHL.<sup>101</sup> During the visit to Ukraine, the mission received confirmation demonstrating that this is a critical issue for Ukraine.

As of 6 May 2022, Ukraine's Ombudsperson for Human Rights denounced that Russian forces are already holding over 3,000 civilians from Mariupol in a former prison colony in Olenivka. Civilians are detained for at least 30 days as part of a *filtration* process, with those deemed the most "untrustworthy," including former military and law-enforcement officers, obliged to remain for two months.<sup>102</sup> Following that, on 18 May 2022, Human Rights Watch documented seven cases of torture in Dyer, in which Russian soldiers beat, shocked, or staged mock executions to force detainees to provide information. According to one of those interviewed by the NGO, the soldiers placed a rifle in the detainees' heads, loaded it, and fired. The detainee could also hear bullet shells falling to the ground and assumed it was the end of his life.<sup>103</sup> On 7 June 2022, Tamila Tacheva, the Ukrainian President's permanent representative in Crimea, stated that 600 people are being held in specially equipped basements and torture chambers in the Kherson region. About 300 people are detained in Kherson city's basements, and the rest are in other settlements spread throughout the region. According to Ukrainian sources, they are detained in inhumane conditions and are victims of torture. Journalists and political activists are detained as well.<sup>104</sup>

Cases of Ukrainian civilians detained by Russian soldiers, transported across the Russian border, and held in a tent camp in Glushkovo, Russia and in a prison in Kursk, about 402 kilometers from the Ukrainian border, for several weeks in March, April, and/or May are reported in the media. Some of them spent their first days in captivity outside, in a pit in the ground lined with cardboard, in freezing temperatures, wearing only a T-shirt.

The interviewees shared similar stories of violence and humiliation reporting that the detention centre was a living hell. They said they had been continuously beaten with boxing gloves as well as stun guns that deliver an electric shock. After being held captive in the open, some people developed frostbite on their feet. As a result, some people have had parts of their feet amputated.<sup>105</sup>

## 5. INTERNATIONAL HUMANITARIAN LAW OF MILITARY OCCUPATION

### a) Administration of the occupied territory

As previously reported by the first mission, Russia distinguishes between areas belonging to the Ukrainian Luhansk and Donetsk regions and other newly occupied territories in terms of administration, public property located therein, and applicable legislation.

Those areas in Ukraine's Luhansk and Donetsk regions are subject to the administration, "laws" and institutions of the respective "republics", as soon as Russia takes control of them, in violation of IHL.<sup>106</sup> In other newly occupied areas, Russia has established "Komendaturas"

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<sup>101</sup> GC IV, Article 42(1) (in Party's own territory); GC IV, Article 78(1) (in occupied territory). 132 GC IV, Art. 78.

<sup>102</sup> Peter Sidel, Russia Holds 3,000 Civilians in Town Where Mariupol Fighters Were Taken, Kyiv Says, *The Wall Street Journal*, 17 May 2022, at <https://www.wsj.com/livecoverage/russia-ukraine-latest-news-2022-05-17/card/russia-holds-3-000-civilians-in-town-where-mariupol-fighters-were-taken-kyiv-says>.

<sup>103</sup> Ukraine: Executions, Torture During Russian Occupation, *Human Rights Watch*, 18 May 2022, at <https://www.hrw.org/news/2022/05/18/ukraine-executions-torture-during-russian-occupation>.

<sup>104</sup> Zelenskiy says stalemate with Russia is 'not an option' – as it happened, *The Guardian*, 8 June 2022, at <https://www.theguardian.com/world/live/2022/jun/07/russia-ukraine-war-latest-sievierodonetsk-sees-fierce-street-fighting-zelenskiy-says-as-peace-talks-at-level-zero-live>

<sup>105</sup> Anya Kamenetz, Russia is disappearing Ukrainian civilians. Their families want answers, *NPR*, 24 June 2022, at <https://www.npr.org/2022/06/24/1107022067/russia-ukraine-detention-enforced-disappearance>.

<sup>106</sup> GC IV, Art 47, Art. 64; the HR, Art. 43.

which is a type of civil administration by the occupying forces aimed at adopting and enforcing only rules deemed necessary to protect its forces' security or to maintain law and order, which is in principle not prohibited under IHL.<sup>107</sup>

The mission gathered information indicating that a process of establishing a "people's republics" lifestyle, including practices such as conferring Russian citizenship, is underway in the new areas occupied by Russian forces during the current invasion.

The Ukrainian government is concerned and has condemned Russian occupation authorities in southern Ukraine for issuing Russian passports to residents of two cities in June 2022, Kherson and Melitopol. The move has been denounced by Ukraine as a "blatant violation" of its territorial integrity. Russia has been issuing passports to inhabitants of Ukrainian regions controlled by the Russian military since 2014, including Crimea and much of the Donbas. This fact complicates also the procedure to specify the exact number of Ukrainians who died in Crimea. During a meeting held in Kyiv with the Mission of the President of Ukraine in the Autonomous Republic of Crimea, the mission was informed that it is difficult to confirm if the mid-May number of 48 dead Ukrainians is correct. Some other deceased may be Ukrainian citizens on whom Russian citizenship was unlawfully imposed.<sup>108</sup>

Furthermore, local media sources claim that in the newly occupied territories, the occupants are compelling Ukrainians into getting a Russian passport by torturing or paying them.<sup>109</sup> During its visit to Ukraine, the mission learned that Ukrainians are required to obtain a Russian passport in order to protect their property and safety.

On 23 May 2022, President Putin signed a decree streamlining the procedure to obtain Russian citizenship and passports for residents in the Russian-occupied Kherson and Zaporizhzhia regions. The directive is a step towards the "*russification*" of the two territories, and adds to the continuous land bridge that connects Russia to the Crimean Peninsula and was built after the annexation by Russia in 2014. Putin's move expands a scheme that has been offered to residents of certain areas of the Donetsk and Luhansk regions of Ukraine, temporarily occupied by the Russian Federation, with Moscow issuing some 800,000 passports since 2019.<sup>110</sup>

#### **b) Enforced Disappearances**

While the full extent of enforced disappearances in Ukraine is currently unknown, available information indicates that Russian forces have abducted active and outspoken community leaders, journalists, and political activists on a systematic basis. There is evidence that many mayors have been arrested, detained, or abducted – the latter includes "any form of deprivation of liberty of a person against his or her will". The disappearances are often followed by a refusal to provide information about the fate or location of the abducted. Such refusals include cases in which the deprivation of liberty is either denied outright or misrepresented. Some of the victims

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<sup>107</sup> HR, Art. 43.

<sup>108</sup> Mission of the President of Ukraine in the Autonomous Republic of Crimea, The use of Crimeans in Russia's full scale military aggression against Ukraine, 23 May 2022.

<sup>109</sup> Russia wants to unite the occupied territories of Ukraine into a new federal district of Russia – Russian media, *Hromadske.radio*, 10 June 2022, at <https://hromadske.radio/en/news/2022/06/10/russia-wants-to-unite-the-occupied-territories-of-ukraine-into-a-new-federal-district-of-russia-russian-media>; Russia hands out passports in occupied Ukraine cities, *BBC News*, 11 June 2022, at <https://www.bbc.com/news/world-europe-61770997>; Kyiv denounces Putin's 'illegal' plan for issuing Russian passports in Ukraine, *The Guardian*, 25 May 2022, at <https://www.theguardian.com/world/2022/may/25/kyiv-denounces-putins-plan-for-issuing-russian-passports-in-ukraine-as-illegal>.

<sup>110</sup> Ukraine's eastern towns bombarded, Russia offers fast-track citizenship to people in occupied regions, *CBC*, 25 May 2022, at <https://www.cbc.ca/news/world/ukraine-invasion-day-91-1.6464872>; Russia has issued 720,000 fast-track passports in separatist-held areas of eastern Ukraine, *Euronews*, 17 February, 2022, at <https://www.euronews.com/2022/02/17/russia-has-issued-720-000-fast-track-passports-in-separatist-held-areas-of-eastern-ukraine>.

have been released by Russian forces – sometimes in exchange for captured Russian soldiers – under the condition that they accept to film a pro-Russian statement.<sup>111</sup>

The United Nations Human Rights Monitoring Mission in Ukraine documented 204 cases of apparent enforced disappearances involving 169 men, 34 women, and a boy. These are recorded between 24 February and 10 May 2022 and were in the vast majority attributed to Russian armed forces and affiliated armed groups.<sup>112</sup> Experts and government officials agree that the true figure is almost certainly much higher. Nobody knows how much higher, but since Russia's invasion, Ukraine's national police have received over 9,000 missing person reports and nearly 800 cases of enforced disappearances have been documented by Ukrainian authorities.<sup>113</sup>

Hundreds of cases of enforced disappearances have been also reported to Ukrainian human rights organizations. The Center for Civil Liberties recorded 293 cases (as of 29 April 2022), while the Human Rights Centre ZMINA, the Media Initiative for Human Rights, and the Crimean Human Rights Group documented 139 cases as of April 29. Most cases have been reported in the Kyiv, Kherson, and Zaporizhzhia regions. Between February 24 and April 30, the OMCT and its Ukrainian partners directly documented 16 alleged enforced disappearances in Kherson, Kyiv, Zaporizhzhia, Mykolaiv, and Chernihiv, all of which are or were under Russian control.

The World Organisation Against Torture (OMCT) has co-operated with the United Nations Working Group on Enforced or Involuntary Disappearances trying to trace all these cases (WGEID). In six of them, however, relatives have received no official or unofficial information about the victims' whereabouts.

Four of the victims named by the OMCT in previous crisis updates have been identified (their names are Oleg Baturin, Viktor Maruniak, Dmytro Bodyu, and Serhiy Pryima). For up to 45 days, the relatives of these victims received no information about them. The OMCT has confirmed that at least two of them (Oleg Baturin and Viktor Maruniak) were tortured or ill-treated by the Russian military or by intelligence personnel.<sup>114</sup>

Another clear pattern is that civilians forcedly disappear when the Russian troops withdraw from occupied territories or transport military equipment and personnel through such territories. Witnesses who were present during enforced abductions reported that the perpetrators were formed by groups of armed military men wearing balaclavas who behaved aggressively, threatened witnesses, and attempted to intimidate civilians. The soldiers wore white or red armbands and drove in vehicles marked with a "Z," a symbol of Russian military support.<sup>115</sup>

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<sup>111</sup> Ruby Axelson, Ruby Axelson and Anna Mykytenko, *The Disappeared: Ensuring Future Investigations Recognise Enforced Disappearances in Ukraine (Part II)*, *Intlawgrrls*, 15 May 2022, at <https://ilg2.org/2022/05/15/the-disappeared-ensuring-future-investigations-recognise-enforced-disappearances-in-ukraine-part-ii/>.

<sup>112</sup> Russia: Enforced Disappearance of Ukrainian Teacher, *Human Rights Watch*, 13 June 2022, at <https://www.hrw.org/news/2022/06/13/russia-enforced-disappearance-ukrainian-teacher#>

<sup>113</sup> Paulina Villegas, Reis Thebault, All over Ukraine, people are missing, forcing families to become detectives, *Washington Post*, 19 June 2022, at <https://www.washingtonpost.com/world/2022/06/19/people-missing-ukraine-russia-invasion/>.

<sup>114</sup> Ukraine: killings, kidnappings and torture of civilians in territories under Russian control, *World Organisation Against Torture*, 6 May 2022, at <https://www.omct.org/en/resources/statements/ukraine-killings-kidnappings-and-torture-of-civilians-in-territories-under-russian-control>. See also Paulina Villegas and Reis Thebault, All over Ukraine, people are missing, forcing families to become detectives, *Washington Post*, 19 June 2022, at <https://www.washingtonpost.com/world/2022/06/19/people-missing-ukraine-russia-invasion>; When Russian troops arrived, their relatives disappeared, *Vox*, 21 April 2022, at <https://www.vox.com/23012456/ukraine-russia-war-disappearances-kidnappings>.

<sup>115</sup> Ukraine: killings, kidnappings and torture of civilians in territories under Russian control, *World Organisation Against Torture*, 6 May 2022, at <https://www.omct.org/en/resources/statements/ukraine-killings-kidnappings-and-torture-of-civilians-in-territories-under-russian-control>.

According to OMCT, the following are the goals of enforced disappearances of local government representatives, civil activists, and humanitarian volunteers: 1) to coerce victims into assisting Russian troops 2) to exact vengeance for the occupation's lack of support 3) to prevent any activity, including humanitarian activities, that is not sanctioned by the occupiers.<sup>116</sup>

On 13 June 2022 Human Rights Watch claimed that Russian authorities made a teacher, Viktoria Andruska, who had been detained in Ukraine in late March 2022 forcibly disappear.<sup>117</sup> After a month-long occupation, Russian forces withdrew from the area and forcibly transferred Andruska to Russia. She is one of several Ukrainian civilians who appear to have forcibly disappeared since Russia launched its full-scale invasion of Ukraine.

Concerns have been raised about children who have gone missing, as the mission was informed also during its visit to Ukraine. Over 2,200 children have gone missing in the three months since the war began. Last year, 182 children went missing. They may have been kidnapped by Russian soldiers. For example, Vladyslav Buryak, also known as Vlad, is 16 and thought to have been kidnapped by Russian soldiers in April 2022 at a checkpoint on the way from Melitopol to Zaporizhzhia. Oleg Buryak, the head of military administration in Zaporizhzhia, the boy's father, believes that Vlad was kidnapped because of his governmental work.<sup>118</sup>

As of 15 June 2022, the OHCHR stated that it was investigating allegations that children were taken from orphanages in Donbas, where Russia has steadily gained ground despite intense fighting in recent weeks. Despite the fact that OHCHR cannot confirm these allegations or the number of children who may be in such a situation, it is concerned about the Russian authorities' alleged plans to allow the movement of children from Ukraine to families in the Russian Federation, which do not appear to include steps for family reunification or respect the best interests of the child.<sup>119</sup>

### c) Allegations of Summary Executions

The first mission found evidence that from late February to March 2022, when Russian forces controlled much of the Kyiv and Chernihiv regions in northeastern Ukraine, they subjected civilians to summary executions, torture, and other grave abuses, all of which amount to war crimes. In order to further document these allegations, the mission considered information obtained both from local official sources and from international institutions. Russian military conversations and the Russian government's emergency plans for civilian mass graves are among the evidence in various trials in Ukraine.<sup>120</sup>

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<sup>116</sup> Paulina Villegas, Reis Thebault, All over Ukraine, people are missing, forcing families to become detectives, *Washington Post*, 19 June 2022, at <https://www.washingtonpost.com/world/2022/06/19/people-missing-ukraine-russia-invasion/>; Ukraine: killings, kidnappings and torture of civilians in territories under Russian control, *World Organisation Against Torture*, 6 May 2022, <https://www.omct.org/en/resources/statements/ukraine-killings-kidnappings-and-torture-of-civilians-in-territories-under-russian-control>; Ukraine war puts spotlight on Red Cross service to find missing people, *DW*, 8 May 2022, at <https://www.dw.com/en/ukraine-war-puts-spotlight-on-red-cross-service-to-find-missing-people/a-61712712>.

<sup>117</sup> Anya Kamenetz, Russia is disappearing Ukrainian civilians. Their families want answers, 24 June 2022, *NPR*, at <https://www.npr.org/2022/06/24/1107022067/russia-ukraine-detention-enforced-disappearance>; Russia: Enforced Disappearance of Ukrainian Teacher, *Human Rights Watch*, 13 June 2022, at <https://www.hrw.org/news/2022/06/13/russia-enforced-disappearance-ukrainian-teacher>.

<sup>118</sup> Lucy Watson, You imagine the worst: Families' desperate search for the missing children of Ukraine, *ITV*, 31 May 2022, at <https://www.itv.com/news/2022-05-31/families-desperate-search-for-the-missing-children-of-ukraine>; Anya Kamenetz, War displaced two-thirds of Ukraine's children. Keeping them safe isn't easy, *NPR*, 9 June 2022, at <https://www.npr.org/2022/05/29/1101973267/ukraine-children-displaced-orphanage-russia-war>.

<sup>119</sup> UN's Bachelet concerned over Ukraine orphans 'deported' to Russia for adoption, *UN News*, 15 June 2022, at <https://news.un.org/en/story/2022/06/1120412>.

<sup>120</sup> Michael Day, Russian state news demands 'liquidation' of Ukrainians as evidence of war crimes mounts, *Inews*, 5 April 2022, at <https://inews.co.uk/news/russia-news-ria-novosti-demands-liquidation-ukraine-ukrainians-war->

On 15 April 2022, the Kyiv regional police force reported that 900 civilian bodies had been discovered following Russia's withdrawal from the area, including over 350 of them discovered in Bucha. According to evidence gathered by the police, nearly 95 percent were "simply executed". More bodies were discovered in mass graves and under rubble.<sup>121</sup> The Office of the Prosecutor General of Ukraine announced on 4 April 2022 that police in the Kyiv region discovered a "torture chamber" in the basement of a children's sanatorium in Bucha.

The bodies of five men with their hands tied behind their backs were found there. Several photos were posted on Facebook to accompany the announcement. Many pieces of evidence of torture, and mutilated bodies were reported by the media.<sup>122</sup> On 27 April 2022, HCHR Michelle Bachelet reported that the Monitoring Mission in Ukraine had documented the unlawful killing of 50 civilians – mostly men but also women and children – in Bucha.<sup>123</sup>

The New York Times published videos on 19 May 2022 showing Russian soldiers leading a group of civilians away and forcing them to the ground. The men's dead bodies were later recorded by a drone in the location where the video was recorded, and the bodies were later discovered after Bucha's liberation. The videos show the murdered men in Russian custody minutes before their execution and corroborate eyewitness accounts.<sup>124</sup> During its visit to Ukraine, the mission visited the location in Bucha where the mass graves were discovered. Inside the church next to the place where the mass graves were discovered, there is a photo exhibition depicting some of the moments of the digging up of the bodies. A plaque is placed in the memory of the dead persons.

Only in the Region of Kyiv, Human Rights Watch investigated 22 apparent summary executions, 9 other unlawful killings, 6 possible enforced disappearances, and 7 cases of torture. These occurred in 17 villages and small towns in the Kyiv and Chernihiv regions, which were visited by the NGO in April. Twenty-one civilians described inhuman and degrading conditions of unlawful confinement.<sup>125</sup> One of the cases concerns Ihor Savran, 45, from the Kyiv Region. His mother, Anastasia Andriivna, said that she was at home on 19 March 2022 when soldiers detained her son and on 31 March 2022, she discovered her son's body in a barn about 100 meters from her house, the day after Russian forces withdrew. She recognized his sneakers sticking out of the barn door.<sup>126</sup>

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crimes-civilians-putin-1558378; Russian soldiers 'discussed killing civilians' in Ukraine in radio intercepts German intelligence presented evidence of transmissions to MPs, according to Der Spiegel, *The Guardian*, 7 April 2022, at <https://www.theguardian.com/world/2022/apr/07/russian-soldiers-discussed-killing-civilians-in-radio-intercepts>.

<sup>121</sup> Police: Over 900 civilian bodies discovered in Kyiv region, *AP News*, 16 April 2022, at <https://apnews.com/article/russia-ukraine-zelenskyy-kyiv-business-black-sea-22d7279f32c>; Bucha: A street filled with bodies, *France 24*, 21 April 2022, at <https://www.france24.com/en/live-news/20220421-bucha-a-street-filled-with-bodies>; Joel Gunter, Collecting the Dead in Bucha, *BBC News*, 13 April 2022, at <https://www.bbc.com/news/world-europe-61085810>; Ukraine: Executions, Torture During Russian Occupation, *Human Rights Watch*, 18 May 2022, at <https://www.hrw.org/news/2022/05/18/ukraine-executions-torture-during-russian-occupation>

<sup>122</sup> Louise Callaghan, Bodies of mutilated children among horrors the Russians left behind, *The Times*, 2 April 2022, at <https://www.thetimes.co.uk/article/bodies-of-mutilated-children-among-horrors-the-russians-left-behind-5ddnkkwp2>

<sup>123</sup> Accountability for atrocities committed in Ukraine' Statements Office of the High Commissioner for Human Rights, *OHCHR*, 27 April 2022, at <https://www.ohchr.org/en/statements/2022/04/ensuring-accountability-atrocities-committed-ukraine>.

<sup>124</sup> Al-Hlou Yousur, Froliak Masha, Hill Evan, Browne Malachy, Botti, David, New Evidence Shows How Russian Soldiers Executed Men in Bucha. *The New York Times*, 19 May 2022, at <https://www.nytimes.com/2022/05/19/world/europe/russia-bucha-ukraine-executions.html>.

<sup>125</sup> Ukraine: Executions, Torture, during Russian Occupation, *Human Rights Watch*, 18 May 2022, at <https://www.hrw.org/news/2022/05/18/ukraine-executions-torture-during-russian-occupation>.

<sup>126</sup> *Ibidem*.

#### **d) Administration of Public Property.**

The mission gathered information on Russia's administration of Ukrainian public property in violation of IHL and ICL.<sup>127</sup> As it has been reported in June, a "decree" on the "nationalization" of Ukrainian property was adopted in the occupied territories of Zaporizhzhia oblast in order to plunder and appropriate land, natural resources, strategic industries, and Ukrainian property. This "decree" concerns also Zaporizhzhia's nuclear plant which is the largest in Europe.<sup>128</sup> According to Russian sources, the decision was made "to meet state needs related to improving the overall efficiency and social orientation of the economy, as well as to preserve the national heritage for the inhabitants of the Zaporozhye region".<sup>129</sup>

#### **e) Respect for Private Property**

Survivors of the Bucha massacre have claimed that Russian soldiers ransacked the city, taking jewellery, electronics, kitchen appliances, clothes, and vehicles from the displaced, deceased, and those still in the city.<sup>130</sup> The media reported that in Trostianets, after a month of Russian occupation, evidence of "systematic looting" was discovered.<sup>131</sup> Similarly, in the village of Berestyanka near Kyiv Russian soldiers looted clothing, appliances, and electronics from homes before the village was returned to Ukrainian control. Belaruski Gayun, a Telegram channel that has been monitoring military activity in Belarus since February, reported in early April that Russian soldiers were sending large packages to Russia via a courier service. The packages are believed to contain items stolen by Russian soldiers.<sup>132</sup>

There have been reports of Russian forces setting up bazaars in Belarus to trade looted goods. Washing machines, dishwashers, refrigerators, jewellery, automobiles, bicycles, motorcycles, dishes, carpets, works of art, children's toys, and cosmetics are examples of such items.<sup>133</sup>

An important issue concerns the grain looting that Russia is accused of. The Ukrainian Defence Ministry accused Russia of stealing "hundreds of thousands of tonnes of grain" from grain elevators and other storage facilities in occupied Ukraine and transporting it to Russia. Grain theft from occupied Ukraine has the potential to exacerbate food crises, with both the Ukrainian Minister of Agriculture and the United Nations World Food Programme warning that it could worsen the Ukrainian food crisis and even exacerbate global hunger. On 30 May 2022, Russia

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<sup>127</sup> Rule 51, Public and Private Property in Occupied Territory, Customary IHL; Rome Statute, Art. 8(2)(a)(iv), Art.8(2)(a)(xvi).

<sup>128</sup> Kostia Andreikovets, The occupiers decided to nationalize Ukrainian property in Zaporizhzhia, *Babel*, 2 June 2022, at <https://babel.ua/en/news/79373-the-occupiers-decided-to-nationalize-ukrainian-property-in-zaporizhzhia>; In Zaporozhye issued a decree on the nationalization of property of Ukraine, *Azlyrics*, 2 June 2022, at <https://azlyrics.com.az/lyrics/in-zaporozhye-issued-a-decree-on-the-nationalization-of-property-of-ukraine/>; The authorities of the Zaporozhye region announced the nationalization of property of Ukraine, *BBC CNTV*, 23 June 2022, at <https://bb-cntv.com/news/the-authorities-of-the-zaporozhye-region-announced-the-nationalization-of-property-of-ukraine-60381/>.

<sup>129</sup> The authorities of the Zaporozhye region announced the nationalization of property of Ukraine, *BBC CNTV*, 23 June 2022, at <https://bb-cntv.com/news/the-authorities-of-the-zaporozhye-region-announced-the-nationalization-of-property-of-ukraine-60381/>.

<sup>130</sup> Katz Sam, War in Ukraine: Russia leaves behind massacres in liberated towns, *The Daily Campus*, 7 April 2022, at <https://dailycampus.com/2022/04/07/war-in-ukraine-russia-leaves-behind-massacres-in-liberated-towns/>.

<sup>131</sup> Walker Shaun, 'Barbarians': Russian troops leave grisly mark on town of Trostianets. *The Guardian*. 6 April 2022, at <https://www.theguardian.com/world/2022/apr/05/barbarians-russian-troops-leave-grisly-mark-on-ukraine-town-of-trostianets>.

<sup>132</sup> New footage shows Russian troops sending stolen Ukrainian items home through Belarus, *Meduza*, 6 April 2022, at <https://meduza.io/en/feature/2022/04/06/new-footage-shows-russian-troops-sending-stolen-ukrainian-items-home-through-belarus>.

<sup>133</sup> Michael Starr, 'Bazaar' for looted Ukrainian property allegedly opened in Belarus, *JPost*. 4 April 2022, at <https://www.jpost.com/international/article-703211>.

claimed that it had begun exporting grain from Kherson to Russia and was working on exporting sunflower seeds.<sup>134</sup>

The mission was also be informed of the treatment of civilians suspected of being thieves or bootleggers. As of 6 May 2022, photographs of Ukrainian "marauders", the local term for looters, and those who violate public norms were widely circulated on the internet, showing marauders tethered to a pole or painted with colours, while others have the word "thief" or a similar term scrawled across their faces and bodies. In many cases, the accused are seen stripped of their shirts and often left naked below the waist. Locals can be seen kicking or striking the accused with a stick in a few videos.<sup>135</sup>

#### **f) Deportations**

The mission ascertained many information regarding alleged deportations. As of 7 April 2022, Ukraine's deputy prime minister, Iryna Vereschuk, estimated that 45,000 Ukrainian residents had been deported forcibly since the beginning of the war.<sup>136</sup> According to Ukraine's government and to humanitarian organizations, armed forces of the Russian Federation and of the two so-called People's Republics are transporting tens of thousands of civilians to so-called "*filtration centres*" in the so-called Donetsk People's Republic (DPR) in eastern Ukraine, which Moscow recognizes as independent, before deporting them to Russia.<sup>137</sup>

Mariupol's mayor claimed that some of his neighbours and municipal colleagues were deported to Russia against their will. He described how the practice was carried out. At night, a man with a gun entered the shelter, claiming it was an evacuation. People who had been in the shelter for about 20 days were let out, put in cars, and driven somewhere, only to realize they had been taken somewhere out of Ukraine. They were then loaded onto trains and transported to the Russian Federation's hinterland.<sup>138</sup>

CNN reported that victims were given only two options: go to Russia or die. In many interviews, including to Mariupol residents, people described Russian soldiers and soldiers of the so-called DPR storming bomb shelters and forcing everyone inside to leave right away. No one had any

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<sup>134</sup> Russian-controlled Kherson region in Ukraine starts grain exports to Russia - TASS, *Reuters*, 30 May 2022, at <https://www.reuters.com/markets/commodities/pro-moscow-kherson-region-starts-grain-exports-russia-tass-2022-05-30/>; Russian-Controlled Kherson Region in Ukraine Starts Grain Exports to Russia - TASS, *US News*, 30 May 2022, at <https://www.usnews.com/news/world/articles/2022-05-30/pro-moscow-kherson-region-starts-grain-exports-to-russia-tass>; Emre Gürkan Abay, Moscow-backed region in Ukraine begins grain exports to Russia, *AA*, 30 May 2022, at <https://www.aa.com.tr/en/economy/moscow-backed-region-in-ukraine-begins-grain-exports-to-russia/2601178>.

<sup>135</sup> Jason Jay Smart, Tethered to a pole: the rise of vigilante justice in Ukraine, *Kyiv Post*, 6 May 2022, at <https://www.kyivpost.com/ukraine-politics/tethered-to-the-pole-the-appearance-of-vigilante-justice-in-ukraine.html>; Chloé Lauvergner, Ukraine: People accused of looting tied to poles, stripped and beaten, *The Observer*, 1 April 2022, at <https://observers.france24.com/en/europe/20220404-ukraine-poles-public-humiliation-punishment-looting>.

<sup>136</sup> Eliza Mackintosh, Oleksandra Ochman, Gianluca Mezzofiore, Katie Polglase, Teele Rebane and Anastasia Graham-Yooll, Russia or die After weeks under Putins bombs, these Ukrainians were given only one way out, *CNN*, 7 April 2022, at <https://edition.cnn.com/2022/04/07/europe/ukraine-mariupol-russia-deportation-cmd-intl/index.html>.

<sup>137</sup> Eliza Mackintosh, Oleksandra Ochman, Gianluca Mezzofiore, Katie Polglase, Teele Rebane and Anastasia Graham-Yooll, Russia or die After weeks under Putins bombs, these Ukrainians were given only one way out, *CNN*, 7 April 2022, at <https://edition.cnn.com/2022/04/07/europe/ukraine-mariupol-russia-deportation-cmd-intl>.

<sup>138</sup> Yogita Limaye, War in Ukraine: Ukrainians deported to Russia beaten and mistreated, *BBC News*, 28 April 2022, at <https://www.bbc.com/news/world-europe-61248436>; Eliza Mackintosh, Oleksandra Ochman, Gianluca Mezzofiore, Katie Polglase, Teele Rebane, Anastasia Graham-Yooll, Russia or die After weeks under Putins bombs, these Ukrainians were given only one way out, *CNN*, 7 April 2022, at <https://edition.cnn.com/2022/04/07/europe/ukraine-mariupol-russia-deportation-cmd-intl>.

idea of where he/she was being taken. In one reported case, five people were eventually deported to Russia; three have since returned.<sup>139</sup>

During its visit to Ukraine, the mission obtained confirmation of the existence of cases of deportations, though the precise number is difficult to determine. Ukraine's Commission for human rights said in mid-May that Russia had relocated more than 210,000 children during the conflict, part of the more than 1.2 million Ukrainians deported against their will, according to Kyiv.<sup>140</sup> However, also in this case, the mission could not receive any exact number of children involved.

Mass forcible transfers of civilians during a conflict to the territory of the occupying party are prohibited under the 1949 Geneva Conventions. The practice is considered a war crime.

#### **g) Conscription of Ukrainian nationals**

According to a statement released by the Ukrainian Main Intelligence Directorate and General Staff on April 23, Russia is planning to enlist Ukrainian residents from the Russian-occupied areas of Kherson and Zaporizhzhia, in violation of Article 51 of the Fourth Geneva Convention, which states that "the Occupying Power may not compel protected persons to serve in its armed or auxiliary forces," and that "no pressure or propaganda aimed at securing voluntary enlistment is permitted".<sup>141</sup>

This practice had already occurred in other regions. On 19 February 2022, the Russian occupation authorities in Luhansk and Donetsk called for a "general mobilization". Russia appears to be relying heavily on conscripts from these regions in the absence of its own full mobilization. Conscription was imposed on all local men between the age of 18 and 55. Abducting men from the streets, their homes, and their workplaces became the new normality in occupied Donbas less than two weeks later, when the age limit was raised to 65. Russian authorities have made it illegal for men to leave the occupied territory, allowing any man between the age of 18 and 65 to be conscripted. In mid-April, for example, local social media groups in Donetsk highlighted how philharmonic and opera musicians, circus performers, educators, and social professionals were forcibly enlisted as "volunteers", despite having no connection to the military. The Russian mobilization in the occupied Donbas is still ongoing, although there are only non-accurate figures on how many men were conscripted for military service. Radio Liberty puts the amount in the hundreds, if not tens of thousands, not just in Luhansk and Donetsk, but also in the oblasts of Kharkiv, Kherson, and Sumy.<sup>142</sup> In recent weeks, Russian occupation administration has reportedly intensified the call-up, with residents saying men with no military experience are regularly plucked from the streets and immediately sent to the front. The escalation, and rising casualty rates, have begun to spark anger even among pro-Russian communities. Several videos posted online purportedly show the wives of Donetsk and Luhansk conscripts demanding assistance for their husbands and asking why men with no military background are being sent to fight.<sup>143</sup>

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<sup>139</sup> Eliza Mackintosh, Oleksandra Ochman, Gianluca Mezzofiore, Katie Polglase, Teele Rebane and Anastasia Graham-Yooll, Russia or die After weeks under Putin's bombs, these Ukrainians were given only one way out, *CNN*, 7 April 2022, at <https://edition.cnn.com/2022/04/07/europe/ukraine-mariupol-russia-deportation-cmd-intl>.

<sup>140</sup> Anthony Deutsch, Thomson Reuters, Exclusive: Ukraine probes deportation of children to Russia as possible genocide, *Reuters*, 3 June 2022, at <https://www.reuters.com/world/europe/exclusive-ukraine-investigates-deportation-children-russia-possible-genocide-2022-06-03/>.

<sup>141</sup> Ministry of Defence on Twitter, Latest Defence Intelligence update on the situation in Ukraine, 23 April 2022, at <https://twitter.com/defencehq/status/1517956476211503105?lang=en>.

<sup>142</sup> Forced conscription: how Russia wipes out the male population of occupied Donbas, *Euromaidan Press*, 28 April 2022, at <https://euromaidanpress.com/2022/04/28/forced-conscription-how-russia-wipes-out-the-male-population-of-occupied-donbas/>.

<sup>143</sup> Russia turns to Donbas conscripts to fill front lines, *Financial Times*, 11 June 2022, at <https://www.ft.com/content/e5b88958-b6e4-4417-ba50-eb1916092acd>.



Following the Russian occupation of Popasna in Luhansk oblast on 8 May 2022, the Russians immediately began forcing residents to flee to Pervomaisk and Stakhanov, two cities within the so-called Luhansk People's Republic (LPR). The Regional Governor of Luhansk reported on 14 May 2022 that the Russians are mobilizing those men who were taken against their will to the so-called LPR and forcing them to fight against Ukraine.<sup>144</sup>

During its visit to Ukraine, the mission was able to receive information from the Mission of the President of Ukraine in the Autonomous Republic of Crimea about illegal conscription in Crimea's temporary occupied territories (TOTs). The occupation administration launched its 15th illegal conscription campaign on 1 April 2022, with Russia expected to recruit 134,500 conscripts across its territory, including the TOTs of Crimea and Sevastopol. According to the same Ukrainian mission, that figure includes between 2,500 and 3,500 Crimeans. These mobilized Crimeans were sent to take part in hostilities against Ukraine.<sup>145</sup> On 1 April 2022, a new forced conscription campaign began, with other several thousands of Crimeans to be sent to war. However, in Crimea, the indicators of conscription are hidden. At the press conference in Simferopol, Yuriy Lyvar, "Crimean Military Commissioner", refused to announce this year's plans for the draft campaign.<sup>146</sup>

The Prosecutor's Office of the Autonomous Republic of Crimea and the city of Sevastopol are currently investigating a number of criminal cases involving forced conscription. The case is expected to be investigated and verdicts issued in absentia. Russian actions are forcing Ukrainians living in Crimea to flee their homes and attempt to reach mainland Ukraine via third countries (such as Georgia, Armenia, and Azerbaijan) in order to avoid being recruited into the Russian army.<sup>147</sup>

During its visit to Ukraine, the mission was able to interview one person who fled Crimea: he described the difficulties of fleeing TOTs because roads were destroyed or full of checkpoints: 60 checkpoints in only one route.

The mission was also able to ascertain the current Ukrainian conscription rules. The Presidential Decree No.36/2022 issued by Ukraine in February 2022 introduced an intensive model of military training for citizens as a possible alternative to military service. The conscription of Ukrainian citizens for military service was supposed to end on 1 January 2024. The Russian invasion threw these plans into disarray.<sup>148</sup> Following an order issued by President Zelenskyy, Ukraine began calling up military reservists aged 18-60 for duty of up to one year, as the country faced the possibility of a full-scale Russian invasion. The state of emergency was established on 23 February 2022 by Presidential Decree No. 64/2022 and approved by the Parliament.<sup>149</sup> After the Russian act of aggression, martial law was imposed throughout the entirety of Ukraine, and it has been periodically extended.

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<sup>144</sup> Halya Coynash, Russia deports Ukrainians to occupied Donbas, forcing them to fight its war against Ukraine, *Kharkiv Human Rights Protection Group*, 16 May 2022, at <https://khpg.org/en/1608810566>; Halya Coynash, Russia is forcing Ukrainians from occupied Crimea and Donbas to fight in its invasion of Ukraine, *Kharkiv Human Rights Protection Group*, 7 March, 2022, at <https://khpg.org/en/1608810165>.

<sup>145</sup> High Commissioner to Special Session of the Human Rights Council on Ukraine: Many of the Allegations of Violations of International Human Rights and Humanitarian Law in Ukraine May Amount to War Crimes, *Human Rights Council*, 12 May 2022, at <https://www.ohchr.org/en/press-releases/2022/05/high-commissioner-special-session-human-rights-council-ukraine-many>.

<sup>146</sup> Human Rights Situation in Crimea and 100 Days of Full-Scale Russian Invasion of Ukraine, *Crimean Human Rights Group*, 20 June 2022, at [https://crimeahrg.org/wp-content/uploads/2022/06/100\\_booen.pdf](https://crimeahrg.org/wp-content/uploads/2022/06/100_booen.pdf).

<sup>147</sup> Mission of the President of Ukraine in the Autonomous Republic of Crimea, The use of Crimeans in Russia's full scale military aggression against Ukraine, 23 May 2022.

<sup>148</sup> Zelensky instructs Cabinet to develop bill on changing military training system with ending conscription into army from Jan 1, 2024, *Interfax*, 1 February 2022, at <https://interfax.com.ua/news/general/795386.html>

<sup>149</sup> Decree of the President of Ukraine No 64/2022, at <https://rm.coe.int/1680a5b03f>.

## **h) Enlistment and Labour**

During its visit to Ukraine, the mission learned that Crimean civilian specialists, particularly doctors, are being forced to serve troops directly engaged in hostilities not only in Crimea but also in the TOTs of Donetsk and Luhansk regions.<sup>150</sup> That is a violation of IHL<sup>151</sup> and ICL.<sup>152</sup>

The mission gathered information that some residents of occupied areas choose to collaborate with the occupiers in exchange for the achievement of social standing or the assurance of being able to maintain their businesses. During its visit, the mission met a person who comes from a village that is 15 km from Kherson and has been occupied by Russian forces since March 2022 as part of the Kherson military-civilian administration. He explained that some citizens choose to work with occupiers in exchange for employment opportunities in administrative bodies or in order to keep their businesses.

Although not specifically related to labour, the information gathered by the mission may demonstrate how the Russian occupiers tempt people to collaborate with them by promising special treatment for collaborators, including benefits in terms of access to certain basic commodities.

According to the Center for Countering Disinformation, in Mariupol the Russians are promising compensation for destroyed homes in Mariupol in an attempt to persuade residents to cooperate or to receive identification documents issued by them. They will then be required, the Center claims, to renounce their Ukrainian citizenship.<sup>153</sup>

## **i) Provision of Relief**

As UN agencies affirm, the scale of the emergency in Ukraine is unprecedented since World War II.<sup>154</sup> Months of escalating and intense fighting in Ukraine is taking an enormous toll on civilians and over 2.2 million people in the Donetsk region alone need life-saving assistance, OCHA said, noting that the situation in Sloviansk, formerly home to 100,000 people, is particularly concerning.<sup>155</sup> Hostilities have damaged the water system, leaving the 25,000 people who remain there – mainly the elderly and the most vulnerable – without piped water, electricity is limited and basic supplies are lacking in the few shops still open for business, with increasing prices further impacting people's access to food and other vital items.<sup>156</sup>

Many people who are trapped inside Ukraine are unable to meet their basic needs, including food, water, and medicines. At least, 3 million Ukrainian children urgently need humanitarian assistance.<sup>157</sup> Life-saving aid delivery remains difficult due to a lack of safe humanitarian access to areas where intense hostilities are ongoing.

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<sup>150</sup> Mission of the President of Ukraine in the Autonomous Republic of Crimea, The use of Crimeans in Russia's full scale military aggression against Ukraine, 23 May 2022.

<sup>151</sup> GC IV, Art. 40 and Art. 51.

<sup>152</sup> ICC Statute, Art.8 (2)(b)(xv).

<sup>153</sup> Halya Coynash, Center for Countering Disinformation: Russians promise compensation for destroyed homes in Mariupol in attempt to persuade residents to cooperate, 18 April 2022, *The Kyiv Independent news*, at [deskhttps://kyivindependent.com/uncategorized/center-for-countering-disinformation-russians-promise-compensation-for-destroyed-homes-in-mariupol-in-attempt-to-persuade-residents-to-cooperate/](https://kyivindependent.com/uncategorized/center-for-countering-disinformation-russians-promise-compensation-for-destroyed-homes-in-mariupol-in-attempt-to-persuade-residents-to-cooperate/)

<sup>154</sup> UN, Ukraine: At least two children killed in war every day, says UNICEF, *UNICEF*, 1 June 2022, at <https://news.un.org/en/story/2022/06/1119432>; United Nations High Commissioner for Refugees, Ukraine Situation Flash Update, 10 June 2022, at <https://data.unhcr.org/en/documents/details/93519>.

<sup>155</sup> 'Ukraine: UN and partners deliver lifesaving aid to Donetska region', UN News, 21 June 2022, at <https://news.un.org/en/story/2022/06/1120962>.

<sup>156</sup> *Ibidem*.

<sup>157</sup> United Nations Office for the Coordination of Humanitarian Affairs, Highlights-Last Updated 22 June, 2022, at <https://www.unocha.org/ukraine>; UN, Ukraine: At least two children killed in war every day, says UNICEF, *UNICEF*, 1 June 2022, at <https://news.un.org/en/story/2022/06/1119432>.

As of 22 June 2022, the situation in the Donbas is dire, particularly in Severodonetsk in Luhansk oblast and eastern Donetsk region. Humanitarian access is limited and, in some cases, impossible. In Severodonetsk, under Russian control, the situation started getting worse after the last bridge into it was destroyed. People are gathering in desperation for food and water as supplies dwindle.<sup>158</sup>

As already mentioned in the previous section 4, letter a, Russia has been accused of blocking aid from being addressed to the besieged city of Mariupol at the end of March. The same can be said for the city of Kherson: according to media, Ukrainian officials in the Russian-occupied city of Kherson said that Russia has not allowed humanitarian corridors as agreed upon as food supplies run low.<sup>159</sup>

According to the European Commission's Directorate-General for European Civil Protection and Humanitarian Aid Operations, Russian troops stopped the work of a humanitarian centre in occupied Berdiansk on 6 April 2022.<sup>160</sup>

## **B. CONDUCT OF HOSTILITIES**

### **1. GENERAL ASSESSMENT OF VIOLATIONS OF IHL RULES ON TARGETING**

The number of civilians killed and injured grows week by week. This appears evident by reading and comparing the data of the latest updated reports of the United Nations Human Rights Monitoring Mission.

As of 28 April 2022, the United Nations Human Rights Monitoring Mission counted at least 2,829 killed civilians (932 men, 626 women, 62 girls, 75 boys, as well as 68 children and 1,066 adults whose sex is yet unknown). At least 3,180 people have been injured as a result of the invasion (368 men, 302 women, 66 girls, 73 boys, as well as 164 children and 2,207 adults whose sex is yet unknown). In the Donetsk and Luhansk regions 2,883 casualties were reported (1,354 killed and 1,529 injured); in the territories controlled by the Government 2,438 (1,266 killed and 1,172 injured).<sup>161</sup>

As of May 2022, the United Nations Human Rights Monitoring Mission recorded a total of 7,061 civilian casualties across the country since the beginning of the Russian attack, with 3,381 killed and 3,680 injured. Of these, 92.3 percent of casualties (2,266 killed and 2,593 injured) were recorded in the Government-controlled territory. The remaining 7.7 percent (79 killed and 326 injured) were counted in the Donetsk and Luhansk regions controlled by Russian armed forces and by affiliated armed groups.

As of 22 June 2022, the Office of the UN High Commissioner for Human Rights (OHCHR) recorded 10,465 civilian casualties in Ukraine: 4,662 killed and 5,803 injured. This included: a total of 4,662 killed (1,789 men, 1,207 women, 131 girls, and 148 boys, as well as 41 children and 1,346 adults whose sex is yet unknown); a total of 5,803 injured (1,177 men, 820 women, 131 girls, and 169 boys, as well as 179 children and 3,327 adults whose sex is yet unknown). In Donetsk and Luhansk regions: 5,945 casualties (2,725 killed and 3,220 injured). On Government-controlled territory: 4,995 casualties (2,539 killed and 2,456 injured). On territory controlled by Russian affiliated armed groups: 950 casualties

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<sup>158</sup> Alex Crawford, Severodonetsk under siege, *Sky news*, at <https://news.sky.com/story/ukraine-war-inside-a-city-torn-apart-by-war-where-even-those-who-live-together-are-turning-against-one-another-12620608>

<sup>159</sup> Azmi Haroun, Ukrainian officials say Russia is breaking its promise to allow humanitarian aid into a captured city, *Insider*, 5 March, 2022, at <https://www.businessinsider.com/ukraine-says-russia-not-allowing-humanitarian-aid-into-captured-city-2022-3?r=US&IR=T>.

<sup>160</sup> Emergency Response Coordination Centre (ECHO), Echo daily flash, 7 April 2022, at <https://erccportal.jrc.ec.europa.eu/ECHO-Products/Echo-Flash#/daily-flash-archive/4468>

<sup>161</sup> United Nations Human Rights Monitoring Mission in Ukraine, Ukraine: civilian casualty update 28 April 2022, at <https://www.ohchr.org/en/news/2022/04/ukraine-civilian-casualty-update-28-april-2022>.

(186 killed and 764 injured). In other regions of Ukraine (the city of Kyiv, and Cherkasy, Chernihiv, Kharkiv, Kherson, Kyiv, Mykolaiv, Odesa, Sumy, Zaporizhzhia, Dnipropetrovsk, Poltava, Rivne, Vinnytsia, Ternopil and Zhytomyr regions), which were under Government control when casualties occurred: 4,520 casualties (1,937 killed and 2,583 injured).<sup>162</sup> Most of the civilian casualties recorded were caused by the use of explosive weapons with a wide impact area, including shelling from heavy artillery and multiple launch rocket systems, and missile and air strikes.

OHCHR believes that the actual figures are considerably higher, as the receipt of information from some locations where intense hostilities have been going on has been delayed and many reports are still pending corroboration. This concerns, for example, Mariupol (Donetsk region), Iziurm (Kharkiv region), Popasna, Lysychansk, and Severodonetsk (Luhansk region), where there are allegations of numerous civilian casualties.<sup>163</sup>

According to the Committee to Protect Journalists, at least 12 journalists covering the war in Ukraine have been killed as of May. The CPJ is currently investigating the deaths of some other journalists to determine whether the casualties were work-related. It reports that hundreds more journalists have been shelled, shot, and detained in relation to their activity.<sup>164</sup>

As of June, there were still daily reports of civilians being killed or injured. Along with the worst of the hostilities, the majority of casualties were reported in the Donetsk and Luhansk regions, mostly resulting from the shelling of civilian areas and civilian facilities, including schools. Two Reuters journalists were reportedly injured, and their driver was killed, in shelling near Severodonetsk, in the Luhansk Oblast, on 3 June 2022.

The Mykolaiv region, in the south, is still being heavily attacked by missiles. On 22 June 2022, the city of Mykolaiv was attacked by a Russian missile strike: the regional Governor reported that seven missiles had hit Mykolaiv.<sup>165</sup>

The attacks caused several fires, damaged a number of residential and business buildings, a school, and left smoke hanging over the port city, according to the mayor. At least one person was killed.<sup>166</sup>

On 26 June 2022, in an attack on the Ukrainian capital, a Russian missile struck a residential building and a kindergarten in Kyiv, injuring 11 people and killed at least 2 persons. A seven year-old girl was immediately pulled from the rubble. In the central Shevchenkivskiy district, a fire broke out in a nine-story residential building that was partially damaged in the attack.<sup>167</sup>

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<sup>162</sup> Ukraine: civilian casualty update 23 June 2022, *OHCHR*, 23 June 2022, at <https://www.ohchr.org/en/news/2022/06/ukraine-civilian-casualty-update-23-june-2022>. This information is confirmed also by United Nations Office for the Coordination of Humanitarian Affairs, UKRAINE Situation Report Last updated: 22 Jun 2022, at <https://reports.unocha.org/en/country/ukraine/>.

<sup>163</sup> *Ibidem*.

<sup>164</sup> Russia-Ukraine War, *Committee to Protect Journalist*, 22 June 2022, at <https://cpj.org/invasion-of-ukraine/>.

<sup>165</sup> Russian missiles hit Ukrainian city of Mykolaiv, one killed, *Reuters*, 22 June 2022, at <https://www.reuters.com/world/europe/seven-russian-missiles-hit-ukrainian-city-mykolaiv-regional-governor-2022-06-22>; Valentyna Romanenkom, Mykolaiv region subjected to massive missile attack: 2 Russian missiles shot down, *Pravda*, 5 June 2022, at <https://www.pravda.com.ua/eng/news/2022/06/5/7350638/>.

<sup>166</sup> Roger Cohen, Linchpin of Ukrainian Defiance, a Southern City Endures Russian Barrage, *New York Times*, 22 June 2022, at <https://www.nytimes.com/2022/06/22/world/europe/ukraine-mykolaiv-russia.html>; Russian missiles hit Ukrainian city of Mykolaiv, one killed, *Reuters*, 22 June 2022, <https://www.reuters.com/world/europe/seven-russian-missiles-hit-ukrainian-city-mykolaiv-regional-governor-2022-06-22>; Valentyna Romanenkom, Mykolaiv region subjected to massive missile attack: 2 Russian missiles shot down, *Pravda*, 5 June 2022, at <https://www.pravda.com.ua/eng/news/2022/06/5/7350638/>.

<sup>167</sup> Russian missile hits residential building in Ukraine's Kyiv, *AlJazeera*, 26 June 2022, at <https://www.aljazeera.com/news/2022/6/26/missile-hits-residential-building-in-ukraines-capital-kyiv>; Pavel Polityuk, Russian missiles hit Kyiv wounding five people, Ukraine says, *Reuters*, 26 May 2022, at

Generally speaking, in Donetsk region, and Luhansk region, many civilian facilities continue to be damaged by the fighting. For instance, on 2 June 2022 Donetsk oblast authorities reported that water supply had been disrupted for two weeks in several cities, including Sloviansk and parts of Kramatorsk, due to damaged electricity infrastructure. Meanwhile, water supply is said to be limited in the city of Donetsk, in the Donetsk oblast.<sup>168</sup>

## 2. SIEGES AND HUMANITARIAN CORRIDORS

As concerns sieges, the mission continued to verify the events of the Mariupol siege, which had already been investigated by the first mission.

The siege of Mariupol started on 24 February 2022, when Russian and the so-called Donetsk People's Republic forces clashed with Ukrainian forces in Mariupol, and it ended on 16 May 2022, when Russia announced that the remaining Ukrainian forces in Mariupol had surrendered after being ordered to stop fighting.<sup>169</sup> The ICRC considered the situation as "apocalyptic",<sup>170</sup> and Ukrainian authorities accused Russia of orchestrating a major humanitarian crisis in the city, with city officials reporting that about 22,000 civilians had died.<sup>171</sup>

According to Ukrainian officials, at least 95 percent of the city was destroyed during the fighting, largely as a result of Russian airstrikes.<sup>172</sup> The UN confirmed the deaths of 1,348 civilians, but added that the true death toll was "likely thousands higher," and that 90% of the city's residential buildings had been damaged or destroyed.<sup>173</sup>

The siege ended after what media outlets called the "evacuation" or "surrender" of the remaining Azov Regiment personnel from the Azovstal Iron and Steel Work, a fortress-like plant in the ruined city of Mariupol where their last-ditch stand became a symbol of resistance to Moscow's invasion. More than 2,500 plant fighters are being held captive, and Ukraine is working to secure their release.<sup>174</sup>

Russia began handing over the bodies of Ukrainian fighters killed at the Azovstal on June 7. According to both a military leader and a spokeswoman for the Azov Regiment, dozens of the dead taken from the bombed-out mill's now-Russian-occupied ruins have been transferred to Kyiv, where DNA testing is underway to identify the remains.

At the end of June 2022, it had been nearly two months since Russian forces began their assault on Severodonetsk. Despite heavy casualties, Ukraine's defence of Severodonetsk forced the

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<https://www.reuters.com/world/europe/several-explosions-kyivs-central-district-mayor-2022-06-26/>; Deadly Strikes On Kyiv, Cherkasy Residents Prompt Fresh Ukrainian Pleas For G7 Help, *RFE/RLs Ukrainian Services*, 26 June 2022, at <https://www.rferl.org/a/ukraine-russia-war-kyiv-explosions-severodonetsk-belarus/31915504.html>.

<sup>168</sup> Ukraine: Situation Report, 9 June 2022, *OCHA*, 9 June 2022, at <https://reports.unocha.org/en/country/ukraine/>.

<sup>169</sup> Ukraine war: Last Ukrainian troops in Mariupol told to stop defence of city, *Sky news*, 20 May 2022, at <https://news.sky.com/story/ukraine-war-last-ukrainian-troops-in-mariupol-told-to-stop-defence-of-city-12617385>.

<sup>170</sup> Luke Harding, Julian Borger, and Jon Henley, Russia accused of 'holding 400,000 people hostage' in Mariupol, *The Guardian*, 9 March 2022, at <https://www.theguardian.com/world/2022/mar/09/ukraine-mariupol-civilians-russia-war>.

<sup>171</sup> At least 22,000 civilians killed in Mariupol - mayor's adviser, *Interfax-Ukraine*, 17 June 2022, at <https://en.interfax.com.ua/news/general/834794.html>.

<sup>172</sup> Holly Ellyatt, Mariupol hasn't surrendered to Russia, PM says; at least 5 dead, 20 injured in Kharkiv attack, *CNBC*, 18 April 2022, at <https://www.cnn.com/2022/04/17/russia-ukraine-live-updates.html>.

<sup>173</sup> Helen Regan, Hafsa Khalil, Jack Guy, Ed Upright, Elise Hammond, Adrienne Vogt and Aditi Sangal, UN says more than 1,300 civilians killed in Mariupol — but true toll "likely thousands higher", *CNN*, 17 June 2022, at [https://edition.cnn.com/europe/live-news/russia-ukraine-war-news-06-17-22/h\\_44f071da9d6cc467bc1c322ce18aa481](https://edition.cnn.com/europe/live-news/russia-ukraine-war-news-06-17-22/h_44f071da9d6cc467bc1c322ce18aa481).

<sup>174</sup> John Leicester and Hanna Arhirova, AP Exclusive: Ukraine recovers bodies from steel-plant siege, *AP News*, 7 June 2022, at <https://apnews.com/article/russia-ukraine-putin-kyiv-travel-government-and-politics-fd34c02c14247c39589bd93cd85ff818>.

Russians to concentrate their firepower on a small area, slowing their efforts to seize the remaining 10% of the Luhansk region. According to media reports, Russian forces were throwing everything they have, including all of their munitions. Hundreds of civilians, including dozens of children, had taken refuge in the Azot chemical plant in Severodonetsk amid intense urban combat. It provided little protection below ground, unlike the Azovstal plant in Mariupol. Gazprom-owned NTV suggested there may be as many as 1,200 people, including children, trapped underneath the plant.<sup>175</sup> They are people who previously refused to leave the city, according to Ukrainian officials, but can no longer be evacuated from the plant due to the intense fighting. The Azot plant and its immediate surroundings, like Azovstal, have become a focal point of Ukrainian resistance.<sup>176</sup>

After Russian forces destroyed the last bridge across a river to the Ukrainian-held twin city of Lysychansk on 12 June 2022, Ukraine tried anyway to evacuate civilians from Severodonetsk. Lysychansk, which is located on higher ground on the western bank of the Siverskyi Donets river, has been shelled by Russian forces.<sup>177</sup> The evacuation of civilians from Severodonetsk has been made more difficult as a result of this.<sup>178</sup> Approximately 12,000 people are still trapped inside the city. Concerns about a lack of water and sanitation, as UN Humanitarian Affairs recalled, stem from the fact that people cannot survive for long without water. In Severodonetsk, food and medical supplies are also running out.<sup>179</sup>

The mission was able to gather information indicating that humanitarian corridors remain an important issue in the current conflict, though the situation is improving in comparison to the early months of the conflict. Humanitarian corridors have been critical since Russia's invasion of Ukraine began, allowing residents to flee cities and towns where heavy fighting has erupted, as well as deliveries of food and medicine. In any case, some violations can still be reported after 1 April 2022.

On 5 April 2022, the Ukrainian Deputy Prime Minister announced the opening of seven humanitarian corridors in order to evacuate civilians from several hard-hit areas, including the southern port cities of Mariupol and Berdyansk.<sup>180</sup> A few days later, on 9 April, the total of the agreed humanitarian corridors rose to ten.<sup>181</sup>

As of 5 April 2022, the Deputy Prime Minister also denounced that despite their leadership's promises, Russian forces were refusing to allow anyone to enter Mariupol. Representatives of the International Committee of the Red Cross were also denied entry to Manhush, about 20 kilometers west of Mariupol, pending the conclusion of negotiations allowing them to travel to Zaporizhzhia. Russian soldiers have been accused of blocking buses in violation of cease-fire

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<sup>175</sup> Emily McGarvey and Leo Sands, Thousands of civilians trapped in Severodonetsk, Ukraine war, *BBC news*, 15 June 2022, at <https://www.bbc.com/news/world-europe-61816749>.

<sup>176</sup> Tim Lister, Russia is still fighting for control of this small Ukrainian city two months later, *CNN*, 21 June 2022, at <https://edition.cnn.com/2022/06/21/europe/russia-ukraine-severodonetsk-cmd-intl/index.html>.

<sup>177</sup> Russian forces destroy bridge out of Sievierodonetsk, *The Guardian*, 12 June 2022, at <https://www.theguardian.com/world/live/2022/jun/12/russia-ukraine-war-fierce-fighting-in>.

<sup>178</sup> Russia Tells Ukrainian Troops In Severodonetsk To Lay Down Arms, *NDTV*, 15 June 2022, at <https://www.ndtv.com/world-news/russia-ukrainewar-russia-tells-ukrainian-troops-in-severodonetsk-to-lay-down-arms-3068131>.

<sup>179</sup> Civilians trapped in Severodonetsk as Russia demolishes the last bridge, *Al Jazeera*, 14 June 2022, at <https://www.aljazeera.com/news/2022/6/14/ukraine-civilians-trapped-severodonetsk-russia-demolishes-last-bridge>; Emily McGarvey and Leo Sands, Thousands of civilians trapped in Severodonetsk, Ukraine war, *BBC News*, 15 June 2022, at <https://www.bbc.com/news/world-europe-61816749>.

<sup>180</sup> Ukrainian Service, Ukraine Says Seven Humanitarian Corridors Agreed, As Russian Forces Concentrate On Southeast, *RFE/RL*, 5 April 2022, at <https://www.rferl.org/a/ukraine-southeast-humanitarian-corridors/31786842.html>.

<sup>181</sup> Ruslan Rehimov, Ukraine says 10 humanitarian corridors agreed for civilian evacuation, *AA News*, 9 April 2022, at <https://www.aa.com.tr/en/europe/ukraine-says-10-humanitarian-corridors-agreed-for-civilian-evacuation/2559506>.

agreements meant to allow humanitarian aid and people into and out of occupied areas in Ukraine's eastern Luhansk and southern Zaporizhzhia regions. On the other side, Moscow has always accused Ukraine of interfering with humanitarian corridors, an accusation that Ukraine has rejected.<sup>182</sup>

### 3. TARGETED ATTACKS ON INDIVIDUAL CIVILIANS

The mission has continued to gather information about attacks on individual civilians.

Following the withdrawal of Russian forces from Bucha, north of Kyiv, at the end of March 2022, videos emerged showing at least nine apparently dead bodies lying in the street in the town's residential area. Journalists who visited the area said they saw at least twenty corpses dressed in civilian clothing.<sup>183</sup> On 15 April 2022, the Kyiv regional police force reported that 900 civilian bodies had been discovered in the region following Russia's withdrawal, with over 350 of them discovered in Bucha. According to the police, the vast majority – nearly 95 percent – were "simply executed." More bodies were discovered in mass graves and under the rubble.<sup>184</sup>

A photo and information on one man and two or three naked women under a blanket were allegedly burned by Russian soldiers on the side of a road before fleeing.<sup>185</sup> The photos appear to show that Russian forces carried out targeted, organized killings of civilians in Bucha: they are frequently found shot dead, hands tied behind their backs.

As of 3 April 2022, Human Rights Watch reported that Russian soldiers had killed a woman and her 14-year-old child in Vorzel, west of Bucha, after throwing smoke grenades into the basement where they were hiding.<sup>186</sup>

A series of torture chambers separated by concrete walls were discovered in a summer camp in Bucha. At the front, there was a room that appeared to be used for executions, with bullet holes in the walls. The following room contained two chairs, an empty jug, and a wooden plank. The Russians had brought in two metal bedsprings and leaned them against the wall in another. The tableaux suggested to Ukrainian investigators that prisoners were tortured here: tied to the bedsprings and interrogated; strapped to the plank and waterboarded. In that chamber, five dead men dressed in civilian clothes were discovered. They were covered with burns, bruises, and

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<sup>182</sup> Ukrainian Service, Ukraine Says Seven Humanitarian Corridors Agreed, As Russian Forces Concentrate On Southeast, *RFE/RL*, 5 April 2022, at <https://www.rferl.org/a/ukraine-southeast-humanitarian-corridors/31786842.html>; Matthew Luxmoore, Ukraine Says Russia Obstructing Humanitarian Corridors for Residents Fleeing War, *Wall Street Journal*, 13 April 2022, at <https://www.wsj.com/livecoverage/russia-ukraine-latest-news-2022-04-13/card/ukraine-says-russia-obstructing-humanitarian-corridors-for-residents-fleeing-war-yHpwAoUJqrRsQf2GEj8X>

<sup>183</sup> Stern David L, Kelly Meg, Parker Claire, Bodies, rubble line the streets of Bucha following Russian retreat., *Washington Post*, 2 April 2022, at <https://www.washingtonpost.com/world/2022/04/02/bucha-bodies-russia-retreat-kyiv/>; War in Ukraine: A street in Bucha was discovered strewn with dead bodies, *BBC News*, 2 April 2022, at <https://www.bbc.com/news/world-europe-60967463>; Olga Rudenko, Hundreds of murdered civilians discovered as Russians withdraw from towns near Kyiv, *Kyiv Independent*, 2 April 2022, at <https://kyivindependent.com/national/hundreds-of-murdered-civilians-discovered-as-russians-withdraw-from-towns-near-kyiv-graphic-images>.

<sup>184</sup> Adam Schreck, Robert Burns, Yesica Fisch, Police: More than 900 civilian bodies found in Kyiv region, *APNews*, 16 April 2022, at <https://apnews.com/article/russia-ukraine-zelenskyy-kyiv-business-black-sea-22d7279f32c15d4a7037a2195113fb57>; Igor Gossov, Uncovering the scope of the Bucha massacre, *Kyiv Independent*, 21 April 2022, at <https://kyivindependent.com/national/uncovering-the-scope-of-the-bucha-massacre>.

<sup>185</sup> Rudenko, Olga, Hundreds of murdered civilians discovered as Russians withdraw from towns near Kyiv, *The Kyev Independent*, 2 April 2022, at <https://kyivindependent.com/national/hundreds-of-murdered-civilians-discovered-as-russians-withdraw-from-towns-near-kyiv-graphic-images>

<sup>186</sup> Ukraine: Apparent War Crimes in Russia-Controlled Areas, *Human Rights Watch*, 3 April 2022, at <https://www.hrw.org/news/2022/04/03/ukraine-apparent-war-crimes-russia-controlled-areas>

lacerations.<sup>187</sup> Also, in Zabuchchya, a village in the Bucha district, 18 mutilated bodies of murdered men, women, and children were discovered in a basement: some had their ears cut off, while others had their teeth pulled out.<sup>188</sup> Other torture chambers were found in Trostyanets, Sumy oblast.

New evidence continues to emerge also after the mass graves were discovered. On 21 May 2022, the New York Times published a video dated 4 March 2022 showing Russian paratroopers marching captive civilians at gunpoint, less than a week after Russian invasion forces entered the town. The men were led to a location where they would be later executed. An eyewitness also recorded what was going on through his home's window. All of the men executed were local civilians, though the majority of them had joined various defence units formed in the aftermath of the invasion.<sup>189</sup>

As media reported on 10 May 2022, Human Rights Watch documented nine cases in which Russian forces opened fire on and killed civilians for no apparent military reason. For example, on the afternoon of 14 March 2022, as a Russian convoy passed through Mokhnatyn village, northwest of Chernihiv, soldiers shot and killed 17-year-old twin brothers and their 18-year-old friend.<sup>190</sup>

During the capture of the city of Kreminna, in the Luhasank Oblast, on 18 April 2022, Russian forces were accused of shooting four civilians fleeing in their cars. Official Ukraine statistics report 200 civilians killed, but the Governor of the Luhansk region believes there are many more.<sup>191</sup> In the same city, intentional attacks against the elderly have been recorded. Testimonials received by the mission contend that Russian soldiers are shooting at and wounding also civilians who wish to leave or enter into Kherson region.<sup>192</sup>

As mentioned above, on 26 June 2022, Kyiv was targeted from the territory of the Russian Federation by a precise rocket missile, which struck a residential building and the compound of a kindergarten in central Kyiv, killing one person and wounding six more.<sup>193</sup> Another missile launched by Russian military forces in Kyiv hit a kindergarten in the Shevchenkivskiy district.

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<sup>187</sup> Simon Shuster, A Visit to the Crime Scene Russian Troops Left Behind at a Summer Camp in Bucha, *Time*, 13 April 2022, at <https://time.com/6166681/bucha-massacre-ukraine-dispatch/>; Singh Samantha, Lock Maanvi, Oladipo Gloria, Chao-Fong, Léonie, Belam Martin, Zelenskiy says now is the 'crucial moment' for western leaders to impose further sanctions – as it happened, *The Guardian*, 6 April 2022, at <https://www.theguardian.com/world/live/2022/apr/05/russia-ukraine-war-latest-news-live-updates-zelenskiy-address-un-united-nations-borodyanka-atrocities-bucha>.

<sup>188</sup> Callaghan Louise, Bodies of mutilated children among horrors the Russians left behind, *The Times*, 4 April 2022, at <https://www.thetimes.co.uk/article/bodies-of-mutilated-children-among-horrors-the-russians-left-behind-5ddnkkwp2>.

<sup>189</sup> New Evidence Shows How Russian Soldiers Executed Men in Bucha, *The New York Times*, 21 May 2022, at <https://www.nytimes.com/2022/05/19/world/europe/russia-bucha-ukraine-executions.html?smtyp=cur&smid=tw-nytimes>, New video evidence reveals more facts about Bucha massacre, TVP World, 21 May 2022, at <https://tvpworld.com/60311984/new-video-evidence-reveals-more-facts-about-bucha-massacre>.

<sup>190</sup> United Nations Human Rights Officer, Plights of civilians In Ukraine, 10 May 2022, at <https://www.ohchr.org/en/press-briefing-notes/2022/05/plight-civilians-ukraine>

<sup>191</sup> Russia takes Donbas town but Ukrainian frontline 'still holding, *The Guardian*, 19 April 2022, at <https://www.theguardian.com/world/2022/apr/19/ukraine-war-battle-for-donbas-has-begun-russia-launches-offensive>

<sup>192</sup> See also 'Days-long roadblocks, missiles and 'lots of blood.' Civilians recall terrifying attempts to escape Ukraine's cities as Russian forces tighten grip', CNN, 21 May 2022, at <https://edition.cnn.com/2022/05/21/europe/kherson-ukraine-evacuations-russian-occupation-intl-cmd/index.html>.

<sup>193</sup> Russian missiles kill one and wound six in Kyiv, Ukraine says', Swissinfo.ch, 26 June 2022, at <https://www.swissinfo.ch/eng/russian-missiles-kill-one-and-wound-six-in-kyiv--ukraine-says/47704714>.



#### 4. ARMING OF THE CIVILIAN POPULATION

The first mission reported that as soon as the war started, the Ukrainian government mobilized and conscripted all males between the ages of 18 and 60, as previously said in Section IV.A.5.g. The Ukrainian government has also begun paramilitarizing the civilian population, distributing over 18,000 Kalashnikov assault rifles in Kyiv alone.<sup>194</sup> The government is also encouraging citizens to engage vastly superior Russian forces with Molotov cocktails, with breweries now mass producing petrol bombs. Ukraine passed a law titled "Ensuring Civilians' Participation in Ukraine's Defence," which governs the procedure for issuing and returning firearms and ammunition to civilians in order to protect the country during wartime and states that civilians are not responsible for the use of firearms against persons who commit armed aggression against Ukraine.<sup>195</sup>

Taking into account the observations of the first mission, the mission looked into whether civilians had been asked to gather weapons and make Molotov cocktails to fight Russian invaders. No supporting information was found during the second expert mission. After discussions with Ukrainian institutions, particularly the Office of the Ombudsperson, the mission has also received assurances that civilians have not been involved in any way in these operations and that the armed forces receive special training designed to ensure adherence to human rights and IHL.

#### 5. HUMAN SHIELDS

The mission confirmed the use of non-combatants as human shields, contrary to Article 51(7) of API to the Geneva Convention.<sup>196</sup> The mission gathered evidence on episodes that had been reported in the media since April.

Media, like the BBC News and The Economist, reported that Russian soldiers used over 300 Ukrainian civilians as human shields and held them captive for 25 days in March in the basement of Yahidne School, where a major Russian military camp was located. According to reports, 12 elderly people died in the cellar, and locals were tortured and killed. On 5 March 2022, Russian forces seized the village and used it as a base to launch an attack on the nearby city of Chernihiv.<sup>197</sup>

When the first evidence of the Bucha massacre surfaced in early April, Ukraine alleged Russian forces retreating from the area near Kyiv of using children as human shields. To protect themselves, Russian units withdrawing from Novyi Bykiv village reportedly placed Ukrainian children's carriages in front of their tanks.<sup>198</sup>

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<sup>194</sup> Dale Pankhurst, A Serious Threat or a Strategic Success? The Pros and Cons of Paramilitarising a Civilian Population in Ukraine, *Small Wars Journal*, 27 February 2022, at <https://smallwarsjournal.com/jrnl/art/serious-threat-or-strategic-success-pros-and-cons-aramilitarising-civilian-population>.

<sup>195</sup> Beyza Binnur Dönmez, Ukraine's president signs law on civilian use of weapons during wartime, 10 March, 2022, AA, 10.03.2022, at <https://www.aa.com.tr/en/russia-ukraine-war/ukraines-president-signs-law-on-civilian-use-of-weapons-during-wartime/2529765>.

<sup>196</sup> See also Article 23 of the 1949 Third Geneva Convention which bars the use of prisoners of war to "render certain points or areas immune from military operations, while article 28 of the Fourth Geneva Convention which provides the same protection to "protected persons." Protected persons are those "who, at a given moment and in any manner whatsoever, find themselves, in case of a conflict or occupation, in the hands of a Party to the conflict or Occupying Power of which they are not nationals" (art. 4).

<sup>197</sup> Sean Rubinsztein-Dunlop and Phil Hemingway, Russia's unspeakable horrors in northern Ukraine: Torture, murder and cluster bombs, *ABC News*, 17 April 2022, at <https://www.abc.net.au/news/2022-04-18/the-horrors-of-russian-occupation-in-ukrainian-villages/100994262>; Ukraine: Executions, Torture, and Apparent War Crimes in Kyiv and Chernihiv Regions During Russian Occupation, *Human Rights Watch*, 18 May 2022, at <https://www.hrw.org/news/2022/05/18/ukraine-executions-torture-during-russian-occupation>.

<sup>198</sup> Daniel Boffey, Ukrainian children used as 'human shields' near Kyiv, say witness reports, *The Guardian*, 2 April 2022, at <https://www.theguardian.com/world/2022/apr/02/ukrainian-children-used-as-human-shields-near-kayiv-say-witness-reports>; Russians use Ukrainian children as a human shield for their vehicles Оригінал статті

Evidence of the use of non-combatants as shields was also discovered in the vicinity of Ivankiv. On 1 April 2022, the BBC discovered clear evidence of Russian troops using Ukrainian civilians as human shields near the Belarussian border in Obukhovychi. Villagers in Obukhovychi claim that Russians holding back advancing Ukrainian forces kidnapped them at gunpoint from their homes and held them captive in a school. Additionally, locals reported seeing Russian troops shooting civilians and imprisoning others in and around the neighboring town of Ivankiv. Specifically, according to multiple witnesses, on 14 March, Russian soldiers went door-to-door, rounding up about 150 civilians and locking them up in a local school, where they were used as protection for Russian forces.<sup>199</sup>

Regrettably, there have been reports in other parts of Ukraine that Russian forces have kidnapped local children and threatened their parents if they reveal troop coordinates. According to the Ukrainian Ombudsman for Human Rights, Russian soldiers have used Ukrainian children as human shields in Sumy, Kyiv, Chernihiv, and Zaporizhzhia regions.<sup>200</sup>

In the village of Novyi Bykiv, close to the encircled city of Chernihiv, 106 kilometers north of Kyiv, it is alleged that coaches of children were placed in front of tanks, according to some eyewitness accounts from the recently liberated town of Bucha, near Kyiv. Furthermore, it was claimed that children had been held as hostages in a number of flashpoints of violence across the nation to prevent locals from providing the Ukrainian forces with the enemy's movement coordinates.<sup>201</sup>

Russia claims that human shields were used on the Ukrainian side.<sup>202</sup> The mission was unable to determine the basis for this claim but could gather some information from media and a video published by *Der Spiegel* reporting the testimony of a Ukrainian woman who accused Ukrainian forces and Azov fighters to use civilians trapped in the Azovstal plant as human shields.<sup>203</sup> At the same time, during the visit to Ukraine the representative of the State's body excluded the use of civilians as shields.

## 6. PASSIVE PRECAUTIONS TO BE TAKEN BY THE DEFENDER

There are currently 33 prisons in places where there are active hostilities. Although it is unknown how many prisoners are housed in these facilities, it is estimated that there are roughly 48,000 prisoners in total. The shelling targeted five prisons. The pre-trial detention facilities in Mariupol and Chernihiv, as well as three other prisons in the Mariupol, Berdiansk, and Kharkiv regions, were specifically damaged by the attacks. Prisoner staff and prisoners were in bomb shelters during the shelling. Some Ukrainian prisons are no longer under Ukrainian government control, particularly those in the south (Kherson Oblast, Mykolaiv Oblast), east (Luhansk Oblast), and other regions controlled by Russian Federation forces. During the meeting with the Ministry of Justice, the mission was informed of concerns about the living conditions of

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- на сайті Українського кризового медіа-центру, *Ukraine Crisis*, 1 April 2022, at <https://uacrisis.org/en/zhyvogo-shhyta>.

<sup>199</sup> Jeremy Brown, Ukraine War: Russian soldiers held us as human shields, *BBC*, 7 April 2022, at <https://www.bbc.com/news/world-europe-61020565>

<sup>200</sup> Michael Schmitt, Ukraine Symposium, Weaponizing Civilians, Human Shields in Ukraine, Lieber Institute, 11 April 2022, at <https://lieber.westpoint.edu/weaponizing-civilians-human-shields-ukraine/>; Jeremy Brown, Ukraine War: Russian soldiers had us as human shields, *BBC*, 7 April 2022, at <https://www.bbc.com/news/world-europe-61020565>.

<sup>201</sup> Daniel Boffey, Ukrainian children used as 'human shields' near Kyiv, say witness reports, *The Guardian*, 2 April 2022, at <https://www.theguardian.com/world/2022/apr/02/ukrainian-children-used-as-human-shields-near-kyiv-say-witness-reports>.

<sup>202</sup> Neve Gordon, Why we need to challenge Russia's human shields narrative, *Al Jazeera*, 3 April 2022, at <https://www.aljazeera.com/opinions/2022/4/3/why-we-need-to-challenge-russias-human-shields-narrative>

<sup>203</sup> Sanbeer Singh Ranhotra, Did Ukraine use innocent civilians as human shield against Russia in the name of evacuation?, *Global News*, 9 May 2022, at <https://tfglobalnews.com/2022/05/09/did-ukraine-use-innocent-civilians-as-human-shield-against-russia-in-the-name-of-evacuation/>.

prisoners in those prisons. The Ukrainian government is doing everything possible to keep prisoners informed and provide them with food, water, and medical care. Furthermore, Ukrainian institutions stated that the Ukrainian government is making every effort to evacuate prisoners from prisons that may soon be occupied as well as the most dangerous areas. However, as confirmed by Ministry of Justice representatives with whom the mission met, the situation is difficult despite the government's best efforts.

## **7. SPECIALLY PROTECTED OBJECTS**

### **a) Medical Units and Transport**

The war has increased the demand for healthcare services while reducing the system's ability to provide them, particularly in areas of active conflict. Between 23 February and 27 April 2022, 175 attacks were reported, resulting in 52 injuries and 73 fatalities in violation of IHL.<sup>204</sup> These attacks against health facilities, transportation, personnel, patients, supplies, and warehouses, put healthcare workers in danger, deny patients access to desperately needed care, and damage the health system.<sup>205</sup> The number is increasing. Indeed, as of 17 May 2022, the World Health Organization has documented 226 attacks on such facilities since the Russian invasion in late February. As of 2 June 2022, there had been 269 verified attacks on health facilities, with at least 76 people killed and 59 injured. In 2021, a quarter of a million Ukrainians were treated at the hospitals and ambulances that were attacked, according to a WHO representative in Ukraine. In 2022, Ukraine alone has been the scene of two-thirds of all attacks on healthcare facilities worldwide.<sup>206</sup>

Data and accounts from patients evacuated show that the war in Ukraine is being conducted with an outrageous lack of care to distinguish and protect civilians, according to Médecins Sans Frontières (MSF) on 22 June 2022. Between March 31 and June 6, 2022, MSF medically evacuated 653 patients by train from war-torn eastern areas to hospitals in safer parts of the country. Over 40% of the war wounded transported by MSF's medical train were elderly and children suffering from blast injuries, traumatic amputations, shrapnel and gunshot wounds. According to the medical humanitarian organization, this demonstrates a disregard for civilian protection, which is a serious violation of international humanitarian law.<sup>207</sup>

### **b) Nuclear Power Stations**

As already reported by the first mission, since the start of Russia's conflict with Ukraine, Russian forces have seized control of the largest still-operating nuclear power plant in Europe, Zaporizhzhia Nuclear Power Plant, in southeast Ukraine, as well as the Chernobyl Nuclear Power Plant and its surroundings. A nuclear research facility in the eastern Ukrainian city of Kharkiv suffered damage during shelling on 26 March 2022. The Zaporizhzhia plant is still under Russian control, despite the fact that the majority of the Russian troops occupying Chernobyl have departed, apparently due to radiation-related worries.<sup>208</sup> As Energoatom

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<sup>204</sup> Rule 29 affirms that medical transports assigned exclusively to medical transportation must be respected and protected in all circumstances. They lose their protection if they are being used, outside their humanitarian function, to commit acts harmful to the enemy.

<sup>205</sup> World Health Organization, Emergency in Ukraine, Reporting period: 21–27 April 2022, file:///C:/Users/User/Downloads/WHO-EURO-2022-5152-44915-64377-eng.pdf

<sup>206</sup> Annika Kim Constantino, WHO calls for probe into more than 200 Russian attacks on health facilities in Ukraine, 17 May 2022, at <https://www.cnn.com/2022/05/17/who-calls-for-probe-into-russia-attacks-on-ukraine-health-facilities-.html>.

<sup>207</sup> Médecins Sans Frontières (MSF), Ukraine: Data and patient accounts reveal consistent indiscriminate attacks against civilian, 22 June 2022, at <https://doctorswithoutborders-apac.org/en/ukraine-data-and-patient-accounts-reveal-consistent-indiscriminate-attacks-against-civilian>.

<sup>208</sup> Noah Mayhew, How the IAEA can help nuclear power plants in Ukraine's war zone, *James Martin Center for non proliferation studies*, 6 April 2022, at <https://nonproliferation.org/how-the-iaea-can-help-nuclear-power-plants-in-ukraines-war-zone/>

explained, the online data transmission from Zaporizhzhia Nuclear plants to the International Atomic Energy Agency (IAEA) on the State nuclear materials was interrupted by the actions of the Russian who disconnected the Ukrainian operator Vodafone with which the IAEA has a data transmission contract. Since the Zaporizhzhia NPP is still under Russian control, the Ukrainian government declared on 7 June 2022, that a IAEA access to the nuclear power plant would be possible only when control over it is returned to Ukraine.<sup>209</sup> On the other hand, a delegation from the IAEA visited the Chornobyl nuclear power plant on 26 April 2022 after it had been placed back under Ukrainian control.<sup>210</sup> The mission could ascertain that worries about Russian attacks against nuclear plants persist, in the face of the most recent events that occurred.<sup>211</sup>

On 16 April 2022, three cruise missiles likely launched from Belarusian soil toward the city of Mykolaiv flew over the location of the Pivdennoukrainska nuclear plant, which is the second-largest nuclear plant and is located near the Mykolaiv region.<sup>212</sup> On 5 June 2022, the plant was passed by a low-flying missile before it came crashing to earth.<sup>213</sup> Around the same time, explosions were heard in the Darnytsia and Dniprovskiyi neighbourhoods of Kyiv, where Russian missiles hit municipal infrastructure, and the pictures that followed showed thick plumes of smoke. A video of a Russian Kalibr missile flying over the Pivdennoukrainska nuclear plant was made public by Energoatom, the country's nuclear energy operator.<sup>214</sup> The operator said the missile flew critically low over the nuclear plant.<sup>215</sup> The security camera shows that the firefight began when a Russian tank advancing on the facility was struck by a missile from Ukrainian forces;<sup>216</sup> a 21-minute security camera video of the attack reveals that Russian forces fired heavy weapons repeatedly at the plant's massive reactor buildings, which housed nuclear fuel. Russian fire razed an administrative building directly in front of the reactor complex, according to photos. A video from inside the plant also shows damage and what appears to be a Russian shell that landed less than 750 meters from the Unit 2 reactor building.

### c) Cultural Heritage and Places of Worship

As in the first report, the mission acknowledges considerable Ukrainian efforts to protect and preserve cultural heritage in conformity with the IHL obligation of the defender to safeguard

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<sup>209</sup> Ukraine denies IAEA director general visit to Zaporizhzhia NPP occupied by Russians before its liberation – Energoatom, *Interfax Agency*, 7 June 2022, at <https://interfax.com.ua/news/economic/837524.html>.

<sup>210</sup> Update 64 – IAEA Director General Statement on Situation in Ukraine, *International Atomic Energy Agency*, 26 April 2022, at <https://www.iaea.org/newscenter/pressreleases/update-64-iaea-director-general-statement-on-situation-in-ukraine-0>

<sup>211</sup> Attacks on nuclear power plants are mainly governed by Article 56 of AP I to Geneva Conventions which generally prohibits attacks against civilian nuclear power plants.

<sup>212</sup> Roman Petrenko, Nuclear terrorism": Russian cruise missile spotted in the sky above nuclear power plant, *Pravda*, 22 April 2022, at <https://www.pravda.com.ua/eng/news/2022/04/22/7341357/>.

<sup>213</sup> Monica Perosino, Guerra Russia-Ucraina, missile sorvola una centrale nucleare. Kiev: "Ripreso il controllo di metà Severodonetsk". Sede aiuti umanitari rasa al suolo, 40 dispersi a Lysychansk, *La Stampa*, 5 June 2022, at [https://www.lastampa.it/esteri/2022/06/05/news/ucrainarussia\\_news](https://www.lastampa.it/esteri/2022/06/05/news/ucrainarussia_news); Teresa Gottein Martinez, Nuclear panic: Russian missile flies 'critically' near major plant at time of Kyiv blasts, *Express*, 5 June 2022, at <https://www.express.co.uk/news/world/1620852/Russia-Nuclear-warning-Ukraine-missile-Kyiv-Pivdennoukrainska-plant-reactor-Mykolaiv>.

<sup>214</sup> Kateryna Tshchenko, Energoatom releases video of Russian missile flying over nuclear power plant, *Pravda*, 5 June 2022 <https://www.pravda.com.ua/eng/news/2022/06/5/7350693/>.

<sup>215</sup> Ukraine power operator says Russian missile flew "critically low" over nuclear plant, *Reuters*, 5 June 2022, <https://www.reuters.com/world/europe/seven-russian-missiles-hit-ukrainian-city-mykolaiv-regional-governor-2022-06-22/>; Russian Missile Flew "Critically Low" Over Nuclear Plant: Report, *NDTV*, 6 June 2022, <https://www.ndtv.com/world-news/russian-missile-flew-critically-low-over-nuclear-plant-report-3042225>; Roman Petrenko, Nuclear terrorism: Russian missile flies dangerously close to nuclear power plant, *Pravda*, 5 June 2022, *Ukrainska Pravda*, at <https://www.pravda.com.ua/eng/news/2022/06/5/7350623/>.

<sup>216</sup> Alyson Hurt, Video analysis reveals Russian attack on Ukrainian nuclear plant veered near disaster, *NPR*. 11 March 2022, at <https://www.npr.org/2022/03/11/1085427380/ukraine-nuclear-power-plant-zaporizhzhia>.

cultural property.<sup>217</sup> Despite all these efforts, the mission takes note of an extensive list of cultural heritage damaged during the armed conflict.<sup>218</sup> As of 22 June 2022, UNESCO confirms the damage of 152 cultural sites<sup>219</sup> since 24 February 2022 – 70 religious sites, 12 museums, 30 historic buildings, 18 buildings dedicated to cultural activities, 15 monuments, 7 libraries, with no detected damage to any UNESCO World Heritage site to date.<sup>220</sup> Out of these, 14 cultural sites were damaged in Chernihiv Region, 26 in Kyiv Region, 40 in Kharkiv Region, 4 in Zaporizhzhya Region, 2 in Zhytomyr region, 45 in Donetsk Region, 12 in Lugansk Region, 8 in Sumy Region and 1 in Mykolaiv region. Among the damaged cultural sites are over 60 churches.

Russian forces damaged or destroyed the Kuindzhi Art Museum in Mariupol, the Soviet-era Shchors cinema and a Gothic revival library in Chernihiv, the Babyn Yar Holocaust memorial complex in Kyiv, the Soviet-era Slovo building<sup>221</sup> and the regional State administration building in Kharkiv, a 19th-century wooden church in Viazivka, Zhytomyr Region.<sup>222</sup> Among more striking incidents of destruction of cultural heritage, it is important to mention that according to some reports, on 20 May 2022, two Russian Kh-22 supersonic bombs, in a direct hit, decimated the Palace of Culture in the Ukrainian city of Lozova.<sup>223</sup> Also, the burning down of a historic wooden church<sup>224</sup> in Svyatohirsk (part of Sviatohirsk Lavra monastery dating back to 1627, one of Ukraine's holiest Orthodox Christian sites) in eastern Ukraine in an attack in Ukraine on 4 June 2022, deserves to be specifically mentioned. Ukraine's Culture Minister Oleksandr Tkachenko said that “*the Donetsk eparchy [diocese] of the Ukrainian Orthodox Church has confirmed that in this temple, besides monks and nuns, there were 300 refugees, among them disabled and elderly, and nearly 60 children, among them newborns*”.<sup>225</sup> Ukraine blamed Russian bombardment but Russia has accused retreating Ukrainian forces of starting the blaze. The mission does not possess information substantiating any of these claims.

The data referred to by UNESCO however, covers only immovable cultural property as per 1954 Hague Convention, and does not cover all cultural heritage as defined under the 1972 Convention Concerning the Protection of the World Cultural and Natural Heritage, to which

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<sup>217</sup> HR, Art. 27; AP I, Art. 53.

<sup>218</sup> The Ukrainian online platform 'Recorded Warcrimes', 26 June, 2022, at <https://mkip.notion.site/mkip/e9a4dfe6aa284de38673efedbe147b51?v=f43ac8780f2543a18f5c8f45afdce5f7> recorded 397 alleged crimes of attacks against cultural sites in Ukraine.

<sup>219</sup> UNESCO is specifying that the term “cultural property” refers to immovable cultural property as defined under Article 1 of the 1954 HC, irrespective of its origin, ownership or status of registration in the national inventory, and facilities and monuments dedicated to culture, including memorials. ‘Damaged cultural sites in Ukraine verified by UNESCO’, 26 June 2022, at <https://www.unesco.org/en/articles/damaged-cultural-sites-ukraine-verified-unesco?hub=66116>.

<sup>220</sup> UNESCO is conducting a preliminary damage assessment for cultural properties by cross-checking the reported incidents with multiple credible sources. These published data which are being regularly updated do not commit the Organization. UNESCO is also developing, with its partner organizations, a mechanism for independent coordinated assessment of data in Ukraine, including satellite image analysis, in line with provisions of the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict. At <https://www.unesco.org/en/articles/damaged-cultural-sites-ukraine-verified-unesco?hub=66116>.

<sup>221</sup> Reid Anna, Ukrainian heritage is under threat – and so is the truth about Soviet-era Russia. *The Guardian*, 2 April 2022, at <https://www.theguardian.com/commentisfree/2022/mar/15/ukrainian-heritage-under-threat-truth-soviet-era-russia>.

<sup>222</sup> Over 50 landmark Ukraine sites damaged in Russian invasion: UN, *France 24*, 1 April 2022, at <https://www.france24.com/en/live-news/20220401-over-50-landmark-ukraine-sites-damaged-in-russian-invasion-un>.

<sup>223</sup> Is Ukraine's cultural heritage under coordinated attack?, *The Art Newspaper*, 10 June 2022, at <https://www.theartnewspaper.com/2022/06/10/is-ukraines-cultural-heritage-under-coordinated-attack>.

<sup>224</sup> The All Saints church was built from timber in 2009 to replace the one destroyed in 1947.

<sup>225</sup> Blazing monastery linked to Moscow Church, *BBC News*, 4 June 2022, at <https://www.bbc.co.uk/news/live/world-europe-61656289>

both Ukraine and the Russian Federation, are parties. It is thus reasonable to assume that the damage to cultural property on such a large scale is highly likely to result in at least some cases where it might be possible to prove that such destruction of cultural property cannot be justified under IHL, as the cultural property itself in such individual cases was not used by Ukraine for military purposes – which is lawful only in case of imperative military necessity – nor were the incidental effects on cultural property of an attack against a lawful military objective proportionate neither were all feasible measures taken to avoid them.<sup>226</sup> The deliberate targeting of cultural property that has not lost protection violates IHL and constitutes a war crime.<sup>227</sup> According to Lazare Eloundou Assomo, director of UNESCO’s World Heritage Centre, the damage to historic sites is having terrible consequences on the country’s cultural identity. He warned that targeting buildings bearing the UNESCO-backed Blue Shield can be considered a war crime<sup>228</sup> and emphasized that UNESCO also recommended to mark, as quickly as possible, key historic monuments, and sites across the country with the distinctive emblem of the 1954 Hague Convention, an internationally recognized sign for the protection of cultural heritage in the event of armed conflict.<sup>229</sup> This is particularly relevant, as concerns have been raised about the proximity of historic monuments, works of art, churches, and other cultural properties due to the use of explosive weapons with wide-area effects.<sup>230</sup>

According to some sources 2,000 art objects are estimated to have been looted, and special squads exist to track down and expropriate antiquities, such as Scythian artifacts, from archaeological digs. These objects are to be relocated to Russia.<sup>231</sup> The mission wishes to emphasize that pillaging or illicit trafficking of artefacts and museums’ collections, if established, violate both IHL and IHRL and the neighbouring countries, as well as the international community need to remain vigilant.

The mission notes that any prosecution will have to prove that the perpetrator(s) intentionally targeted protected cultural property or (in the alternative) that the destruction of that property was extensive and wanton, requiring gross negligence in targeting. Ukraine’s 2014 ad hoc acceptance of ICC jurisdiction on its territory and the ICC Prosecutor’s initiation of an investigation brings into play the provisions of Rome Statute Article 8(2)(a)(iv) (Grave Breaches from the Geneva Conventions, including wanton destruction) and particularly, 8(2)(b)(ix) (intentionally directing attacks against cultural property).

Furthermore, an obligation to prevent and punish crimes is outlined in the GCs and API. Russia and Ukraine are therefore required to establish sanctions for any misconduct, and if established, the crimes are the object of universal jurisdiction where States have adopted that approach. The grave breach provision of the GC IV, Article 147, includes “*extensive destruction and*

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<sup>226</sup> AP I, Art. 53; HC, Art. 4(1)-(2).

<sup>227</sup> ICC Statute, Art. 8 (2)(b)(ix). See also AP I, Art. 85(4)(2).

<sup>228</sup> In 2017, the UN Security Council unanimously adopted resolution 2347, which for the first time made the protection of cultural heritage a security imperative and condemned the deliberate destruction of cultural property as a war crime.

<sup>229</sup> UNESCO: deliberate destruction of Ukraine's cultural heritage could be considered a war crime, 20 April 2022, at <https://genevasolutions.news/peace-humanitarian/unesco-deliberate-destruction-of-ukraine-s-cultural-heritage-could-be-considered-a-war-crime>.

<sup>230</sup> Vladimir Putin's war endangers Ukraine's cultural heritage, *The Economist*, 19 March 2022, at <https://www.economist.com/culture/2022/03/19/vladimir-putins-war-endangers-ukraines-cultural-heritage>; Pevny Olenka Z., Ukraine's cultural heritage faces destruction as Russian bombing continues, *The Conversation*, 2 April 2022, at <https://theconversation.com/ukraines-cultural-heritage-faces-destruction-as-russian-bombing-continues-178563>,

<sup>231</sup> Mullins Charlotte, Ukraine's heritage is under direct attack: why Russia is looting the country's museums, *The Guardian*, 2 June 2022, <https://www.theguardian.com/artanddesign/2022/may/27/ukraine-russia-looting-museums>; UNESCO warns of attacks on more than 150 cultural spaces in Ukraine, *UNESCO*, 25 June 2022, at <https://newsrtd.com/life/2022-06-25-unesco-warns-of-attacks-on-more-than-150-cultural-spaces-in-ukraine.r1e1CrDEcc.html>.

*appropriation of property, not justified by military necessity and carried out unlawfully and wantonly.*” The 1954 Hague Convention requires State parties to “*take all necessary steps to prosecute and impose penal sanctions*” on individuals responsible for breaches of the Convention. Interested States may thus choose to apply their national law, via universal jurisdiction, to punish these crimes once established.

The mission also takes note, that the 1907 Hague Rules, the 1954 Hague Convention, the Geneva Convention (IV) for Protection of Civilians (GCIV), and AP I all provide guidance for occupying powers that reinforce the requirements to safeguard and respect cultural property. The Hague Rules require the occupying power to restore public order and safety (Article 43), respect public buildings (Article 55), and protect public institutions devoted to religion, charity, arts, and historic monuments (Article 56). The occupation rules of the 1954 Hague Convention require the occupier to support “competent authorities,” preserve cultural property, in close cooperation with those authorities, and to ensure the military respects cultural property (Article 5). It is beyond the capacity of this mission to analyse how and where Russia has complied with these provisions.

Moreover, the occupying power generally is required to restore the status *quo ante* after the occupation has ended. Consequently, Russia has substantial obligations to mitigate damage and work with “competent authorities” to further preserve and protect the cultural heritage in all the areas under its occupation and effective control.

Finally, the mission also encountered reports,<sup>232</sup> arguing that there is a “*very serious risk of genocide*” in Ukraine, citing the “*destruction of cultural and sacred sites*” as an indicator.

#### **d) Schools**

Civilian facilities that are essential for children’s wellbeing continue to be damaged or destroyed. According to Ukraine’s Ministry of Education and Science, as of 2 June 2022, at least 1,888 schools have been damaged or destroyed by shelling and bombing since the conflict erupted on 24 February 2022. One out of every ten schools that were attacked was completely destroyed, and more than half of the damaged schools was located in eastern Ukraine. That is more than double the number that was recorded in the same area from 2014 to 2021, when about 750 schools were damaged, destroyed or forced to close.<sup>233</sup>

Since its very beginning, the war was marked by school attacks. On the morning of 25 February 2022, a nursery school in north-eastern Ukraine where civilians had sought refuge was hit by widely prohibited cluster munitions. Three were killed and another person was injured. The attack appears to have been carried out by Russian forces operating nearby, allegedly using cluster munitions in populated areas. Amnesty International confirmed that a 220mm Uragan rocket launched cluster ammunition against both the Sonechko kindergarten and the kindergarten of the city of Okhtyrka in the Sumy Oblast, where residents had sought shelter from the fighting.<sup>234</sup> The list of the schools that are destroyed is updated daily.

The number of attacks on educational facilities grows progressively over time. Attacks not only cause devastating injuries on children, both physically and emotionally, but they also deprive

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<sup>232</sup> An Independent Legal Analysis of the Russian Federation’s Breaches of the Genocide Convention in Ukraine and the Duty to Prevent, New Lines Institute for Strategy and Policy, 26 May 2022, at <https://newlinesinstitute.org/russia/an-independent-legal-analysis-of-the-russian-federations-breaches-of-the-genocide-convention-in-ukraine-and-the-duty-to-prevent/>.

<sup>233</sup> Ukraine: twice as many schools attacked in the past 100 days as during the first years of conflict, *Save the Children*, 2 June 2022, at <https://www.savethechildren.net/news/ukraine-twice-many-schools-attacked-past-100-days-during-first-7-years-conflict>.

<sup>234</sup> Ukraine: Cluster munitions kill child and two other civilians taking shelter at a preschool, *Amnesty International*, 27 February 2022, at <https://www.amnesty.org/en/latest/news/2022/02/ukraine-cluster-munitions-kill-child-and-two-other-civilians-taking-shelter-at-a-preschool>

hundreds of students of the chance of receiving a good-quality education. Sometimes, a community's only place of learning is destroyed.<sup>235</sup>

School shooting is "a tragedy for the children," the director of School 50 in the town of Gorlovka said as he stood outside the brick building shortly after the 27 February 2022 attack. Two women, a teacher and the assistant headmaster, were killed, their bodies covered by blood-splattered books and papers, while shards of broken glass and debris littered the concrete where once children had played, flown kites and posed for photos with friends.<sup>236</sup>

The war has disrupted the education of 7.5 million children in Ukraine. More precisely, an estimated 5.7 million school-aged children (ages 3-18) have been affected by the war. Currently, many Ukrainian schools are closed or are being used by the military. For example, according to information reported in April 2022, Russian reinforcements in Bucha established their base in an apartment complex behind School No. 3, the main high school on Vokzalna, or Station Street, and stationed a sniper in a high-rise building still under construction. In addition, five bodies were discovered in a cellar at a children's summer camp that Russian units had used as a base.<sup>237</sup>

In many cases, schools are used as shelters. Indeed, many thousands of children within Ukraine have been displaced; some are using the remaining schools as shelters from the war.<sup>238</sup> More than 4,000 education institutions are used for humanitarian purposes as shelters for IDPs, centres for collecting and distributing humanitarian aid, or for preparing meals for IDPs.<sup>239</sup> Due to the bombing of educational facilities, schools are at risk of becoming death traps.

On 8 May 2022, a school in the eastern village of Bilohorivka, Luhansk Oblast, which like School 21 in Chernihiv was being used a shelter, was bombed by Russian forces during the Battle of Severodonetsk. As many as 60 people were feared to be killed.<sup>240</sup> The attack against School 21 in Chernihiv occurred on April 13. The school had been kept open as a shelter for families. The word "children" had been sprayed in large bold letters on the windows in the hope that Russian forces would see it and spare the building. The bombs fell nevertheless and at least nine people have died, including a 13-year-old boy.<sup>241</sup> In Chernihiv alone, the city council reported that only seven out of the city's 35 schools were unscathed. Three were reduced to rubble.<sup>242</sup>

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<sup>235</sup> *Ibidem*.

<sup>236</sup> In possible war crimes, Russia has destroyed or damaged at least 57 Ukrainian schools, *Associated Press International*, 17 May 2022, at <https://www.ny1.com/nyc/all-boroughs/international/2022/05/17/in-possible-war-crimes--russia-has-destroyed-or-damaged-57-ukrainian-schools>.

<sup>237</sup> Carlotta Gall, They shot my son. I was next to him. It would be better if it had been me. Bucha months of terror, *New York Times*, 11 April 2022, at <https://www.nytimes.com/interactive/2022/04/11/world/europe/bucha-terror.html>

<sup>238</sup> Ukraine: twice as many schools attacked in the past 100 days as during the first years of conflict, Save the Children, 2 June 2022, at <https://www.savethechildren.net/news/ukraine-twice-many-schools-attacked-past-100-days-during-first-7-years-conflict>.

<sup>239</sup> Ukraine Education Needs Assessment Survey - Initial Report on Key Findings, *UNICEF*, 10 June 2022, at <https://www.humanitarianresponse.info/en/operations/ukraine/document/ukraine-education-needs-assessment-survey-initial-report-key-findings>.

<sup>240</sup> Jason Dearen, Juliet Linderman, Oleksander Stashevsky, War Crimes Watch: Targeting Ukraine Schools, Russia Bombs the Future, *AP News*, 25 May 2020, at <https://apnews.com/article/russia-ukraine-war-crimes-schools-d1e52368aced8b3359f4436ca7180811>.

<sup>241</sup> In possible war crimes, Russia has destroyed or damaged at least 57 Ukrainian schools, *The Associated Press*, 17 May 2022, at <https://www.ny1.com/nyc/all-boroughs/international/2022/05/17/in-possible-war-crimes--russia-has-destroyed-or-damaged-57-ukrainian-schools>.

<sup>242</sup> *Ibidem*.



All the evidence gathered indicates that Russia's intentional attacks on schools and other civilian facilities can be proved on a large scale. Evidence gathered refutes claims that schools' destruction was merely collateral damage.

Schools are used by Russian occupiers also to imprison civilians. As reported by Human Right Watch on 18 May 2022, in Yahidne, Russian forces imprisoned over 350 villagers, including at least 70 children, five of whom were infants, in a schoolhouse basement for 28 days, severely restricting their ability to leave even for a brief period of time. There was little air or space to lie down, and people had to use buckets to relieve themselves. As reported by witnesses, someone who had previously worked at the school recalled, "After a week, everyone was hacking up blood; almost every child had a high fever, cough spasms, and would throw up; that prolonged sitting can cause bedsores in some people. Ten old people passed away".<sup>243</sup>

## **8. USE OF WEAPONS**

The mission gathered information on the use of indiscriminate weapons in the country's east, such as the FAB-250, metal dart shells, and cluster bombs, resulting in civilian casualties and damage to civilian objects.<sup>244</sup>

The FAB-250s are among the most commonly used Russian bombs against Ukrainian towns in the Kyiv oblast, including Bucha, Hostomel, and Borodyanka. According to investigators, these powerful, unguided bombs destroyed at least eight buildings in towns north of Kyiv, killing hundreds. The FAB-250 is a highly inaccurate airdropped bomb that was widely used by the former Soviet Union in Afghanistan and by Russia in Syria.<sup>245</sup>

A Russian missile strike hit two residential buildings on 23 April 2022. According to Ukraine, it killed eight civilians and injured 18 or 20 others. A three-month-old baby, his mother, and the baby's maternal grandmother were killed by a missile that struck a residential building.<sup>246</sup>

As of 22 June 2022, the populated areas of Turya, Myropilske, and Slavhorod in the Sumy region came under fire from Russian troops using tube artillery. In the vicinity of the towns of Bohorodychne, Nova Dmytrivka, Novopavlivka, Kurulka, Dolyna, Pryshyb, Krasnopillia, Virnopillia, Ridne, Chervone, Shnurky, Chervona Poliana, Karnaukhivka, Velyka Komyshuvakha, and Semylanne, the Russians used tube and rocket artillery.

### **a) Cluster Munitions**

The mission collected a number of pieces of information that cluster munitions are being used in the international armed conflict in Ukraine in 2022, resulting in civilian casualties and damage to civilian objects.

The 2008 Convention on Cluster Munitions prohibits these weapons due to their indiscriminate effect and the long-lasting danger posed to civilians.<sup>247</sup> It calls for the destruction of stockpiles, the clearing of areas contaminated by cluster munitions remnants, and the assistance of victims.

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<sup>243</sup> Ukraine: Executions, Torture During Russian Occupation, *Human Rights Watch*, 12 May 2022, at <https://www.hrw.org/news/2022/05/18/ukraine-executions-torture-during-russian-occupation>.

<sup>244</sup> Plights of civilians in Ukraine, *OHCHR*, 10 May 2022, at <https://www.ohchr.org/en/press-briefing-notes/2022/05/plight-civilians-ukraine>.

<sup>245</sup> Lorenzo Tondo and Isobel Koshiw, How The Guardian documented Russia's use of illegal weapons, *The Guardian*, 24 May 2022, at <https://www.theguardian.com/world/2022/may/24/ukraine-destruction-how-the-guardian-documented-russia-use-of-weapons>.

<sup>246</sup> Davies Caroline, Odesa missile attack: My world was destroyed by a Russian missile, *BBC*, 24 April 2022, at <https://www.bbc.com/news/world-europe-61210699>; Joe Ruiz, Maureen Chowdhury, Mike Hayes, Simone McCarthy, Amy Woodyatt, Amir Vera, Helen Regan and Andrew Raine, Russia-Ukraine news, 25 April 2022, at [https://edition.cnn.com/europe/live-news/russia-ukraine-war-news-04-24-22/h\\_3f65b85b8497d5406bc752cb5b7d25b8](https://edition.cnn.com/europe/live-news/russia-ukraine-war-news-04-24-22/h_3f65b85b8497d5406bc752cb5b7d25b8).

<sup>247</sup> Convention on Cluster Munitions, adopted May 30, 2008, Dublin Diplomatic Conference for the Adoption of a Convention on Cluster Munitions, CCM/77, entered into force August 1, 2010, at <https://www.clusterconvention.org/>.

Russia and Ukraine, however, are not among the treaty's 110 State parties. Nonetheless, the use of cluster munitions in populated areas invariably violates IHL prohibitions on using weapons that cannot distinguish between civilians and combatants.<sup>248</sup>

Russian armed forces have used at least six types of cluster munitions in attacks that have resulted in hundreds of civilian casualties and damage to civilian objects, including homes, hospitals, and schools, since Russia's invasion of Ukraine on 24 February 2022. There is evidence that Ukrainian forces used cluster munitions at least once.

Although the precise number of Russian cluster munition attacks is unknown, hundreds have been evidenced, reported, or alleged, many of them in populated areas. Cluster munitions have hit at least eight of Ukraine's 24 oblasts (provinces): Chernihiv, Dnipropetrovsk, Donetsk, Kharkiv, Kherson, Mykolaiv, Odesa, and Sumy.<sup>249</sup>

On 7, 11 and 13 March 2022, Russian forces launched cluster munition rockets into populated areas in Mykolaiv, killing and injuring civilians while damaging homes, businesses, and civilian vehicles. One of the 13 March 2022 attacks appeared to have killed nine people who were lined up at a cash machine.<sup>250</sup>

The New York Times reported on 19 June 2022 that it had reviewed over 1,000 photographs of potentially illegal munitions. It discovered photographic evidence of widespread use of cluster munitions in a variety of civilian settings. It was noted that the majority were unguided, with a proclivity to cause collateral damage to civilians. It also discovered instances of other types of weapons that may be illegal under international law, such as land mines.<sup>251</sup>

Following Russia's withdrawal from the Kyiv region in early April, evidence of cluster munitions – shells or bombs that release dozens of smaller munitions – was discovered in the wreckage of cars, streets, and civilian buildings, as well as dead bodies. Wrecks of dozens of cars in Bucha and Borodyanka show the distinctive holes caused by Russian military cluster bomb submunitions. In other parts of Ukraine, cluster munitions and cluster bombs have also been widely reported. On 4 April 2022, for example, when a team from Médecins Sans Frontières (MSF) entered a cancer hospital in Mykolaiv, several explosions occurred near the staff.<sup>252</sup> The submunitions in a cluster bomb are designed to release over a wide area, but they do not always explode, posing an additional future risk to civilians.

A Russian cluster rocket near a farm village in Hostomel, and fragments from RBK-500 cluster bombs with PTAB-1M submunitions and cluster rockets hit towns north of Kyiv. Cluster bombs had such a large impact in these areas that they hit and killed numerous animals in some cases. A short distance from the Hostomel cluster bomb, the carcasses of two horses bear clear

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<sup>248</sup> Protocol I, Art.51(4). Both Russia and Ukraine are parties to Protocol I.

<sup>249</sup> Intense and Lasting Harm, *Human Rights Watch*, 11 May 2022, at <https://www.hrw.org/report/2022/05/11/intense-and-lasting-harm/cluster-munition-attacks-ukraine>

<sup>250</sup> Legs shredded like meat: Inside Mykolaiv, residents live in fear of Russian cluster bombs, *The Independent*, 13 April 2022, at <https://www.independent.co.uk/news/world/europe/ukraine-mykolaiv-russia-war-cluster-munitions-b2057346.html>; Ukraine: Cluster Munitions Repeatedly Used on Mykolaiv, *Human Rights Watch*, 17 March 2022, at <https://www.hrw.org/news/2022/03/17/ukraine-cluster-munitions-repeatedly-used-mykolaiv>; Mykolaiv is being shelled with cluster bombs - Mayor, *Ukrainska Pravda*, 22 May 2022, at <https://www.pravda.com.ua/eng/news/2022/05/22/7347889/>

<sup>251</sup> Ukraine: Week May 21 to June 14: Amnesty says Russia guilty of war crimes in Kharkiv shelling, *Nikkei Asia*, 16 June 2022, at <https://asia.nikkei.com/Politics/Ukraine-war/Ukraine-war-Free-to-read/Ukraine-Week-May-21-to-June-14-Amnesty-says-Russia-guilty-of-war-crimes-in-Kharkiv-shelling>

<sup>252</sup> Lorenzo Tondo and Isobel Koshiw, How The Guardian documented Russia's use of illegal weapons, *The Guardian*, 24 May 2022, at <https://www.theguardian.com/world/2022/may/24/ukraine-destruction-how-the-guardian-documented-russia-use-of-weapons>.

evidence of its submunitions.<sup>253</sup> The weapons were used in areas with no military personnel or infrastructure.

The Russian government has made no denials about the use of cluster munitions in Ukraine but it has repeatedly denied targeting civilians and has accused Ukraine of fabricating allegations of war crimes.<sup>254</sup> It has accused Ukraine of using cluster munitions on 14 March 2022 in Donetsk, but this has not been independently confirmed.<sup>255</sup>

On 8 April 2022, a Tochka missile struck a railway station in Kramatorsk: 4,000 civilians were there, the majority of whom were women and children. Officials in Ukraine blamed Russia for the attack. The final death number was 60 civilians, including seven children, and 111 injured.<sup>256</sup> The Russian Ministry of Defence denied the allegations, claiming that the Tochka-U missile was only used by Ukrainian forces.<sup>257</sup> Analysts, however, claim that images and videos on social media appear to show Russia using the missile.<sup>258</sup>

According to media reports, Ukrainian forces used cluster munitions in Husarivka, Kharkiv oblast, on 6 or 7 March 2022, when Russia occupied the village. The Ukrainian government has not denied the use of cluster munitions, stating however that the Ukrainian Armed Forces "strictly adhere to the norms of international humanitarian law".<sup>259</sup>

During the visit to Ukraine, the Ukrainian State bodies confirmed that the Ukrainian Armed Forces strictly observe the IHL also regarding the use of not permitted weapons.

As of 9 May 2022, 98,864 items of unexploded ordnance, including submunitions and landmines, had been cleared and destroyed by Ukraine's State Emergency Service.<sup>260</sup> During the first seven weeks of the conflict, 29 workers were reportedly killed and 73 were injured while doing demining and related work. On 17 April 2022, three emergency workers from Kharkiv were killed while clearing cluster munition remnants.<sup>261</sup>

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<sup>253</sup> *Ibidem*.

<sup>254</sup> *Ibidem*.

<sup>255</sup> Letter from the permanent representative of the Russian Federation to the United Nations, addressed to the Secretary General and the President of the Security Council, 15 March 2022, at <https://documents.un.org/prod/ods.nsf/xpSearchResultsM.xsp>.

<sup>256</sup> Office of the High Commissioner for Human Rights, Bachelet urges respect for international humanitarian law amid growing evidence of war crimes in Ukraine, *OHCHR*, 22 April 2022, at <https://www.ohchr.org/en/press-releases/2022/04/bachelet-urges-respect-international-humanitarian-law-amid-growing-evidence>; Carolin Vakil, Death toll in Ukraine train station bombing reaches 59, including 7 children, *The Hill*, 14 April 2022, at <https://thehill.com/policy/international/3269176-death-toll-in-ukraine-train-station-bombing-reaches-59-including-7-children/>.

<sup>257</sup> Voitovych, Olga; Hodge, Nathan. Dozens killed in train station missile strike in eastern Ukraine as civilians try to flee Russian onslaught, *CNN*, 11 April 2022, at <https://edition.cnn.com/2022/04/08/europe/kramatorsk-railway-station-strike-intl/index.html>; Max Bearak, Louisa Loveluck, In Bucha, the scope of Russian barbarity is coming into focus, *Washington Post*, 6 April 2022, at <https://www.washingtonpost.com/world/2022/04/06/bucha-barbarism-atrocities-russian-soldiers/>

<sup>258</sup> Kramatorsk station attack: What we know so far, *BBC*, 9 April 2022, at <https://www.bbc.com/news/world-europe-61036740>.

<sup>259</sup> Thomas Gibbons-Neff and John Ismay, To Push Back Russians, Ukrainians Hit a Village With Cluster Munitions, *New York Times*, 18 April 2022, at <https://www.nytimes.com/2022/04/18/world/europe/ukraine-forces-cluster.html#:~:text=%E2%80%9CThe%20Armed%20Forces%20of%20Ukraine,prohibited%20by%20the%20Geneva%20Conventions.%E2%80%9D>.

<sup>260</sup> Ukraine's State Emergency Service Facebook Homepage, at <https://www.facebook.com/MNS.GOV.UA/posts/369969805170915?>

<sup>261</sup> Isabelle Khurshudyan and Max Bearak, Clearing the deadly litter of unexploded Russian bombs in Ukraine, *Washington Post*, 15 April 2022, at <https://www.washingtonpost.com/world/2022/04/15/ukraine-clearing-unexploded-russian-bombs-missiles/>; Nima Elbagir, Twitter, Sending condolences to the Kharkiv Emergency Services. Three of the team we filmed below were killed today while clearing Russian cluster munitions. They risked their lives every day to save civilians and the rest of the team are continuing on with their urgent, life saving work, 17 April 2022, at <https://twitter.com/nimaelbagir/status/1515718136598872075>.

## **b) Other Controversial Weapons, in Particular Incendiary Weapons**

### *Incendiary weapons*

Incendiary weapons are among the most heinous weapons used in modern warfare. These weapons, which generate heat and fire by a chemical reaction with a flammable substance, cause immediate and long-term human suffering as well as the destruction of homes and other civilian structures.

Incendiary weapons are not covered by the Chemical Weapons Convention, which entered into force in 1997. However, they are subject to the 1983 Convention on Certain Conventional Weapons, which limits the use of fire weapons without prohibiting them entirely and to its Protocol III.<sup>262</sup> This type of weapon is 'prohibited in all circumstances' against civilians, according to the protocol. Both Russia and Ukraine have incendiary weapons, which they have used in previous conflicts.

According to photo and video evidence, the Russian military is still using incendiary and cluster munitions against Ukrainian forces. On 15 May 2022, a video surfaced showing the Azovstal plant in Mariupol being shelled by what appear to be incendiaries. About 20 rockets were seen exploding one after the other, each releasing an orange spray that densely covered a square of 500 meters on each side, made up of concrete, asphalt and the roofs of the buildings at the heart of the famous steel plant. When spray touched the ground, the pellets produced a brief flash and then remained incandescent, producing white smoke and sometimes a burst of flame.<sup>263</sup>

Ukraine has repeatedly accused Russian troops of using phosphorus bombs, incendiary weapons prohibited against civilians but permitted against military targets. Ukrainian officials claim that phosphorus weapons, which leave a distinctive white trail in the sky, were used against a village in the Lugansk region and at Irpin outside Kyiv.<sup>264</sup> Many videos and witnesses can support these accusations.

### *Thermobaric weapons*

Since its invasion of Ukraine on 24 February 2022, Russia has been accused of using vehicle-borne thermobaric rocket launchers. There have also been reports of Ukrainian forces employing thermobaric weapons in the form of shoulder-launched weapon systems. Thermobaric bombs are a type of explosive that ignites oxygen using aerosolized fuel (fuel droplets suspended in air).<sup>265</sup> IHL does not expressly prohibit thermobaric weapons. However,

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<sup>262</sup> Russia using phosphorus bombs in Ukraine? incendiary weapons & its use, *WION*, 5 April 2002, at <https://www.wionews.com/photos/russia-using-phosphorus-bombs-in-ukraine-incendiary-weapons-its-use-466629#russia-using-phosphorus-bombs-466605>.

<sup>263</sup> Russian War Report: Russian forces use incendiary munitions in Mariupol, *Atlantic Council*, 20 May 2022, at <https://www.atlanticcouncil.org/blogs/new-atlanticist/russian-war-report-incendiary-munitions-in-mariupol/#mariupol>; Burning munitions cascade down on Ukrainian steel plant, video shows, *Reuters*, 11 May 2022, at <https://www.reuters.com/world/europe/burning-munitions-cascade-down-ukrainian-steel-plant-video-2022-05-15/>; Emmanuel Grynspan, Ukraine: A rain of forbidden firebombs falls on the Azovstal factory, *Le Monde*, 18 May 2022, at [https://www.lemonde.fr/en/international/article/2022/05/18/a-rain-of-forbidden-firebombs-on-the-azovstal-factory\\_5983906\\_4.html](https://www.lemonde.fr/en/international/article/2022/05/18/a-rain-of-forbidden-firebombs-on-the-azovstal-factory_5983906_4.html)

<sup>264</sup> Russia using phosphorus bombs in Ukraine? incendiary weapons & its use, *WION News*, 5 April 2022, at <https://www.businessinsider.com/video-russia-hits-ukraine-troops-with-thermobaric-bombs-ukraine-says-2022-5?r=US&IR=T>; Russia to use more deadly weapons in Ukraine war, *Gulf Today*, 12 June 2022, at <https://www.gulftoday.ae/news/2022/06/12/russia-to-use-more-deadly-weapons-in-ukraine-war>; Rain of Hell: What are White Phosphorus bombs Russia is accused of using against Ukraine?, *The Print*, 18 May 2022, at <https://theprint.in/world/frontline-ukraine/rain-of-hell-what-are-white-phosphorus-bombs-russia-is-accused-of-using-against-ukraine/961358/>.

<sup>265</sup> Michael Starr, Thermobaric, phosphorus, cluster munitions allegedly indiscriminately used in Ukraine, *The Jerusalem Post*, 5 April 2022, at <https://www.jpost.com/international/article-703328>; Russia appears to use thermobaric weapons as Donbas progress slow, *Youtube*, 27 May 2022, at <https://www.youtube.com/>

because thermobaric bombs absorb so much oxygen in the environment, they can suffocate people hiding in bunkers. Due to the pressure wave, they can also suck air from people's lungs or even burst them. Thermobaric weapons have a very wide impact area and thus cause indiscriminate damage. Then, in terms of the use of such weapons, it follows IHL rule that military actions must target military targets. Anyone who uses a weapon on civilians indiscriminately or intentionally commits a war crime.

As of 27 May 2022, Ukraine accuses Russia of using thermobaric weapons in the latest battle for the Donbas region of eastern Ukraine, whose powerful blasts can wreak havoc on people and buildings.<sup>266</sup> Many videos and witnesses can support these accusations.

#### *Antipersonnel mines*

The Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Antipersonnel Mines and on their Destruction of 1997 prohibits the use, production, stockpiling, and transfer of antipersonnel mines.<sup>267</sup> Russia is not one of the 164 State parties. Ukraine signed the treaty on 24 February 1999 and ratified it on 27 December 2005. At least seven types of antipersonnel mines have been used by Russian forces in at least four regions of Ukraine: Donetsk, Kharkiv, Kyiv, and Sumy.

Also, Russia seems to employ a newly developed type of mine known as POM-3, also known as "Medallion", which is equipped with a seismic sensor that detects an approaching person and ejects an explosive charge into the air. According to the limited information available publicly on this landmine, the subsequent detonation of the charge and metal fragments it projects can cause death and injury within a 16-meter radius.<sup>268</sup> Human Rights Watch reported that Russian forces fighting in Ukraine have used prohibited antipersonnel mines in the eastern Kharkiv region. The antipersonnel mines were discovered on 28 March 2022 by Ukrainian explosive ordnance disposal technicians.<sup>269</sup>

The impact of antipersonnel mine use can also be seen in the denial of access to civilian homes, infrastructure, transportation routes, and agricultural lands. Moreover, evidence suggests that the use of landmines in fields, rural paths, and roads has an impact on agricultural production. Also, millions of people are at risk from anti-personnel and anti-vehicle mines, as well as other unexploded or abandoned ammunition left behind in Ukraine. They will take years to remove,

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watch?v=Jvg5yCrknKc; What is a thermobaric or vacuum bomb?, *BBC News*, 10 March, 2022, at <https://www.bbc.com/news/business-60571395>.

<sup>266</sup> Ana Rivas, Roque Ruiz, Taylor Umlauf, Ukraine Is Accusing Russia of Again Using Thermobaric Weapons. Here's What Makes Them So Devastating, *Wall Street Journal*, 27 May 2022, at <https://www.wsj.com/articles/ukraine-is-accusing-russia-of-again-using-thermobaric-weapons-heres-what-makes-them-so-devastating-11653679508>; Russia appears to use thermobaric weapons as Donbas progress slow, *Youtube*, 27 May 2022, at <https://www.youtube.com/watch?v=Jvg5yCrknKc>; Sophia Ankel, Video shows huge explosions Ukraine says are Russian thermobaric bomb strikes on its positions, *Business Insider*, 27 May 2022, at <https://www.businessinsider.com/video-russia-hits-ukraine-troops-with-thermobaric-bombs-ukraine-says-2022-5?r=US&IR=T>.

<sup>267</sup> Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Antipersonnel Mines and on their Destruction, adopted 18 September 1997, entered into force 1 March 1999, online at <http://www.icbl.org/media/604037/treatyenglish.pdf>.

<sup>268</sup> Ukraine: Russia Uses Banned Antipersonnel Landmines, *Human Rights Watch*, 29 March, 2022, at <https://www.hrw.org/news/2022/03/29/ukraine-russia-uses-banned-antipersonnel-landmines>; Geneva International Centre for Humanitarian Demining, Clearing landmines from Ukraine may take decades; Work to find, map, and remove them has already begun, 13 May 2022, at <https://www.gichd.org/en/what-we-do/our-news/news-detail/clearing-landmines-from-ukraine-may-take-decades-work-to-find-map-and-remove-them-has-already-begun/>

<sup>269</sup> Ukraine: Russia Uses Banned Antipersonnel Landmines, *Human Rights Watch*, 29 March, 2022, at <https://www.hrw.org/news/2022/03/29/ukraine-russia-uses-banned-antipersonnel-landmin>.

complicating reconstruction efforts and making it dangerous for people to return to their previous daily lives.<sup>270</sup>

## **9. UNLAWFUL METHODS OF WARFARE**

Since 1 April 2022, the mission has received no information about the use of unlawful warfare methods in violation of IHL.<sup>271</sup> Nevertheless, some reports argue that at least amidst the devastation of the siege of Mariupol, one method of Russian warfighting that has become prominent is the deprivation of food, water, and other essentials and that the starvation of civilians was used as a method of warfare, prohibited by article 54 of API and codified as a war crime in article 8(2)(b)(xxv) of the Statute of the ICC. Starvation methods are prohibited because of their multifaceted, destructive, and torturous impacts on individuals and societies, but as those consequences are gradual and often shaped by a combination of conditions and intervening factors, it can be difficult to trace the specific harms associated with starvation in a particular context to specific military operations.<sup>272</sup>

## **10. NAVAL WARFARE**

### **a) Publication of a Contraband List**

As already underlined by the first mission report, in order to exercise belligerent rights vis-à-vis merchant vessels (M/Vs), a party must publish a contraband list<sup>273</sup> concerning goods destined for territory controlled by the enemy and capable of being used in armed conflict, while goods with a neutral destination coming from a belligerent port do not constitute contraband<sup>274</sup>. The mission did not get any information about the publication of a contraband list by Russia.

### **b) Destruction of Neutral Ships**

The mission gathered information on Russia's indiscriminate attacks on neutral ships resulting in the destruction of vessels and injuries to the crew. Under IHL, neutral merchant vessels (M/Vs) may only be attacked if, they constitute military objectives.<sup>275</sup>

Over 1,000 seafarers are stranded in the Black Sea and the Sea of Azov on board foreign-flagged vessels with insufficient provisions, drinking water, and medical supplies. An estimated 100 foreign-flagged ships are caught in the direct line of fire, surrounded by an imposed Russian blockade and reported sea mines, with few options for evacuation. According to available information, a seafarer has died as a result of a missile attack, Russian armed forces have reportedly targeted merchant ships, and a foreign-flagged vessel sank this week after being heavily and indiscriminately attacked by a missile.<sup>276</sup>

Among the cases, the Commonwealth of Dominica Maritime Administration reports that on 4 April 2022, the motor vessel AZBURG IMO number 9102899 was hit indiscriminately by two missile shells while berthed in the port of Mariupol. After intentionally shelling the vessel twice the day before, Russian armed forces opened fire on the vessel around 22:40 LT on 4 April

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<sup>270</sup> Geneva International Centre for Humanitarian Demining, Clearing landmines from Ukraine may take decades; Work to find, map, and remove them has already begun, 13 May 2022, at <https://www.gichd.org/en/what-we-do/our-news/news-detail/clearing-landmines-from-ukraine-may-take-decades-work-to-find-map-and-remove-them-has-already-begun/>.

<sup>271</sup> AP, I, Art.38.

<sup>272</sup> Red Cross prohibits use of its emblem on humanitarian vehicles - Zelensky, *Ukrinform*, 8 March, 2022, at <https://www.ukrinform.net/rubric-ato/3423671-red-cross-prohibits-use-of-its-emblem-on-humanitarian-vehicles-zelensky.html>;

<sup>273</sup> San Remo Manual (SRM), para 149.

<sup>274</sup> SRM para 148; Helsinki Principles, para 5.2.3.

<sup>275</sup> API Art. 52 (2); see also SRM, art 67(f).

<sup>276</sup> Human Rights at Sea, War crimes against seafarers and neutral merchant vessels warrant accountability, at <https://www.humanrightsatsea.org/news/war-crimes-against-seafarers-and-neutral-merchant-vessels-warrant-accountability>

2022. The specific characteristics of the vessel's firing remain unknown; however, the crew reported shelling, bombing, and repeated missile hits, resulting in a fire in the engine room. The crew was able to escape and seek refuge on board neighbouring vessels. One person was found injured and received medical attention<sup>277</sup>.

The Administration received additional reports of heavy fighting and intense shelling in the port area by Russian armed forces.

Another critical issue is the threat to maritime safety posed by free floating mines. Naval mines laid by belligerents over which they have lost control and are left adrift, continue to pose threat and indicate the violation of the obligation to protect merchant shipping from collateral damage.<sup>278</sup>

Ukraine stated in a Circular Letter No. 4544 addressed to the IMO on 31 March 2022, that due to Russian Federation aggression and drifting mines, the safety of international shipping via a "Blue Corridor" in the Black Sea cannot be guaranteed.<sup>279</sup>

The International Maritime Organization (IMO) has received reports of free-floating sea mines in the Black Sea region, including off the coasts of Romania and Turkey, as a result of the ongoing conflict in Ukraine, which poses a serious and immediate threat to the safety and security of the region's crews and vessels.<sup>280</sup>

Authorities in coastal nations have detected and deactivated drifting mines in the Western Black Sea. The latest regional authority statement, confirming another mine sighting, demonstrates that the threat of drifting mines in the Southwest part of the Black Sea remains.<sup>281</sup>

### **c) Measures against Enemy Merchant Vessels**

Merchant ships are currently unable to enter or leave the country for fear of colliding with mines or being attacked, as happened to the Ukrainian merchant vessel on 27 February 2022, as mentioned in the first report. Currently Ukraine's ports are closed. Ships are unable to enter or exit. While the mission may have gathered data on Russian attacks on foreign merchant ships, it did not gather data on Ukrainian merchant ships.

### **d) Blockade**

For naval blockades to be lawful they must be declared and notified to all Powers (neutral and enemy), and must specify the commencement, duration, location, extent of blockade and period within which vessels of neutral States may leave blockaded coastline.<sup>282</sup> However, the establishment of a blockade is prohibited if "it has a sole purpose of starving the civilian population or denying it other objects essential for its survival;" or "the damage to the civilian population is, or may be expected to be, excessive in relation to the concrete and direct military advantage anticipated from the blockade".<sup>283</sup> Under IHL specific obligations for the blockading party to provide for free passage of foodstuff and other essential supplies only relate to instances

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<sup>277</sup> Commonwealth of Dominica Maritime Administration, DMA condemns Russian sinking of Dominica-flag vessel Azburg, 5 April 2022, at <https://dominica-registry.com/dma-condemns-russian-sinking-of-dominica-flag-vessel-azburg/>

<sup>278</sup> SRM, paras 82-86.

<sup>279</sup> International Maritime Organization, Circular Letter No.4544 -Statement from Ukraine, 31 March 2022, at <https://wwwcdn.imo.org/localresources/en/MediaCentre/HotTopics/Documents/Black>.

<sup>280</sup> International Maritime Organization, Circular Letter No.4573 24 May 2022, at Circular Letter No.4573 - Maritime Security Threat Posed By Free Floating Sea Mines In TheBlack Sea Region (Secretariat).pdf (imo.org)

<sup>281</sup> NATO, Risk of collateral damage in the North Western and Southwest Black Sea, 21 June 2022, at <https://shipping.nato.int/nsc/operations/news/-/2022/risk-of-collateral-damage-in-the-north-western-black-sea-2>.

See also, Last NAVAREA III warning broadcasted, at [https://armada.defensa.gob.es/ihm/Aplicaciones/Navareas/Index\\_Navareas\\_xml\\_en.html](https://armada.defensa.gob.es/ihm/Aplicaciones/Navareas/Index_Navareas_xml_en.html)

<sup>282</sup> SRM, paras 93-94.

<sup>283</sup> SRM, para 102.

whereby the civilian population of the blockaded territory is inadequately provided with food and other objects essential for its survival.<sup>284</sup>

As mentioned in the first mission report, on 24 February the Russian Defence Ministry suspended the movement of commercial vessels in the Sea of Azov until further notice.<sup>285</sup>

Russia continues to enforce its declaration of the suspension of movement of commercial vessels in the Sea of Azov, which may qualify as a declaration of the blockade. Ports in Ukraine are closed, whereby ships cannot enter or leave. Because of that, millions of tons of grain remain trapped in the Ukrainian ports and on ships unable to move, which significantly affects the global food and agricultural supplies threatening to result in a global hunger crisis.<sup>286</sup>

The World Food Programme (WFP) called for the immediate opening of the Black Sea ports to allow critical food from Ukraine reaching people facing food insecurity in other countries where millions are on the brink (e.g. Afghanistan, Ethiopia, South Sudan, Syria and Yemen).<sup>287</sup>

Anyway the mission would like to consider some aspects. Aside from the suspension of maritime traffic, there is no additional information available indicating the notification of a blockade or an establishment of a blockade that would satisfy the notification requirement, such as an announcement of the blockade's commencement, location, and extent.

Furthermore, coastal nation's authorities, like NAVAREA III's responsible for the Black Sea region, warning about mined areas and other dangerous areas due to ongoing military operations<sup>288</sup> make no mention of the existence or notification of a Russian naval blockade. Neither does the IMO, which appears to be concerned about the safety of seafarers in the area and has advocated for a maritime corridor to ensure that merchants can safely leave ports with their vessels.

It is worth considering that the Sea of Azov measures approximately 360 km by 180 km. The ports in the Azov Sea are not only Ukrainian but also Russian ports that are still operational. Because of geographical features, the sea can be easily closed off by blocking the Kerch Strait. However, it has been reported that traffic through the Strait is not suspended but rather reduced. Furthermore, ships are congregating at the Kerch Strait's approaches. Meanwhile, Russia is allowing ships to transit from the Azov Sea to the Black Sea.<sup>289</sup>

To begin with, this would imply that Russia is not blocking all traffic and is not enforcing a blockade in an impartial manner. Second, if it did, one should question whether blocking the entrance to the Sea of Azov amounts to blocking all maritime traffic from enemy ports or coasts, bearing in mind that the Sea of Azov is large and has several commercial ports, including Russian ports. The challenge of leaving port is a combination of an announcement of a

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<sup>284</sup> SRM, para. 103. See also Rule 53, ICRC Customary IHL.

<sup>285</sup> Russia confirms suspension of movement of commercial vessels in the Azov sea – Interfax, *Reuters*, 24 February 2022, at <https://www.reuters.com/article/ukraine-crisis-russia-shipping-grains-az-idAFR4N2U2026>.

<sup>286</sup> World Food Program, WFP calls for urgent opening of Ukrainian ports to help rein in global hunger crisis, 6 May 2022, at <https://www.wfp.org/news/wfp-calls-urgent-opening-ukrainian-ports-help-rein-global-hunger-crisis>; The Maritime Executive, Op-Ed: Russian Blockade Could Starve Millions, But is it a War Crime?, 27 May 2022, at <https://www.maritime-executive.com/editorials/op-ed-russian-blockade-could-starve-millions-but-is-it-a-war-crime>.

<sup>287</sup> World Food Program, War in Ukraine: WFP calls for ports to reopen as world faces deepening hunger crisis, 6 May 2022, at <https://www.wfp.org/stories/war-ukraine-wfp-calls-ports-reopen-world-faces-deepening-hunger-crisis>.

<sup>288</sup> See, NAVAREA III 2022/0118 and 2022/0092 and NAVAREA III 2022/0093, at [https://armada.defensa.gob.es/ihm/Aplicaciones/Navareas/Index\\_Navareas\\_xml\\_en.html](https://armada.defensa.gob.es/ihm/Aplicaciones/Navareas/Index_Navareas_xml_en.html).

<sup>289</sup> Jamie Wallace, Ukraine/Russia Port Update, *Standard Club*, 25 February 2022, at <https://www.standard-club.com/knowledge-news/ukraine-russia-port-update-4179/#:~:text=Navigation%20in%20the%20Sea%20of,allowed%20within%20the%20port%20limits>



suspension of navigation, threats, security, logistical challenges, and a restrictive Kerch Strait entrance procedure.<sup>290</sup>

As a result, it appears that, while various factors have effectively reduced maritime traffic into and out of Ukrainian ports in the Sea of Azov, Russia has not established a naval blockade in the Sea of Azov. As a result, Russia cannot use any belligerent rights derived from a legally established blockade to impose a blockade on vessels.

The mission is nevertheless concerned over the consequences that the blockade may have on the civilian populations in third States.

Russia has also destroyed the second-largest Ukrainian grain terminal in Mykolaiv.<sup>291</sup>

Russia denies responsibility for the international food crises and claims that it has already made necessary commitments and that it is Ukraine that has to clear its ports of mines to allow for the resumption of grain shipments.<sup>292</sup> Ukraine on the other hand claims that Russia will use the possible humanitarian corridors to its advantage and that it needs “effective security guarantees” before it can start shipments.<sup>293</sup> Talks between Ukraine, Russia and Turkey to allow for a safe passage of grain, are ongoing,<sup>294</sup> whereby no solution for the shipment of grain from ports under the control of Ukraine has been reached. However, on 22 June the first neutral (Turkish) M/V left Ukraine’s port of Mariupol, which is occupied by Russia.<sup>295</sup>

There have been reports of Russian forces stealing tons of grain from Ukraine and Ukrainian farmers without any financial compensation.<sup>296</sup> Under IHL pillage, i.e., the appropriation of public and private movable property is strictly prohibited.<sup>297</sup> Moreover, in the occupying territories, private property cannot be confiscated,<sup>298</sup> pillage is strictly forbidden<sup>299</sup> and requisitions in kind and services shall not be demanded from municipalities or inhabitants except for the needs of the army of occupation.<sup>300</sup> The mission is not aware of any requisition procedures in the above-mentioned cases of stealing grain. The reported behaviour of the Russian soldiers, therefore, amounts to pillage, which constitutes a violation of IHL and a war crime.<sup>301</sup>

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<sup>290</sup> Martin Fink, The war at sea: is there a naval Blockade in the Sea of Azov?, *Lieber Institute*, 24 March 2022, at <https://lieber.westpoint.edu/war-at-sea-naval-blockade-sea-of-azov/>.

<sup>291</sup> European Commissions Directorate-General for European Civil Protection and Humanitarian Aid Operations, Ukraine - Russia’s war on Ukraine, 8 June 2022, at <https://reliefweb.int/report/ukraine/ukraine-russias-war-ukraine-un-ukraine-government-media-echo-daily-flash-08-june-2022>

<sup>292</sup> Lavrov says onus is on Ukraine to de-mine ports to allow grain shipments, *Reuters*, 8 June 2022, at <https://www.reuters.com/world/europe/lavrov-says-onus-is-ukraine-de-mine-ports-allow-grain-shipments-2022-06-08/>

<sup>293</sup> Tuvan Gumrukcu, Turkey says U.N. plan for Ukraine grain exports reasonable, Kyiv wary, *Reuters*, 8 June 2022, at <https://www.reuters.com/world/after-russia-meeting-turkey-says-ukraine-grain-export-plan-reasonable-2022-06-08/>

<sup>294</sup> Pavel Polityuk and Tuvan Gumrukcu, Turkey struggles to push Russia, Ukraine into grain deal to avert food crisis, *Reuters*, 8 June 2022, at <https://www.reuters.com/markets/commodities/turkey-is-not-powerful-enough-guarantee-ukrainian-grain-exports-traders-union-2022-06-08/>; Human Rights at Sea, Maritime Humanitarian Corridors in Ukraine (Part 2), 23 June 22, at <https://www.humanrightsatsea.org/news/maritime-humanitarian-corridors-ukraine-part-2>.

<sup>295</sup> Asharq-Al Awsat, eFirst Turkish Grain Ship Leaves Mariupol Port, 23 June 2022, at <https://english.aawsat.com/home/article/3719491/first-turkish-grain-ship-leaves-mariupol-port>.

<sup>296</sup> Tim Lister and Sanyo Fylyppov, Russian ships carrying stolen Ukrainian grain turned away from Mediterranean ports -- but not all of them, *CNN*, 22 May 2022, at <https://edition.cnn.com/2022/05/12/europe/russia-ship-stolen-ukraine-grain-intl-cmd/index.html>

<sup>297</sup> HR, Arts 28 and 47; GC IV, Art. 33(2).

<sup>298</sup> HR, Art. 46.

<sup>299</sup> HR, Art. 47.

<sup>300</sup> HR, Art. 52.

<sup>301</sup> ICC Statute, Art. 8(2)(b)(xvi).

### e) Possibility for Neutral Ships and Their Crews to Leave

Allegedly, 70 vessels from 16 countries remain stranded in 6 Ukrainian ports (Kherson, Mykolaiv, Chornomorsk, Ochakiv, Odesa and Yuzhny/Yuzhne).<sup>302</sup> Between 450<sup>303</sup> and 1,000 seafarers are believed to be stranded on board of these vessels with limited access to vital supplies.<sup>304</sup> A dire humanitarian situation could arise as it is reported that seafarers continue to be attacked and are now low on supplies.<sup>305</sup> IMO has been calling for a Blue Safe Corridor to allow the safe evacuation of seafarers and ships from high-risk and affected areas in the Black Sea and the Sea of Azov.<sup>306</sup> Russia claims that its armed forces have created conditions for the operation of two maritime humanitarian corridors in the Black Sea (Kherson, Mykolaiv, Chornomorsk, Ochakiv, Odesa and Yuzhny/Yuzhne) as well as the Sea of Azov (Mariupol).<sup>307</sup> However, according to Russia, the high mine danger posed by Ukraine prevents these ships from entering the high seas.<sup>308</sup> On the other hand, Ukraine disputes the Russian unilateral corridor and accused Russia of mine-laying activities.<sup>309</sup> There have been calls for the establishment of the internationally secured maritime humanitarian corridor, which would provide greater reassurance to seafarers.<sup>310</sup>

## C. CONCLUSIONS

As previously found by the first mission, the second one has determined that IHL is still being ignored or marginalized in the context of the war in Ukraine. Using many official and unofficial sources it managed to gather evidence on indiscriminate bombings of civilian areas, incidents of direct targeting of civilians, the execution of civilians, and the destruction of hospitals, schools, and other civil facilities. Thanks to the meetings that the mission was able to have with institutional bodies and international organizations, especially during the visit to Ukraine, it was possible to gather further information on the specific issues that will be further analyzed.

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<sup>302</sup> Human Rights at Sea, Maritime Humanitarian Corridors in Ukraine (Part 1), 23 Jun 22, at <https://www.humanrightsatsea.org/news/maritime-humanitarian-corridors-ukraine-part-1>.

<sup>303</sup> IMO, Maritime Security and Safety in the Black Sea and Sea of Azov, 10 May 2022, at <https://www.imo.org/en/MediaCentre/HotTopics/Pages/MaritimeSecurityandSafetyintheBlackSeaandSeaofAzov.aspx>.

<sup>304</sup> International Labour Organization, ILO and IMO call for urgent action on seafarers stranded in Ukraine following Russian aggression, 8 April 2022, at [https://www.ilo.org/global/docs/WCMS\\_841806/lang-en/index.htm](https://www.ilo.org/global/docs/WCMS_841806/lang-en/index.htm)

<sup>305</sup> Lori Ann LaRocco, Under attack and low on supplies, 1,500 seafarers trapped in Ukrainian waters' *Freightwaves*, 8 April 2022, at <https://www.freightwaves.com/news/1500-seafarers-trapped-ukraine-low-supplies-under-attack-russia>.

<sup>306</sup> IMO, Extraordinary Session of the Council (C/ES.35), 11 March 2022, at <https://www.imo.org/en/MediaCentre/PressBriefings/pages/ECSStatement.aspx>; IMO, Maritime Safety Committee, Resolution MSC.495(105), 28 April 2022, at <https://www.imo.org/en/MediaCentre/PressBriefings/pages/MSCRResolutionActionsForSeafarerEvacuation-.aspx>.

<sup>307</sup> Ministry of Defence of the Russian Federation, Statement of the Joint Coordination Headquarters of the Russian Federation for Humanitarian Response, 4 June 2022, at [https://eng.mil.ru/en/news\\_page/country/more.htm?id=12424267@egNews](https://eng.mil.ru/en/news_page/country/more.htm?id=12424267@egNews); IMO Circular Letter No.4543, 28 March 2022, at <https://www.wcdn.imo.org/localresources/en/MediaCentre/HotTopics/Documents/Black%20Sea%20and%20Sea%20of%20Azov%20-%20Member%20States%20and%20>

<sup>308</sup> Ministry of Defense of the Russian Federation, Statement of the Joint Coordination Headquarters of the Russian Federation for Humanitarian Response, 4 June 2022, at [https://eng.mil.ru/en/news\\_page/country/more.htm?id=12424267@egNews](https://eng.mil.ru/en/news_page/country/more.htm?id=12424267@egNews).

<sup>309</sup> International Maritime Organization, Communication from the Government of Ukraine (Circular Letter No.45449, 31 March 2022, at <https://www.wcdn.imo.org/localresources/en/MediaCentre/HotTopics/Documents/Black%20Sea%20and%20Sea%20of%20Azov%20-%20Member%20States%20and%20>

<sup>310</sup> Human Rights at Sea, Maritime Humanitarian Corridors in Ukraine (Part 1), 23 Jun 22, at <https://www.humanrightsatsea.org/news/maritime-humanitarian-corridors-ukraine-part-1>.

On the basis of the data and information that was gathered, the mission concludes that the Russian invasion has resulted in unnecessary and disproportionate harm to civilians due to the Russian military carrying out both deliberate attacks against civilian targets and indiscriminate attacks in densely populated areas in manifest disregard of the principle of distinction; by employing cluster munitions, a type of weapon prohibited by international law,<sup>311</sup> and by using wide-area explosive weapons such as air-dropped bombs, missiles, heavy artillery shells, and multiple-launch rockets. Furthermore, the massive use of submunitions that do not explode immediately exposes civilians to risks for years. Their use even outside populated areas raises serious concerns about disproportionate and long-term indiscriminate effects<sup>312</sup>. The Russian forces' attacks caused damage to or destroyed civilian facilities such as houses, hospitals, schools, kindergartens, nuclear power plants, historic buildings, and churches. The war has also caused environmental disasters such as air, soil, and water pollution, and the sanitary and epidemiological situation in many cities is deteriorating. Ukrainian national authorities have started monitoring potential cholera outbreaks across the country calling Mariupol's situation especially dire. Indeed, decomposing garbage and corpses have contaminated the city's drinking water.<sup>313</sup>

As with the first mission, the experts of the second mission expected to be informed on what military advantages the attacking forces were seeking. This would have allowed them to evaluate the evidence collected more clearly. Unfortunately, no such information was provided on Russia's behalf. Nonetheless, the evidently huge numbers of civilians killed or injured, as well as civilian buildings destroyed, many of which stand far apart from where the ground forces were actually fighting (and would therefore entail that every building defended by Ukrainian forces or civilians constituted a military objective), led the mission to believe that in all reported cases it is highly unlikely that the military advantage sought was significant enough to justify the negative impact on civilians. The proofs of incidental losses of civilian lives, the injuries to civilians, and damages to civilian buildings gathered during the mission appear to be largely disproportionate with respect to the expected practical and direct military advantages. This constitutes a violation of the proportionality principle. Furthermore, the anticipated losses are clearly excessive, which may constitute a war crime.

All of these deaths, injuries, and damages resulted in an increasing number of refugees and internally displaced people, according to the United Nations Agencies. As of 21 June 2022, according to the United Nations Commission for Refugees (UNHCR) more than 8 million people (8,007,014) have left their homes; more than 5.2 million (5,261,278) of these people have sought refuge in Europe. More than 3.5 million (3,514,970) people have requested temporary residency abroad. Thousands of refugees have, however, made their way back to their country, particularly to Kyiv and other larger cities.<sup>314</sup>

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<sup>311</sup> While neither the Russian Federation nor Ukraine ratified the 2008 Convention on Cluster Munitions, the use of cluster munitions in populated areas is incompatible with the international humanitarian law principles governing the conduct of hostilities that are binding on the parties of the conflict due to their wider area effects.

<sup>312</sup> HRMMU, Update on the human rights situation in Ukraine, Reporting period: 24 February – 26 March, at [https://www.ohchr.org/sites/default/files/2022-03/HRMMU\\_Update\\_2022-03-26\\_EN.pdf](https://www.ohchr.org/sites/default/files/2022-03/HRMMU_Update_2022-03-26_EN.pdf).

<sup>313</sup> Raisa Santos, Decomposing Bodies and Contaminated Drinking Water Spark Cholera Fears in Ruined Mariupol, *Health Policy Watch*, 9 June 2022, at <https://healthpolicy-watch.news/cholera-fears-in-ruined-mariupol/>; Officials Warn of Cholera Outbreak in Mariupol, *Voanews*, 10 June 2022, at <https://www.voanews.com/a/officials-warn-of-cholera-outbreak-in-mariupol-/6612498.html>; Ben Tobias, Cholera in Mariupol: Ruined city at risk of major cholera outbreak - UK, *BBC News*, 10 June 2022, at <https://www.bbc.com/news/world-europe-61762787>; Mariupol, sanitary disaster and epidemics: what to do?, *Rubrika*, 24 June 2022, at <https://rubryka.com/en/article/mariupol-ecological-disaster>.

<sup>314</sup> 'How many Ukrainian refugees are there and where have they gone?', *BBC news*, 21 June 2022, at <https://www.bbc.com/news/world-60555472>.

## V. ALLEGED VIOLATIONS AND ABUSES OF INTERNATIONAL HUMAN RIGHTS LAW

### A. IMPACT OF THE CONFLICT ON CIVIL AND POLITICAL RIGHTS

The first mission concluded that the conflict in Ukraine had had a major impact on the enjoyment of civil and political rights, including some of non-derogable rights, such as the right to life or the prohibition of torture and inhuman or degrading treatment. The evidence collected by the second mission confirms this conclusion. In the period under scrutiny in this report (1 April – 25 June 2022), extensive violations of civil and political rights, such as the right to life, the prohibition of torture and inhuman or degrading treatment, the right to liberty and security, the right to a fair trial or the right to freedom of expression, were committed. Most of these violations are, again, attributed to the Russian Federation and they predominantly, albeit not exclusively, occurred in the territories under the temporary occupation of the Russian Federation. There is again an overlap between violations of IHRL and those of IHL, which is why the same incidents are sometimes referred to in the two sections. Moreover, the most serious of these violations may constitute crimes against humanity and/or war crimes.

Although this report focuses primarily on the period indicated above, the violations committed prior to 1 April 2022 but which were not reported in the first report, because information about them only became available after this date, are also included in this second report. The focus again lies on the civil and political rights most severely or extensively affected by the conflict. The mission however wants to stress that there is hardly any civil and political right which would be wholly unaffected by the current conflict. As explained in the first report, civil and political rights can be violated both by action (negative obligations, obligation to respect) and by inaction (positive obligations, obligations to protect and fulfil). The latter type of violations is more difficult to identify and, in some cases, the identification is only possible after some time (e.g., the failure to investigate); this report therefore, again identically as the first report, mainly concentrates on the former type of violations.

#### 1. RIGHT TO LIFE

In the period under scrutiny in this report, no derogation from the right to life “*in respect of deaths resulting from lawful acts of war*” under Article 15(2) of the ECHR was made by either Ukraine or the Russian Federation. The provisions relating to this right (Article 2 of the ECHR, as well as Article 6 of the ICCPR for which no derogation is possible) remain fully in force, though they must be interpreted considering the applicable rules of IHL.

The second mission wishes to echo the serious concerns expressed by the first mission about the large number of persons, both civilians and military personnel, who have been *killed* during the conflict. By 17 June 2022, according to the data of the UN High Commission for Human Rights (OHCHR), the number of civilian casualties reached 10,094 persons (4,509 killed and 5,585 wounded). Out of this number, most casualties occurred in the Donetsk and Luhansk regions (5,745 casualties – 2,628 killed and 3,117 injured), mainly on government-controlled territories (4,845 casualties – 2,452 killed and 2,393 injured).<sup>315</sup> Among those killed, there were 1,769 men, 1,182 women, 126 girls and 137 boys, as well as 41 children and 1,314 adults whose sex is yet unknown. The OHCHR indicates that the actual figures are most likely higher, as it only reports those instances of killings and injuries that it has been able to verify. Ukraine itself reports more than 25,000 killed civilians, most of whom were killed during the siege of the city

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<sup>315</sup> Ukraine: civilian casualty update 17 June 2022, 17 June 2022, at <https://www.ohchr.org/en/news/2022/06/ukraine-civilian-casualty-update-17-june-2022>

of Mariupol.<sup>316</sup> The killed civilians are in the majority Ukrainian citizens, though over 30 foreign citizens from several countries of the world have also been reported killed.

The number of military casualties is at this stage difficult to determine with any precision. The two parties to the conflict both tend to underrate their own casualties while overrating those of the enemy. Already in the late March 2022, Oleksiy Arestovych, advisor to the office of the president of Ukraine, announced that Ukraine would not disclose any exact numbers of its military casualties. Since such numbers could help Russia assess the efficiency of its actions, these numbers need to be considered as a military secret.<sup>317</sup> In late May 2022, however, President Zelenskyy stated that Ukraine was losing 60-100 soldiers per day.<sup>318</sup> Other Ukrainian sources indicate an even higher figure (200-500 killed per day).<sup>319</sup> Overall, the estimates of the military casualties (killed) on the Ukrainian side range from 10,000 (Ukraine – by 11 June 2022)<sup>320</sup> to 23,000 (Russia – by 16 April 2022).<sup>321</sup> This includes some 30 foreign citizens who had joined the Ukrainian Foreign Legion.

Concerning the Russian side, the Russian Federation also does not disclose the exact number of its casualties. On 7 April 2022, the speaker of the president, Dmitry Peskov indicated that Russia had suffered significant losses during the war,<sup>322</sup> without however specifying what these losses were. On 1 June 2022, the Chairman of the State Duma Committee on Defence, Andrei Kartapolov stated that as a result of a change in the approach to warfare, the Russian army has practically stopped losing people, which should explained why no information about military casualties had been made public since late March.<sup>323</sup> Ukraine on the contrary estimates that by mid-June 2022, Russia had lost more than 33,000 soldiers in the conflict.<sup>324</sup> That again includes some foreign citizens who had joined the Russian side or the units of the so-called Donetsk and Luhansk People's Republics.

Due to the considerable number of both civilian and military death, the mission was not in the position to verify the circumstances of all deaths and injuries and to assess their legality. It may be assumed that many of the casualties, especially among military personnel, are lawful under IHL and could be lawful under IHRL as well.

The mission however recalls that, as the ECHR stated in *Ahmed Ozkan v. Turkey* (2004), the right to life, as enshrined in Article 2 of the ECHR, “covers not only intentional killing but also the situations where it is permitted to “use force” which may result, as an unintended outcome,

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<sup>316</sup> At least 22,000 civilians killed in Mariupol - mayor's adviser, *Interfax-Ukraine*, 25 May 2022, at <https://en.interfax.com.ua/news/general/834794.html>

<sup>317</sup> Katya Soldak, Russia's War On Ukraine: News And Information From Ukraine, *Forbes*, 29 March 2022, at <https://www.forbes.com/sites/katyasoldak/2022/03/29/tuesday-march-29-russias-war-on-ukraine-news-and-information-from-ukraine/?sh=60adc2bc513a>

<sup>318</sup> Mark Moore, Zelensky: Ukraine losing '60 to 100 soldiers per day' as Russia advances in Donbas, *New York Post*, 1 June 2022, at <https://nypost.com/2022/06/01/zelensky-says-ukraine-losing-60-to-100-soldiers-per-day/>

<sup>319</sup> Dave Lawler, Ukraine suffering up to 1,000 casualties per day in Donbas, official says, *Axios*, 15 June 2022, at <https://www.axios.com/2022/06/15/ukraine-1000-casualties-day-donbas-arakhania>

<sup>320</sup> Arestovich said that up to 10,000 Ukrainian soldiers have died since the beginning of the war, *Meduza*, 11 June 2022, at <https://meduza.io/news/2022/06/11/arestovich-zayavil-chto-s-nachala-voiny-pogibli-do-10-tysyach-ukrainskih-voennyh>

<sup>321</sup> Минобороны РФ: потери украинской армии превышают 23 тысячи человек, *Meduza*, 16 апреля 2022, at <https://meduza.io/news/2022/04/16/minoborony-rf-poteri-ukrainskoj-armii-prevyshayut-23-tysyachi-chelovek>

<sup>322</sup> Песков: Россия понесла значительные потери на Украине, *Live*, 7 апреля 2022, at <https://life.ru/p/1485253>  
To date, 33,800 Russian servicemen killed and 1,477 tanks and 3,588 armoured personnel carriers destroyed by Ukrainian Armed Forces, *Ukrainska Pravda*, 20 June 2022, at <https://www.pravda.com.ua/eng/news/2022/06/20/7353542/>

<sup>323</sup> Россия практически перестала нести потери на Украине, заявил Картаполов, *Ria Novosti*, 01 июня 2022, at <https://ria.ru/20220601/spetsoperatsiya-1792413875.html>

<sup>324</sup> Втрати російської армії в Україні, *Мінфін*, 20. 06. 2022, at <https://index.minfin.com.ua/ua/russian-invading/casualties/>

*in the deprivation of life /.../. In particular, the force used must be strictly proportionate to the achievement of the aims”.*<sup>325</sup> Furthermore, in the assessment, it is necessary to take into account “*not only the actions of State agents who actually administer the force but also all the surrounding circumstances, including such matters as the planning and control of the actions under examination /.../. The responsibility of the State is not confined to circumstances where there is significant evidence that misdirected fire from State agents has killed a civilian. It may also be engaged where they fail to take all feasible precautions in the choice of means and methods of a security operation mounted against an opposing group with a view to avoiding and, in any event, to minimising incidental loss of civilian life”.*<sup>326</sup>

The obligation to take precautionary measures in the planning of security or military operations to minimize incidental losses of life is preventative (*ex ante*) in nature. It is coupled with the subsequent (*ex post*) obligation to carry out “*some form of effective official investigation when individuals have been killed as a result of the use of force by, inter alios, agents of the State”.*<sup>327</sup> Although the form of the investigation may vary depending on the circumstances,<sup>328</sup> the investigation “*must be effective in the sense that it is capable of leading to a determination of whether the force used was or was not justified in the circumstances and to the identification and punishment of those responsible”.*<sup>329</sup>

Both Ukraine and the Russian Federation thus have the obligation to seek to prevent or minimize incidental losses of life in the military operations carried by their armed forces and to investigate instances of death, especially civilian death, that occur during such operations in the areas under their control. The second mission also takes note of the position expressed by the UN Human Rights Committee that “*States parties engaged in acts of aggression as defined in international law, resulting in deprivation of life, violate ipso facto article 6 of the Covenant”.*<sup>330</sup>

In addition to the deprivation of life stemming, deliberately or incidentally, from military operations, the second mission has documented a rather large number of instances of targeted, **extrajudicial killings** of civilian persons and persons deprived of liberty, both prisoners of war and civilian detainees. The second mission recalls that extrajudicial killings by State agents, including the members of the military forces, constitute a violation of the right to life. Moreover, States have the obligation to take all reasonable measures to protect individuals against serious threats to their life by non-state actors and to investigate any instance of the killing carried out by such actors.<sup>331</sup> Extrajudicial killing is a deliberate and targeted killing of a person without the lawful authority granted by a judicial proceedings which is arbitrary (Article 6 of the ICCPR) or which is not absolutely necessary to achieve one of the recognized legal grounds (Article 2 of the ECHR). Acts of extrajudicial killings may also amount to war crimes or crimes against humanity (Articles 7(1)(a) and 8(2)(a)(i) of the Rome Statute of the ICC).

During its visit to Ukraine, the mission had the opportunity to visit the towns of Bucha, Irpin and Hostomel, in the vicinity of Kyiv. In late February and early March 2022, heavy fighting was taking place in the area and by 5-12 March, the three towns all became under the control

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<sup>325</sup> Para 297.

<sup>326</sup> *Ibidem*.

<sup>327</sup> ECtHR, *Al-Skeini and Others v. the United Kingdom*, Application no. 55721/07, Judgment (GC), 7 July 2011, para 163. See also UN Doc. CCPR/C/CG/36, *General comment No. 36 (2018) on the right to life*, 30 October 2018, paras 13 and 64.

<sup>328</sup> ECtHR, *Al-Skeini and Others v. United Kingdom*, Application no. 55721/07, Judgment (GC), 7 July 2011, para 165.

<sup>329</sup> *Ibidem*, para 166.

<sup>330</sup> UN Doc. CCPR/C/CG/36, *General comment No. 36 (2018) on the right to life*, 30 October 2018, para 70.

<sup>331</sup> ECtHR, *Mahmut Kaya v. Turkey*, Application no. 22535/93, Judgment, 28 March 2000, para 87 and 101; *Gongadze v. Ukraine*, Application no. 34056/02, Judgment, 8 November 2005, paras 170-171.

of the armed forces of the Russian Federation. They were recaptured by the Ukrainian armed forces on 28 March-1 April 2022. After the withdrawal of the Russian armed forces, reports, photos, and videos of some 20 dead persons in civilian clothing left lying in one street of Bucha started circulating in the media.<sup>332</sup> One person had his hands tied behind his back with a white cloth and had his Ukrainian passport left next to his body. On 4 April 2022, the bodies of five men with their hands tied were found in the basement of a children's health centre in Bucha.<sup>333</sup> Moreover, a mass grave containing more than 70 bodies was found close to the church in the centre of Bucha. Some bodies showed obvious signs of torture and mutilation. On 16 May 2022, BBC News reported that more than 1,000 civilians had been killed in Bucha and the surrounding region during the Russian occupation, out of whom more than 650 had been shot dead by the Russian armed forces.<sup>334</sup> The Ukrainian estimates are even higher.

The Russian Federation denies any allegations of targeted killings of civilians arguing first that *"not a single local resident had suffered from any violent action"* while under the control of the Russian armed forces and that the reports of extrajudicial killings were *"a hoax, a staged production and provocation by the Kiev regime for the Western media"*.<sup>335</sup> Later on, it indicated that *"many civilians in Bucha had died not from gunshot wounds, as Ukraine claimed, but from artillery shells of the obsolete type, which were used by the Ukrainian army"*.<sup>336</sup> Yet, already on 7 April 2022, the mayor of Bucha, Anatoly Fedoruk, indicated that almost 90% of the dead had died of bullet wounds, not shrapnel wounds, thus suggesting that they had most probably not been killed incidentally, as a collateral damage during the active hostilities but, rather, had been deliberately targeted.<sup>337</sup>

This conclusion has been corroborated by a detailed report on the events in Bucha issued by Human Rights Watch on 21 April 2022.<sup>338</sup> According to this report, shortly after the occupation of the town by the Russian armed forces in early March 2022, Russian soldiers made a search of residential buildings, going from one door to another and claiming to be hunting Nazis. They interrogated local residents, forced some of them to leave their flats and move to shelters and detained a certain number of local male inhabitants. The bodies of some of these detained civilians were among those found lying in the street, in yards or in basements. In at least two cases, victim-activated booby traps were placed on the dead bodies. Human Rights Watch was able to establish specific facts relating to some of the extrajudicial killings, for instance those of Oleh Abramov and Vasily Nedashkivskiy, who were detained by the Russian armed forces in their homes and later found dead, or of Serhiy Matashko, Dmytro Shulmeister, Volodymyr Boychenko, Valery Prudko and Viktor Prudko, the five men whose bodies were found in the basement of a children's health centre in Bucha.

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<sup>332</sup> Mansur Mirovalev, Bucha killings: The world cannot be tricked anymore, *AlJazeera*, 4 April 2022, online at <https://www.aljazeera.com/news/2022/4/4/will-the-bucha-massacre-wake-up-the-world>

<sup>333</sup> Head of village near Bucha killed with family in Ukraine, *BBC News*, 4 April 2022, at <https://www.bbc.com/news/world-europe-60989632>

<sup>334</sup> Sarah Rainsford, Ukraine: The children's camp that became an execution ground, *BBC News*, 16 May 2022, at <https://www.bbc.com/news/world-europe-61442387>

<sup>335</sup> Statement by the Russian Defence Ministry, 4 April 2022, at <https://t.me/MFARussia/12230>

<sup>336</sup> West's media admit that civilians died in Bucha in shelling by Ukrainian troops — diplomat, *TASS*, 23 May 2022, at [https://tass.com/politics/1454827?utm\\_source=google.com&utm\\_medium=organic&utm\\_campaign=google.com&utm\\_referrer=google.com](https://tass.com/politics/1454827?utm_source=google.com&utm_medium=organic&utm_campaign=google.com&utm_referrer=google.com)

<sup>337</sup> Mayor of Bucha says almost 90% of civilians killed have bullet wounds, not shrapnel ones, *Rubryka*, 7 April 2022, at <https://nebayduzha.rubryka.com/en/2022/04/07/mer-buchi-zayavyv-shho-majzhe-90-zagyblyh-myrynh-meshkantsiv-mayut-kulovi-poranennya-a-ne-oskolkovi/>

<sup>338</sup> Ukraine: Russian Forces' Trail of Death in Bucha Preserving Evidence Critical for War Crimes Prosecutions, *Human Rights Watch*, 21 April 2022, at <https://www.hrw.org/news/2022/04/21/ukraine-russian-forces-trail-death-bucha>

There are also documented cases of indiscriminate shooting by the Russian armed forces of any persons venturing outside their homes during the period of the occupation. Thus, on 7 March 2022, Vasyl Yushenko from Bucha was shot in his neck when he went to smoke a cigarette in the enclosed balcony of his apartment. Three days earlier, a man whose identity has not been revealed was shot dead while trying to run away from the Russian forces. A 9-year old girl who was shot together with him survived but had her arm amputated. Civilians were also killed while trying to abandon the area in their car. For instance, during the evacuation from the town of Irpin on 6 March 2022, 8 civilians, including 2 children, were killed by Russian mortar units shelling the route.<sup>339</sup> There are reports that Ukrainian artillery position was located nearby. If these reports are correct, the deaths could in fact pass for incidental losses stemming from military operations and, as such, would not necessarily constitute a violation of the right to life, on the condition the Russian Federation took all precautionary measures to minimize these losses and the losses were not clearly disproportionate to the expected military gain. In most of the other incidents reported above, however, it would be hard to find any plausible legal justification. Killing an unarmed civilian with their hands tied after subjecting them to violent investigation can never be found compatible with IHRL.

The incidents that occurred in Bucha and the surrounding area during the period of the Russian occupation are now under investigation by the ICC. These incidents have attracted the most attention, but they were not the only ones documented for the period under scrutiny in this report. In another detailed report published on 18 May 2022,<sup>340</sup> Human Rights Watch informed about extrajudicial killings and other atrocities committed by the Russian armed forces in 17 towns and villages in the Kyiv and Chernihiv regions. For instance, on 14 March 2022, two 17-year-old twin brothers and their 18-year-old friend were allegedly shot dead by the passing Russian military convoy in the Mokhatyn village in the Chernihiv region, without any evident military justification.

Other regions and areas in Ukraine which were temporarily occupied by the armed forces of the Russian Federation report civilian deaths, including clear instances of extrajudicial killings. For instance, in the Sumy region, some 100 civilians died during the occupation, according to the head of the regional military administration, Dmytro Zhivitskiy. Again, some bodies had their hands tied, were shot in the head and showed signs of torture.<sup>341</sup> Targeting cars in which civilians try to flee to safely has also been common across Ukraine. For instance, on 9 May 2022, the Russian military shot at a car carrying two civilians in Bilohirya, Zaporizhzhia region, killing one person and injuring the other.<sup>342</sup> On 12 May 2022, the Russian military fired at a column of civilian cars, injuring a woman and an 11-year-old child.<sup>343</sup> These incidents, as with those that occurred in the Kyiv region, are difficult to justify by any cogent military reasons and, as such, seem to entail violations of IHRL. The second mission regrets to note that instead of conducting investigation into the allegations of serious crimes, the Russian Federation simply denies these allegations and, in one instance at least, even confers special honours on members

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<sup>339</sup> Під час евакуації з Ірпеня війська РФ відкрили вогонь по цивільних, є загиблі – кореспондент Радіо Свобода". *Radio Svoboda*, 6 March 2022.

<sup>340</sup> Ukraine: Executions, Torture During Russian Occupation Apparent War Crimes in Kyiv, Chernihiv Regions, *Human Rights Watch*, 18 May 2022, at <https://www.hrw.org/news/2022/05/18/ukraine-executions-torture-during-russian-occupation>

<sup>341</sup> «Це був терор і жах». На Сумщині через російську окупацію загинули понад 100 мирних жителів – Живицький, *Radio Svoboda*, 13 квітня 2022, at <https://www.radiosvoboda.org/a/news-sumshchyna-100-zahyblykh-vid-okupatsiyi/31801639.html>.

<sup>342</sup> The shelling of cars with civilians in Zaporizhzhia by enemy artillery - an investigation has been launched, *Telegram channel of the Prosecutor General's Office*, 10 May 2022, at [https://t.me/pgo\\_gov\\_ua/4048](https://t.me/pgo_gov_ua/4048)

<sup>343</sup> Aggressors shelled a convoy of refugees in Kherson region, injuring a woman and a child, *Ukrainska Pravda*, 12 May 2022, at <https://www.pravda.com.ua/eng/news/2022/05/12/7345838/>.



of the Russian armed forces who are suspected of having engaged in mistreatment and extrajudicial killings of civilians.<sup>344</sup>

The second mission also received alarming news concerning the killings of *prisoners of war* detained by both parties to the conflict. On 4 April 2022, a video was posted on social media showing a group of Ukrainian soldiers shooting captured Russian soldiers outside a village west of Kyiv. The video showed the killing of one soldier and the bodies of at least three other soldiers, including one with a head wound and his hands tied behind his back, lying already dead next to the victim.<sup>345</sup> According to the verification carried out by New York Times, the video is authentic and it was filmed on a road north of the village of Dmytrivka, southwest of Bucha.<sup>346</sup> The second mission recalls that extrajudicial killing of prisoners of war, equally as that of civilians, amounts to a violation of the right to life and of IHL and constitutes a war crime. It also recalls that any allegation of extrajudicial killing must be properly investigated and the persons responsible for it must be brought to justice.

The first mission documented several cases of killings of Ukrainian nationals suspected of being *marauders, traitors* or pro-Russian spies carried out either by Ukrainian civilians (“civilian justice”) or, even, with the involvement of Ukrainian public officials. It stressed that such incidents needed to be properly investigated. The second mission has found limited evidence of new incidents of that type having occurred since 1 April 2022.<sup>347</sup> Yet, the mission notes with concern the view expressed by retired lawyer and major general of Ukraine’s State Security Service (SBU) Vasyl Vovk that investigating such cases is not a priority for the police.<sup>348</sup> While it is understandable that in the current situation law enforcement agencies are overwhelmed with many different tasks, no cases involving the deprivation of or serious threat to life may be treated as lacking priority.

The use of the *death penalty* also gives rise to concerns. On 9 June 2022, three foreigners serving in the Ukrainian navy, the UK citizens Aiden Aslin and Shaun Pinner and a Moroccan citizen Brahim Saadoun, were sentenced to death by a court of the so-called Donetsk People’s Republic (DPR) on charged of violent seizure of power or forcible retention of power (Article 323 of the Criminal Code of the so-called DPR), mercenarism (Article 430 of the Criminal Code) and committing crimes by a group of persons (Article 34(2) of the Criminal Code). The decision is now under appeal in the Supreme Court of the so-called DPR.<sup>349</sup> The trial has been widely condemned by States and international organizations due to its irregularities, the refusal to respect the POW status of the defendants and the sentence imposed on them. At least two other foreigners fighting in the ranks of the Ukrainian armed forces, the US citizens Alexander

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<sup>344</sup> Lee Brown, Russian President Vladimir Putin honors ‘heroism’ and ‘courage’ of unit accused of leading genocide in Bucha, *New York Post*, 19 April 2022, at <https://nypost.com/2022/04/19/putin-honors-unit-accused-of-leading-genocide-in-bucha/>

<sup>345</sup> Jenn Selby, Video appears to show Ukrainian soldiers shooting Russian prisoner of war, *The Guardian*, 7 April 2022, at <https://www.theguardian.com/world/2022/apr/07/video-appears-to-show-ukrainian-soldiers-shooting-russian-prisoners-of-war>

<sup>346</sup> What Happened on Day 42 of the War in Ukraine, *New York Times*, 6 April 2022, at <https://www.nytimes.com/live/2022/04/06/world/ukraine-russia-war-news#russia-pows-ukraine-executed>

<sup>347</sup> Jason Jay Smart, Tethered to the pole: the appearance of vigilante justice in Ukraine, *Kyiv Post*, 6 May 2022, at <https://www.kyivpost.com/ukraine-politics/tethered-to-the-pole-the-appearance-of-vigilante-justice-in-ukraine.html>

<sup>348</sup> *Ibidem*.

<sup>349</sup> Britons sentenced to death after ‘show trial’ in Russian-occupied Ukraine, *The Guardian*, 9 June 2022, at <https://www.theguardian.com/world/2022/jun/09/britons-sentenced-to-death-russian-occupied-ukraine-aiden-aslin-shaun-pinner>

Drueke and Andy Tai Ngoc Huynh, are at risk of being sentenced to the death penalty by courts of the so-called DPR as well.<sup>350</sup>

The second mission recalls that while the ICCPR and the ECHR still recognize the death penalty as lawful, there has been a clear legal evolution over the past decades to abolish, *de jure* or *de facto*, the death penalty. As of 2022, 109 States have abolished the death penalty *de jure* and 25 have not been applying it. In its General Comment No. 36 on the right to life, the UN HRC expressed the view that „*the abolition of the death penalty is /.../ legally irrevocable*“.<sup>351</sup> Ukraine abolished the death penalty in 2000 and this penalty thus should not be reintroduced anywhere in its territory. In *Al-Saadoon and Mufdhi v. the United Kingdom*, the ECtHR suggested that the exception for the death penalty foreseen in Article 2 might have been removed and that the figures concerning the ratification of Protocol 13 prohibiting the death penalty in times of war, “*together with consistent State practice in observing the moratorium on capital punishment, are strongly indicative that Article 2 has been amended so as to prohibit the death penalty in all circumstances*”.<sup>352</sup>

One of the countries observing, since 1999, a moratorium on the death penalty is the Russian Federation, though certain statements made in the recent months by Russian lawyers and politicians indicate that the country might consider revoking the moratorium and starting using the death penalty again. Particularly worrying in this context are the declarations made with respect to the detained defenders of the Azovstal steel plant in Mariupol, especially those belonging to the Azov battalion. The chair of the Russian State Duma Vyacheslav Volodin referred to those persons as Nazis and war criminals who should stand trial and the Russian Ministry of Justice has petitioned the Supreme Court to declare the Azov battalion a terrorist organization, thus making it easier for Russian courts to prosecute its members on terrorism charges and to potentially impose death penalty on them.<sup>353</sup>

The second mission also notes that it is not possible for a State to bypass its international obligations by handing detained persons over to a State which still uses the death penalty (the principle of *non-refoulement*).<sup>354</sup> The principle applies *a fortiori* in case of a State handing detained persons over to a non-state actor, including non-state actors under the overall control of that very State.

Finally, the second mission wishes to recall that while IHL does not completely rule out the possibility of the death penalty being imposed in the context of an armed conflict, including by a non-state party to such a conflict, it subjects its imposition to strict conditions.<sup>355</sup> Under the lowest standard contained in Common Article 3 to the Geneva Conventions, the execution of capital punishment is only possible upon “*previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples*”. This provision is to be interpreted in light of the IHRL standards, which operate as the *lex specialis* in this context.

In its General Comment No. 36, the UN HRC stressed that the death penalty may only be applied in case of the most serious crimes, by a court which must “*be established by law within*

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<sup>350</sup> Peter Beaumont, US volunteer fighters captured in Ukraine could face death penalty, says Russia, *The Guardian*, 21 June 2022, at <https://www.theguardian.com/world/2022/jun/21/us-volunteer-fighters-captured-in-ukraine-could-face-death-penalty-says-russia>

<sup>351</sup> UN Doc. CCPR/C/CG/36, *General comment No. 36 (2018) on the right to life*, 30 October 2018, para 34.

<sup>352</sup> ECtHR, *Al-Saadoon and Mufdhi v. the United Kingdom*, Application no. 61498/08, Judgment, 2 March 2010, para 120.

<sup>353</sup> MIL-OSI Global: Ukraine conflict: how both sides are breaking the law on prisoners of war, 11 June 2022,

<sup>354</sup> ECtHR, *Al-Nashiri v. Poland*, Application no. 28761/11, Judgment, 24 July 2014, para 577.

<sup>355</sup> See also Sandesh Sivakumaran, Courts of Armed Opposition Groups Fair Trials or Summary Justice?, *Journal of International Criminal Justice*, Vol. 7(3), 2009, pp. 489–513.

*the judiciary, be independent of the executive and legislative branches and be impartial*<sup>356</sup> and after a process meeting all the fair trial guarantees. “*Violation of the fair trial guarantees /.../ would render the sentence arbitrary in nature, and in violation of /the right to life/*”.<sup>357</sup> Examples of such violations include the use of forced confessions, the inability of the accused to question relevant witnesses, lack of effective representation involving confidential attorney-client meetings during all stages of the criminal proceedings, failure to respect the presumption of innocence, lack of an effective right to appeal, lack of adequate time and facilities for the preparation of the defence or lack of suitable interpretation.<sup>358</sup>

Commenting on the trial with the three foreigners sentenced to death by a court in the so-called DPR, the UN spokesperson Stéphane Dujarric noted that “*since 2015, we have observed that the so-called judiciary within these self-contained republics has not complied with essential fair trial guarantees, such as public hearings, independence, impartiality of the courts and the right not to be compelled to testify*”.<sup>359</sup> These words have been echoed by analysts and scholars, who have labelled the trial as a show trial, likening it to the political trial carried out by the Soviet Union in the 1930s.<sup>360</sup> The imposition of the death penalty by courts established by a non-recognized entity, which moreover do not respect the fundamental guarantees of a fair trial thus gives rise to serious concerns and amounts to a violation of IHL, a war crime and, potentially, a crime against humanity. The handing over of detained persons by the Russian military forces to such courts for a trial constitutes, in addition, a violation of the right to life.

## **2. PROHIBITION OF TORTURE AND INHUMAN AND DEGRADING TREATMENT**

The prohibition of torture and other inhuman and degrading treatment, as enshrined in Article 7 of the ICCPR, Article 3 of the ECHR and Article 2 of the *UN Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment* (CAT),<sup>361</sup> constitutes one of the most fundamental human rights. This right is absolute and does not allow for derogation, even in times of armed conflict. Acts of torture committed against persons protected under the Geneva Conventions amount to a war crime (Article 8(2)(a)(ii) of the Rome Statute acts of torture committed as part of a widespread or systematic attack directed against any civilian population with the knowledge of this attack, are crimes against humanity (Article 7(2)(e) of the Rome Statute).<sup>362</sup> Torture is also prohibited under IHL. Inhuman and degrading treatment differs from torture by the degree of severity, but it is equally prohibited under IHRL and IHL.

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<sup>356</sup> UN Doc. CCPR/C/CG/36, *General comment No. 36 (2018) on the right to life*, 30 October 2018, para 45.

<sup>357</sup> *Ibidem*, para 41.

<sup>358</sup> Para 41.

<sup>359</sup> Death sentence for Ukraine foreign fighters is a war crime: UN rights office, *UN News*, 10 June 2022, at <https://news.un.org/en/story/2022/06/1120102>

<sup>360</sup> Andrew Rot, Emine Sinmaz, Britons sentenced to death after ‘show trial’ in Russian-occupied Ukraine, *The Guardian*, 9 June 2022, at <https://www.theguardian.com/world/2022/jun/09/britons-sentenced-to-death-russian-occupied-ukraine-aiden-aslin-shaun-pinner>; Robert Goldman, ‘Show’ trial of foreign fighters in Donetsk breaks with international law – and could itself be a war crime, *The Conversation*, 13 June 2022, at <https://theconversation.com/show-trial-of-foreign-fighters-in-donetsk-breaks-with-international-law-and-could-itself-be-a-war-crime-184899>; or Lawrence Hill-Cawthorne, The Prosecution of British Fighters by Pro-Russian Separatists in Ukraine, *EJILTalk*, 14 June 2022.

<sup>361</sup> Article 1 of CAT defines torture as “*any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity*”.

<sup>362</sup> The Rome Statute defines torture (as a crime against humanity) as “*the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused*”. Article 7(2)(e) of the Rome Statute.

The second mission has come across extensive evidence demonstrating that torture or inhuman and degrading treatment has been used by the Russian armed forces against Ukrainian civilians and, to a lesser degree, by the Ukrainian armed forces against Russian prisoners of war. The first mission documented relatively isolated cases of mistreatment of concrete civilians, mostly journalists, human rights defenders, or former veterans, at the hands of the Russian armed forces. The second mission regrets to note that it has documented a *pattern of serious mistreatment* of local civilian inhabitants of areas under the temporary control of the Russian armed forces. The evidence suggests that such areas were usually turned into lawless zones, where civilians were left at the complete mercy of the Russian soldiers occupying the area. The second mission is not able to determine with certainty whether this situation resulted from a coordinated plan or from the disorganization of the Russian troops. Yet, it notes that in the two cases, the Russian Federation is responsible for all the acts of mistreatment carried out by its armed forces, including those acting *ultra vires*, and that it also has the obligation to investigate such instances and hold concrete individuals having engaged in mistreatment responsible.

Instances of torture and inhuman or degrading treatment have been reported from all territories which were or have been temporarily occupied by the Russian armed forces. Again, the towns of Bucha, Irpin or Hostomel became witness to some of the most extensive and serious instances of this type during the Russian occupation in the first weeks of the conflict. According to the statement made by the Prosecutor General of Ukraine, Irina Venediktova, on 28 April 2022, *“in a short period of time, investigations revealed that during the occupation of Bucha these very persons took unarmed civilians hostage, tortured them with hunger and thirst, kept them on their knees with their hands tied and their eyes taped, humiliated, and beat them”*.<sup>363</sup> She also provided a list of 10 Russian soldiers who are suspected of the involvement in those events.<sup>364</sup> According to the testimonies provided by the local inhabitants, the Chechen forces (Kadyrovtsi) were heavily involved in many of the atrocities.<sup>365</sup> The testimonies also confirm that, as noted above, the newly occupied territories were turned into a lawless zone, where civilians were left at the complete mercy of the Russian soldiers.

One of the victims in Bucha was, for instance, the already mentioned local inhabitant Vasily Nedashkivskiy, who was detained by the Russian armed forces in his home and later found dead in the streets of Bucha. He had severe lacerations on his hands, bruises on his lower abdomen, and what appeared to be blunt force trauma to his head. As the Human Rights Watch noted, *“the fact that Vasily was last seen alive in the custody of Russian soldiers, and that his body had marks consistent with abuse, strongly suggest that after he was detained, he was tortured and summarily killed”*.<sup>366</sup> The five bodies found in the basement of a children’s sanatorium in Bucha also showed signs of mistreatment and, in fact, there are suggestions that this basement might have served as a torture chamber during the Russian occupation.<sup>367</sup> The events there and in the other Kyiv suburbs are now under investigation not only by the Ukrainian authorities but also by the ICC. After a visit to Bucha, the ICC Prosecutor, Karim Ahmad Khan, called the place a *“crime scene”*, concluding that there were reasonable grounds to believe war crimes

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<sup>363</sup> Катування у Бучі: Венедіктова назвала прізвища перших підозрюваних військовослужбовців РФ, *Radio Svoboda*, 28 квітня 2022, at <https://www.radiosvoboda.org/a/news-bucha-viyskovyi-rf-pidozra/31825283.html>

<sup>364</sup> Ukraine Releases Names Of Russian Soldiers Suspected Of Torturing Civilians In Bucha, *Radio Liberty*, 28 April 2022, at <https://www.rferl.org/a/ukraine-torture-bucha-russians-named/31825840.html>

<sup>365</sup> «Я два рази вернулась с того света» Буча. Что рассказывают журналистам жители города, *Meduza*, 3 апреля 2022, at <https://meduza.io/feature/2022/04/03/ya-dva-raza-vernulas-s-togo-sveta>

<sup>366</sup> Ukraine: Russian Forces’ Trail of Death in Bucha Preserving Evidence Critical for War Crimes Prosecutions, *Human Rights Watch*, 21 April 2022, at <https://www.hrw.org/news/2022/04/21/ukraine-russian-forces-trail-death-bucha>

<sup>367</sup> Thomas, Kika, Bucha Killings: Russian Torture Chamber Discovered in Kyiv Suburb, *Newsweek*, 4 April 2022, at <https://www.newsweek.com/bucha-killings-torture-chamber-found-1694946>

were committed in the region.<sup>368</sup> The second mission regrets to note that the Russian Federation itself continues to fail to conduct a proper investigation of the events.

Mistreatment of civilians by members of the Russian armed forces has been reported from other temporarily occupied territories as well. One of them is the Kherson region, bordering Crimea, where, according to the statement by the Permanent Representative of the President of Ukraine in the Autonomous Republic of Crimea, Tamila Tasheva, “about 600 people /.../ are in basements, in specially equipped rooms, in torture chambers”.<sup>369</sup> The BBC has gathered witness testimonies from some of the persons having passed through such places.<sup>370</sup> One of them, Oleksander Guz from the village of Bilozerka, was detained by the Russian soldiers shortly after the occupation of the area. He reported having a rope tied around his neck and wrists and to be told to stand with his legs wide apart while they questioned him. “When I didn't answer them, they hit me between my legs. When I fell, I started to suffocate. As you try to get up, they beat you. Then they ask again.”<sup>371</sup> Another victim of mistreatment was the local journalist Oleh Baturin, who as reported by the first mission, went missing on 12 March 2022 in the town of Kahovka but was released a week later, having however been subject to beating and mock execution and having had four ribs broken in the beating in the meantime.<sup>372</sup> Similar stories have been told by witnesses from other regions.<sup>373</sup>

The second mission is also gravely concerned by the mistreatment to which Ukrainian civilians are purportedly subject in the so-called *filtration centres*. People evacuated from besieged cities, like Mariupol, or people relocating from the temporarily occupied territories have to go through these centres where, according to the information received by the second mission during its visit to Kyiv, their personal data is recorded, their fingerprints are taken and their IDs copied. There are reports indicating that people are subject to harsh interrogations and humiliating body searches in such centres.<sup>374</sup> The interrogations and searches seem to be aimed at establishing whether the persons have fought on the Ukrainian side, have any connections to the Azov battalion or have close links to the Ukrainian governments. If this is found to be so, those persons are separated from others and often simply disappear. Some are allegedly transferred to the territories of the so-called Donetsk and Luhansk People's Republic, where they are detained or even murdered.<sup>375</sup> This practice, which is somewhat reminiscent of the extraordinary renditions used in the so-called war against terrorism,<sup>376</sup> suggests that the Russian Federation is indeed using the two proxy entities to bypass its international obligations, leaving it up to them to engage in some of the most problematic practices.

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<sup>368</sup> Mason Bissada, Top ICC Prosecutor Visits Bucha As Court Investigates War Crimes In Ukraine, *Forbes*, 13 April 2022, at <https://www.forbes.com/sites/masonbissada/2022/04/13/top-icc-prosecutor-visits-bucha-as-court-investigates-war-crimes-in-ukraine/?sh=722345095e26>

<sup>369</sup> Evan Simko-Bednarski, Russians holding 600 in Kherson ‘torture chambers,’ says Ukraine, *New York Post*, 8 June 2022, at <https://nypost.com/2022/06/08/russians-holding-600-in-kherson-torture-chambers-says-ukraine/>

<sup>370</sup> Caroline Davies, Ukraine war: Stories of torture emerging out of Kherson, *BBC*, 1 June 2022, at <https://www.bbc.com/news/world-europe-61607410>

<sup>371</sup> *Ibidem*.

<sup>372</sup> *Ibidem*.

<sup>373</sup> Ukraine: Executions, Torture During Russian Occupation Apparent War Crimes in Kyiv, Chernihiv Regions, *Human Rights Watch*, 18 May 2022, at <https://www.hrw.org/news/2022/05/18/ukraine-executions-torture-during-russian-occupation>

<sup>374</sup> Ivana Kottasová, Oleksandra Ochman, Ukrainians must endure a brutal 'filtration' process to escape Russian-held territory. Here's what that means, *CNN*, 23 May 2022, at <https://edition.cnn.com/2022/05/23/europe/russia-ukraine-filtration-camps-intl-cmd/index.html>

<sup>375</sup> OSCE Envoy Says Evidence Of 'Filtration Camps' Emerging From Areas Of Ukraine Claimed By Russian Forces, *RFE/RL*, 28 April 2022, at <https://www.rferl.org/a/russia-ukraine-filtration-camps-osce/31825625.html>

<sup>376</sup> Centre for Human Rights and Global Justice, *Torture By Proxy: International And Domestic Law Applicable To “Extraordinary Renditions”*, New York. 2004.

According to Yevhenii Tsymbaliuk, Ambassador and Permanent Representative of Ukraine to the OSCE, there are around 20 such facilities on the territories occupied by the Russian Federation.<sup>377</sup> Among them, the filtration centre located in the place symptomatically called Bezimenne (Безіменне, which means without any name), in the Donetsk region, has become particularly well known. It has been used for several weeks to screen and filter individuals leaving the city of Mariupol. The forces of the Territorial Defence of the so-called Donetsk People's Republic indicated that by 17 May 2022, more than 33,000 people had passed through that centre.<sup>378</sup> When interviewed by the press or non-governmental organizations, these people commonly confirm that filtration entails personal identification, interrogation (with a likely presence of the FSB personnel) and personal search.<sup>379</sup>

According to the Russian sources, these measures are aimed at preventing “*Ukrainian nationalists from infiltrating Russia disguised as refugees so they could avoid punishment*”.<sup>380</sup> That confirms that the Bezimenne centre is used as a checkpoint before the displacement of Ukrainian civilians, who pass through the filtration, into the territory of the Russian Federation. Those who do not pass, as already noted, are transferred to some detention facilities at the territory controlled by the so-called Donetsk People's Republic or disappear without trace. Such practice, especially with respect to the latter category of persons, is clearly incompatible with IHL.

On 11 May 2022, the Ministry of Defence of the Russian Federation informed that it was allegedly in possession of evidence demonstrating that the US Ministry of Defence conducted inhuman experiments on Ukrainian citizens hospitalized at the psychiatric hospital N. 1 in the village of Strelechy in the Kharkiv Region. The main group involved in the experiments should be male patients aged 40-60 who would be exposed to tests of extreme physical exhaustion.<sup>381</sup> Earlier, the same ministry reported that potentially hazardous biological agents had been tested on patients at Kharkiv's regional clinical psychiatric hospital N. 3. The second mission has not been able to verify this information which, if proven correct, would constitute a violation of the prohibition of torture and inhuman and degrading treatment.

In addition to civilians, *prisoners of war* have also been occasionally subject to mistreatment, also by the Ukrainian armed forces. The incident having occurred in the village of Vilkhivka in the Kharkiv region on 27 March 2022, where Russian prisoners of war were, according to a video posted on internet, beaten and shot in legs, was reported by the first mission already.<sup>382</sup> Another incident, involving mistreatment and extrajudicial execution of at least four Russian prisoners of war close to the village of Dmytrivka, was reported above.<sup>383</sup> Ukrainian prisoners of war detained by the Russian forces also purportedly get subject to mistreatment, as described

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<sup>377</sup> Украина в ОБСЕ: В захваченных районах россияне создали 20 фильтрационных лагерей и тюрем, *Ukrinform*, 17 June 2022, at <https://www.ukrinform.ru/rubric-ato/3508669-ukraina-v-obse-v-zahvacennyh-rajonah-rossiane-sozdali-20-filtracionnyh-lagerej-i-turem.html>

<sup>378</sup> Ivana Kottasová, Oleksandra Ochman, Ukrainians must endure a brutal 'filtration' process to escape Russian-held territory. Here's what that means, *CNN*, 23 May 2022, at <https://edition.cnn.com/2022/05/23/europe/russia-ukraine-filtration-camps-intl-cmd/index.html>

<sup>379</sup> Hugo Bachega, 'The Russians said beatings were my re-education', *BBC News*, 16 June 2022, at <https://www.bbc.com/news/world-europe-61683513>

<sup>380</sup> Amid Intensified Fighting, Reports Continue To Surface Of Ukrainians Forcibly Relocated To Russia, *RFE/RL*, 17 April 2022, at <https://www.rferl.org/a/ukraine-refugees-forcibly-resettled-russia/31807244.html>

<sup>381</sup> Russia has evidence US staged experiments on psychiatric hospital's patients near Kharkov, *TASS*, 11 May 2022, at [https://tass.com/politics/1449471?utm\\_source=google.com&utm\\_medium=organic&utm\\_campaign=google.com&utm\\_referrer=google.com](https://tass.com/politics/1449471?utm_source=google.com&utm_medium=organic&utm_campaign=google.com&utm_referrer=google.com)

<sup>382</sup> Ukraine: Apparent POW Abuse Would Be War Crime, *Human Rights Watch*, 31 March 2022, at <https://www.hrw.org/news/2022/03/31/ukraine-apparent-pow-abuse-would-be-war-crime>

<sup>383</sup> What Happened on Day 42 of the War in Ukraine, *New York Times*, 6 April 2022, at <https://www.nytimes.com/live/2022/04/06/world/ukraine-russia-war-news#russia-pows-ukraine-executed>

by the recently released Ukrainian paramedic Yulia Payevska.<sup>384</sup> Moreover, videos showing prisoners of war continue to be posted on public channels and social media, exposing those prisoners to public curiosity in what could amount to degrading treatment.<sup>385</sup> All those incidents need to be properly investigated and if allegations of torture or inhuman or degrading treatment are confirmed, the relevant persons must be held responsible. The same applies to the allegations of mistreatment of persons believed to be marauders, bootleggers, spies, pro-Russian supporters or curfew violators in the territory under the control of Ukraine, to which attention was drawn by the first mission.<sup>386</sup>

### 3. RIGHT TO LIBERTY AND SECURITY

Another human right which has come under pressure in the current conflict, is the right to liberty and security. This right, as enshrined in Article 9 of the ICCPR and Article 5 of the ECHR, is not absolute and indeed, Ukraine has derogated from it. Certain guarantees, such as the prohibition of arbitrary detention, the prohibitions against taking of hostages or abductions, and procedural guarantees protecting the liberty of persons remain however in force at all times.<sup>387</sup> “*The existence and nature of a public emergency /.../ may be relevant to a determination of whether a particular arrest or detention is arbitrary*”.<sup>388</sup> In times of armed conflicts, rules of IHL are used for this determination under the ICCPR<sup>389</sup> and in the interpretation of the catalogue of the grounds for the lawful deprivation of liberty under the ECHR.<sup>390</sup> An act of unlawful deprivation of liberty – when committed as part of a widespread or systematic attack directed against any civilian population with the knowledge of this attack – may amount to a crime against humanity.<sup>391</sup> Support for the right to liberty and security has also been expressed by the OSCE Participating States (Moscow 1991).

Violations of the right to liberty and security can take many forms. Since the adoption of the *UN International Convention for the Protection of All Persons from Enforced Disappearance* (ICPPED) in 2006 at least, enforced disappearance has been recognized as a particularly serious form of such a violation. It consists of “*the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law*”.<sup>392</sup> Although Russia is not State party to the ICPPED, the prohibition of enforced disappearance can also be inferred from other human rights (right to life, right to liberty and security, right to family life and the prohibition of torture and inhuman and degrading treatment)

The first mission expressed its serious concern at the reports about Ukrainian civilians, who had been ***detained, abducted, or kidnapped*** by the Russian armed forces in the first five weeks

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<sup>384</sup> “Totally Deprived of Any Rights and Treated Like Slaves”: Taira Released from Russian Captivity Shared the Horrid Story of Russian Concentration Camp, *TCH*, 21 June 2022, at <https://tsn.ua/en/ato/totally-deprived-of-any-rights-and-treated-like-slaves-taira-released-from-russian-captivity-shared-the-horrid-story-of-russian-concentration-camp-2092384.html>

<sup>385</sup> Ukraine: Respect the Rights of Prisoners of War, *Human Rights Watch*, 16 March 2022, at <https://www.hrw.org/news/2022/03/16/ukraine-respect-rights-prisoners-war>

<sup>386</sup> OHCHR, *HRMMU Update on the human rights situation in Ukraine, 24 February-26 March*, 28 March 2022, para 41.

<sup>387</sup> UN Doc. CCPR/C/GC/35, *General comment No. 35. Article 9 (Liberty and security of person)*, 16 December 2014, paras 64-66.

<sup>388</sup> *Ibidem*, para 66.

<sup>389</sup> *Ibidem*, para 64. See also UN Doc. A/RES/43/173, *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*, 9 December 1988.

<sup>390</sup> ECtHR, *Hassan v. United Kingdom*, Application no. 29750/09, Judgment (GC), 16 September 2014, para 104.

<sup>391</sup> See Article 7(1)(e) of the Rome Statute.

<sup>392</sup> Article 2 of the ICPPED. See also Article 7(2)(i) of the Rome Statute.

of the conflict, including journalists, human rights defenders, public officials and civil servants of local authorities. Some of these persons, after being held incommunicado for some time, were later released, other were found dead or are still missing. The second mission has not been in a position to establish the whereabouts of all the specific individuals reported missing in the first report. At least two of those persons have however already been released. One is the bishop of the World Life Church Dmitry Bodya, who was abducted from his home in Melitopol on 19 March 2022<sup>393</sup> and released approximately a week later. He reported that while held *incommunicado*, he was by the Russian secret service and military, who suspected him of being an FBI agent, due to his dual (US-Ukrainian) citizenship.<sup>394</sup> The second is the mayor of the town Stara Zbur'ivka in the Kherson region Viktor Maruniak, who was detained and abducted by the Russian armed forces on 21 March 2022<sup>395</sup> and released three weeks later, having been held *incommunicado* and subject to serious mistreatment.<sup>396</sup>

Other individuals whose abduction in the early days of the conflict was not reported in the first mission have also been released. Probably the best-known among them is the Ukrainian paramedic Yulia (Taira) Payevska. Payevska, who had acquired a country-wide reputation through her medical work during the Maydan events in 2014 and in Donbas after 2014, and went to Mariupol at the beginning of the conflict to provide medical help to those in need there. She was detained and abducted by the forces from the so-called Donetsk People's Republic and held for more than two months in a camp. Soon after her detention, she was shown on Russian TV – she was presented as a Nazi sympathizer and a monster, who used the work of a medic as a cover for espionage. She was finally released in mid-June 2022.<sup>397</sup> The whereabouts of many other persons detained in the early weeks of the conflict remain, however, unknown. This is the case of the mayor of Hola Prystan in the Kherson region, Oleksandr Babych<sup>398</sup> or of the teacher Viktoria Andrusha from the Chernihiv region, who was detained in late March 2022 on account of her alleged reporting to the Ukrainian authorities about the movement of the Russian troops.<sup>399</sup>

According to the figures that the UN Human Rights Monitoring Mission in Ukraine (HRMMU) kindly shared with the mission, by 28 May 2022, there were 222 verified cases of conflict-related detention and enforced disappearance reportedly perpetrated by Russian armed forces and affiliated armed groups of the so-called Donetsk and Luhansk People's Republics.<sup>400</sup> The second mission notes that there seems to be a relatively consistent pattern of behaviour on the side of the Russian Federation, when the military occupation of a certain area is followed by

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<sup>393</sup> In Melitopol, Russian invaders kidnapped the bishop of the Word of Life Church, *Religious Information Service of Ukraine*, 21 March 2022, online [https://risu.ua/en/in-melitopol-russian-invaders-kidnapped-the-bishop-of-the-word-of-life-church\\_n127432](https://risu.ua/en/in-melitopol-russian-invaders-kidnapped-the-bishop-of-the-word-of-life-church_n127432)

<sup>394</sup> Jacqueline Gelineau, Ukrainian priest shares with Kelowna his experience as a POW, *Summerland Review*, 22 June 2022, at <https://www.summerlandreview.com/news/ukrainian-priest-shares-with-kelowna-his-experience-as-a-pow/>

<sup>395</sup> Jen Kirby, When Russian troops arrived, their relatives disappeared, *Vox*, 12 April 2022, at <https://www.vox.com/23012456/ukraine-russia-war-disappearances-kidnappings>

<sup>396</sup> Halya Coynash, He was held and tortured for three weeks, with the torture something that his captors seemed to “somehow get pleasure from”, *Kharkiv Human Rights Protection Centre*, 23 June 2022, at <https://khp.org/en/1608810710>

<sup>397</sup> “Totally Deprived of Any Rights and Treated Like Slaves”: Taira Released from Russian Captivity Shared the Horrid Story of Russian Concentration Camp, *TCH*, 21 June 2022, at <https://tsn.ua/en/ato/totally-deprived-of-any-rights-and-treated-like-slaves-taira-released-from-russian-captivity-shared-the-horrid-story-of-russian-concentration-camp-2092384.html>

<sup>398</sup> Svitlana Kizilova, Kherson region: no-one able to find mayor abducted by Russians for two months now, *Ukrainska Pravda*, 29 May 2022, at <https://www.pravda.com.ua/eng/news/2022/05/29/7349212/>

<sup>399</sup> Russia: Enforced Disappearance of Ukrainian Teacher, *Human Rights Watch*, 13 June 2022, available at <https://www.hrw.org/news/2022/06/13/russia-enforced-disappearance-ukrainian-teacher>

<sup>400</sup> Interview with the representatives of the HRMMU, on file with the authors of the report.



abductions, interrogations, mistreatment and sometimes killings of important public figures, such as mayors or local journalist. More recently, moreover, the same practices have been employed with respect to persons who seek to evacuate from besieged places, such as the city of Mariupol. In this latter case, individuals are not abducted from their homes but get detained during the filtration procedure at the filtration centres and, as already noted, are brought from there to detention places in Russia or, more commonly, in the territory under the control of the so-called Donetsk and Luhansk People's Republics. In the two cases, detained and abducted persons are usually held *incommunicado*, have no contact with their families and are subject to various forms of mistreatment. The second mission has no doubts that such practices violate IHRL and may amount to a crime against humanity or a war crime.

The second mission notes that the same applies with respect to the individuals allegedly detained, and sometimes disappeared, by the Ukrainian law enforcement agencies, especially the Security Service of Ukraine. By 28 May 2022, the UN Human Rights Monitoring Mission in Ukraine (HRMMU) recorded 12 such cases but most of the persons concerned had been either released or their relatives received a confirmation of the detention. The whereabouts of the remaining ones are not known.

The first mission also expressed concern over the reports about the detention of large numbers of Ukrainian civilians and their *massive displacement* to the areas under the effective control of the Russian Federation or, even, to Russia's own territory. It noted that by 1 April 2022 between 300,000 and 500,000 Ukrainian citizens had been deported to Russia according to the various sources from both countries.<sup>401</sup> The report concluded that if those deportations were forcible (including because Russia created a coercive environment in which civilians had no other choice than to leave for Russia), they would amount to a violation of IHL and a war crime. It also recalled that deportation and forcible transfer of population, when committed as part of a widespread or systematic attack directed against any civilian population with the knowledge of this attack, constitutes a crime against humanity.<sup>402</sup>

The second mission regrets to note that since 1 April 2022, the number of Ukrainian civilians deported from the occupied territories to Russia has continued to rise. The numbers of the affected civilians differ depending on the source of information. UNHCR estimates that 1,136,243 Ukrainian citizens had crossed the border to Russia by 9 June 2022.<sup>403</sup> According to the information provided by the former Ukrainian Parliament Commissioner for Human Rights Lyudmila Denisova, Russia had deported 1,377,925 Ukrainians to its territory, including 232,480 children by 21 May 2022.<sup>404</sup> By 14 June, 2022, this number further increased to 1,700,000 Ukrainians, including 276,000 children.<sup>405</sup> As stated in the first report, Russia denies accusations that the Russian military is forcibly deporting Ukrainian citizens to Russia.<sup>406</sup> On the other hand, it acknowledges that the transfers are taking place. On 23 May 2022 the Head of the National Centre for Defence Control of the Russian Federation Colonel General Mikhail

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<sup>401</sup> Shona Murray, More than 400,000 Ukrainians 'forcibly displaced to Russia', claims Ukraine's ombudswoman, *Euronews*, 20 March 2022, at <https://www.euronews.com/my-europe/2022/03/30/more-than-400-000-ukrainians-forcibly-displaced-to-russia-claims-ukraine-s-ombudswoman>.

<sup>402</sup> Article 7(1)(d) of the Rome Statute.

<sup>403</sup> Operational Data Portal, Refugees fleeing Ukraine (since 24 February 2022), *UNHCR*, at <https://data.unhcr.org/en/situations/ukraine/location?secret=unhcrrestricted>

<sup>404</sup> <https://zn.ua/UKRAINE/rossija-deportirovala-bolee-1-3-mln-ukraintsev-iz-nikh-232-480-detej-denisova.html>

<sup>405</sup> Interview with former Ukrainian Parliament Commissioner for Human Rights Lyudmila Denisova, on file with the authors of the report.

<sup>406</sup> Moscow denies deporting Ukrainians to Russia, *TeleTrader*, *Teletrader*, 22 March 2022, at <https://www.teletrader.com/moscow-denies-deporting-ukrainians-to-russia/news/details/57536310?ts=1648496942911>

Mizintsev, stated that Russia has transferred a total of 1,426,979 Ukrainians, including 238,329 children since the start of the war.<sup>407</sup>

In its Resolution A/HRC/S-34/L.1 adopted on 12 May 2022, the UN Human Rights Council urged the Russian Federation “to provide representatives and staff of international human rights and humanitarian institutions, including United Nations specialized agencies, with unhindered, timely, immediate, unrestricted and safe access to persons who have been transferred from conflict-affected areas of Ukraine and are held on the territory of the Russian Federation or areas controlled or occupied by the Russian Federation, and to share with relevant parties a comprehensive list of such transferred persons”.<sup>408</sup> To the knowledge of the mission, the Russian Federation has not so far undertaken any steps to comply with this request.

The second mission is aware that there have been several humanitarian corridors from some of the hardest-hit localities opened since 1 April 2022, most of them leading to the territories under the control of Russia. In some cases, the Ukrainian civilians used these corridors individually as it was the safest way under current security conditions. In other cases, they were taken by evacuation buses to the villages, located in the so-called Donetsk and Luhansk People’s Republics or the Autonomous Republic of Crimea. In certain situations, it was not physically possible to transfer the civilians to any other places than aforementioned, because of the security situation on the frontline. After the weeks spent without food, water, and medical supplies in the shelters under the shelling, many of the civilians were desperate to leave, irrespective of the final destination.

Yet, as already indicated above, taking the evacuation road towards Russia or the two so-called People’s Republics conventionally means passing through so-called *filtration centres*, such as the Bezimenne centre in the Donetsk region. The mission wishes to reiterate its special concern over the mistreatment to which individuals are subject in such centres and over the fate of those civilians who do not pass through the filtration procedure.

Those civilians who pass through the filtration procedure are issued some kind of “travel voucher” for evacuation to Russia. Based on this document, they are relocated to the so-called Temporary Accommodation Points (Пункты временного размещения), which include dozens of sanatoriums, former children’s wilderness camps and similar facilities that are located all across the Russian Federation including Russian Far North (Murmansk), Siberia (Irkutsk) and Far East (Kamchatka).<sup>409</sup> According to the reports, the Ukrainian citizens can get officially employed through Russian employment centres,<sup>410</sup> in some cases they are also promised free housing, reduced mortgage rates and relocation support.<sup>411</sup> They can apply for “temporary asylum” (временное убежище) in the country. In general, the Temporary Accommodation Points are functioning in the open mode and their inhabitants are free to leave them, but they often do not have enough information, money for transport, functioning mobile phones, etc. The mission recognizes as especially difficult the situation of those who do not possess any valid personal documents because they were lost or destroyed during the evacuation or the

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<sup>407</sup> В Россию из Украины, ДНР и ЛНР за сутки эвакуировали свыше 13 тысяч человек, *Interfax*, 23 May 2022, at <https://www.interfax.ru/world/842452>

<sup>408</sup> UN Doc. A/HRC/S-34/L.1, *The deteriorating human rights situation in Ukraine stemming from the Russian aggression*, 12 May 2022.

<sup>409</sup> Putin sends Mariupol survivors to remote corners of Russia as investigation reveals network of 66 camps, *iNews*, 7 May 2022, at <https://inews.co.uk/news/putin-mariupol-survivors-remote-corners-russia-investigation-network-camps-1615516>

<sup>410</sup> Вывезенным в РФ украинцам предлагают трудоустройство на Сахалине, *Focus.ua*, 24 March 2022, at <https://focus.ua/voennye-novosti/510323-vyvezennym-v-rf-ukraincam-predlagayut-trudoustroystvo-na-sahaline>

<sup>411</sup> ‘I don’t know what to do’ Taken to the Russian Far East, refugees from Mariupol were promised housing and jobs. They have yet to receive either, *Meduza*, 19 May 2022, at <https://meduza.io/en/feature/2022/05/19/i-don-t-know-what-to-do>

deportation. Several NGOs from Ukraine and Russia are involved in helping the Ukrainian civilians deported to the Russian Federation to leave for the EU or other third countries if they so wish.

The Ukrainian authorities have already launched an investigation into more than 20 criminal cases concerning the forced transfer of people to Russia and Belarus according to the Prosecutor-General Iryna Venedyktova.<sup>412</sup> The investigation is ongoing and focuses mainly on the forcible deportation of children to Russia as she looks to build a genocide indictment against Moscow.<sup>413</sup> The mission is indeed worried about the situation of the children being transferred to Russian-occupied territories and Russia (for more details, see Section V.C.2).

#### 4. RIGHT TO A FAIR TRIAL

Similar to the right to liberty and security, the right to a fair trial, which is enshrined in Article 14 of the ICCPR and Article 6 of the ECHR, is derogable and has been derogated by Ukraine in the current conflict. Again, similarly as for the previous right, however, the basic guarantees of a fair trial may never be fully suspended.<sup>414</sup> In the situation of armed conflict, moreover, States may not derogate those elements of the right to a fair trial which are explicitly guaranteed under IHL.<sup>415</sup> The crucial importance of the right to a fair trial has been repeatedly confirmed by the OSCE Participating States (Ljubljana 2005, Helsinki 2008).

The first mission paid a relatively limited attention to the right to a fair trial, noting that it had not received information indicating that the operation of the judicial system would have been seriously disrupted or that the guarantees to a fair trial would not be respected in the territories under the control of Ukraine. It also noted the number of cases of alleged war crimes or other serious offences, in which investigation had been opened by the Ukrainian authorities. Finally, it expressed concerns at the lack of information related to the operation of the judicial system in the territories under the effective control of the Russian Federation, including the territories of the so-called Donetsk and Luhansk People's Republics.

In the period under the scrutiny in the second report (1 April – 25 June 2022), the right to a fair trial has become much more relevant. The main reason is that both Ukraine and the Russian Federation, the latter acting through the so-called Donetsk and Luhansk People's Republics, have conducted the first trials with individuals suspected of having committed war crimes or certain other offences during the current conflict.

As to Ukraine, by 25 June 2022, the Office of the Prosecutor General of *Ukraine* registered almost 20,000 criminal cases relating to crimes under international law. 18,805 concern war crimes, 73 the act of aggression, 18 war propaganda and 634 are others.<sup>416</sup> By the same date, the second mission received information about two trials resulting in conviction. The first one took place in Kyiv in May 2022. The defendant, a 21-year-old Russian soldier Vadim Shish(i)marin<sup>417</sup> was charged with the offence of “*Violation of the laws and customs of war*” (Article 438 of the Criminal Code of Ukraine) for having shot, on 28 February 2022, a 62-year-old Ukrainian man Oleksander Shelipov in the village of Chupakhyvka in the Sumy region.

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<sup>412</sup> Украина расследует более 20 уголовных производств относительно принудительного перемещения лиц в россию и беларусь, *Ukrinform*, 4 June 2022, at <https://www.ukrinform.ru/rubric-ato/3499783-v-ukraine-otkryli-20-del-izza-deportacii-ludej-v-rossiu-i-belarus-venediktova.html>

<sup>413</sup> Ukraine's Top Prosecutor Says Deportation of Children to Russia May Be Genocide, *Radio Free Europe*, 3 June 2022, at <https://www.rferl.org/a/ukraine-russian-genocide-children-deportation-venediktova/31881902.html>

<sup>414</sup> UN Doc. CCPR/C/46/D/263/1987, *Miguel Gonzáles del Río v. Peru*, Communication No. 263/1987, 2 November 1992, para. 5.1.

<sup>415</sup> UN Doc. CCPR/C/21/Rev.1/Add.11, *General comment no. 29. States of emergency (article 4)*, 31 August 2001, para 16.

<sup>416</sup> Crimes Committed During the Full-Scale Invasion of the RF, *Office of the Prosecutor General of Ukraine*, 25 June 2022, at <https://en.gp.gov.ua/ua/>

<sup>417</sup> Different sources report two different forms of the surname – Shishmarin and Shishimarin.

Shelipov, former bodyguard of the USSR president Leonid Brezhnev, was talking on his mobile while leading his bicycle on the side of the road where the Russian troops were stationed.<sup>418</sup> Shish(i)marin was ordered to shoot Shelipov by his commander. Both of them were later detained by the Ukrainian forces but while the commander was exchanged for a Ukrainian prisoner of war, Shish(i)marin remained in custody, though his exchange seems to be, even after the completion of the trial, an option.<sup>419</sup> The trial started on 13 May 2022. The defendant pleaded guilty and was sentenced on 23 May 2022 to life imprisonment.

The second trial took place in the Poltava region at the end of May 2022. Two Russian soldiers, Alexander Bobikin and Alexander Ivanov, were accused of shelling civilian sites in the Kharkiv region and charged with the same offence as Shish(i)marin. On 31 May 2022, they were found guilty and sentenced to 11 years and 6 months in prison.<sup>420</sup> On 24 June 2022, the first trial pertaining to conflict-related sexual violence started in Kyiv. The defendant, the 32-year-old Russian soldier Mikhail Romanov, is accused of having repeatedly raped a woman in the Kyiv region on 9 March 2022 after murdering her husband. The trial is being held in absentia,<sup>421</sup> as the defendant has probably returned to Russia. Another trial started on the same day with respect to a group of eight Russian soldiers accused of violence against civilians in the village of Motyzhin near Kyiv.<sup>422</sup> At the time of the completion of this report, these trials were still ongoing. In view of the number of cases registered in the Office of the Prosecutor General of Ukraine, it may be expected that many will be opened in various courts across Ukraine in the upcoming weeks and months.<sup>423</sup>

The trials have, in the majority, produced positive reactions. Yet, words of caution can also be heard, especially within the legal academia.<sup>424</sup> The respect of the fair trial guarantees during the trials gives rise to doubts. It is not clear how the confession of the three defendants was obtained and whether it was truly voluntary. It was reported that the first defendant's lawyer was not informed about the hearings and could not attend some of them. The presumption of innocence might not have been truly respected, with the defendants being generally considered as guilty from the beginning of the trial and with them being put in special glass cages in the courtroom. Concerning the decision, it has been argued that the Ukrainian courts have not paid sufficient attention to the rule on superior order<sup>425</sup> and that the sentence imposed on the first defendant, life imprisonment, appears disproportionate and, in view of *de facto* irreducible nature of this sentence, might involve a violation of the prohibition of torture and inhuman and degrading treatment.<sup>426</sup> It is moreover worrying that the Ukrainian organs seem to focus on Russian

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<sup>418</sup> Pavel Polityuk, Russian soldier jailed for life in first war crimes trial of Ukraine war, *Reuters*, 23 May 2022, at <https://www.reuters.com/world/europe/ukraine-court-jails-russian-soldier-life-war-crimes-trial-2022-05-23/>

<sup>419</sup> Украинский генпрокурор не исключила обмен осужденного российского военного Шишмарина, *Новые Известия*, 24 мая 2022, at <https://newizv.ru/news/world/24-05-2022/ukrainskiy-genprokuror-ne-isklyuchila-obmen-osuzhdennogo-rossiyskogo-voennogo-shishmarina>

<sup>420</sup> Claire Parker, Ellen Francis and Annabelle Chapman, Russian soldiers get prison terms in second Ukraine war crimes trial, *The Washington Post*, 31 May 2022, at <https://www.adn.com/nation-world/2022/05/31/russian-soldiers-get-prison-terms-in-second-ukraine-war-crimes-trial/>

<sup>421</sup> See Article 262 of the Criminal Procedural Code of Ukraine.

<sup>422</sup> Сергей Гуца, Еще восемь россиян обвинены в преступлениях в Украине, *DW*, 24 May 2022, at <https://www.dw.com/ru/v-ukraine-vosmeryh-rossijan-obvinili-v-voennyh-prestuplenijah-pod-kievom/a-61920142>

<sup>423</sup> See 20 criminal cases opened in connection with deportation of Ukrainian citizens to Russia and Belarus – prosecutor general, *Ukrainska Pravda*, 4 June 2022, at <https://www.pravda.com.ua/eng/news/2022/06/4/7350529/>

<sup>424</sup> See, for instance, Kai Ambos, Ukrainian Prosecution of ICC Statute Crimes: Fair, Independent and Impartial?, *EJILTalk*, 10 June 2022.

<sup>425</sup> Article 41 of the Criminal Code of Ukraine.

<sup>426</sup> *Ibidem*.

crimes exclusively, treating the allegations of crimes committed by the Ukrainian soldiers as less important and less urgent.<sup>427</sup>

The first trials for alleged war crimes have started in the *Russian Federation* as well. On 7 June 2022, the Ukrainian Lieutenant Colonel Alexander Plotnikov, commander of an artillery battalion, was accused by the Russian Investigative Committee of “*Cruel treatment of civilians and the use of prohibited methods of warfare*” (Article 356(1) of the Criminal Code of the Russian Federation), for having ordered, from 25 February to 10 March 2022, shelling of residential buildings and civil infrastructure in the Donetsk region, resulting in the death of one child, the brain injury of a woman and large-scale destruction of private property. At the time of the completion of this report, the trial was still ongoing. The concerns raised above, pertaining to the respect of fair trial guarantees, apply here as well. Moreover, the Russian Federation also seems to concentrate on the alleged violations committed by the other side to the conflict exclusively, thus failing to abide by the obligation to search for and bring before its courts all persons alleged to have committed or to have ordered to have committed war crimes, regardless of their nationality.<sup>428</sup>

However, the most worrying are the trials held by courts in the so-called *Donetsk and Luhansk People’s Republics*. As already noted above, the first of such trials, held before a court in Donetsk, resulted in the sentence of death penalty being imposed, on 9 June 2022, to three foreigners serving in the Ukrainian navy, the UK citizens Aiden Aslin and Shaun Pinner and a Moroccan citizen Brahim Saadoun,<sup>429</sup> At least two other foreigners fighting in the Ukrainian armed forces, the US citizens Alexander Druke and Andy Tai Ngoc Huynh, may receive the same sentenced in the upcoming weeks.<sup>430</sup> In addition to the legal problems surrounding the death penalty, the trials are also hardly compatible with the right to a fair trial. One week after the end of the first trial, the UN High Commissioner for Human Rights Michelle Bachelet expressed “*concerns that fair trial guarantees were not complied with, including that the defendants in the cases were not able to present a full defense*”.<sup>431</sup> She also recalled that “*the so-called ‘courts’ in this area have long failed to comply with international standards, including the general right to a public hearing, the principles of independence and impartiality and the right not to be compelled to testify against oneself*”.<sup>432</sup>

The second mission moreover once again reiterates that it is not possible for States to bypass their international obligations by handing detained persons over to another State or, even less, a non-state entity under their overall control, where there is a serious risk that the handed over detainees would face an unfair trial or could be imposed the death penalty. Moreover, even if the Russian Federation seeks to distance itself from the two so-called People’s Republics, as was well visible in the reaction of the Russian Minister of Foreign Affairs Sergey Lavrov to the

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<sup>427</sup> Transcript: World Stage: Ukraine with Ukraine Prosecutor General Iryna Venediktova, *Washington Post*, 23 May 2022, at <https://www.washingtonpost.com/washington-post-live/2022/05/23/transcript-world-stage-ukraine-with-ukraine-prosecutor-general-iryna-venediktova/>

<sup>428</sup> Article 49 of GCI, Article 50 of GCII, Article 50 of GCIII, Article 129 of GCIV and Article 145 of API.

<sup>429</sup> Britons sentenced to death after ‘show trial’ in Russian-occupied Ukraine, *The Guardian*, 9 June 2022, at <https://www.theguardian.com/world/2022/jun/09/britons-sentenced-to-death-russian-occupied-ukraine-aiden-aslin-shaun-pinner>

<sup>430</sup> Peter Beaumont, US volunteer fighters captured in Ukraine could face death penalty, says Russia, *The Guardian*, 21 June 2022, at <https://www.theguardian.com/world/2022/jun/21/us-volunteer-fighters-captured-in-ukraine-could-face-death-penalty-says-russia>

<sup>431</sup> High Commissioner updates the Human Rights Council on Mariupol, Ukraine (16 June 2022), *ReliefWeb*, 16 June 2022, at <https://reliefweb.int/report/ukraine/high-commissioner-updates-human-rights-council-mariupol-ukraine-16-june-2022>

<sup>432</sup> *Ibidem*. See also Human Rights in the Administration of Justice in Conflict-Related Criminal Cases in Ukraine April 2014 – April 2020, *OHCHR*, 1 August 2020, available at <https://www.ohchr.org/en/documents/country-reports/human-rights-administration-justice-conflict-related-criminal-cases>

judgment pertaining to the three foreigners,<sup>433</sup> it is evident that in reality it exercises (at least) an overall control over the actions carried out by these entities. The Russian Federation is thus clearly responsible for violations of the fundamental judicial guarantees in trials carried out by courts in the two entities, whether it is through handing over detainees to them or through the direct attributability of the acts of such courts to Russia. It is up to the International Court of Justice or another judicial institution to determine the nature of the relationship between Russia and the two entities in more detail.

## 5. RIGHTS TO FREEDOM OF EXPRESSION

The right to freedom of expression, enshrined in Article 19 of the ICCPR and Article 10 of the ECHR, derogated from by Ukraine, as well as in the OSCE commitments (Helsinki 1975, Istanbul 1999, Astana 2010, Milan 2018), entails the rights to hold opinions and to receive and impart information and ideas without any interference. Journalists and media more broadly enjoy special attention, due to the crucial role they play in a democratic society.<sup>434</sup> They are also in need of special protection in times of armed conflict, as they often operate close to the areas of active hostilities and even if they do not, their task of bringing to the public objective information may make them exposed to mistreatment, intimidation, harassment, abductions, unlawful detention, and other measures involving violence.

The first mission documented various instances of such behaviour in the conflict in Ukraine. It collected information about five *journalists* being killed and several other abducted by 1 April 2022. Since then, the numbers have continued to rise. According to the Committee to Protect Journalists, which monitors the situation on a regular basis, 12 journalists have been killed in Ukraine since the outbreak of the conflict.<sup>435</sup> The Ukraine's Institute of Mass Information informs that nearly 32 journalists have lost their lives over that period.<sup>436</sup> The most recent incident involved the killing of the French cameraman Frédéric Leclerc-Imhoff, working for the French privately owned broadcaster BFMTV, who died, when the Russian armed forces started to shell the humanitarian convoy on the road to the town of Lysychansk, in the Luhansk region, on 30 May 2022.<sup>437</sup> The incident is now under investigation, as a potential war crime, both in Ukraine<sup>438</sup> and in France.<sup>439</sup>

The other journalists killed since the outbreak of the conflict are Ihor Hudenko (26 February 2022, Kharkiv), Yevhenii Sakun (1 March 2022, Kyiv), Viktor Dedov (11 March 2022, Mariupol), Oksana Haidar (11 March – 7 April, Shevchenkove), Brent Renaud (13 March 2022, Irpin), Maks Levin (missing since 13 March 2022, near Huta-Mezhyhirska), Pierre Zakrzewski

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<sup>433</sup> Лавров прокомментировал смертный приговор иностранным наемникам в ДНР, *RU Posters*, 10 июня 2022, at <https://ruposters.ru/news/10-06-2022/lavrov-prokomentiroval-smertnij-prigovor-inostrannim-nayomnikam>

<sup>434</sup> ECtHR, *Dink v. Turkey*, Applications nos. 2668/07, 6102/08, 30079/08, 7072/09 and 7124/09, Judgment, 14 September 2010; *Özgür Gündem v. Turkey*, Application no. 23144/93, Judgment, 16 March 2000, *Gongadze v. Ukraine*, Application no. 34056/02, Judgment, 8 February 2006

<sup>435</sup> Russia-Ukraine War, *Committee to Protect Journalists*, 25 June 2022, at <https://cpj.org/invasion-of-ukraine/>

<sup>436</sup> Ukraine Claims 32 Journalists Slain Since Onset Of Russian Invasion On February 24, *Republicworld.com*, 31 May 2022, at <https://www.republicworld.com/world-news/russia-ukraine-crisis/ukraine-claims-32-journalists-slain-since-onset-of-russian-invasion-on-february-24-articleshow.html>.

<sup>437</sup> Frédéric Leclerc-Imhoff, *Committee to Protect Journalists*, 30 May 2022, at <https://cpj.org/data/people/frederic-leclerc-imhoff/>

<sup>438</sup> Загибель іноземного журналіста на Луганщині кваліфіковано як порушення законів та звичаїв війни, *МВС*, 31. 5. 2022, at <https://mvs.gov.ua/uk/news/zagibel-inozemnogo-zurnalista-na-luganshhini-kvalifikovano-yak-porusennya-zakoniv-ta-zvichayiv-viini>

<sup>439</sup> Ariane Chemin, Sandrine Cassini et Cédric Pietralunga, Guerre en Ukraine : après la mort d'un journaliste français, émotion à BFM-TV et ouverture d'une enquête pour « crimes de guerre », *Le Monde*, 31 mai 2022, at [https://www.lemonde.fr/international/article/2022/05/31/guerre-en-ukraine-apres-la-mort-d-un-journaliste-francais-emotion-a-bfm-tv-et-ouverture-d-une-enquete-pour-crimes-de-guerre\\_6128264\\_3210.html](https://www.lemonde.fr/international/article/2022/05/31/guerre-en-ukraine-apres-la-mort-d-un-journaliste-francais-emotion-a-bfm-tv-et-ouverture-d-une-enquete-pour-crimes-de-guerre_6128264_3210.html)

(14 March 2022, Horenka), Oleksandra Kuvshynova (14 March 2022, Horenka), Oksana Baulina (14 March 2022, Kyiv), Mantas Kvedaravicius (2 April 2022, Mariupol) and Vira Hyrych (28 April 2022, Kyiv).<sup>440</sup> The deaths of three other journalists are under verification by the Committee to Protect Journalists to establish whether they were conflict related. While some of these deaths might be justified under IHL as incidental damage, there are reports suggesting that at least some journalists have been targeted intentionally, and with the knowledge of their special status, in clear violation of IHL and IHRL. All incidents must be properly investigated and those found responsible must be brought to justice. The same applies to the cases of journalists who have been detained, abducted, and mistreated.<sup>441</sup>

On 4 May 2022, a *Joint statement on Russia's invasion and importance of freedom of expression and information* was issued by freedom of expression mandate holders from several international organizations (UN, OSCE, African Union, Organization of American States).<sup>442</sup> The statement identifies six **areas of particular concern** for the respect of the right to freedom of expression in the conflict in Ukraine. The first area is the safety of journalists, media workers and associated personnel, that has already been mentioned. The second area concerns allegations that Ukrainian media and internet infrastructure may be intentionally targeted by the Russian forces in an effort to disrupt access to information, including by means of cyberattacks. Thirdly, the statement recalls that propaganda for war and national hatred is explicitly prohibited under Article 20 of the ICCPR and calls upon the Russian Federation to immediately refrain from such propaganda. Linked to that, fourthly, the statement expresses concerns at the spread of disinformation concerning the conflict in Ukraine in Russian State-owned media. It however also notes that “*disinformation cannot be addressed by blocking or banning media outlets*”.<sup>443</sup> The fifth area pertains to the erosion of the respect for the right to freedom of expression in the Russian Federation and the use of criminal law tools to silence any critics of the war against Ukraine. Finally, the sixth area encompasses the risks of the proliferation of disinformation, misinformation and incitement to violence and hatred and restrictions of lawful speech on digital and social media platforms.

Some of these issues, such as the destruction of media infrastructure or the introduction of new war-related offences into the Code of Administrative Offences of the Russian Federation, were discussed in the report produced by the first mission. The second mission cannot but confirm that these issues – as well as the other ones identified in the Joint Statement – have remained relevant in the period under scrutiny in this report (1 April – 25 June 2022). The Russian State-owned media continue to deny that the Russian Federation wages a full-fledged war against Ukraine, adhering to the special military operation label.<sup>444</sup> They also fail to inform about the allegations of crimes committed by the Russian armed forces or about the first trials with members of such armed forces taking place in Ukraine (i.e., the trial with Vadim Shish(i)marin). Media, internet providers or social networks which make information about the conflict in Ukraine accessible to the Russian public, are threatened with criminal prosecution and asked to remove the information.<sup>445</sup> In the temporarily occupied territories, Ukrainian media are replaced

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<sup>440</sup> Russia-Ukraine War, *Committee to Protect Journalists*, 25 June 2022, at <https://cpj.org/invasion-of-ukraine/>

<sup>441</sup> See, for instance, ‘They said they’d mutilate and kill me,’ says kidnapped Ukrainian journalist, *The Guardian*, 3 April 2022, at <https://www.theguardian.com/world/2022/apr/03/they-said-theyd-mutilate-and-kill-me-says-kidnapped-ukrainian-journalist>

<sup>442</sup> Ukraine: Joint statement on Russia’s invasion and importance of freedom of expression and information, *UN Press Release*, 4 May 2022.

<sup>443</sup> *Ibidem*.

<sup>444</sup> See, for instance, The War in Ukraine, as Seen on Russian TV, *New York Times*, 6 May 2022, at <https://www.nytimes.com/interactive/2022/05/06/technology/russian-propaganda-television.html>

<sup>445</sup> Wikipedia fights Russian order to remove Ukraine war information, *Reuters*, 13 June 2022, at <https://www.reuters.com/world/europe/wikipedia-fights-russian-order-remove-ukraine-war-information-2022-06-13/>

by Russian media and the local inhabitants only have access to the latter.<sup>446</sup> Schools in such territories have to adopt Russian curricula and present the conflict in Ukraine in accordance to the Russian official interpretation.<sup>447</sup> As a result of these developments, the Russian public and the inhabitants of territories under the effective control of the Russian Federation live nowadays in a completely different information space than the inhabitants of the unoccupied regions of Ukraine and of European countries.

## 6. OTHER CIVIL AND POLITICAL RIGHTS

The second mission shares the view expressed by the first mission that the conflict in Ukraine has affected the enjoyment of virtually all civil and political rights. It also concurs that certain rights have been hit more clearly and profoundly than others. Such rights encompass *inter alia* the right to freedom of assembly, the right to freedom of association, the right to freedom of movement, the right to private and family life and the right to property. All these rights have been derogated from under the ICCPR and the ECHR by Ukraine.

The right to freedom of **assembly**, granted by Article 21 of the ICCPR, Article 11 of the ECHR and by OSCE commitments (Paris 1990, Copenhagen 1990), “enables individuals to express themselves collectively and to participate in shaping their societies”.<sup>448</sup> It applies to peaceful assemblies including those that are “used to pursue contentious ideas or goals”.<sup>449</sup> Assemblies should not be dispersed, unless relevant and sufficient reasons exceptionally require to do so.<sup>450</sup> When taking any measures against peaceful assemblies, law enforcement agents should use the minimal amount of force necessary.<sup>451</sup> The first mission expressed doubts as to whether these standards have been respected, especially in the territories under the temporary control of the Russian Federation. The second mission shares those doubts. There are reports indicating that peaceful assemblies protesting against the Russian occupation, for instance those regularly organized in the town of Kherson, continue to be dispersed with the use of tear gas and stun grenades and with Russian soldiers shooting in the air.<sup>452</sup> This was confirmed to the mission by local inhabitants from the Kherson region met during the visit to Kyiv. The mission wishes to reiterate that dispersing a peaceful assembly and, even more, using disproportionate force to do so, amounts to the violation of the right to freedom of assembly.

The right to freedom of **association**, granted by Article 22 of the ICCPR, Article 11 of the ECHR, Article 8 of the ICESCR and the OSCE commitments (Paris 1990, Copenhagen 1990), encompasses the right to join or leave an association and to take collective actions within this association. It applies to all different types of associations,<sup>453</sup> including political parties, trade

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<sup>446</sup> Maria Korenyuk, Jack Goodman, Ukraine war: How Russia replaces Ukrainian media with its own, *BBC*, 23 April 2022, at <https://www.bbc.com/news/world-europe-61154066>

<sup>447</sup> Мариуполь. На зараз. Освіта, Telegram (Андріющенко Time), 26 May 2022, at <https://t.me/andriyshTime/1072>

<sup>448</sup> UN Doc. CCPR/C/GC/37, *General comment No. 37 (2020) on the right of peaceful assembly (article 21)*, 17 September 2020, para 1.

<sup>449</sup> *Ibidem*, para 7.

<sup>450</sup> *Ibidem*, para 85; ECtHR, *Ibrahimov and Others v. Azerbaijan*, Applications nos 69234/11, 69252/11 and 69335/11, Judgment, 11 February 2016, para 80.

<sup>451</sup> UN Doc. CCPR/C/GC/37, *General comment No. 37 (2020) on the right of peaceful assembly (article 21)*, 17 September 2020, para 87-88.

<sup>452</sup> Olena Roshchina, Russian forces disperse rally in Kherson and Russian "rally" fails in Nova Kakhovka, *Ukrainska Pravda*, 10 April 2022, at <https://www.pravda.com.ua/eng/news/2022/04/10/7338600/>; Russian forces disperse pro-Ukraine rally, tighten control in occupied Kherson, *Reuters*, 28 April 2022, at <https://www.reuters.com/world/europe/russian-forces-disperse-pro-ukraine-rally-tighten-control-occupied-kherson-2022-04-27/>

<sup>453</sup> An association is “an organized, independent, not-for-profit body based on the voluntary grouping of persons with a common interest, activity or purpose”. Venice Commission/OSCE-ODIHR, Study no. 706/2012, *Joint Guidelines on Freedom of Association*, CDL-AD(2014)046, 14 December 2014, para 7.



unions, religious associations, or non-governmental organizations. Individuals should be free to establish associations and should not be subject to unnecessary requirements. Associations should be allowed to operate as autonomously as possible and, again, should not be subject to unnecessary requirements or restrictions (for instance with respect to the sources of funding). Finally, the dissolution of an association should only be possible as a last resort measure, when an association “uses violence or threatens civil peace and the democratic constitutional order of the country”.<sup>454</sup>

The first mission expressed its concern with respect both to the extension of the repressive legislation against so-called foreign agents, in force in the Russian Federation, to the areas under the effective control of Russia, and to the decision by Ukraine to suspend the operation of 11 political parties, including the Opposition Platform for Life represented in the Verkhovna Rada.<sup>455</sup> The first mission also noted the intention by the two parties to the conflict to adopt measures against the two separate Ukrainian Orthodox Churches, one autocephalous, the other linked to the Moscow patriarchate.

The second mission has learnt that further steps, giving rise to concerns, have been taken in some of these areas in the period under the scrutiny in this report. On 3 May 2022, the Verkhovna Rada adopted an amendment to several legal acts relating to political parties,<sup>456</sup> which was signed into law by President Zelenskyy 11 days later.<sup>457</sup> The law prohibits political parties which justify, recognize as legitimate or deny the Russian aggression against Ukraine or which glorify or justify actions of persons taking part in this aggression against Ukraine. Based on this law, 10 political parties, including the Opposition Platform for Life, have already been dissolved and some 7 more are expected to be dissolved in the upcoming weeks.<sup>458</sup> The final decision is taken by court, more specifically the Court of Appeal in Lviv. The proceedings however are held behind closed doors and reveal, according to Ukrainian non-governmental organizations, certain other irregularities, which has produced doubts as to their compatibility with IHRL.<sup>459</sup>

The situation of the Ukrainian Orthodox Church of the Moscow Patriarchate, conversely, seems to be resolved, and secured, by the decision of this very church made on 27 May 2022, to cut ties with and declare independence from the Moscow Patriarchate<sup>460</sup> and to also, following the example set by the Orthodox Church of Ukraine, seek autocephaly.<sup>461</sup> The second mission has not received any information about the situation of the Orthodox Church of Ukraine in the territories under the temporary occupation by the Russian Federation.

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<sup>454</sup> Parliamentary Assembly, Resolution 1308 (2002), *Restrictions on Political Parties in the Council of Europe Member States*, 18 November 2002, para 11.

<sup>455</sup> Pjotr Sauer, Ukraine suspends 11 political parties with links to Russia, *The Guardian*, 30 March 2022, at <https://www.theguardian.com/world/2022/mar/20/ukraine-suspends-11-political-parties-with-links-to-russia>

<sup>456</sup> Закон України № 2243 Про внесення змін до деяких законодавчих актів України щодо заборони політичних партій, 3 травня 2022.

<sup>457</sup> Zelenskiy Signs Law Banning Pro-Russian Political Parties In Ukraine, *RFE/RL*, 14 May 2022, at <https://www.rferl.org/a/ukraine-law-bans-pro-russia-parties-zelenskiy-signs/31849737.html>

<sup>458</sup> В Україні заборонили вже 10 проросійських партій, на черзі є ще сім – Мін’юст, *Радіо Свобода*, 21 червня 2022, at <https://www.radiosvoboda.org/a/news-ukraina-zaborona-10-prorosiiski-partii/31908143.html>

<sup>459</sup> Галина Терещук, Заборона проросійських партій: безпека країни чи імітація бурхливої діяльності?, *Радіо Свобода*, 22 червня 2022, at <https://www.radiosvoboda.org/a/zaborona-rosiya-partiyyi-viynakupatsiya/31909540.html>

<sup>460</sup> Moscow-led Ukrainian Orthodox Church breaks ties with Russia, *Reuters*, 28 May 2022, at <https://www.reuters.com/world/europe/moscow-led-ukrainian-orthodox-church-breaks-ties-with-russia-2022-05-28/>

<sup>461</sup> See also Александр Занемонец, Без русского мира. Что значит независимость Украинской церкви от Московского патриархата, *Carnegie Endowment for International Peace*, 31 May 2022, at <https://carnegieendowment.org/eurasiainsight/87214>

The conflict in Ukraine has had an impact on the right to freedom of **movement**, recognized by Article 12 of the ICCPR and Article 2 of Protocol No 4 to the ECHR. Under these provisions, individuals have the right to freely move and have residence within a country, as well as the right to leave their country. Since the outbreak of the conflict, the right to freedom of movement has been, as noted by the first mission, seriously impeded, both due to the risks stemming from the travel in certain parts of Ukraine and the legal restrictions imposed on free movement in the territories under the temporary occupation as well as by Ukraine. The former restrictions concern *inter alia* the travel from newly occupied territories, such as the Kherson region, to other regions. During the visit to Ukraine, the mission was told by local inhabitants of the Kherson region that when leaving the region, it is necessary to pass through as many as 60 check points, which often involve detailed body and car inspections.<sup>462</sup> The latter restrictions, imposed by Ukraine – having derogated from the ICCPR and ECHR in this respect – encompass curfews declared in various areas across the country<sup>463</sup> or the prohibition for men in the military age (18-60 years) to leave Ukraine.<sup>464</sup> Abductions, enforced disappearances and the deportations of Ukrainian civilians to Russia or to the territories under the temporary occupation by Russia, which are dealt with in Section V.A.3, also interfere with the right to freedom of movement.

The conflict in Ukraine has had a profound impact on the right to **private and family life**, as granted by Article 23 of the ICCPR and Article 8 of the ECHR of many, if not all inhabitants of Ukraine. People have lost their relatives, friends and colleagues or they have been at least separated from them.<sup>465</sup> Sometimes, they do not have any information about their loved ones for weeks or even months. Furthermore, over 12 million Ukrainians have left their homes and have relocated within the country or even outside its borders. The privacy of individuals has been often disrespected. On the one hand, people go through various security checks, which may involve detailed body inspections. The dire situation in the so-called filtration centres and in other institutions of this type has already been mentioned several times, as has the lack of respect for local inhabitants by the Russian forces exercising control over certain areas. On the other hand, people are also deprived of their privacy when on move or in shelters, some of which do not even allow for the separation of men and women. The second mission recalls that there is a positive obligation for States to try to minimize the impact of an armed conflict on private and family life, but it also shares the view expressed in the first report that the content of this obligation must be interpreted in light of the severe emergency that Ukraine faces.

Another right the enjoyment of which has been heavily affected by the current conflict, is the right to **property**. Absent from the ICCPR but present in Article 1 of the Additional Protocol to the ECHR and in the OSCE commitments (Bonn 1990, Copenhagen 1990, Paris 1990), the right to property grants everyone the right to own property and use his or her possessions. As rightly stated by the first mission, destruction of property stemming from acts of war which are lawful under IHL do not violate the right to property. Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly,

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<sup>462</sup> Interviews with the inhabitants of the Kherson region, on file with the authors of the report.

<sup>463</sup> See, for instance, Oleksiy Sorokin, Anna Myroniuk, With mined beaches, extended curfew, Ukraine's main tourist hub Odesa is ready to fight, *Kyiv Independent*, 10 May 2022, at <https://kyivindependent.com/national/with-mined-beaches-extended-curfew-ukraines-main-tourist-hub-odesa-is-ready-to-fight>; or Denys Karlovskiy, Kyiv Oblast to strengthen control over curfew compliance, *Ukrainska Pravda*, 1 June 2022, at <https://www.pravda.com.ua/eng/news/2022/06/1/7349965/>

<sup>464</sup> Asha C. Gilbert, Reports: Ukraine bans all male citizens ages 18 to 60 from leaving the country, *USA Today*, 25 February 2022, at <https://eu.usatoday.com/story/news/world/2022/02/25/russia-invasion-ukraine-bans-male-citizens-leaving/6936471001/>

<sup>465</sup> Wyre Davies, The family separated by war in both life and death, *BBC*, 20 June 2022, at <https://www.bbc.com/news/world-europe-61866727>

qualifies however not only as a violation of IHL and a war crime<sup>466</sup> but also as a violation of the right to property.

There is credible evidence confirming that the current conflict has been the scene of many instances of such extensive destruction and appropriation of (private and public) property. The situation has been particularly serious in the areas under the temporary occupation of the Russian Federation, where numerous cases of pillage, and confiscation of private property without financial compensation and organized robbery of basic commodities, such as grain, have been documented.<sup>467</sup> It seems from the reports that some of these acts of pillage and looting are carried out by individual members of the Russian armed forces, making use of the lawless situation in the newly occupied territories, to personally enrich themselves, with the knowledge that such behaviour will most likely be tolerated, if not encouraged, by their superiors. Other acts, however, such as the export of the Ukrainian grain from the country, reveal signs of an organized activity. All these acts amount to violations of IHL and IHRL and must be properly investigated, those responsible for them brought to justice and those having suffered property losses or harm compensated for.

The first mission informed about the adoption by Ukraine, on 3 March 2022, of the *Law on the Basic Principles of Forcible Seizure of Objects of Property Rights of the Russian Federation and its Residents in Ukraine*.<sup>468</sup> This law entitles Ukraine to confiscate, without compensation, movable and immovable property, funds, bank deposits, securities, corporate rights, and other property located in Ukraine and owned directly or through affiliates by Russia. On 12 May 2022, the first decision was adopted under this law, directed against several daughter branches of Russian banks operating on the territory of Ukraine.<sup>469</sup>

Moreover, on 12 May 2022, the Verkhovna Rada of Ukraine adopted the *Law on Amendments to Certain Legislative Acts on Improving the Effectiveness of Sanctions Related to the Assets of Individuals*.<sup>470</sup> This law makes it possible to the Ukrainian authorities to confiscate, without compensation, assets of natural or legal persons who in one way or another, including through propaganda, support the aggression against Ukraine. The assets confiscated under this law should be used for the compensation of the war damage.<sup>471</sup> Since the confiscation of Russian or Russia-related property is now taking place in many countries all over the world, the new Ukrainian legislation has not given rise to critical comments. The second mission nonetheless stresses that any confiscation of property, especially when no compensation is provided, may only take place if the clear conditions set in the legal framework are met and upon the decision of a competent judicial body.

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<sup>466</sup> See Article 8(2)(a)(iv) of the Rome Statute of the ICC.

<sup>467</sup> Hrihoriy Pyrlik, 'They Have To Steal, Too?' Ukrainian Family Recognizes Their Possessions In Photo Of Russian Looting, *RFE/RL*, 4 June 2022, at <https://www.rferl.org/a/ukraine-russian-looting-popasna-korenyuk/31883131.html>; Ship recently docked in occupied Berdiansk's port believed to try to take out stolen Ukrainian grain, *UkrInform*, 25 June 2022, at <https://www.ukrinform.net/rubric-economy/3515137-ship-recently-docked-in-occupied-berdiansks-port-believed-to-try-to-take-out-stolen-ukrainian-grain.html>

<sup>468</sup> *Закон України № 2116-IX Про основні засади примусового вилучення в Україні об'єктів права власності Російської Федерації та її резидентів*, 3 березня 2022. The Law was amended on 1 April 2022, where its application was extended to natural and legal persons, regardless of nationality, with a close link to Russia.

<sup>469</sup> Those are *Joint-Stock Commercial Industrial and Investment Bank* owned by the Russian State Development Corporation VEB.RF, and *International Reserve Bank* owned by Sberbank of Russia. Who can lose their property rights in Ukraine, *Glimstedt*, 30 May 2022, at <https://www.glimstedt.lt/en/news/who-can-lose-their-property-rights-in-ukraine/>

<sup>470</sup> *Закон України № 7194 Про внесення змін до деяких законів України щодо підвищення ефективності санкцій, пов'язаних з активами окремих осіб*, 12 травня 2022.

<sup>471</sup> See also Рада ухвалила закон, який дозволяє конфіскувати майно тих, хто підтримує напад Росії, *24 Канал*, 12 травня 2022, at [https://24tv.ua/rada-uhvalila-zakon-yakiy-dozvolyaє-konfiskuvati-mayno-tih-hto\\_n1978302](https://24tv.ua/rada-uhvalila-zakon-yakiy-dozvolyaє-konfiskuvati-mayno-tih-hto_n1978302)

## B. IMPACT OF THE CONFLICT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

The first mission concluded that the conflict in Ukraine had had a profound impact on the enjoyment of economic, social, and cultural (ESC) rights. It stated that “*by causing a high level of destruction and forcing millions of persons to leave their homes, the conflict has interfered with the provision of services which are vital for the normal functioning of a society, such as the educational, healthcare or social security systems*”.<sup>472</sup> It further stated that the conflict had threatened the food and water security and had left long-lasting marks on the state of the environment. It warned that the harm stemming from all these effects of the conflict may be as serious as the harm produced by the actual fighting. The second mission notes that the evidence collected for the period under scrutiny in this report (1 April – 25 June 2022) fully corroborates these findings. It also stresses that some of the violations of ESC rights may at the same time constitute war crimes or crimes against humanity (e.g., extensive destruction of environment or starvation of local population).

Unlike civil and political rights, ESC rights may not be derogated from in times of emergency. Yet, this is compensated by the fact that they are subject to a progressive realization, dependent on the available resources. How progressive the realization can be and what the available resources are is determined by the circumstances and there is no doubt that an international armed conflict may slow the pace of the realization and temporarily divert some resources towards other public needs. Yet, even in an emergency, States must do their best, to the extent possible, to work towards the progressive realization of ESC rights, they must guarantee the minimum content of the core obligations and they must not discriminate in the access to these rights. Measures aimed at enhancing the position of individuals belonging to vulnerable groups, may be compatible with the principle of non-discrimination. The ESC rights also give rise to various positive obligations (to protect and to fulfil). The content of these obligations is however largely context-specific and is heavily impacted by the situation of an armed conflict.

### 1. RIGHT TO EDUCATION

The right to education is enshrined in Article 13 of the ICESCR, Article 2 of the Additional Protocol to the ECHR,<sup>473</sup> several treaties applicable to certain categories of individuals<sup>474</sup> as well as in the OSCE Commitments (Vienna 1989, Copenhagen 1990). The importance of securing the right to education even in times of armed conflict is explicitly acknowledged in UN Security Council Resolution 2601 adopted in 2021,<sup>475</sup> which *inter alia* condemns the military use of schools and attacks on schools in violation of IHL and calls upon all States to “*safeguard, protect, respect, and promote the right to education, including in armed conflict*” (para 3).

The second mission regrets to note that the conflict continues to have a negative impact on the right to education. This negative impact manifests itself in several different ways. First, schools, universities and other educational institutions are used for military purposes and/or become, deliberately or incidentally, object of *military attacks*. The use of educational institutions for military purposes has been confirmed by the Head of UN Human Rights Monitoring Mission in Ukraine (HRMMU) Matilda Bogner, who on 10 May 2022 stated that the HRMMU has “*received information that in many areas armed forces – from both sides – have been using*

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<sup>472</sup> Wolfgang Benedek, Veronika Bílková, Marco Sassòli, *Report on Violations of International Humanitarian And Human Rights Law, War Crimes And Crimes Against Humanity Committed In Ukraine Since 24 February 2022*, OSCE, Vienna, 13 April 2022, p. 54.

<sup>473</sup> This provision can be derogated from and Ukraine indeed did so after the outbreak of the conflict.

<sup>474</sup> See Article 10 of the CEDAW, Articles 28 and 29 of the CRC and Article 24 of the CRPD.

<sup>475</sup> UN Doc. S/RES/2601(2021), *The Children and armed conflict*, 29 October 2021.

*schools as their bases and have placed heavy military equipment in the vicinity of schools*".<sup>476</sup> While such use of educational institutions is not completely prohibited, it should be avoided whenever possible, because it risks compromising the safety of such institutions and interrupt educational processes. The second mission also recalls that "it is *"unlawful to use a school simultaneously as an armed stronghold and as an educational center"*".<sup>477</sup>

Concerning the destruction of educational institutions, according to a specially dedicated site established by the Ukrainian Ministry of Education and Science of Ukraine, by 25 June 2022, 2061 such institutions had suffered bombing and shelling and 212 of them had been destroyed completely.<sup>478</sup> Some of the institutions which have been heavily damaged or totally destroyed since the outbreak of the conflict are the Secondary School № 21 in Chernigiv; the Secondary School № 118 in Kharkiv, the Specialized School № 75 in Kharkiv, the Specialized School № 17 in Kharkiv, the Evening School № 1 in Izyum, the Secondary School №96 in Kharkiv, the Secondary School in Gorokhovatka, the Specialized School № 134 in Kharkiv, the Secondary School № 35 in Kharkiv, the Kindergarten № 72 in Chernigiv, the Professional Lyceum in Vasytkiv or V. N. Karazin Kharkiv National University in Kharkiv.<sup>479</sup> The mission recalls that the destruction of educational institutions can only be compatible with international standards if either these institutions are used for military purposes or they are incidentally hit in actions carried out in full respect of the principles of distinction, proportionality and precautions. The failure to meet these criteria amounts to a violation of IHL and, potentially, a war crime.

Secondly, the conflict has produced serious *learning losses*. In the first weeks of the conflict, the education was suspended. While resumed since mid-March 2022 in some 86% of schools, it is still mostly carried out via online/distance modalities, and it is not accessible to all children and students. The extensive displacement has caused problems, equally as the conditions in some temporary shelters (i.e., lack of the access to electricity or to internet). According to the report produced by the World Bank, some 665,000 students (16% of total number of enrolled students) and over 25,000 educators (6% of total educators in the country) have left Ukraine and become refugees.<sup>480</sup> While some of them continue to attend or provide classes in Ukrainian (for instance through the All-Ukrainian Online School system<sup>481</sup>), other become integrated into the educational systems of other countries or lose access to education/teaching completely. The World Bank notes that *"the long-term effect could be substantial, with future earnings losses of more than 10% a year per student"*.<sup>482</sup>

Thirdly, the situation is particularly complicated in the *territories* under the effective control of the Russian Federation. According to the data collected by the Ukrainian think tank Cedos, three main alternative models are applied in such territories.<sup>483</sup> In some regions, educational institutions continue working remotely according to Ukrainian standards and curricula. In other regions, such institutions become under the pressure of the occupational authorities which try

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<sup>476</sup> Plight of civilians in Ukraine, *OHCHR*, 10 May 2022, at <https://www.ohchr.org/en/press-briefing-notes/2022/05/plight-civilians-ukraine>

<sup>477</sup> Sabotaged Schooling: Naxalite Attacks and Police Occupation of Schools in India's Bihar and Jharkhand States, *Human Rights Watch*, 2009, p. 53.

<sup>478</sup> See at <https://saveschools.in.ua/en/> The figures from this site are taken over by UNESCO, see Damages and Victims, *UNESCO*, 22 June 2022, at <https://www.unesco.org/en/ukraine-war/damages-and-victims#educational-institutions>.

<sup>479</sup> *Ibidem*.

<sup>480</sup> Education: Impact of the War in Ukraine, *World Bank*, May 2022, at <https://reliefweb.int/report/ukraine/education-impact-war-ukraine-may-2022>

<sup>481</sup> See the website here: <https://lms.e-school.net.ua/about>

<sup>482</sup> Education: Impact of the War in Ukraine, *World Bank*, May 2022, at <https://reliefweb.int/report/ukraine/education-impact-war-ukraine-may-2022>

<sup>483</sup> Education in the occupied territories of Ukraine (February 24 – April 30, 2022), *Cedos*, 2 May 2022, at <https://cedos.org.ua/en/researches/education-in-the-occupied-territories-of-ukraine-february-24-april-24-2022/>

to impose the Russian standards and curricula on them. Finally, in some regions, the educational process has been suspended due to active hostilities. The second model, reported for instance from the Kherson region, is particularly problematic. Teachers are under pressure to abandon the original curriculum and become a tool of Russian propaganda. If they do not yield to this pressure, they risk measures of retaliation from the occupying forces.<sup>484</sup> If they yield to it, they risk being criminally prosecuted by Ukrainian courts, because since the inclusion into the Criminal Code of Ukraine of an offence of collaborative activities (Article 111.1), engaging in propaganda in education institutions with the goal of assisting the Russian army and for actions aimed at introducing the education standards of the aggressor State in education institutions entails criminal responsibility.<sup>485</sup> Reports from regions suggest that most teachers prefer to face the first risk.<sup>486</sup>

The attempts to turn schools situated in the territories under the effective control of the Russian Federation into places of propaganda were documented already by the first mission. The second mission regrets to state that these attempts have become even stronger over the past months. Cedos reports that new subjects, such as Russian language and literature, Social studies or History, are being introduced in schools in the temporarily occupied territories, and they are taught according to Russian textbooks and in Russian. When the first school in Mariupol resumed work, it began classes with the Russian national anthem.<sup>487</sup> On 26 May 2022, Mariupol deputy mayor Petro Andrushenko reported on his Telegram account that starting from the fall semester, the education in all city schools will be entirely in Russian and will feature the standard Moscow-approved curriculum.<sup>488</sup>

## 2. RIGHT TO HEALTH

The right to health is recognized in Article 12 of the ICESCR, Article 11 of the RESC, specific human rights treaties<sup>489</sup> the OSCE Commitments (Vienna 1989). It entails the freedom to control one's health and body and the entitlement to have access to a system of health protection providing equal opportunity to individuals to enjoy the highest attainable level of health.<sup>490</sup>

According to the World Health Organization (WHO), Ukraine's *health system* is under severe pressure.<sup>491</sup> This pressure comes from several sources. First, similar to educational institutions, health institutions are used for medical purposes and/or become object of military attacks. As of 25 June 2022 the WHO had reported 332 verified attacks on health care in the country, killing 76 people and injuring 59.<sup>492</sup> The WHO reiterated that the conflict had caused "a massive

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<sup>484</sup> Lauren Said-Moorhouse, Oleksandra Ochman, This is what the 'Russification' of Ukraine's education system looks like in occupied areas, *CNN*, 16 May 2022, at <https://edition.cnn.com/2022/05/16/europe/russia-ukraine-education-intl-cmd/index.html>

<sup>485</sup> Закон України № 2108 Про внесення змін до деяких законодавчих актів України щодо встановлення кримінальної відповідальності за колабораційну діяльність, 3 березня 2022.

<sup>486</sup> Pavlo Krivosheyev, Ukrainian Teachers Balk As Moscow Seeks To Impose 'Russian Standards' In Occupied Territories, *RFE/RL*, 22 May 2022, at <https://www.rferl.org/a/ukraine-kherson-education-russian-occupation/31862426.html>

<sup>487</sup> Education in the occupied territories of Ukraine (February 24 – April 30, 2022), *Cedos*, 2 May 2022, at <https://cedos.org.ua/en/researches/education-in-the-occupied-territories-of-ukraine-february-24-april-24-2022/>

<sup>488</sup> Мариуполь. На зараз. Освіта, Telegram (Андріющенко Time), 26 May 2022, at <https://t.me/andriyshTime/1072>

<sup>489</sup> Article 12 of CEDAW, Article 24 of CRC and Article 25 of CRPD

<sup>490</sup> UN Doc. E/CN.4/2000/4, *General Comment No. 14: The right to the highest attainable standard of health*, 11 August 2000, para 8.

<sup>491</sup> One hundred days of war has put Ukraine's health system under severe pressure, *WHO*, 3 June 2022, at <https://www.who.int/news/item/03-06-2022-one-hundred-days-of-war-has-put-ukraine-s-health-system-under-severe-pressure>

<sup>492</sup> Surveillance System for Attacks on Health Care (SSA), *WHO*, 25 June 2022, at <https://extranet.who.int/ssa/Index.aspx>;

increase in psychological harm and distress”<sup>493</sup> and stressed that the Russian Federation’s aggression in Ukraine is “causing a serious impediment to the health of the population of Ukraine, as well as having regional and wider than regional health impacts”.<sup>494</sup> The WHO condemned attacks on health care and urged the Russian Federation to “immediately cease any attacks on hospitals and other healthcare facilities”.<sup>495</sup>

Secondly, the conflict has brought about new, hostilities-unrelated **health risks**. According to the WHO “the risk of disease outbreaks, such as cholera, measles, diphtheria or COVID-19, has been exacerbated due to lack of access to water, sanitation and hygiene, crowded conditions in bomb shelters and collective centres, and suboptimal coverage for routine and COVID-19 immunizations”.<sup>496</sup> In Mariupol, occupied by the Russian Federation, there is a risk of a major cholera outbreak, due to problems with water supply, surface burials and mixing sewage water with drinking water.<sup>497</sup> The mass graves in the occupied territories and decomposition of bodies can also pose a health threat.<sup>498</sup> There is also an increased risk of “physical injury, psychological distress and long-term mental health problems, unwanted pregnancy, STIs, and negative coping strategies such as addiction,”<sup>499</sup> whereby the access to some medical services such as psychological and psychiatric support is severely limited.<sup>500</sup>

Thirdly, there have been reports of Russia’s blocking **supplies of medicine** to the temporarily occupied areas.<sup>501</sup> Also, during the visit to Kyiv, the mission was informed by the interlocutors from certain temporarily occupied territories, such as the Kherson region, that medicine became unavailable after the arrival of the Russian armed forces or, if available, was sold at exorbitant prices.<sup>502</sup> The second mission recalls that under the IHL the occupying power “has the duty of ensuring and maintaining, with the cooperation of national and local authorities, the medical and hospital establishments and services, public health and hygiene in the occupied territory, with particular reference to the adoption and application of the prophylactic and preventive measures necessary to combat the spread of contagious diseases and epidemics”.<sup>503</sup>

### 3. RIGHT TO SOCIAL SECURITY

The right to social security, recognized in Articles 9 and 10 of the ICESCR, Article 12 of the RESC, specific treaties<sup>504</sup> and the OSCE Commitments (Helsinki 1975, Vienna 1989, Helsinki 1992), “encompasses the right to access and maintain benefits /.../ without discrimination in order to secure protection, inter alia, from (a) lack of work-related income caused by sickness, disability, maternity, employment injury, unemployment, old age, or death of a family member;

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<sup>493</sup> One hundred days of war has put Ukraine’s health system under severe pressure, WHO, 3 June 2022, at <https://www.who.int/news/item/03-06-2022-one-hundred-days-of-war-has-put-ukraine-s-health-system-under-severe-pressure>

<sup>494</sup> WHO Resolution *Health emergency in Ukraine and refugee receiving and hosting countries, stemming from the Russian Federation’s aggression*, A75/A/CONF./6, 23 May 2022.

<sup>495</sup> *Ibidem*.

<sup>496</sup> WHO, *Emergency in Ukraine*, External Situation Report #14 (2 June 2022).

<sup>497</sup> Twitter post by OCHA, 8 June 2022, at [https://twitter.com/OCHA\\_Ukraine/status/1534549070118850561](https://twitter.com/OCHA_Ukraine/status/1534549070118850561)

<sup>498</sup> Victoria Gubareva, *Battered Mariupol Faces Attack on a New Front*, *Transitions*, 16 June 2022, at <https://tol.org/client/article/battered-mariupol-faces-attack-on-a-new-front.html>

<sup>499</sup> WHO, *Emergency in Ukraine*, External Situation Report #14 (2 June 2022).

<sup>500</sup> *Ibidem*.

<sup>501</sup> *Terrorism against civilians: Russia blocking supply of medicines to occupied territories*, *UkrinForm*, 11 June 2022, at <https://www.ukrinform.net/rubric-society/3504743-terrorism-against-civilians-russia-blocking-supply-of-medicines-to-occupied-territories.html>; *Russian-occupied medical facilities lack drugs: Russians block supplies from Ukraine*, *AAAM*, 25 May 2022, at <https://aam.com.ua/en/2022/05/25/russian-occupied-medical-facilities-lack-drugs/>

<sup>502</sup> Interviews with the inhabitants of the Kherson region, on file with the authors of the report.

<sup>503</sup> Article 56 of GC IV.

<sup>504</sup> Article 26 of the CRC, Article 11 of the CEDAW and Article 28 of the CRPD.

(b) unaffordable access to health care; (c) insufficient family support, particularly for children and adult dependents”.<sup>505</sup>

The conflict in Ukraine, especially due to the massive displacement of the population, has made the normal operation of the *social security sector* very difficult. Prior to the conflict, almost 25% of the government expenditure was spent on social security, with old age pensions accounting for half of this figure. Many people in Ukraine are thus fully dependent on social security and have no alternative source of income. During the COVID-19 crisis, in autumn 2021, Ukraine established a single list of all recipients and an online system of applications. Yet, large portions of the population, such as older persons, due to the lower level of digital literacy, continue to collect benefits through post offices or banks.

There is scarcity of information, either in the media or in official statements by relevant ministries, about the conditions of the adult charges of facilities providing residential social services and assisted living, palliative/hospice care, as well as other institutional care facilities (facilities for labour veterans, for people with disabilities, elderly care facilities, etc.). As of 11 April 2022, a total of 2,807 adult residents of around-the-clock social care facilities were evacuated due to a threat to their lives and health. These were residents of elderly care facilities, residential care facilities for people with disabilities, neuropsychiatric facilities from nine regions (particularly from Donetsk, Kharkiv, Luhansk, Zhytomyr, Kyiv regions and the city of Kyiv). Most residents were relocated to appropriate facilities in other regions without active fighting, and about two hundred people were relocated to appropriate facilities abroad.<sup>506</sup>

Despite the official claims by Russian leadership that the Russian army only conducts military actions against military infrastructure facilities, according to some reports, the targets of *bombing and shelling* in the first two months of the full-scale war were often specifically social infrastructure facilities, mainly social care institutions.<sup>507</sup> Moreover Russian troops allegedly took residents of these facilities hostage and forcibly evacuated them to occupied territories. Moreover, the Atynivka Neuropsychiatric Residential Facility (Sumy Region) was shelled by Russian forces in late April.<sup>508</sup> Due to shelling and bombing, many institutional care facilities were cut off from power, heating, water supply and communication, and their windows and doors were damaged, making them unfit for residence and service provision and creating a need for urgent evacuation of their residents.<sup>509</sup> Additionally, in a number of localities, active fighting led to breaking communication lines, which made it impossible to coordinate with central government bodies or local self-government bodies in neighbouring regions, and made it more difficult to ensure a safe route.

The social security system is in operation in most regions of Ukraine. In addition, new social benefits have been put in place since the outbreak of the conflict to the benefit of victims of the conflict, especially those who have been displaced due to the conflict (for more detail, see Section V.C.8). As previously, the inhabitants of the temporarily occupied territories, especially older persons and persons with disabilities, experience difficulties having access to their pensions and other social benefits, though some measures have been adopted to improve the situation (for more detail, see Sections V.C.3 and V.C.4).

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<sup>505</sup> UN Doc. E/C.12/GC/19, *General Comment No 19. The right to social security*, 4 February 2008, para 2.

<sup>506</sup> Social security and war in Ukraine (February 24 — April 30, 2022), *Cedos*, 17 May 2022, at <https://cedos.org.ua/en/researches/social-security-and-war-in-ukraine-february-24-april-30-2022/>

<sup>507</sup> *Ibidem*.

<sup>508</sup> Ігор Стрельцов, Андрій Крамченков, Військові РФ обстріляли психоневрологічний інтернат на Сумщині, *Suspilne*, 26 квітня 202, at <https://suspilne.media/232643-vijskovi-rf-obstrilali-psihonevrologicnij-internat-na-sumsini/>

<sup>509</sup> Social security and war in Ukraine (February 24 — April 30, 2022), *Cedos*, 17 May 2022, at <https://cedos.org.ua/en/researches/social-security-and-war-in-ukraine-february-24-april-30-2022/>



#### 4. RIGHT TO FOOD AND WATER

The right to food is recognized in Article 11 of the ICESCR and it “also includes the right to have access to safe drinking water”.<sup>510</sup> The first report noted that there was a risk of food and water *shortage* stemming from the destruction of agricultural infrastructure by military actions, contamination of soil and water or inaccessibility of fertilizers. In the period under the scrutiny in the second report (1 April – 25 June 2022), this risk has become even more acute. On 15 April 2022, UNICEF reported that 1.4 million people in Ukraine were without running water, whereas additional 4.6 million people across Ukraine were without adequate access to safe water as a result of damages to the water network and power cuts.<sup>511</sup> In total “over 6 million people in Ukraine are struggling every day to have drinking water, one of the most essential human needs”.<sup>512</sup> The situation with the access to water is particularly critical in besieged cities such as Mariupol, where over 100,000 people were reported to be without access to drinking water during the Russian siege of the city.<sup>513</sup> There have also been reports of the Russian forces deliberately targeting water infrastructure, such as pipes, dams, sewage treatment plants and pumping stations, across the entire country.<sup>514</sup>

The inhabitants of some parts of the country also face the risk of *starvation*. It is so, first, due to the destruction of agricultural equipment, shelling of farms and planting of landmines in the soil by the Russian armed forces.<sup>515</sup> Moreover, in some temporarily occupied territories, such as the Kherson region, food, and especially wheat is confiscated by the Russian armed forces and exported to other regions (Crimea) or countries (Turkey), leaving the local inhabitants with limited means of subsistence.<sup>516</sup> During the interviews made in Kyiv, the mission was informed that prices had increased several times in such regions and that local inhabitants struggle to make the ends meet.<sup>517</sup> Again, the situation is particularly critical in besieged cities such as Mariupol, where people, according to the executive director of the UN World Food Programme David Beasley, were being “starved to death”.<sup>518</sup> Although the second mission has not been able to conclude whether starvation of the civilian population has been used as a deliberate strategy by the Russian Federation, there are signs – denial of access for humanitarian aid, blocking of humanitarian corridors etc. – that it might indeed be so. The second mission recalls that deliberate starvation of the civilian population constitutes violations of IHL and of IHRL as well as a war crime and a crime against humanity. Since Ukraine has in its recent history made very painful experience with starvation during Holodomor in the 1930s, any allegations of this act have to be considered very diligently.

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<sup>510</sup> See UN Docs E/C.12/2002/11, *General Comment No. 15. The Right to Water (Arts. 11 and 12 of the Covenant)*, 20 January 2003; A/RES/64/292, *The human right to water and sanitation*, 3 August 2010.

<sup>511</sup> 1.4 million people without running water across war-affected eastern Ukraine, *UNICEF*, 15 April 2022, at <https://www.unicef.org/press-releases/14-million-people-without-running-water-across-war-affected-eastern-ukraine>

<sup>512</sup> *Ibidem*.

<sup>513</sup> Mayor: Over 100,000 residents remaining in occupied Mariupol don't have access to drinking water, *Kyiv Independent*, 20 June 2022, at <https://kyivindependent.com/uncategorized/mayor-over-100000-residents-remaining-in-occupied-mariupol-dont-have-access-to-drinking-water>

<sup>514</sup> Antonia Zimmermann, Russia's war on water in Ukraine, *Politico*, 25 May 2022, at <https://www.politico.eu/article/russias-war-on-water-in-ukraine/>

<sup>515</sup> Eddy Wax, The starvation of a nation: Putin uses hunger as a weapon in Ukraine, *Politico*, 1 April 2022, at <https://www.politico.eu/article/the-starvation-of-a-nation-how-putin-is-using-hunger-as-a-weapon-in-ukraine/>

<sup>516</sup> Russian-controlled Kherson region in Ukraine starts grain exports to Russia - TASS, *Reuters*, 20 May 2022, at <https://www.reuters.com/article/ukraine-crisis-russia-kherson-grain-idAFKBN2NG0CE>

<sup>517</sup> Interviews with the inhabitants of the Kherson region, on file with the authors of the report.

<sup>518</sup> Adam Schreck, The AP Interview: UN food chief says Mariupol is starving, *AP*, April 2022, at <https://apnews.com/article/russia-ukraine-kyiv-united-nations-david-beasley-europe-c366ee40872be664c8af3945da42ef02>

## 5. RIGHT TO A HEALTHY ENVIRONMENT

The right to a healthy environment stems from general human rights provisions<sup>519</sup> and the OSCE Commitments (Helsinki 1992, Istanbul 1999, Astana 2010). The first mission voiced concern as to the potential environmental impact of the conflict, especially in the Eastern part of Ukraine where active hostilities had been going on for years already. The second mission has also come across worrying evidence suggesting that the conflict has seriously affected the state of Ukrainian environment. The situation is made worse by the fact that at the moment, ecological concerns are treated as secondary.

According to the online map-based platform Ecodozor (established by Zoï Environment Network and supported by the OSCE Project Co-ordinator in Ukraine<sup>520</sup>), there have been many hazardous industrial incidents recorded in Ukraine, whereby 92 industrial facilities in the high or very high environmental risk category were affected.<sup>521</sup> They include *inter alia* Chernobyl and Zaporizhzhia nuclear power plants, the Kakhovka and Kyiv hydropower plants, the Avdiivka Coke and Chemical Plant the Toretsk Ferroalloy Plant, metallurgical plants Azovstal and Illich in Mariupol as well as numerous sea ports, oil storage facilities and coal mines.<sup>522</sup> The environmental situation in some occupied territories is worrying due to air, soil and water pollution and deterioration of the sanitary and epidemiological situations.<sup>523</sup> Satellite images show that large areas in Eastern and Southern Ukraine are engulfed in wildfires sparked by explosions. The soil has become contaminated with heavy metals and other potentially dangerous and poisonous substances leaking from missiles, military equipment and spent ammunition. Ground waters are polluted by spilled fuel.<sup>524</sup> Reportedly, in Mariupol sewage and storm water runoff goes to the sea without any treatment.<sup>525</sup> Several zoo staff members have been killed, together with the animals in their care, when zoos have been under shelling.<sup>526</sup> The second mission thus concludes that the environment is, indeed, a “*silent victim*” of the conflict.<sup>527</sup>

### C. IMPACT OF THE CONFLICT ON VULNERABLE GROUPS

The first mission established that while the conflict in Ukraine had affected the population of Ukraine as a whole, it had had a specific and often particularly heavy impact on individuals belonging to certain vulnerable groups. These groups include, but are not limited to, women, children, older persons, persons with disabilities, national and ethnic minorities, LGBTQ people or watchdogs (human rights defenders and other activists). Furthermore, the conflict itself has

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<sup>519</sup> See UN Doc. A/HRC/25/53, *Report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*, John H. Knox, *Mapping report*, 30 December 2013, Section IV.

<sup>520</sup> The platform is available at <https://www.ecodozor.org/>

<sup>521</sup> OSCE-supported platform highlights environmental risks stemming from war in Ukraine, *OSCE*, 16 June 2022, at <https://www.osce.org/project-coordinator-in-ukraine/520442>

<sup>522</sup> Environmental Risks from Damage to Industry and Infrastructure, *Zoinet*, June 2022, at <https://zoinet.org/wp-content/uploads/2022/06/Risks.pdf>

<sup>523</sup> Victoria Gubareva, Battered Mariupol Faces Attack on a New Front, *Transitions*, 16 June 2022, at <https://tol.org/client/article/battered-mariupol-faces-attack-on-a-new-front.html>

<sup>524</sup> Ivana Kottasová, Ukraine's natural environment is another casualty of war. The damage could be felt for decades, *CNN*, 22 May 2022, at <https://edition.cnn.com/2022/05/22/europe/ukraine-russia-war-environment-intl-cmd/index.html>

<sup>525</sup> Victoria Gubareva, Battered Mariupol Faces Attack on a New Front, *Transitions*, 16 June 2022, at <https://tol.org/client/article/battered-mariupol-faces-attack-on-a-new-front.html>

<sup>526</sup> Josh Layton, Ukrainian zoo says monkeys and big cats among nearly 100 animals killed since invasion, *Metro*, 11 April 2022, at <https://metro.co.uk/2022/04/11/almost-100-animals-murdered-by-russia-forces-at-bombed-ukrainian-zoo-16443688/>

<sup>527</sup> Emily Anthes, A ‘Silent Victim’: How Nature Becomes a Casualty of War, *New York Times*, 13 April 2022, at <https://www.nytimes.com/2022/04/13/science/war-environmental-impact-ukraine.html>

produced new vulnerable groups, especially internally displaced persons (IDPs) and refugees. In accordance with the principle of non-discrimination,<sup>528</sup> individuals belonging to vulnerable groups must not be treated less favourably than other people. To ensure that this is so, States have to take the special needs of those individuals into account. This rule remains in place in all times and can never be suspended. It is important to make sure that those who are vulnerable even in times of normalcy are not made even more vulnerable, or are not even left behind, in times of crisis, such as that produced by the current conflict in Ukraine.

## 1. WOMEN

The first category of individuals who have been particularly affected by the current conflict in Ukraine encompasses women. Protected by general human rights instruments as well as by the special UN *Convention on the Elimination of all Forms of Discrimination Against Women* (CEDAW), to which both Ukraine and Russia are States parties, women must not be subject to any form of negative discrimination. There is an increased need to protect women and girls in times of armed conflicts, as explicitly recognized in the UN Security Council Resolution 1325 on women and peace and security,<sup>529</sup> and especially to “*take special measures to protect women and girls from gender-based violence, particularly rape and other forms of sexual abuse, and all other forms of violence in situations of armed conflict*” (para 10). The special vulnerability of women in conflict and post-conflict situations and their exposure to a higher risk of gender-based sexual violence has also been repeatedly recognized in the OSCE commitments (Bucharest 2001, Ljubljana 2005).

The first mission noted that the outbreak of the conflict had indeed brought about an increase in *gender-based violence*. The second mission regrets to confirm that this trend has continued to manifest itself during the period under scrutiny in this report (1 April – 25 June 2022). Reports from and about women being raped or otherwise sexually abused by members of the Russian armed forces, especially in the newly occupied territories, have become abundant.<sup>530</sup> As of 3 June 2022, the OHCHR had received reports of 124 alleged acts of conflict-related sexual violence across Ukraine, mostly against women and girls.<sup>531</sup> It is generally believed that the actual number is much higher and that many incidents of rape and sexual-based violence simply fail to be reported. In a hearing held at the UN Security Council on early June 2022, Natalia Karbowska, Co-Founder and Director of Strategic Development for the Ukrainian Women’s Fund, noted that for every girl or woman who is willing to tell her story, there are many others who will be silent for years. She also suggested that “*the Russian Federation is using sexual violence and rape as instruments of terror to control civilians*”.<sup>532</sup>

One of the victims of sexual violence was a 23-year-old woman Karina Yershova from Bucha. During the Russian occupation of the town, she was abducted, raped, tortured and finally shot dead.<sup>533</sup> There are also certain reports indicating instances of gang rape or rape carried out in front of family members, including children. For example, the Commissioner for Human Rights Denisova said that 25 girls aged 14-24 were kept in a basement in Bucha and gang-raped, as a

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<sup>528</sup> This principle is enshrined in Article 26 of the ICCPR, Article 14 of the ECHR, Protocol 12 to the ECHR, Article E of the RESC and Article 20 of the CHRFF.

<sup>529</sup> UN Doc. S/RES/1325 (2000), Women and peace and security, 31 October 2000.

<sup>530</sup> Amie Ferris-Rotman, Ukrainians Are Speaking Up About Rape as a War Crime to Ensure the World Holds Russia Accountable, *Time*, 20 April 2022, <https://time.com/6168330/rape-war-crime-russia-ukraine/> or Yogita Limaye, Ukraine conflict: 'Russian soldiers raped me and killed my husband', *BBC News*, 11 April 2022, at <https://www.bbc.com/news/world-europe-61071243>

<sup>531</sup> UN Doc. Sc/14926, Sexual Violence ‘Most Hidden Crime’ Being Committed against Ukrainians, Civil Society Representative Tells Security Council, *UN Press Release*, 6 June 2022

<sup>532</sup> *Ibidem*.

<sup>533</sup> Anna Myroniuk, ‘Hide the girls’: How Russian soldiers rape and torture Ukrainians, *Kyiv Independent*, 20 April 2022, at <https://kyivindependent.com/national/hide-the-girls-how-russian-soldiers-rape-and-torture-ukrainians>

result of which nine became pregnant.<sup>534</sup> The second mission has not been in the position to verify the authenticity of this report from other sources. It is however clear that women who have been subject to rape or other forms of sexual abuse – and there are (at least) hundreds of them in the conflict – face a high risk of forced pregnancy, sexually transmitted infections, HIV/AIDS, internal physical injuries and of mental problems.<sup>535</sup> Women who became pregnant as a result of a rape may moreover have difficulties getting an abortion, both because of the level of destruction of medical facilities in Ukraine and the strict anti-abortion laws in some of the countries of refuge, especially Poland.<sup>536</sup>

**Domestic violence** against women also seems to be on the rise, though the separation of many families due to the compulsory recruitment of men aged 18-60 has most likely has some effect on the situation.<sup>537</sup> According to Alyona Krivulyak, one of the leaders of La Strada Ukraine, “hostilities have become a catalyst for the exacerbation of domestic violence in families where these facts existed before the war”.<sup>538</sup> Moreover, victims of domestic violence report increasing difficulties to report cases of domestic violence and, especially, to have the police and other public authorities pay attention to them due to the workload they have at the moment. A non-profit organization Women's Perspectives based in Lviv reported cases where women wanted to file a complaint against an offender or get an update on their case but were told to come back later and that there were more pressing issues.<sup>539</sup>

As already noted by the first mission, women and girls also make up the majority of *refugees* and internally displaced persons. When on the move or in temporary shelters, women and girls are exposed to an increased risk of gender-based violence, including rape and other forms of sexual abuse, as well as the risk of human trafficking. On 6 June 2022, the UN Special Representative on Sexual Violence in Conflict Pramila Patten stated that the humanitarian crisis in Ukraine was gradually turning into a trafficking crisis.<sup>540</sup> Already two months earlier, on 12 April 2022, UNHCR’s Assistant High Commissioner for Protection Gillian Triggs, warned that refugees fleeing from Ukraine to face “the risks of predators and criminal networks who may attempt to exploit their vulnerability or lure them with promises of free transport, accommodation, employment or other forms of assistance”.<sup>541</sup> There are indeed reports of women and girls being offered shelter only in exchange for sexual services.<sup>542</sup> A rapid assessment of the situation was done by La Strada in mid-May which made it possible to

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<sup>534</sup> Ombudsman Reports Mass Rapes In Bucha. 25 Girls Were Kept In Basement, *Ukrainian News*, 12 April 2022, at <https://press.ukranews.com/en/news/848905-ombudsman-reports-mass-rapes-in-bucha-25-girls-were-kept-in-basement>

<sup>535</sup> See also Melanie O’Brien, Noelle Quenivet, Sexual and Gender-Based Violence against Women in the Russia-Ukraine Conflict, *EJILTalk*, 8 June 2022.

<sup>536</sup> Patrick Adams, Why Poland's restrictive abortion laws could be problematic for Ukrainian refugees, *NPR*, 17 May 2022, at <https://www.npr.org/sections/goatsandsoda/2022/05/17/994654590/u-n-and-advocates-raise-concerns-of-abortion-access-for-ukrainian-refugees-in-po>

<sup>537</sup> Brianna Navarre, The War in Ukraine Is Impacting Women ‘Disproportionately’, U.N. Report Finds, *US News*, 4 May 2022, at <https://www.usnews.com/news/best-countries/articles/2022-05-04/women-in-ukraine-face-disproportionate-effects-of-war-u-n-report-finds>

<sup>538</sup> Thaisa Semenova, Domestic violence victims struggle to get help amid war: ‘If Russians don't kill me — he might’, *Kyiv Independent*, 27 May 2022, at <https://kyivindependent.com/national/domestic-violence-victims-struggle-to-get-help-amid-war-if-russians-dont-kill-me-he-might>

<sup>539</sup> *Ibidem*.

<sup>540</sup> Ashish Kumar Sen, Russia’s War Has Created a Human Trafficking Crisis, Says U.N. Envoy, *US Institute of Peace*, 7 June 2022, at <https://www.usip.org/publications/2022/06/russias-war-has-created-human-trafficking-crisis-says-un-envoy>

<sup>541</sup> Statement on risks of trafficking and exploitation facing refugees from Ukraine attributed to UNHCR’s Assistant High Commissioner for Protection, *UNHCR*, 12 April 2022.

<sup>542</sup> Anti-Trafficking Task Force (ATTF) Ukraine Terms of Reference, *ReliefWeb*, 16 May 2022, noline at <https://reliefweb.int/report/ukraine/anti-trafficking-task-force-attf-ukraine-terms-reference-may-2022>

identify categories of women who are at particular risk of human trafficking (e.g., young girls or poor women) and to propose concrete steps to minimize the risk of human trafficking (e.g., a robust programme of assistance for all displaced persons or focusing on trafficking channels).<sup>543</sup>

On 3 May 2022, the *Framework on cooperation between the Government of Ukraine and the UN on prevention and response to conflict-related sexual violence* was signed in Kyiv.<sup>544</sup> The Framework builds on the Ukraine's National Action Plan (NAP) for the implementation of the UN Security Council resolution 1325 on Women, Peace and Security. It is directed at the prevention and repression of “rape, sexual slavery, forced prostitution, forced pregnancy, forced abortion, enforced sterilization, forced marriage and any other form of sexual violence of comparable gravity perpetrated against women, men, girls or boys that is directly or indirectly linked to a conflict”.<sup>545</sup> The text however is rather general and it remains to be seen to what extent the Framework will be able to improve the lives and well-beings of women, girls as well as other vulnerable persons to whom it applies.

The second mission also draws attention to the difficult situation that women who stay in their homes, including older women, face. These women often find it difficult to meet their basic needs, as they have limited access to food, water, heating, medical care, social benefits or work. Some 265,000 Ukrainian women were pregnant at the outbreak of the conflict and there are reports that some of them have been giving birth prematurely, due to the conflict-related stress.<sup>546</sup> The limited access to female sanitary products in some parts of Ukraine as well as the large-scale displacement of medical staff also causes problems.<sup>547</sup>

## 2. CHILDREN

Children, i.e., human beings under the age of 18, unless legal majority is attained earlier, are under the protection of general human rights instruments and of the 1989 *UN Convention on the Rights of the Child* (CRC) with its Optional Protocols (OP). Ukraine and the Russian Federation have ratified the CRC and the OPs on the involvement of children in armed conflict and on the sale of children, child prostitution and child pornography. By means of Article 38 of the CRC, States must “respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child”. The protection of children in armed conflict has also been, for more than two decades now, on the agenda of the UN Security Council, its special Working Group on Children and Armed Conflict and the Special Representative of the UN Secretary General for Children and Armed Conflict. In addition to the UN, other international organizations deal with this topic as well<sup>548</sup> and it is also covered by the OSCE commitments (Istanbul 1999, Brussels 2006, Madrid 2008).

The first mission established that the conflict in Ukraine had had a profound impact on the lives and well-being of children. It identified several main ways in which this impact manifested itself. The second mission regrets to note that the situation has not really changed for the better in the period under scrutiny in this report (1 April – 25 June 2022). According to the information

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<sup>543</sup> Suzanne Hoff, Eefje de Volder, Preventing human trafficking of refugees from Ukraine A rapid assessment of risks and gaps in the anti-trafficking response, *La Strada*, 10 May 2022.

<sup>544</sup> *Framework on cooperation between the Government of Ukraine and the UN on prevention and response to conflict-related sexual violence*, 4 May 2022, the text is available at <https://reliefweb.int/report/ukraine/framework-cooperation-between-government-ukraine-and-un-prevention-and-response>

<sup>545</sup> *Ibidem*, preamble.

<sup>546</sup> Andrew E. Kramer, ‘He is a child of war’: Pregnant women endure harrowing ordeal of giving birth amid chaos in Ukraine, *The Independent*, 8 April 2022, at <https://www.independent.co.uk/news/world/europe/ukraine-russia-war-childbirth-pregnancy-bomb-shelters-b2053794.html>

<sup>547</sup> Rapid Gender Analysis of Ukraine, *UNHCR*, 4 May 2022.

<sup>548</sup> See, for instance, the EU Guidelines on Children And Armed Conflict (adopted in 2003, revised in 2007).

presented at the UN Security Council meeting on 12 May 2022, around 7.5 million children in Ukraine are suffering because of the conflict.<sup>549</sup>

First, children continue to be among *direct victims* of the conflict. On the occasion of World Children's Day, on 1 June 2022, UNICEF reported that on average more than two children are killed and more than four injured each day in Ukraine – mostly in attacks using explosive weapons in populated areas.<sup>550</sup> However, the actual figures are believed to be much higher. The Office of the Prosecutor General of Ukraine reports, by 24 June 2022, a total of 948 child war casualties – 338 killed and 610 wounded.<sup>551</sup> Over 130 children have been reported missing.<sup>552</sup> These figures may also not be definitive, as the count goes on in places of open hostilities and in temporarily occupied or liberated territories.

In Bucha alone, 31 children under the age of 18 were killed and 19 wounded, according to local authorities. As the chief prosecutor of the Bucha region, Ruslan Kravchenko, said “*all children were killed or injured deliberately, since the Russian soldiers deliberately shot at evacuating cars that had the signs CHILDREN and white fabric tied to them, and they deliberately shot at the homes of civilians*”.<sup>553</sup> Some children witnessed adult executions, including those of their parents, relatives and friends.<sup>554</sup> Children have been killed in many other regions of Ukraine as well.<sup>555</sup> For instance, on 31 May 2022, a 12-year-old boy died in Ivanivka in the Kharkiv Oblast as a result of shelling by the Russian armed forces of the village.<sup>556</sup> Furthermore, children are said to be used as human shields by the Russian armed forces. Despite their proximity to the battlefield, in Volnovakha, students were purportedly forced by the Russian military to return to their classes at the local school in Volnovakha on 11 April 2020.<sup>557</sup>

Secondly, children have been exposed to other forms of *violence and abuse* during the conflict. Reports of sexual violence against children, including rape, have been particularly common, though the extent of this violence is difficult to assess due to the sensitive nature of the abuse, the well-known and well-understandable reluctance of victims to report it and misinformation about this issue spread in the public space. By 3 June 2022, the UN Human Rights Monitoring Mission in Ukraine received 124 allegations of conflict-related sexual violence, 97 of them involving women and girls, 19 men, seven boys and one gender unknown.<sup>558</sup> After the Russian armed forces were pushed out of the areas north of Kharkiv, the Commissioner for Human Rights Denisova stated that a one-year-old boy was raped by Russian soldiers and later died in a village near Kharkiv.<sup>559</sup> Other victims have been reported, including “*two 10-year-old boys,*

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<sup>549</sup> UN Doc. SC/14889, War in Ukraine Presenting ‘Child Protection, Child Rights Crisis, Senior United Nations Official Tells Security Council, *UN Press Release*, 12 May 2022.

<sup>550</sup> Ukraine: At least two children killed in war every day, says UNICEF, *UN Press Release*, 1 June 2022.

<sup>551</sup> 338 children killed in 4 months of war in Ukraine, *Ukrainian News*, 24 June 2022, at <https://ukranews.com/en/news/864934-338-children-killed-in-4-months-of-war-in-ukraine>

<sup>552</sup> Martin Belam, Samantha Lock, Lviv commemorates 243 dead children in Ukraine war with school buses memorial, *The Guardian*, 2 June 2022, at <https://www.theguardian.com/world/2022/jun/02/lviv-commemorates-243-dead-children-in-ukraine-war-with-school-buses-memorial>

<sup>553</sup> Cara Anna, This tears my soul apart: A Ukrainian Boy and an execution, *Frontline*, 12 May 2022, at <https://www.pbs.org/wgbh/frontline/article/ukraine-war-child-deaths-bucha/>

<sup>554</sup> *Ibidem*.

<sup>555</sup> See Iryna Balachuk, Russia has killed 261 children in Ukraine, 17 children found dead in Mariupol, *Ukrainska Pravda*, 2 June 2022, at <https://www.pravda.com.ua/eng/news/2022/06/2/7350041/>

<sup>556</sup> *Ibidem*.

<sup>557</sup> James Wilson, Russia Kidnaps Ukrainian Children, *EU Political Report*, April 2022, at <https://www.eupoliticalreport.eu/russia-kidnaps-ukrainian-children/>

<sup>558</sup> UN Doc. SC/14926, Sexual Violence ‘Most Hidden Crime’ Being Committed against Ukrainians, Civil Society Representative Tells Security Council, *UN Press Release*, 6 June 2022.

<sup>559</sup> The occupiers raped a baby in the Kharkiv region in front of the mother – Denisova, *Mind*, 19 May 2022, at <https://mind.ua/en/news/20241681-the-occupiers-raped-a-baby-in-the-kharkiv-region-in-front-of-the-mother-denisova>

triplets aged 9, a 2-year-old girl raped by two Russian soldiers, and a 9-month-old baby" raped in front of his mother".<sup>560</sup>

On 8 April 2022, the Ukrainian official Oleksandr Vilkul claimed that Russian armed forces raped a 16-year-old girl and a 78-year-old woman in one of the villages near Ingulets.<sup>561</sup> On the same day, a video by a Russian soldier was posted on Twitter, in which he initially declared that he was making a "ferocious video" before sexually abusing a one-year-old baby. The soldier was allegedly arrested in Russia after the video clip went viral.<sup>562</sup> On 27 May 2022 the Chernihiv Regional Prosecutor's Office identified two servicemen of the Russian armed forces who attempted to rape a 16-year-old girl and tortured the girl's older brother with the help of other soldiers.<sup>563</sup> The two servicemen were charged of the offence of violating the laws and customs of war (Article 438(1) of the Criminal Code of Ukraine). The second mission was not in the position to verify all these different reports. Yet, the collected evidence allows it to conclude that sexual violence, including violence against children, has occurred in the conflict, primarily by the members of the Russian armed forces. The mission wishes to stress that all these incidents, whether they reflect any premeditated plan or not, have to be duly investigated and those responsible for them have to be brought to justice.

Thirdly, the conflict has forced more than 12 million people to *leave their homes* or places of habitual residence and a big number of them are children. Such children are increasingly vulnerable, especially if they relocate without their family members. Children on move within Ukraine or across borders have faced numerous risks, including the risk of human trafficking and exploitation, the risk of child labour, the risk of forced recruitment and the risk of gender-based violence. Appropriate measures must be put in place to protect children against these risks to the extent possible.

On 8 April 2022, the Commissioner for Human Rights Denisova called on international organizations such as UNICEF, claiming that more than 121,000 children, had been taken by force to Russia. She accused the Russian Federation of the intention to make such children available for adoption by Russian families.<sup>564</sup> However, at that time, UNICEF indicated to have no evidence to support such claims.<sup>565</sup> On 25 May 2022, Missing Children Europe released a report on the children that were allegedly missing in Ukraine during the first 60 days of the war, and called on the EU and Member States to provide support and protection for all children and families at risk of going missing as a result of the war.<sup>566</sup> On 30 May 2022, President Putin signed a decree, simplifying the procedure that enables orphans from Ukraine, including the territories of the so-called Donetsk and Luhansk People's Republic, to obtain Russian citizenship.<sup>567</sup> On 15 June 2022, the UN High Commissioner for Human Rights, Michele

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<sup>560</sup> Nadeau Barbie Latza, Russian accused of raping and killing a 1 year old child. Says Ukraine Official, *Daily Best*, 20 May 2022, at <https://www.thedailybeast.com/russians-accused-of-raping-and-killing-a-one-year-old-child-says-ukraine-official>

<sup>561</sup> Anthony Blair, Russian soldier arrested after 'filming himself raping baby in Ukraine' in unspeakably evil video, *The Sun*, 10 April 2022, at <https://www.the-sun.com/news/5093174/russian-soldier-rapes-baby-ukraine-war-arrested/>

<sup>562</sup> *Ibidem*.

<sup>563</sup> Жорстоке поводження з цивільними та сексуальне насилля над неповнолітньою - двом військовим РФ повідомлено про підозру, *Офіс Генерального прокурора*, 27 May 2022, at [https://t.me/pgov\\_gov\\_ua/4251](https://t.me/pgov_gov_ua/4251)

<sup>564</sup> Russians have already forcibly moved 121,000 Ukrainian children, *Rubryka*, 18 April 2022, at <https://rubryka.com/en/2022/04/08/rosiyany-prymusovo-vyvezly-vzhe-121-000-ukrayinskyh-ditej/>

<sup>565</sup> UNICEF: No Evidence on Russia's Abduction of Ukrainian Children, 12 April 2022, *Tele SUR*, at <https://www.telesurenglish.net/news/UNICEF-No-Evidence-on-Russias-Abduction-of-Ukrainian-Children-20220412-0009.html>

<sup>566</sup> War on Ukraine responsible for surge in missing children cases, *Missing Children in Europe*, 25 May 2022, at <https://missingchildreneurope.eu/press-release-imcd-2022/>

<sup>567</sup> Путин подписал указ об упрощенном приеме в гражданство РФ детей-сирот из Донбасса и Украины, *Interfax*, 30 мая 2022, at <https://www.interfax.ru/russia/843711>

Bachelet, noted that while her office could not yet establish the exact number of children concerned, they were “*concerned about the alleged plans of the Russian authorities to allow the movement of children from Ukraine to families in the Russian Federation, which do not appear to include steps for family reunification or respect the best interests of the child*”.<sup>568</sup>

During the visit to Kyiv, the mission received the information that there were indeed cases where orphaned children had been brought to the Russian Federation and their whereabouts were not clear. No further details were however provided. Yet, there are reports confirming that many children have gone missing during shelling and military actions especially in the bigger cities, and also many children have lost their parents and relatives and have become orphaned. Some of these children have been transferred to areas in the so-called Donetsk and Luhansk People’s Republics, but there is no attempt to find their parents or living relatives by the local administrations.<sup>569</sup> Also, there are reports about approximately 2,000 children from the various orphanages and children’s institutions that have been purportedly transferred to Russia, even though they have living relatives and were in the institutions only for medical care.<sup>570</sup> In addition to unaccompanied children, undocumented children are especially vulnerable including the newborns who were born during the military actions and have not received their birth certificates. If transferred to Russia, these children have little to no chance of being legalized and able to leave the country.

The mission recalls that by virtue of Article 8 of the CRC, States “*undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference*”. Concerning the procedure of adoption, which is to be exceptional during a conflict Article 21 of the CRC stipulates that States allowing for adoption of children “*shall ensure that the best interests of the child shall be the paramount consideration*”. In doing so, they shall ensure that the adoption is authorized by competent authorities and takes account of the child’s status concerning parents, relatives and legal guardians (para a)) and that inter-state adoption is only “*an alternative means of child’s care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child’s country of origin*” (para b). Article 20, moreover, stresses that when looking for a solution for a child who is temporarily or permanently deprived of his or her family, “*due regard shall be paid to the desirability of continuity in a child’s upbringing and to the child’s ethnic, religious, cultural and linguistic background*” (para 3).

Fourthly, children in Ukraine also suffer due to the disruption of certain **vital services** brought about, in some parts of the country, by the conflict, such as food, water and electricity supply, the provision of health care or the provision of education. A media report focusing on the situation in the Lviv region, hosting one of the largest populations of IDPs, indicates shortage of medical supplies and health care staff as well as difficulties faced by displaced children to continue their pre-war education or to have access to psychosocial assistance.<sup>571</sup>

The problem with the right to education is particularly painful. According to Ukrainian Ministry of Education and Science, as of 2 June 2022, at least 1,888 schools had been damaged or destroyed by shelling and bombing. Many school buildings, moreover, are used as shelters, centres for collecting humanitarian aid or, even, military bases. Some schools used as shelters for families have also become the object of a military attack. In one of the major incidents of this type, on 13 April 2022, School 21 in Chernihiv, used as a shelter and equipped with the

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<sup>568</sup> UN’s Bachelet concerned over Ukraine orphans ‘deported’ to Russia for adoption, *UN Press Release*, 15 June 2022.

<sup>569</sup> Interviews of Ukrainian activists and lawyers, on file with the authors of the report.

<sup>570</sup> Interviews of Ukrainian activists and lawyers, on file with the authors of the report

<sup>571</sup> Irwin Redlener, Ukraine’s children desperately need more than shelter and food, *NBC News*, 20 June 2022, at <https://www.nbcnews.com/think/opinion/ukraines-children-desperately-need-more-than-shelter-food-rcna34239>



inscription “children” sprayed in large bold letters on the windows, was purportedly hit, killing nine persons, including a 13-year-old boy.<sup>572</sup> In a similar incident, on 7 May 2022, a school in the village of Bilohorivka in the Luhansk Oblast, also used as a shelter, was bombed by the Russian forces, resulting reportedly in as many as 60 casualties.<sup>573</sup>

The first mission already noted that while after the Russian attack, teaching in all types of educational facilities across most of the regions of Ukraine was suspended, it has been at least partly resumed in most regions of Ukraine since mid-March 2022. Over 15,000 schools resumed classes then, mainly through distance learning or hybrid *ad-personam* options. The mission notes that although the Ministry of Education and Science (MESU) is attempting to reach children by online education from kindergarten to the 11th year, distance learning can only represent an emergency, short-term solution. As of May 2022, it is estimated that 3.7 million children in Ukraine and abroad are using online and distance learning options. The shortage of teachers in some areas is yet another challenge. As of 31 May 2022, some 40,000 teachers had reportedly been displaced. Oblasts with the highest teacher outflow rates are Kharkivska (10,675), Zaporiz’ka (4,342), and Kyivska (3,918).<sup>574</sup>

Moreover, children living in the territories under the effective control of the Russian Federation, such as Crimea, are exposed to massive propaganda and militarization of education. It was, for instance, reported that the Russian armed forces cancelled school vacations in the occupied city of Mariupol in order to prepare students for the transition to the Russian curriculum. The goal is to remove the Ukrainian curriculum and prepare students to return to school with a Russian curriculum.<sup>575</sup>

### 3. OLDER PERSONS

Older persons are usually defined as persons over 60 years old or, alternatively, people having reached the retirement age set in the specific country. In Ukraine, such persons constitute around one quarter of the population and in some areas, for instance the Donetsk and Luhansk regions, their percentage reaches up to 30% of the population. While no specific instrument on human rights of older persons has been adopted so far within the UN or the Council of Europe, older persons are protected by general human rights instruments. Some of these instruments, moreover, contain specific provisions applicable to older persons, mostly relating to the right to old-age pension. There is also an increasing number of soft law documents on older persons which should, moreover, be used as a tool in the interpretation of the general standards.<sup>576</sup>

The first mission established that older persons had been heavily affected by the current conflict, both as its direct victims, i.e., those killed or injured incidentally or deliberately, and as its indirect victim, i.e., those bearing the negative consequences of the general disruption that the conflict has brought about, for instance by being deprived of the access to food, clean water, medical care or heating. The second mission confirms that older persons have remained one of

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<sup>572</sup> In possible war crimes, Russia has destroyed or damaged at least 57 Ukrainian schools, *NY1*, 17 May 2022, at <https://www.ny1.com/nyc/all-boroughs/international/2022/05/17/in-possible-war-crimes--russia-has-destroyed-or-damaged-57-ukrainian-schools>

<sup>573</sup> Jason Dearen, Juliet Linderman, Oleksander Stashevsky, War Crimes Watch: Targeting Ukraine Schools, Russia Bombs the Future, *AP News*, 25 May 2022, at <https://apnews.com/article/russia-ukraine-war-crimes-schools-d1e52368aced8b3359f4436ca7180811>

<sup>574</sup> Ukraine Education Needs Assessment Survey - Initial Report on Key Findings (6 May – 10 June 2022), June 2022, at <https://www.humanitarianresponse.info/en/operations/ukraine/document/ukraine-education-needs-assessment-survey-initial-report-key-findings>

<sup>575</sup> Ukraine says Russia Canceling School Holiday in Mariupol, *Moscow Times*, 26 May 2022, at <https://www.themoscowtimes.com/2022/05/26/ukraine-says-russia-canceling-school-holiday-in-mariupol-a77819>

<sup>576</sup> UN Doc. A/RES/46/91, *Implementation of the International Plan of Action on Ageing and related activities*, 16 December 1991.

the particularly affected vulnerable groups in the period under scrutiny in this report (1 April – 25 June 2022) as well. On 14 June 2022, OHCHR together with the United Nations Population Fund (UNFPA), WHO Regional Office for Europe (WHO/Europe) and HelpAge International, issued a joint statement in which they noted that while “*everyone living in Ukraine has felt the impact of this war, /.../ in a country where 1 in 4 people is over 60, the impact on older persons, including those with disabilities, has been dramatic. /.../ To say that the health, rights and well-being of older persons are in danger is an understatement*”.<sup>577</sup>

As previously, older persons have become *direct victims* of the conflict. On 12 April 2022, the Commissioner for Human Rights Denisova stated that “*during the war in Ukraine, elderly people who cannot travel to safe regions are forced to live in the occupation or in the besieged cities, where they are tortured and killed by the Russian occupiers*”,<sup>578</sup> without however providing any more specific data.

There are reports of concrete seniors being killed, most likely incidentally, by the Russian armed forces. For instance, on 12 May 2022, a 67-year old man died, as a result of shelling, in the yard of his own house in Stari Vyrky, in the Sumy region.<sup>579</sup> 13 days later, on 25 May 2022, a 64-year old man was killed, also in shelling, in Balaklia in the Kharkiv region.<sup>580</sup> Civilian losses among older persons have been reported by the *de facto* authorities of the so-called Donetsk and Luhansk People’s Republics. Thus, on 16 June 2022, an elderly woman was allegedly killed by a missile strike shot by the Ukrainian armed forces on Khrustalnyi in the Luhansk region.<sup>581</sup> The mission was not in the position to verify this information. Not all civilian casualties among older persons amount to violations of IHRL or IHL, yet it is, as for any other civilian casualties, crucial to investigate each individual incident to verify whether the principles of distinction, proportionality and precaution were respected.

The first mission indeed documented cases of older persons being extrajudicially killed by the Russian armed forces. One of those cases, the killing of a 62-year old Oleksandr Shelypov riding his bicycle close to the town of Sumy by a 21-year old Russian soldier Vadim Shish(i)marin, that occurred in the early days of the conflict, resulted in fact in the very first condemnation for a war crime before the Ukrainian courts.<sup>582</sup> The second mission has found limited evidence about extrajudicial killings of older persons in the period under scrutiny in this report (1 April – 25 June 2022), though it is highly probably that seniors are among civilians killed by the Russian armed forces in the areas under the temporary control of the Russian Federation, including the north-western suburbs of Kyiv (Bucha, Irpin, Borodyanka) and the Chernihiv region.

A much larger number of Ukrainian older persons have become *indirect victims* of the current conflict. As noted by various sources, older persons are typically those who stay behind, either because they are unable to leave their homes, for instance, due to their weak health conditions, few social connections, limited digital literacy or, even more commonly, because they are

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<sup>577</sup> Joint statement on the situation of older persons in Ukraine, WHO, 14 June 2022, at <https://www.who.int/europe/news/item/14-06-2022-joint-statement-on-the-situation-of-older-persons-in-ukraine>

<sup>578</sup> Russian invaders torture and kill elderly people - Denisova, *UkrinForm*, 12 April 2022, at <https://www.ukrinform.net/rubric-ato/3455216-russian-invaders-torture-and-kill-elderly-people-denisova.html>

<sup>579</sup> Enemy artillery fired on Sumy region: killing a pensioner, *Ukrainska Pravda*, 12 May 2022, at <https://www.pravda.com.ua/eng/news/2022/05/12/7345694/>

<sup>580</sup> Kharkiv region: pensioner killed and seven others wounded by shelling in captured Balaklia, *Ukrainska Pravda*, 25 May 2022, at <https://www.pravda.com.ua/eng/news/2022/05/25/7348500/>

<sup>581</sup> Elderly woman killed in Ukrainian attack on Krasnyi Luch, 17 June 2022, at <https://lug-info.com/en/news/elderly-woman-killed-in-ukrainian-attack-on-krasnyi-luch?preview=ed19ca24a257-c95b-00f4-756d-c32b6adf>

<sup>582</sup> Ukrainian court sentences Russian soldier to life in prison for killing civilian, *The Guardian*, 23 May 2022, at <https://www.theguardian.com/world/2022/may/23/ukrainian-court-sentences-russian-soldier-to-life-in-prison-for-killing-civilian-vadim-shishmarin>

unwilling to do so. There have been special rescue operations organized by the State authorities and, very often, families or non-governmental organizations to get those older persons who are willing to relocate to safety.<sup>583</sup> Those who are left behind or stay behind, regardless of whether they live on their own or in residential care, face particular hardship, especially if their places of residence are located close to the areas of active fighting. In addition to the risks stemming from the military operations, those persons are exposed to the problems linked to the shortage of food, water, heating or medicine and to the limited access to health and social services. Forced separation from the rest of the family and social isolation going on for weeks also takes a heavy toll on the physical and mental state of older persons. Older persons who have left the place of their habitual residence and have become either internally displaced persons or refugees are at risk of being subject to sexual or other forms of violence.

Older persons living in the territories outside the control of the Ukrainian authorities also face special challenges. Already prior to the full-fledged Russian attack on Ukraine, older persons living in such territories (the Autonomous Republic of Crimea and the Donetsk and Luhansk regions at that time) lost normal access to the services provided by the Ukrainian government, such as the distribution of pensions. To receive their pensions, those persons had to register as internally displaced persons and had to travel to governmentally controlled territories at least once in every 60 days. Back in 2019, the Commissioner for Human Rights Denisova reported that due to this system, about 30% of seniors living in the Eastern part of Ukraine (450,000 people) could not receive their pensions.<sup>584</sup> Moreover, at least 19 older persons died, mostly out of heart-related incidents, when seeking to cross checkpoint on their way to the governmentally controlled territories. The situation was particularly critical during the early stages of the Covid-19 crisis, when crossing checkpoints within a reasonable time became virtually impossible.<sup>585</sup>

In August 2021, Ukraine suspended the requirement for older persons to regularly come to the governmentally controlled territories, announcing that this requirement would be replaced by a remote identity verification. According to the information received by the second mission, this new system has not been fully put in place yet and the inhabitants of the Eastern regions still have to travel to the governmentally-controlled territories to receive their pensions.<sup>586</sup> The situation seems to be different in the newly occupied territories, such as the Kherson region, where pensions are still delivered (through UkrPoshta or on cards), though the local inhabitants also encounter difficulties, especially when seeking to get their pension in cash.<sup>587</sup> The so-called Donetsk and Luhansk People's Republics as well as the occupational forces present in newly occupied territories also provide pensions but the local inhabitants are very reluctant to receive those pensions.

In its recent report on older persons in armed conflict, Human Rights Watch noted that *“as the /Ukrainian/ government does not exercise control over parts of eastern Ukraine, it is within its authority to amend the process by which pensioners in areas it does not control can collect their pensions. However, the process the government has introduced treats pensioners in these areas differently from other pensioners and imposes an excessive burden that creates hardship*

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<sup>583</sup> Ukraine's elderly struggle with war upheaval, *DW*, 12 April 2022, at <https://www.dw.com/en/ukraines-elderly-struggle-with-war-upheaval/a-61440081>

<sup>584</sup> Ukraine: People with Limited Mobility Can't Access Pensions, *Human Rights Watch*, 24 January 2020.

<sup>585</sup> No One is Spared. Abuses Against Older People in Armed Conflict, *Human Rights Watch*, 2022, pp. 35-37, at [https://www.hrw.org/sites/default/files/media\\_2022/02/global\\_olderpeople0222\\_web.pdf](https://www.hrw.org/sites/default/files/media_2022/02/global_olderpeople0222_web.pdf)

<sup>586</sup> Дар'я Воронцова, Пенсійний фонд продовжує нарахування виплат пенсіонерам Донецької області, *Avdeevka.city*, 17 червня 2022, at [avdeevka.city/news/view/pensijnij-fond-prodovzhue-narahunannya-viplat-pensioneram-donetskoi-oblasti](http://avdeevka.city/news/view/pensijnij-fond-prodovzhue-narahunannya-viplat-pensioneram-donetskoi-oblasti)

<sup>587</sup> Нестача готівки та відсутність зв'язку: як на Херсонщині розв'язують проблему з виплатами пенсій, *Суспільне новини*, 3 червня 2022, at <https://suspilne.media/246406-nestaca-gotivki-ta-vidsutnist-zvazku-ak-na-hersonsini-rozvazuut-problemu-z-viplatami-pensij/>

for them and therefore falls outside the scope of permitted interferences”.<sup>588</sup> The second mission recalls that under IHL, it is primarily the responsibility of the occupying power to ensure that local inhabitants of the occupied territories have their basic needs secured.<sup>589</sup> This is also under IHRL as States undertake to respect and ensure human rights of all persons within their jurisdiction, including those living on the territories under the effective control of the State, exercised directly or through non-state proxies. The territorial State nonetheless maintains a residual obligation first to seek it to re-establish its jurisdiction in full, and secondly to protect human rights of its inhabitants to the extent possible.<sup>590</sup>

#### 4. PERSONS WITH DISABILITIES

Ukraine is home to some 2,700,000 persons with disabilities, i.e., “those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others”.<sup>591</sup> In addition to the general human rights protection, they enjoy special protection under the *UN Convention on the Rights of Persons with Disabilities* (CRPD), ratified by both Ukraine and the Russian Federation. In its Article 11, the CPRD imposes on States the obligation to “take /.../ all necessary measures to ensure the protection and safety of persons with disabilities in situations of risk, including situations of armed conflict /.../”. This obligation is reconfirmed and elaborated upon by the UN Security Council Resolution 2475 (2019) on the *Protection of Persons with Disabilities in Conflict*.<sup>592</sup> The resolution, *inter alia*, requests all States to protect persons with disabilities, as well as other civilians, from violence and abuses, such as killing, torture of rape (para 1), to allow and facilitate safe, timely and unimpeded humanitarian access to such persons (para 3), to provide sustainable, timely, appropriate, inclusive and accessible assistance to them (para 4) and to take all appropriate measures to eliminate discrimination and marginalization on the basis of disability in situations of armed conflict (para 8).

On 14 April 2022, the UN Committee on the Rights of Persons with Disabilities, established under the CRPD, issued a statement related to the conflict in Ukraine. In this statement, the Committee noted the profound impact that the conflict had on persons with disabilities and called upon the Russian Federation not only to fully respect the obligations stemming from the CRPD but also, more generally, “to immediately end the hostilities and observe and respect the principles of international human rights and humanitarian law”.<sup>593</sup> A statement with a largely similar content was issued by 51 States and the EU during the 15<sup>th</sup> Conference of State Parties to the CRPD.<sup>594</sup>

The first mission reported that persons with disabilities, similar as older persons, were often being *left behind* or decided to stay behind in areas where active hostilities were going on, because they either could not leave their homes, often for reasons linked to their disability, did not want to leave their homes or were unable to understand the situation, again often for reasons linked to their disability. Information received by the second mission confirms that this trend

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<sup>588</sup> *Ibidem*, p. 37.

<sup>589</sup> See Articles 55-62 of the Geneva Convention IV.

<sup>590</sup> ECtHR, *Ilaşcu and Others v. Moldova and Russia*, Application no. 48787/99, 8 July 2004, Judgment (GC), paras 322-331.

<sup>591</sup> Article 1(1) of the *UN Convention on the Rights of Persons with Disabilities*.

<sup>592</sup> UN Doc. S/RES/2475(2019), *Protection of Persons with Disabilities in Conflict*, 20 June 2019.

<sup>593</sup> Ukraine: 2.7 million people with disabilities at risk, UN committee warns, *UN News*, 14 April 2022.

<sup>594</sup> Joint Statement of the group of countries to the 15th Session of the Conference of States Parties to the Convention on the Rights of Persons with Disabilities Joint Statement of the group of countries to the 15th Session of the Conference of States Parties to the Convention on the Rights of Persons with Disabilities at the United Nations on the situation of persons with disabilities in Ukraine stemming from the Russian aggression, *Permanent Mission of Ukraine to the United Nations*, 15 June 2022, at [ukraineun.org/en/press-center/569-joint-statement-of-the-group-of-countries-to-the-15th-session-of-the-conference-of-states-parties-to-the-convention-on-the-rights-of-persons-with-disabilities/](https://ukraineun.org/en/press-center/569-joint-statement-of-the-group-of-countries-to-the-15th-session-of-the-conference-of-states-parties-to-the-convention-on-the-rights-of-persons-with-disabilities/)

has continued in the period under scrutiny (1 April – 25 June 2022). The UN Committee in its statement confirmed that „*there are ongoing reports that many people with disabilities, /.../, are trapped or abandoned in their homes, residential care institutions and orphanages, with no access to life-sustaining medications, oxygen supplies, food, water, sanitation, support for daily living and other basic facilities*”.<sup>595</sup> The Committee also noted that “*few people with disabilities are reported to be internally displaced or to have reached Ukraine’s borders, indicating that many of them have not been able to flee to safety*”.<sup>596</sup>

A large section of persons with disabilities have thus not been able or willing to escape to safety, remaining in the place of their habitual residence. Many of these persons are also unable or unwilling to seek shelters in cases of emergency such as air raids. The inability is mostly linked to the physical impediments and the inaccessibility of many places, including bunkers, subway stations or underground shelters, for persons with such impediments. The unwillingness may stem from the belief by the persons with disabilities that their lives are dispensable or from their incapacity to understand the situation.

In this context, particularly worrying seems to be the situation of persons with intellectual and psychosocial disabilities who, although constituting less than one tenth of the persons with disabilities in Ukraine, are strongly represented in long-term care facilities across Ukraine. As the UN Human Rights Monitoring Mission in Ukraine indicates in its briefing note focusing on this category of persons with disabilities, issued on 1 February 2022, a large portion of such persons are moreover deprived of legal capacity.<sup>597</sup> The second mission wishes to stress the increased vulnerability of such persons and the ensuing obligation of the State exercising control over the territory where those persons live, to protect them, to the extent possible, from any acts of violence and to ensure that they have access to all basic commodities (food, water, clothing, medicine, electricity, etc.).

## **5. NATIONAL AND ETHNIC MINORITIES**

The conflict in Ukraine has also affected many national and ethnic minorities, living in the territory of Ukraine. By virtue of Article 11 of the 1996 Constitution of Ukraine, “*the State shall promote the consolidation and development of the Ukrainian nation, its historical consciousness, traditions, and culture, as well as development of ethnic, cultural, linguistic, and religious identity of all indigenous peoples and national minorities of Ukraine*”. Moreover, Article 10 stipulates that while the State language of Ukraine is Ukrainian, “*free development, use, and protection of Russian and other languages of national minorities of Ukraine shall be guaranteed in Ukraine*” (para 2). The rights of national and ethnic minorities are further recognized in international instruments binding upon Ukraine and, partly, Russia, especially Article 27 of the ICCPR, derogated from by Ukraine (but not Russia) and the *Framework Convention* for the Protection of National Minorities, ratified by Ukraine (but not Russia). The protection of these rights also features prominently in the OSCE commitments (Vienna 1989, Copenhagen 1990, Geneva 1991, Budapest 1994, Istanbul 1999).

The total population of Ukraine currently amounts to some 43.7 million persons. According to the all-Ukrainian census held in 2001, the main minority group was made up by the Russians (17.3%) followed by several other, relatively small groups (Belarussians, Moldovans, Crimean Tatars, Bulgarians – all with less than 1% of the total population, and even smaller groups of Poles, Jews, Hungarians, Armenians, Romanians, Greeks, Roma and other nationalities). The same census indicated that 14.8 % of ethnic Ukrainians considered Russian their first language. Since 2001, however, the status of the Ukrainian language has been gradually getting stronger,

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<sup>595</sup> *Ibidem*.

<sup>596</sup> *Ibidem*.

<sup>597</sup> The Human Rights Situation of Persons With Intellectual And Psychosocial Disabilities In Ukraine, *OHCHR Briefing Note*, 1 February 2022.

both through legislative acts<sup>598</sup> and by the rise in the number of persons who consider Ukrainian as their first language (from 57% in 2001 to around 80% in 2022).<sup>599</sup> The outbreak of war has accelerated this process even further. According to the survey carried out by the group Reytyn, the number of those who communicate only in Russian has dropped by some 10% over the first 2.5 months of the conflict. Moreover, one third of such Russian speakers are ready to switch to Ukrainian, as are two thirds of those using two languages at the same time.<sup>600</sup> It thus seems that the forced de-Ukrainization<sup>601</sup> that the Russian Federation has sought to bring to Ukraine, has in fact resulted in spontaneous de-Russification.<sup>602</sup>

The *Russian* language remains however the most important minority language in Ukraine. From that perspective, the mission notes with concern certain moves to limit the access to education in or of Russian. Most notably, on 17 June 2022, the executive committee of the City Council of the City of Mykolaiv, where Russian is commonly used, banned the Russian language from secondary educational institutions in Mykolaiv, both as the language of instruction and as an (even elective) subject of education.<sup>603</sup> Moreover, on 19 June 2022, the Verkhovna Rada adopted two laws, which ban music produced in Russia since 1991 from the Ukrainian media and public space and prohibit the import and distribution of books and other publishing products from Russia, the temporarily occupied territories of Ukraine and Belarus.<sup>604</sup> The bans are not absolute; for instance the former should not apply to Russian singers who have condemned the Russian aggression and who shall be included in a special list set by the Security Service of Ukraine (SBU) and the National Security and Defence Council.<sup>605</sup> Moreover, it is unsurprising that Ukraine seeks to protect its information space from the propaganda spread, through various channels and means, by the Russian Federation. It is however important to make sure that the bans do not prevent the Russian minority living in Ukraine from having access to cultural products in the Russian language.

The first mission in its report noted that the current conflict has had a negative impact on certain *minorities* living close to the areas of active hostilities, such as the Greek minority or the Turkic-speaking Urums, both concentrated in and around the city of Mariupol. It also noted reports about discrimination against the Roma people. These reports have been confirmed by the second mission. Considered the country's most vulnerable minority for quite some time, the

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<sup>598</sup> Закон України № 2704 Про забезпечення функціонування української мови як державної, 25 квітня 2019. See also Venice Commission, Opinion No. 960/2019, *Opinion on the Law on Supporting the Functioning of the Ukrainian Language as the State Language*, CDL-AD(2019)032, 9 December 2019.

<sup>599</sup> Maksym Skrypchenko, The Russian language 'problem' inside Ukraine, *EU Observer*, 17 May 2022, <https://euobserver.com/opinion/154963>

<sup>600</sup> *Ibidem*.

<sup>601</sup> Dee Тимофей Сергейцев, Что Россия должна сделать с Украиной, *РИА Новости*, 03.04.2022, at <https://ria.ru/20220403/ukraina-1781469605.html>

<sup>602</sup> David L. Stern, Robert Klemko and Robyn Dixon, War impels many in Ukraine to abandon Russian language and culture, *Washington Post*, 12 April 2022, <https://www.washingtonpost.com/world/2022/04/12/ukrainians-abandon-russian-language/> and David Gormezano, Quand les russophones d'Ukraine se détournent du russe, "la langue de l'ennemi", *France24*, 20. 5. 2022, at <https://www.france24.com/fr/europe/20220530-quand-les-russophones-d-ukraine-se-detournent-du-russe-la-langue-de-l-ennemi>

<sup>603</sup> У школах Миколаєва з 1 вересня заборонено використання російської мови, *Day.Kyiv*, 18 червня 2022, at <https://day.kyiv.ua/uk/news/180622-u-shkolah-mykolayeva-z-1-veresnya-zaboroneno-vykorystannya-rosiyskoyi-movy>

<sup>604</sup> Закон України № 2309 Про внесення змін до деяких законів України щодо підтримки національного музичного продукту та обмеження публічного використання музичного продукту держави-агресора, 19 червня 2022; and Закон України № 2310 Про внесення змін до деяких законів України щодо підтримки національного музичного продукту та обмеження публічного використання музичного продукту держави-агресора, 19 червня 2022.

<sup>605</sup> See also Олександра Кознова, Прийнято закони про заборону російської музики та видавничої продукції з росії та білорусі, *Liga Zakon*, 20 червня 2022, at [https://biz.ligazakon.net/news/211963\\_priynyato\\_zakoni-pro-zaboronu-rosysko-muziki-ta-vidavniche-produkts-z-ros-ta-blorus](https://biz.ligazakon.net/news/211963_priynyato_zakoni-pro-zaboronu-rosysko-muziki-ta-vidavniche-produkts-z-ros-ta-blorus)

Roma people have continued to face specific difficulties since the outbreak of the conflict. They are sometimes refused places on buses taking people to safety or are not admitted to shelters for internally displaced persons.<sup>606</sup> They also find it difficult to leave the country, as some 10-20% of the Ukrainian Roma lack documents to attest their citizenship and to prove their residence status (allegedly, some 30,000 Ukrainian Roma have no form of ID).<sup>607</sup>

The first mission also drew attention to the violations of rights of national and ethnic minorities, as well as the three ethnic groups declared indigenous peoples of Ukraine under the 2021 *Law on Indigenous Peoples of Ukraine*<sup>608</sup> (Crimean Tatars, Karaites, and Krymchaks), committed in the territories under the effective control of Russia, i.e., in Crimea and parts of Donetsk and Luhansk regions. These violations unfortunately continued in the period under scrutiny in this report (1 April – 25 June 2022).

In her report, *Human rights situation in the Autonomous Republic of Crimea and the City of Sevastopol, Ukraine*, issued on 4 May 2022, the Secretary General of the Council of Europe, Marija Pejčinović Burić, indicates that “consistent reports of abusive measures disproportionately affecting Crimean Tatars continued to underscore the concerns about their deliberate discrimination while exacerbating their sense of insecurity and mistrust towards the occupying authorities”.<sup>609</sup> The Secretary General’s report then provides a detailed analysis of such abusive measures, including harassment of Crimean Tatars human rights defenders and representatives, detentions of such persons and their prosecution on suspicious legal grounds, the *de facto* denial of education in the Tatar language and extensive militarization of schools and school children in Crimea.<sup>610</sup> These and other highly problematic measures have also been documented in the materials issued by the Mission of the President of Ukraine in the Autonomous Republic of Crimea.<sup>611</sup>

## 6. LGBTQ PERSONS

LGBTQ persons experience specific difficulties in the first weeks of the conflict. The first mission documented the attack on one of the LGBTQ shelters in Kyiv by unknown individuals which took place on 1 March 2022<sup>612</sup> and the problems that trans persons, such as the trans singer Zi Famelu, Zianzha (Borys Kruglov), were facing when seeking to cross the borders, both when their documents reflected their new gender and, even more, when this was not yet the case (or when they did not have any documents).<sup>613</sup> The second mission has not been in the position to find out whether the persons responsible for the attack on the shelter have been identified and brought to justice. It recalls that Ukrainian authorities have the obligation to do so, especially since the attack reveals clear signs of homophobia.

The second mission regrets to note that other *incidents*, albeit not extremely numerous ones, revealing such signs have occurred since 1 April 2022. The Kyiv-based LGBTQ organization

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<sup>606</sup> Discrimination Adds to Agonies of War in Ukraine, *NDVT*, 26 May 2022, at <https://www.ndtv.com/world-news/russia-ukraine-war-ukraines-roma-community-discrimination-adding-trauma-to-ukraines-roma-community-amid-war-3010643>

<sup>607</sup> Russia’s war on Ukraine: The situation of Roma people fleeing Ukraine, *European Parliament (At a Glance)*, May 2022, at [https://www.europarl.europa.eu/RegData/etudes/ATAG/2022/729411/ EPRS\\_ATA\(2022\)729411\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/ATAG/2022/729411/ EPRS_ATA(2022)729411_EN.pdf)

<sup>608</sup> Закон України № 38 Про корінні народи України, 1 липня 2021.

<sup>609</sup> Council of Europe, SG/Inf(2022)15, *Human rights situation in the Autonomous Republic of Crimea and the City of Sevastopol, Ukraine*, 4 May 2022, para 30.

<sup>610</sup> *Ibidem*.

<sup>611</sup> See Crimean peninsula in turmoil from all-out aggression of the Russian Federation against Ukraine, *Mission of the President of Ukraine in the Autonomous Republic of Crimea*, 16 March 2022.

<sup>612</sup> Michael K. Lavers, Four Ukraine LGBTQ activists attacked inside Kyiv office, *Washington Blade*, 1 March 2022, at <https://www.washingtonblade.com/2022/03/01/four-ukraine-lgbtq-activists-attacked-inside-kyiv-office/>

<sup>613</sup> Nelson C. J., “Mentally, I am still in Ukraine”: Three Trans Ukrainians on the Tolls of War, *Them*, 18 March 2022, at: <https://www.them.us/story/trans-ukrainians-war-refugees>

Nash Svit Centre reported a case of detention and abuse of two young gay men by unidentified persons in military uniforms at a checkpoint in Odesa, obviously motivated by the sexual orientation of the two persons. Also in Odesa, a lesbian couple had some of its property destroyed by the owner of the flat they were renting, according to the same organization. Finally, members and staff of this organization themselves experienced two consecutive attacks (insults and violence) by members of the Kyiv City Territorial Defence.<sup>614</sup> All these incidents have to be properly investigated and those responsible for them be held accountable.

There was also at least one instance, when a gay man faced problems upon his conscription to the Ukrainian military forces. Under the *Regulations on Military Medical Examination in the Armed Forces of Ukraine* issued by the Ukrainian Ministry of Defence in 2008,<sup>615</sup> persons diagnosed with transsexualism or gender dysphoria are seen as completely unfit for military service, if they are “severe, prone to repeated prolonged decompensation or pathological reactions” or unfit for military service in times of peace and limitedly fit in times of war on the condition they are “moderately expressed with unstable compensation or compensated”. The situation of the concrete individuals is assessed by specialized military commissions. One member of the Nash Svit Center was suspected of transsexualism during his conscription and sent to the relevant commission, which did not confirm the diagnosis, though it labelled homosexuality as a “sexual disorder”.<sup>616</sup>

As noted by the first mission, trans persons also face certain particular *challenges* during the current conflict. One is that trans persons whose documents have male markers, regardless of their gender identity, are not allowed to leave the territory of Ukraine because of the general conscription of men 18-60 years old. Another, opposite problem, is that those same persons are usually not admitted to the military forces (based of the MoD Regulations mentioned above), even if they want to. The ways to bypass this problem are either to either not to disclose they are trans persons or to enter the Territorial Defence, where restrictions on transsexuality do not apply. Yet another problem that some trans persons – namely those undergoing gender transition – face is the lack of the necessary medicine or its financial inaccessibility.

Despite these challenges, the status of the LGBTQ community has also improved in some ways during the current conflict. This can be partly assigned to the ostensibly patriotic pro-Ukrainian attitude that many members of the community have embraced since the outbreak of the conflict, for instance by voluntarily enlisting in the armed forces. The overtly homophobic position held by the political and religious leadership of the Russian Federation and the conscious effort by Ukraine to distance itself from such a position, have also played a positive role. The results of a public poll carried out by Nash Svit Center shows that the number of Ukrainians who have negative feelings about LGBTQ people has decreased from 60.4% in 2016 to 38.2% in 2022, while the percentage of those with positive feelings has raised from 3.3% (2016) to 12.8% (2022).<sup>617</sup> While these results cannot be explained by the current conflict only and while they leave something to be desired, the trend they indicate is clearly a positive one.

The Ukrainian LGBTQ community constitutes to feel concerned about and threatened by the homophobic attitudes by the *Russian* political and religious leadership. As was noted by the first mission, the Patriarch Kirill, the head of the Russian Orthodox Church, explicitly named gay parades as one of the main “sins” that forced the Russian Federation to conduct the “special

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<sup>614</sup> Andrii Kravchuk, The situation of the Ukrainian LGBTQ community after the escalation of Russian aggression, *Nash Svit Center*, 12 May 2022, at C:\Users\user\Documents\LGBTQ-situation-Ukraine-2022-eng.pdf

<sup>615</sup> *Наказ № 402 Міністерства оборони України Про затвердження Положення про військово-лікарську експертизу в Збройних Силах України*, 17 листопада 2008.

<sup>616</sup> Andrii Kravchuk, The situation of the Ukrainian LGBTQ community after the escalation of Russian aggression, *Nash Svit Center*, 12 May 2022, at C:\Users\user\Documents\LGBTQ-situation-Ukraine-2022-eng.pdf

<sup>617</sup> Українці кардинально поліпшили ставлення до ЛГБТ, *Наш світ*, 31 травня 2022, at <https://gay.org.ua/blog/2022/05/31/ukraintsi-kardynalno-polipshyly-stavlennia-do-lhbt/>



military operation” in Ukraine.<sup>618</sup> Moreover, on 6 June 2022, a draft amendment to the Code of Administrative Offences that should introduced a new administrative offence (draft para 6.37) entitled *Propaganda of Non-Traditional Sexual Relations*, was submitted to the Russian State Duma by the Russian occupation administration of the City of Sevastopol.<sup>619</sup>

The new provision would extend the prohibition of the so-called LGBT propaganda from propaganda among children to that among all persons. The offence would be punishable by a fine of 40,000 to 50,000 roubles for citizens, from 100,000 to 500,000 roubles for officials, and from one million to five million roubles for legal entities. If adopted, this draft bill risks to further worsen the situation of the LGBTQ community in the Russian Federation as well as on the territories under the effective or overall control of the Russian Federation, such as Crimea or Donbas, where the repressive Russian legislation against the LGBTQ persons *de jure* or *de facto* applies. Moreover, and in contrast to the trend recorded in Ukraine, the attitudes of the Russian society towards the LGBTQ persons has been, according to the public polls carried out by the Levada centre,<sup>620</sup> becoming even more negative over the past years.<sup>621</sup> While no incidents of mistreatment of Ukrainian LGBTQ persons by the Russian armed forces were brought to the knowledge of the second mission, the risk of such mistreatment should not be underestimated.

## **7. WATCHDOGS (HUMAN RIGHTS DEFENDERS AND OTHER ACTIVISTS)**

The category of watchdogs encompasses various individuals whose main task is to monitor the situation, establish and reveal truth about contested events and draw attention to irregularities they may unveil. Human rights defenders (HRD), i.e., those who, individually or with others, act to promote or protect human rights in a peaceful manner, fall under this category. HRD enjoy special protection under IHRL, due to the increased vulnerability they face. The right, “*individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels*” (Article 1) as well as specific rights granted to HRD, are enshrined in the UN *Declaration on Human Rights Defenders*.<sup>622</sup> Although the definition of HRD is broad, covering many different individuals, there might be other activists who could qualify as watchdogs, such as journalists, bloggers or local representatives. The important role played by watchdogs and the need for their enhanced protection have been repeatedly confirmed by the OSCE Participating States (Helsinki 1975, Madrid 1983, Vienna 1989, Budapest 1994).

The first mission documented violations of human rights, including measures of reprisals and retaliation, directed against HRDs and other activists, especially those living in the areas under the effective control of the Russian Federation. The second mission regrets to confirm that such violations continued in the period under scrutiny in this report (1 April – 25 June 2022). They were moreover extended to other territories, which became, temporarily or for a longer period, under occupation, such as some parts of the Kyiv region or the Kherson region. According to the human rights defender and head of the Kyiv-based Centre for Civil Liberties Oleksandra Matviychuk, “*Russians deliberately search for human rights defenders, for journalists, for*

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618 Патриаршая проповедь в Неделю сыропустную после Литургии в Храме Христа Спасителя, *Московский Патриархат*, 6 марта 2022, at <http://www.patriarchia.ru/db/text/5906442.html?fbclid=IwAR364NBBGQmorRmudkkzXIVaceABe6WQtuFJ-vq58lWFDEJXc9QiGKgRdwQ>

619 В России задумали штрафовать до 10 миллионов рублей за пропаганду ЛГБТ, *Lenta.ru*, 7 июня 2022, at <https://lenta.ru/news/2022/06/07/lgbt/>

620 Отношение россиян к ЛГБТ людям, *Левада-Центр*, 15. 10. 2021, at <https://www.levada.ru/2021/10/15/otnoshenie-rossiyan-k-lgbt-lyudyam/>

621 Преследования ЛГБТИ+ в России: нарастающие репрессии 2021-2022, *Мемориал*, 18. 5. 2022, at <https://adcmemorial.org/statyi/lgbti-persecution-2021-2022/>

622 UN Doc. A/RES/53/144, *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*, 8 March 1999.

*volunteers, for representatives of local communities*".<sup>623</sup> HRD and other activists face various forms of harassment, intimidation, arbitrary detention, and prosecution on dubious grounds.

One concrete example about which the second mission was informed during its visit to Ukraine, concerns four human rights lawyers representing Ukrainian and Crimean Tatar activists in courts and providing legal assistance to them, Emine Avamileva, Edem Semedliayev, Nazim Sheikhmambetov and Ayder Azamatov.<sup>624</sup> On 26 May 2022, Edem Semedliayev was detained in Simferopol by officers of the Centre for Combatting Extremism (Center E) and charged with "*public actions aimed at discrediting the use of the Russian Federation's armed forces, accompanied by calls to carry out unauthorised public events*" (Article 20.3.3 of the Code of Administrative Offenses of the Russian Federation), allegedly for being tagged in a Facebook post against the Russian full-scale invasion of Ukraine published by an unknown person. Found guilty of this offence on the very same day, Edem Semedliayev was sentenced to a fine of 75,000 roubles (around 1,120 Euros). The case is under appeal.

Following this trial, Nazim Sheikhmambetov, Edem Semedliayev's lawyer, was detained and charged with the offence of "*organising a mass simultaneous presence of citizens in a public place, which led to a violation of public order*" (Article 20.2.2 of the Code of Administrative Offenses of the Russian Federation), in relation to a public protest which took place back in October 2021 in Simferopol. One day later, on 27 May 2022, his lawyers, Ayder Azamatov and Emine Avamileva, were detained and charged with the same offence and on the same grounds. On 28 May 2022, the three of them were found guilty on and sentenced to 5-8 days of administrative arrest.<sup>625</sup>

## **8. INTERNALLY DISPLACED PERSONS (IDPS)**

The current conflict in Ukraine has produced the largest displacement of people in Europe since the end of the World War II. According to the data collected by UN High Commissioner for Refugees (UNHCR), by 21 June 2022, more than 5.2 million Ukrainians were recorded across Europe and 3.5 million of them applied for temporary residence in another country (mainly the Russian Federation, Poland, the Republic of Moldova, Romania, Slovakia, and Hungary).<sup>626</sup> In addition, over 7.1 million Ukrainians, i.e., almost one fifth of the population, had been internally displaced inside the country by 22 May 2022, according to the data provided this time by the International Organization for Migration (IOM).<sup>627</sup> Most of IDPS are women (63%) and there is also a high percentage of children and, to a lesser extent, of older persons and persons with disabilities (though persons from the last two group often stay behind).

Defined as "*persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border*",<sup>628</sup> IDPs do not have, unlike refugees, any specific status under IHRL. Yet, there is a growing recognition that such persons are vulnerable and in need of special protection. The

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<sup>623</sup> Documenting War Crimes, Ukrainian NGO Center For Civil Liberties Seeks Justice, *NED*, 31 May 2022, at <https://www.ned.org/documenting-war-crimes-ukrainian-ngo-center-for-civil-liberties-seeks-justice/>

<sup>624</sup> See also Ukraine/Russia: Administrative harassment of four human rights lawyers in occupied Crimea, *FIDH*, 31 May 2022, at <https://www.fidh.org/en/issues/human-rights-defenders/ukraine-russia-administrative-harassment-of-four-human-rights-lawyers>

<sup>625</sup> In addition to the two offences already mentioned, the offence of "*propaganda or public display of Nazi symbols*" (Article 20.3.1 of the Code of Administrative Offenses of the Russian Federation) is also used as a legal ground to prosecute HRDs

<sup>626</sup> Ukraine Situation Flash Update #18, *UNHCR*, 24 June 2022.

<sup>627</sup> Regional Ukraine Response Situation Report #21, *IOM*, 10 June 2022.

<sup>628</sup> UN Doc. E/CN.4/1998/53/Add.2, *Guiding Principles on Internal Displacement*, 11 February 1998, para 2.

appropriate standards of such protection are enshrined in the non-binding *UN Guiding Principles on Internal Displacement*.<sup>629</sup>

The first mission recalled some of these standards which are particularly relevant for the current conflict in Ukraine. One of them is the prohibition of arbitrary displacement (Principle 6). In an armed conflict, arbitrary displacement is any displacement not required by the security of the civilians involved or by imperative military reasons. The reports about instances of forcible deportations of Ukrainian civilians to the territories under the effective control of the Russian Federation or even to the Russian territory, give rise to doubts whether this standard has been respected. Moreover, when displacement takes place, it “*shall not be carried out in manner that violates the right to life, dignity, liberty and security of those affected*” (Principle 8). The second mission however found evidence of the failure to respect humanitarian corridors and the shelling of civilian persons and vehicles using these corridors.<sup>630</sup>

Furthermore, IDPs have to enjoy protection of their human rights during the whole period of displacement (Principles 10-27) and without any discrimination (Principle 4). Yet, similar as with the first mission, the second mission has found information about potentially discriminatory treatment of certain categories of IDPs, especially Roma people,<sup>631</sup> foreigners, older persons<sup>632</sup> and persons with disabilities.<sup>633</sup>

Prior to the Russian attack, Ukraine was home to hundreds of thousands of *foreign citizens*, including some 76,000 foreign students. Some of these foreigners, especially students from Africa and Asia, have allegedly encountered serious difficulties and several among them have even experienced acts of violence while trying to leave Ukraine. They have been, according to testimonies, beaten with sticks, pushed off buses and trains and forced out of shelters.<sup>634</sup> In one such incident, a student from Ghana had to leave a shelter near Sumy, after a Ukrainian man had complained to camp officials that sleeping next to a black person was traumatizing.<sup>635</sup> The second mission recalls that the principle of non-discrimination belongs among the most important human rights and that apart from positive measures in favour of specially vulnerable IDPs, such as young children or pregnant women, no discriminate treatment may be applied with respect to IDPs.

The *conditions* during the displacement and in temporary shelters often leave much to be desired. As noted by the OHCHR, many IDPs “*face shortages of food, water, basic items and energy, and lack access to health services and medication*”.<sup>636</sup> Families get separated, there is limited or no privacy in some temporary shelters. Children might have difficulties pursuing education. Instances of gender-based violence, mainly against women and girls on move, have also been reported and there is an increased risk of human trafficking, exploitation and forced

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<sup>629</sup> *Ibidem*.

<sup>630</sup> Daniel Boffey, Lorenzo Tondo, Russia accused of shelling Mariupol humanitarian corridor, *The Guardian*, 26 April 2022, at <https://www.theguardian.com/world/2022/apr/26/russia-accused-of-shelling-mariupol-humanitarian-corridor>

<sup>631</sup> Discrimination Adds to Agonies of War in Ukraine, *NDVT*, 26 May 2022, at <https://www.ndtv.com/world-news/russia-ukraine-war-ukraines-roma-community-discrimination-adding-trauma-to-ukraines-roma-community-amid-war-3010643>

<sup>632</sup> Angelina Kariakina, Luba Kassova, Alone under siege: how older women are being left behind in Ukraine, *The Guardian*, 16 May 2022, online at <https://www.theguardian.com/global-development/2022/may/16/alone-under-siege-how-older-women-are-being-left-behind-in-ukraine>

<sup>633</sup> Ukraine: 2.7 million people with disabilities at risk, UN committee warns, *UN News*, 14 April 2022.

<sup>634</sup> Emmanuel Achiri, Hrishabh Sandilya, What’s next for African and Asian war refugees?, *IPS*, 8 April 2022, at <https://www.ips-journal.eu/topics/democracy-and-society/whats-next-for-african-and-asian-student-refugees-fleeing-the-war-in-ukraine-5870/>

<sup>635</sup> Ukraine war: African students face Russian missiles and racism, *DW, sine data*, at <https://www.dw.com/en/ukraine-war-african-students-face-russian-missiles-and-racism/a-61356066>

<sup>636</sup> Ukraine: Millions of displaced traumatised and urgently need help, say experts, *OHCHR*, 5 May 2022.

prostitution. Many IDPs are also traumatized by the experience and would need psychosocial support which however is not always available. Yet, all these different needs that IDPs have should be considered and secured to the extent possible.

IDPs have the right to “*return voluntarily, in safety and with dignity, to their homes or places of habitual residence, or to resettle voluntarily in another part of the country*” (Principle 28(1)). As the conflict gets more localized in the Eastern and Southern parts of the country, many IDPs, as well as, in fact, many refugees, seek indeed to return to their homes or to resettle elsewhere in Ukraine. It is hardly realistic to imagine that the Ukrainian authorities could make it possible for all those persons to either regain their original property or possessions or get compensations for those (as foreseen in Principle 29(2)). Yet, they should do their best to facilitate the return or the resettlement.

The first mission drew attention to certain shortcomings in the *legal framework* applicable to IDPs in Ukraine, i.e., the 2014 *Law on Ensuring the Rights and Freedoms of Internally Displaced Persons*, adopted on 20 October 2014.<sup>637</sup> During the visit to Kyiv, the second mission was informed that an amendment to this law had recently been submitted to Verkhovna Rada.<sup>638</sup> The mission was not in the position to study the draft in detail. It nonetheless understands that the primary aim of the draft is to ensure a unified approach to the realization of rights of IDPs across the whole territory of Ukraine, including the temporarily occupied territories.<sup>639</sup> While this is certainly a laudable initiative, the second mission recalls that, as clearly shown by a UN study published in June 2021, the law suffers from some other shortcomings as well.<sup>640</sup> The most serious among them relate to the requirements for the registration and to the false incentive that the benefits linked to the registration may give to IDPs and certain other persons (employers) not to seek the termination of the status.

Similar as with the first mission, the second mission has found limited information about the situation and treatment of Ukrainian IDPs displaced to the territories under the effective control of the Russian Federation. It however wishes to express its serious concern with respect to the alleged practice of forcing at least some IDPs to pass through the so-called filtration centres, mostly situated in the territories of the so-called Donetsk and Luhansk People’s Republics, as well as with respect to the involuntary relocation of some of these IDPs outside the territory of Ukraine (see Section V.A.3 for more details).

## D. CONCLUSIONS

The first mission in its report concluded that human rights, including the most fundamental ones from which no derogation is possible (right to life, prohibition of torture and other inhuman and degrading treatment and punishment), had been extensively violated in the first five weeks of the conflict. The second mission has come to the identical conclusion for the period under the scrutiny in this report (1 April – 25 June 2022). There is rich evidence confirming that the conflict has seriously affected the enjoyment of civil and political rights, such as the right to life, the prohibition of torture and inhuman and degrading treatment, the right to liberty and

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<sup>637</sup> Закон України № 1706-VII Про забезпечення прав і свобод внутрішньо переміщених осіб, 20 жовтня 2014.

<sup>638</sup> Проект Закону про внесення змін до Закону України "Про забезпечення прав і свобод внутрішньо переміщених осіб" щодо приведення окремих його положень у відповідність до Закону України "Про забезпечення прав і свобод громадян та правовий режим на тимчасово окупованій території України", 09.06.2022

<sup>639</sup> Комітет з питань прав людини рекомендує Верховній Раді прийняти за основу та в цілому законопроект про внесення змін до Закону України "Про забезпечення прав і свобод внутрішньо переміщених осіб" щодо приведення окремих його положень у відповідність до Закону України "Про забезпечення прав і свобод громадян та правовий режим на тимчасово окупованій території України", *Верховна Рада України*, 16 червня 2022.

<sup>640</sup> UN, Inclusion of Internally Displaced Persons, *Briefing Note*, June 2021.

security, the right to a fair trial, the right to freedom of expression and many other civil and political rights. Some of the most serious violations encompass targeted killing of civilians, including journalists, human rights defenders, or local mayors; unlawful detentions, abductions and enforced disappearances of the same categories of persons; large-scale deportations of Ukrainian civilians to Russia; various forms of mistreatment, including torture, inflicted on detained civilians and prisoners of war; the failure to respect the fair trial guarantees; and the imposition of the death penalty. Again, most, albeit not all, violations have been committed in the territories under the effective control of the Russian Federation, including the territories of the two so-called People's Republics, and are largely attributable to the Russian Federation.

The second mission has identified two alarming phenomena which were not included or paid sufficient attention in the first report. One is the establishment and use of so-called filtration centres, such as the Bezimenne centre in the Donetsk region, by the Russian armed forces. The centres serve to filter, on unclear grounds, individuals seeking to leave besieged cities or other dangerous areas. Filtration, according to witness testimonies, involves harsh interrogation and humiliating body inspection. Those who pass through filtration are often transferred, with their consent or without it, to Russian territory. Those who do not pass through it, tend to be transferred to the territories of the two so-called People's Republics and their whereabouts are mostly not known. The second alarming phenomenon, linked to the first, is the tendency by the Russian Federation to bypass its international obligations by handing detained persons over to the so-called Donetsk and Luhansk People's Republics and letting these two *de facto* entities engage in problematic practices, including the imposition of the death penalty resulting from trials that fail to meet the basic standards of the fair trial.

The second mission, moreover, concurs with the first mission in concluding that the current conflict in Ukraine has also had a very negative impact on the enjoyment of economic, social, and cultural rights, such as the right to education the right to health, the right to social security, the right to food and water and the right to a healthy environment. This impact is not limited to instances when these rights have been directly violated by one of the parties to the conflict. It has also resulted from the overall state of destruction and disruption of the provision of vital services (education, healthcare, food production, etc.), which has made it very difficult for Ukrainian citizens to fully enjoy their rights and for Ukraine to respect, protect and fulfil these rights. The second mission would moreover like to reiterate that, as stated by the first mission, the conflict in Ukraine has affected all the inhabitants of Ukraine but it has had a particularly negative effect on individuals belonging to vulnerable groups, such as women, children, older persons, or persons with disabilities.

All violations of IHRL entail the responsibility of the relevant State party to the conflict. The most serious among them, moreover, give rise to individual criminal responsibility for crimes against humanity. The second mission shares the doubts expressed by the first mission as to whether the Russian attack on Ukraine *per se* could qualify as a “*widespread or systematic attack directed against any civilian population*”, which provides the context for crimes against humanity. Yet, it fully upholds the conclusion that some patterns of violent acts violating IHRL, which have been repeatedly documented during the conflict, such as targeted killing, enforced disappearance or abductions of civilians, meet this qualification and that any single violent act of this type, committed as part of such an attack and with the knowledge of it, constitutes a crime against humanity. The second mission also notes that such patterns have become more evident in the period under scrutiny in this report.

## VI. ENSURING ACCOUNTABILITY FOR WAR CRIMES, HUMAN RIGHTS VIOLATIONS AND CRIMES AGAINST HUMANITY

### A. FACT-FINDING MECHANISMS

Alleged violations of international humanitarian law and international human rights law, as well as allegations of war crimes and crimes against humanity committed in the current conflict in Ukraine, have to be properly investigated. The obligation to do so stems from treaties, such as the 1949 Geneva Conventions and the 1977 Additional Protocol I and relevant IHRL treaties, as well as from customary rules. The investigation for the purposes of criminal prosecution is carried out by prosecutor offices, courts and law enforcement agents at the national or international level and will be dealt with in the next two subsections. Yet, in many recent conflicts, such criminal law investigation has been often complemented by the activities of fact-finding or inquiry mechanisms which do not seek to provide detailed evidence about individual crimes and to identify their perpetrators but, rather, concentrate on the establishment of facts in order to contribute to the peaceful settlement of international disputes.<sup>641</sup> The main task of fact-finding or inquiry mechanisms is therefore to verify the authenticity of allegations that certain incidents have occurred. The mechanisms may also make a *prima facie* legal assessment of the incidents finding out whether there are reasonable grounds to assume that these incidents might amount to violations of international standards, usually IHL and IHRL.

In the context of the conflict in Ukraine, several fact-finding or inquiry mechanisms have been used. One of them is the Moscow Mechanism of the OSCE, under which the current report has been produced. As noted in Section II above, the Moscow Mechanism, established in 1991 and activated ten times since then, makes it possible for the OSCE Participating States to invite a mission of up to three experts to produce, preferably within three weeks, to consider a particular question or problem relating to the human dimension, gather information about such question or problem from any available sources and, if possible, use its good offices and mediation service to promote dialogue and cooperation among the OSCE Participating States. As also already noted in Section II, the first mission tasked to establish facts about violations of international humanitarian and human rights law, war crimes and crimes against humanity committed in Ukraine since 24 February 2022, was set up on 15 March and produced its report on 5 April 2022 (the report was presented to the OSCE Permanent Council on 12 April 2022 and became public one day later).<sup>642</sup> The current mission, endowed with a virtually identically mandate, was set up on 7 June 2022 and submitted its report on 28 June 2022.

In parallel to the OSCE mission of experts, a similar mission was established, on 4 March 2022, within the UN, by the UN Human Rights Council (HRC). This *Independent International Commission of Inquiry on Ukraine (IICIU)* to ensure accountability for human rights violations and abuses of IHL associated with Russia's aggression against Ukraine and to end impunity.<sup>643</sup> Its wide mandate includes investigations of all alleged violations and abuses of human rights and violations of IHL, and related crimes in the context of the aggression against Ukraine by the Russian Federation; identification, where possible, of individuals and entities responsible for such abuses and violations; and to make recommendations, in particular on accountability measures, including issues of individual criminal responsibility and access to justice for victims. The mandate of the IICIU is thus broader than the mandate of the two OSCE missions of experts

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<sup>641</sup> See Agnieszka Jachec Neale, Human Rights Fact-Finding into Armed Conflict and Breaches of the Laws of War, *Proceedings of the Annual Meeting (ASIL)*, Vol. 105, 2011, pp. 85-89.

<sup>642</sup> Wolfgang Benedek, Veronika Bílková, Marco Sassòli, *Report on Violations of International Humanitarian And Human Rights Law, War Crimes And Crimes Against Humanity Committed In Ukraine Since 24 February 2022*, OSCE, Vienna, 13 April 2022, p. 54.

<sup>643</sup> UN Doc. A/HRC/RES/49/1, *Situation of Human Rights in Ukraine Stemming from the Russian Aggression*, 7 March 2022.

which was in fact limited to the first of the three tasks. The IICIU is composed of three experts, Mr Erik Møse (Norway), Ms Jasminka Džumhur (Bosnia and Herzegovina) and Mr Pablo de Greiff (Colombia). It was set up for the initial duration of one year and should provide an oral update on its work to the UN HRC in September-October 2022 and submit a comprehensive written report in February-April 2023.

On 12 May 2022, the UN Human Rights Council requested the IICIU to address the events having occurred in the areas of Kyiv, Chernihiv, Kharkiv and Sumy regions in late February and in March 2022, when these regions found themselves under the temporary occupation of the Russian Federation.<sup>644</sup> The findings on these events should be presented during the oral update and included in the report. On 7-16 June 2022, the members of the IICIU travelled to Ukraine to meet with various interlocutors, including victims and witnesses of alleged violations of IHL and IHRL. During their stay in Ukraine, they visited Kyiv, Lviv, Irpin, Bucha, Kharkiv, Sumy, Trostyanets and Ohktyrka.<sup>645</sup> The findings from this visit or any other conclusions that the IICIU might reach were not known by 25 June 2022 and the second mission therefore could not rely on them in its report.

The second mission recalls that in addition to the mechanisms established within international organizations, certain treaties applicable in the conflict in Ukraine set up special fact-finding bodies as well. This is the case of the *International Humanitarian Fact-Finding Commission (IHFFC)*, established by Article 90 of the Additional Protocol I to the Geneva Conventions.<sup>646</sup> The IHFFC is a permanent international body composed of 15 experts which may investigate allegations of grave breaches and serious violations of IHL committed in international armed conflicts. It may do so with respect to States which have accepted its jurisdiction through a general declaration or on an *ad hoc* basis. So far, over 70 States, including Ukraine, have issued a general declaration. The Russian Federation did so as well but it withdrew the declaration on 23 October 2019. The *ad hoc* acceptance of the IHFFC would however still be an option and the second mission is convinced that the investigation carried out by the IHFFC would helpfully complement the work of the other, above mentioned fact-finding mechanisms.

As noted by the first mission, in addition to the fact-finding or inquiry mechanisms that are already in place and are or could be used with respect to the conflict in Ukraine, there is also an initiative aimed at establishing a permanent independent investigate mechanism (IIM) advanced by some States, such as the Netherlands, and some NGOs, such as the International Commission of Jurists.<sup>647</sup> Following the example set by the International, Impartial and Independent Mechanism for Syria (IIIM) and the Independent Investigative Mechanism for Myanmar (IIMM), the IIM would be tasked to collect evidence to be used mainly in international or national criminal proceedings. At the time of the submission of this report, the prospects of this initiative remained unclear.<sup>648</sup>

The second mission wishes to add that fact-finding tasks with respect to the conflict in Ukraine, albeit without any formal mandate, have been since the outbreak of the conflict carried out by various Ukrainian and non-Ukrainian non-governmental organizations. These organizations have partly relied on public open sources information but many of them have also collected

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<sup>644</sup> UN Doc. A/HRC/RES/S-34/1, *The deteriorating human rights situation in Ukraine stemming from the Russian aggression*, 16 May 2022.

<sup>645</sup> UN Independent International Commission of Inquiry on Ukraine - Press Conference, *UN Media*, 15 June 2022, at <https://media.un.org/en/asset/k11/k1196tebe9>

<sup>646</sup> For more details, see the website of the IHFFC, at <https://www.ihffc.org/index.asp?Language=EN&page=home>

<sup>647</sup> ICJ, *Report Launch: The Future of Accountability Mechanisms – Twenty Recommendations*, 15 November 2021, at <https://www.icj.org/report-launch-the-future-of-accountability-mechanisms-twenty-recommendations/>.

<sup>648</sup> See also Kingsley Abbott, Saman Zia-Zarifi, *Is It Time to Create a Standing Independent Investigative Mechanism (SIIM)? Part I and Part II*, *Opinio Juris*, 10 and 11 April 2022.

evidence through satellite pictures and on-site visits or witnesses and have interviewed victims and witnesses. Such organizations include *inter alia* the Platform for the Investigation of War Crimes in Ukraine – 5 AM Coalition (bringing together 16 Ukrainian NGOs), the Tribunal for Putin Platform, Bellingcat, Amnesty International, Human Rights Watch and many other organizations. The second mission praises these organizations for their work and for sharing some of the conclusions of this work with the mission and it stresses the importance of constructive cooperation between various entities engaging in similar activities.

## **B. RESPONSIBILITY MECHANISM**

As noted in Section III.C.1-2, any violations of international law, including IHL and IHRL, by the *de jure* or *de facto* organs of the State as well as by private entities whose acts are attributable to the State, give rise to the international responsibility of this State.<sup>649</sup> Moreover, certain qualified violations of IHL, as well as certain violent acts committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack give rise to individual criminal responsibility.

### **1. RESPONSIBILITY OF THE STATE**

Responsibility of the Russian Federation for alleged violations of IHL and IHRL and/or for other alleged violations committed during the conflict in Ukraine are at the moment the object of at least two inter-state judicial proceedings. One takes place before the UN International Court of Justice (ICJ), the other before the European Court of Human Rights (ECtHR).

The *ICJ*, the principal judicial organ of the United Nations,<sup>650</sup> is competent to consider and decide any legal disputes submitted to it by States. On 26 February 2022, Ukraine filed a complaint against the Russian Federation under the 1948 *Convention on the Prevention and Punishment of the Crime of Genocide*.<sup>651</sup> The application relates to the accusations levelled by the Russian Federation against Ukraine that the latter has committed acts of genocide in the Donetsk and Luhansk regions of Ukraine and the use of these accusations for the legal justification of the “special military operation” against Ukraine started on 24 February 2022. Ukraine requests the ICJ to declare that the accusations are false and that they cannot be used as a legal justification for the Russian use of force against Ukraine. At the time of the submission of this second report, the ICJ still remains seized of the matter. Yet, on 16 March 2022, granting the Ukrainian request for provision measures, it ordered the Russian Federation “*to immediately suspend military operations that commenced on 24 February on the territory of Ukraine*” and to “*ensure that any military or irregular armed units which may be directed or supported by it, as well as any organizations and persons which may be subject to its control or direction, take no steps in furtherance of the military operations*”.<sup>652</sup> The order has not been implemented so far.

The *ECtHR* currently has six inter-state cases between Ukraine and the Russian Federation (in one case, the other way round) pending. These cases relate to various events having happened in the relationship between the two countries since 2014, such as the unlawful occupation and annexation of Crimea (2014) or the shooting down of the Malaysia Arline Flight MH17 (2014). On 28 February 2022, Ukraine submitted a request to the ECtHR to indicate urgent interim measures to the Russian Federation in relation to “*massive human rights violations being committed by the Russian troops in the course of the military aggression against the sovereign*

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<sup>649</sup> Draft articles on Responsibility of States for internationally wrongful acts, in UN Doc. A/56/10, Report of the International Law Commission on the work of its Fifty-third session, Official Records of the General Assembly, Fifty-sixth session, Supplement No. 10, November 2001, pp. 43-59.

<sup>650</sup> Article 92 of the UN Charter.

<sup>651</sup> ICJ, *Allegations of Genocide Under the Convention on the Prevention And Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*, Application, 26 February 2022.

<sup>652</sup> ICJ, *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*, Order, 16 March 2022.



*territory of Ukraine*". On 1 March 2022, the ECtHR granted this request, indicating to the Russian Federation to "refrain from military action against civilians and civilian objects, including residential premises, emergency vehicles and other specially protected civilian objects such as schools and hospitals, and to ensure immediately the safety of the medical establishments, personnel and emergency vehicles within the territory under attack or siege by Russian troops".<sup>653</sup>

The interim measures have not been respected and future decisions have even a lower chance to be so, in view of the law adopted by the Russian Federation on 11 June 2022, stipulating that the country "will not implement decisions of the European Court of Human Rights entering into force after 15 March 2022".<sup>654</sup> The law reacts to the exclusion of the Russian Federation from the Council of Europe, due to which the Russian Federation ceased to be bound by the ECHR on 16 March 2022, though the ECtHR had the competence to consider cases related to events having occurred under the jurisdiction of the Russian Federation until 16 September 2022. To the extent that these cases relate to the violations of IHRL in the current conflict, the findings of the first and second mission could be of relevance for them.

## 2. INDIVIDUAL CRIMINAL RESPONSIBILITY

Both the first and the second mission have concluded that there are reasonable grounds to believe that war crimes and crimes against humanity have been committed in the current conflict in Ukraine, mostly, albeit not exclusively, by members of the armed forces of the Russian Federation. Allegations of such crimes have already started to be investigated and/or criminally prosecuted, both at the national level, especially in Ukraine, and at the international level, before the International Criminal Court (ICC). There is also an initiative aimed at setting up a special tribunal for Ukraine.<sup>655</sup> Since this tribunal, according to the available proposals<sup>656</sup> should have jurisdiction solely over the crime of aggression, it is not further discussed in this report, because doing so is not within the mandate of the second mission.

At the *national* level, unsurprisingly, Ukraine has so far been the most active in the investigation and prosecution of international crimes and other offences committed on its territory and, mostly, against its citizens. As already indicated above (see Section V.A.4), by 25 June 2022, the Office of the Prosecutor General of Ukraine registered almost 20,000 criminal cases relating to crimes under international law. 18,805 concern war crimes, 73 the act of aggression, 18 war propaganda and 634 are others.<sup>657</sup> By the same date, two trials have resulted in a judgment before Ukrainian courts (in Kyiv and Poltava). The investigation into international crimes and other offences committed on the territory of Ukraine has also been conducted and the first charges made, in the Russian Federation, mostly with respect to foreigners having joined the Ukrainian armed forces (Section V.A.4). The problematic nature of the trials carried out by the so-called Donetsk and Luhansk People's Republics has already been highlighted in this report (Sections V.A.1 and V.A.4). The second mission wishes to once

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<sup>653</sup> The European Court grants urgent interim measures in application concerning Russian military operations on Ukrainian territory, *ECtHR Press Release*, 1 March 2022.

<sup>654</sup> Федеральный закон № 183-ФЗ *О внесении изменений в отдельные законодательные акты Российской Федерации и признании утратившими силу отдельных положений законодательных актов Российской Федерации*, 11.06.2022, пара 7(a).

<sup>655</sup> See Philippe Sands, Putin's use of military force is a crime of aggression, *Financial Times*, 28 February 2022; and Statement Calling for the Creation of a Special Tribunal for the Punishment of the Crime of Aggression Against Ukraine, March 2022, at [https://gordonandsarahbrown.com/wp-content/uploads/2022/03/ Combined-Statement-and-Declaration.pdf](https://gordonandsarahbrown.com/wp-content/uploads/2022/03/Combined-Statement-and-Declaration.pdf)

<sup>656</sup> *Ibidem*.

<sup>657</sup> Crimes Committed During the Full-Scale Invasion of the RF, *Office of the Prosecutor General of Ukraine*, 25 June 2022, at <https://en.gp.gov.ua/ua/>

again repeat that the obligation to investigate into international crimes and hold their perpetrators accountable is not limited to crimes committed by the other party to the conflict.

In addition to Ukraine and the Russian Federation, several other countries, which are not party to the current conflict, have opened investigation into crimes committed in the territory of Ukraine. Some cases concern crimes committed by the citizens of such countries, having joined one or the other party to the conflict (foreign fighters,<sup>658</sup> volunteers having engaged in looting,<sup>659</sup> etc.). Other relate to international crimes, especially war crimes, committed mostly by members of the Russian armed forces.<sup>660</sup> Third countries are also involved in the investigation carried out by the Ukrainian law enforcement agencies, for instance by providing forensic experts.<sup>661</sup> Already at the end of March 2022 moreover, a *Joint Investigation Team* was set up by Poland, Lithuania and Ukraine and under the auspices of the Eurojust. This team should help Ukraine in gathering evidence of crimes committed on its territory.<sup>662</sup> Within the European Union, the European Arrest warrant could be used as a useful tool to ensure that perpetrators of international crimes do not escape justice by moving to another EU country. The European Arrest Warrant makes it obligatory for EU States to arrest and transfer to another EU State persons suspected of certain serious crimes, including “*crimes within the jurisdiction of the International Criminal Court*”.<sup>663</sup>

At the *international* level, the ICC, the permanent court established by the Rome Statute in 1998, is competent to investigate and prosecute certain international crimes, namely war crimes and crimes against humanity, committed on the territory of Ukraine during the current conflict. The ICC deals with the situation in Ukraine on the basis of a referral made in the early March 2022 by 41 State Parties to the Rome Statute of the ICC.<sup>664</sup> While neither Ukraine nor the Russian Federation have ratified the Rome Statute, the ICC may act on the basis of this referral thanks to the fact that on 9 April 2014 and 8 September 2015, Ukraine made two declarations Article 12(3) of the Rome Statute, granting the ICC the jurisdiction over any crimes committed

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<sup>658</sup> Czech tried over killings with pro-Russian separatists in Ukraine, *Radio Prague International*, 17 March 2022, at <https://english.radio.cz/czech-tried-over-killings-pro-russian-separatists-ukraine-8745077>

<sup>659</sup> Two Czech volunteers are suspected of looting in Ukraine, *Czechia Posts*, 25 June 2022, at <https://czechia.postsen.com/news/15949/Two-Czech-volunteers-are-suspected-of-looting-in-Ukraine.html>

<sup>660</sup> See, for instance, Lithuania prosecutors launch Ukraine war crimes investigation, *Reuters*, 3 March 2022, at <https://www.reuters.com/world/europe/lithuania-prosecutors-launch-ukraine-war-crimes-investigation-2022-03-03/>; Bojan Pancevski, Germany Opens Investigation Into Suspected Russian War Crimes in Ukraine, *Wall Street Journal*, 8 March 2022, at <https://www.wsj.com/livecoverage/russia-ukraine-latest-news-2022-03-08/card/germany-opens-investigation-into-suspected-russian-war-crimes-in-ukraine-bNCphaIWE30f2REH8BCi>; Polish prosecutors launch investigation into Russia's attack on Ukraine, *First News*, 1 March 2022, at <https://www.thefirstnews.com/article/polish-prosecutors-launch-investigation-into-russias-attack-on-ukraine-28331>; Spain opens probe into ‘serious violations’ by Russia in Ukraine, *The Local*, 8 March 2022, at <https://www.thelocal.es/20220308/spain-opens-probe-into-serious-violations-by-russia-in-ukraine/>; Swedish prosecutors open preliminary investigation into war crimes in Ukraine, *Reuters*, 4 April 2022, at <https://www.reuters.com/world/europe/swedish-prosecutors-open-preliminary-investigation-into-war-crimes-ukraine-2022-04-05/>

<sup>661</sup> Shweta Desai, France dispatches team to Ukraine to investigate Russian war crimes, *AA*, 11 April 2022, at <https://www.aa.com.tr/en/europe/france-dispatches-team-to-ukraine-to-investigate-russian-war-crimes/2561103>; Dasha Zubkova, Criminologists From Slovakia Arrive In Ukraine To Assist In Investigation Of Russian War Crimes, *Ukrainian News*, 24 April 2022, at <https://ukranews.com/en/news/852231-criminologists-from-slovakia-arrive-in-ukraine-to-assist-in-investigation-of-russian-war-crimes>

<sup>662</sup> Eurojust supports joint investigation team into alleged core international crimes in Ukraine, Press Release, *Eurojust*, 28 March 2022.

<sup>663</sup> See European Union, *Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States*, Article 2(2).

<sup>664</sup> Statement of ICC Prosecutor, Karim A.A. Khan QC, on the Situation in Ukraine: Receipt of Referrals from 39 States Parties and the Opening of an Investigation, *ICC*, 2 March 2022. Four countries joined the referral later (in March and April 2022).

on its territory since 21 November 2013. The ICC prosecutor Karim A. Khan opened the investigation on 2 March 2022 and has carried out at least two visits to Ukraine since then. At the moment of the submission of this report, the investigation into the situation in Ukraine is still ongoing and no individual defenders have been yet identified, no arrest warrants issued and no cases opened.

During the visit to Kyiv, the second mission learnt that the Ukrainian criminal legislation was about to be amended to facilitate the cooperation between Ukraine and the ICC.<sup>665</sup> Such an amendment is to be welcomed, as would be the entry into force of the substantive amendment to the Criminal Code of Ukraine, revising its text to make it fully compatible with the Rome Statute of the ICC. The draft amendment of this type was adopted by the Verkhovna Rada of Ukraine already on 20 May 2021 but so far has failed to be signed by President Zelenskyy.<sup>666</sup> The second mission notes that bringing the Ukrainian legislation into the full compliance with the Rome Statute of the ICC is desirable and that this move would also facilitate the future ratification of the Rome Statute by Ukraine which should be seen as one of the legal priorities of the country.

## VII. GENERAL CONCLUSIONS

The second mission has largely confirmed the conclusions reached by the first mission. It has discovered clear patterns of serious violations of IHL attributable mostly to Russian armed forces in many areas which its investigations referred to. A significant number of civilians have been killed or injured, and civilian objects – like civilian houses, hospitals, cultural property, schools, multi-story residential buildings, administrative buildings, penitentiary institutions, water stations and electricity systems – have been damaged or destroyed in numerous towns and villages. The magnitude and frequency of the indiscriminate attacks carried out against civilians and civilian objects, including in sites where no military facility was identified, is credible evidence that hostilities were conducted by Russian armed forces disregarding their fundamental obligation to comply with the basic principles of distinction, proportionality and precaution that constitute the fundamental basis of IHL.

The signs of torture and ill-treatment on the corpses of killed civilians also show disregard of the principle of humanity that should guide the application of IHL in military operations. The events concerning the towns of Bucha and Irpin, that were visited by the mission, are two emblematic examples of these grave breaches of IHL under the Geneva Conventions and their Additional Protocols, which constitute war crimes. There is information that all the violations that the mission was able to ascertain are or will be under investigation and the responsible persons, if identified and arrested, under prosecution by the relevant national or international judicial authorities.

The second mission has concluded that international human rights law (IHRL) has been extensively violated in the conflict in Ukraine. Some of the most serious violations include targeted killing of civilians, including journalists, human rights defenders, or local mayors; unlawful detentions, abductions and enforced disappearances of such persons; large-scale deportations of Ukrainian civilians to Russia; various forms of mistreatment, including torture, inflicted on detained civilians and prisoners of war; the failure to respect fair trial guarantees; and the imposition of the death penalty. Most, albeit not all, violations have been committed in

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<sup>665</sup> Interview with representatives of the Ministry of Justice of Ukraine, on file with the authors of the report. See *Закон України № 2236 Про внесення змін до Кримінального процесуального кодексу України та інших законодавчих актів України щодо співробітництва з Міжнародним кримінальним судом*, 3 травня 2022.

<sup>666</sup> *Проект закону Про внесення змін до деяких законодавчих актів України щодо імплементації норм міжнародного кримінального та гуманітарного права*, 20 травня 2021.

the territories under the effective control of the Russian Federation, including the territories of the so-called Donetsk and Luhansk People's Republics, and are largely attributable to the Russian Federation. The mission has identified two new alarming phenomena which were not included or paid sufficient attention in the first report, namely the establishment and use of so-called filtration centres and the tendency by the Russian Federation to bypass its international obligations by handing detained persons over to the two so-called People's Republics and letting them engage in problematic practices, including the imposition of the death penalty.

The second mission has also confirmed that the current conflict in Ukraine has had a very negative impact on the enjoyment of economic, social, and cultural rights, such as the right to education the right to health, the right to social security, the right to food and water and the right to a healthy environment. This impact is not limited to instances when these rights have been directly violated but results from the overall state of destruction and disruption of the provision of vital services (education, healthcare, food production, etc.) in the country as well. The mission would moreover like to stress that particular attention have to be paid to individuals belonging to vulnerable groups, such as women, children, older persons, or persons with disabilities. All violations of IHRL entail the responsibility of the relevant State. The most serious among them, moreover, may give rise to individual criminal responsibility for war crimes and crimes against humanity.

The second mission shares the doubts expressed by the first mission as to whether the Russian attack on Ukraine *per se* could qualify as a “*widespread or systematic attack directed against any civilian population*”, which provides the context for crimes against humanity. Yet, it fully upholds the conclusion that some patterns of violent acts violating IHRL, which have been repeatedly documented during the conflict, such as targeted killing, enforced disappearance or abductions of civilians, meet this qualification and that any single violent act of this type, committed as part of such an attack and with the knowledge of it, constitutes a crime against humanity. The second mission also notes that such patterns have become more evident in the period under scrutiny in this report.

The findings of this report are, similar as in the first report, preliminary. This is due to the limited time for the preparation of this report, the ongoing nature of the armed conflict in Ukraine, the complexity of the situation in Ukraine, the large scale of alleged violations, abuses and crimes committed there as well as difficulties inherent in the collection of evidence in such a situation. The second mission has nonetheless been able to identify certain alarming patterns of behaviour that need to be further investigated and considered by competent national or international bodies. The second mission is convinced that the *Independent International Commission of Inquiry on Ukraine* (IICIU), established by the UN Human Rights Council, will be able, within its one-year mandate, to provide an in-depth analysis of the situation in Ukraine. The *International Humanitarian Fact-Finding Commission* (IHFFC) could helpfully complement the work of the UN and OSCE bodies, if Ukraine and the Russian Federation agreed to use its services. The issues of State responsibility have to be considered by the ICJ, the ECtHR or another judicial body. The issues of individual criminal responsibility have to be, and already are, considered by national courts in Ukraine, the Russian Federation or third countries, or by the ICC, always in full respect of the guarantees of a fair trial.

**Comments by Ukraine to the Report of the Mission of Experts,  
established to address the violations of international humanitarian  
and human rights law, war crimes and crimes against humanity  
committed during Russia's war of aggression against Ukraine**

1. Taking into account the provisions of Section VI.B.2 of the Report [pages 112-114], it is important to note that on 25 April 2022 the Office of the Prosecutor of the International Criminal Court became a participant of the Joint Investigation Team (hereinafter - JIT) for the investigation of crimes committed during the armed aggression against Ukraine, joining Ukraine, Poland and Lithuania. Estonia, Latvia and Slovakia became members of the JIT on 30 May 2022. At the same time, in order to set up a legal framework for cooperation with the International Criminal Court and to bring it in line with the provisions of the Rome Statute, the Criminal Procedure Code of Ukraine was amended by the Law of Ukraine of 3 May 2022 №2236-X "On Amendments to the Criminal Procedure Code of Ukraine and other legislative acts of Ukraine on cooperation with the International Criminal Court" by supplementing it with new section IX<sup>2</sup> "Specific aspects of cooperation with the International Criminal Court".
2. It is important to emphasize that all foreign citizens and stateless persons, which take part in the international armed conflict on Ukraine's side as members of the Armed Forces of Ukraine are lawful combatants and are protected by the international humanitarian law, including the immunity from being brought to justice for the mere fact of participation in the armed conflict. The issue of the military service in the Armed Forces of Ukraine by foreign citizens and stateless persons is regulated by the Law of Ukraine "On Military Duty and Military Service". Ukraine ratified the International Convention Against the Recruitment, Use, Financing and Training of Mercenaries. Article 447 of the Criminal Code of Ukraine provides for criminal liability for mercenarism.
3. *"This fact also complicates the procedure to specify the exact number of Ukrainians who died in Crimea. During a meeting held in Kyiv with the Mission of the President of Ukraine in the Autonomous Republic of Crimea, the mission was informed that it is difficult to confirm if the mid-May number of 48 dead Ukrainians is correct. Some other deceased may be Ukrainian citizens on whom Russian citizenship was unlawfully imposed."* [page 25 of the Report]. **Comment by Ukraine:** based on the findings of the Mission of the President of Ukraine in the Autonomous Republic of Crimea as of July 2022, out of 108 Crimean residents confirmed to have died as a result of taking part in the hostilities in mainland Ukraine as part of the Russian armed forces, 57 were reported to be Ukrainian citizens. What complicates the establishment of exact figures is that some of the deceased may be Ukrainian citizens on whom Russian citizenship was unlawfully imposed, which Ukraine doesn't recognize, while others may be Russians that have been unlawfully residing in the occupied Crimea and Sevastopol.
4. *"During its visit to Ukraine, the mission could receive information from the Mission of the President of Ukraine in the Autonomous Republic of Crimea about illegal conscription in Crimea's temporary occupied territories (TOTs)."* [page 32 of the Report]. **Comment by Ukraine:** according to the announcement of the occupying administration in Crimea dated July 4, 2022, it issued "The order on commission for mobilization of citizens in the republic of Crimea". This "order" also provides for establishment of the relevant municipal commissions of lower level. This step of the occupying administration testifies that the Russian Federation might prepare to carry out the illegal mobilization in the temporarily occupied territory of the Autonomous Republic of Crimea and the city of Sevastopol. In the

meantime, conscription campaigns are conducted regularly twice a year (in spring and autumn) since 2015. Conscripts are men between 18 and 27. As of now, the occupiers have unlawfully conducted 14 conscription campaigns, forcing about 34,000 Crimeans to serve in the Russian armed forces. On April 1, 2022, the occupying administration launched the 15th unlawful conscription campaign. Russia planned to draft 134,500 conscripts in total, including in the TOT of Crimea and Sevastopol.

5. *“Since its invasion of Ukraine on 24 February 2022, Russia has been accused of using vehicle-borne thermobaric rocket launchers.”* [page 51 of the Report]. **Comment by Ukraine:** it is important to mention that Russian armed forces use multiple rocket launchers capable of using thermobaric warheads «TOS-1» (so-called «Buratino») and «TOS-1a» (so-called «Solntsepyok») when attacking Ukrainian cities. This directly endangers the lives of civilians, given the affected area and the level of indiscriminate impact of such weapons. For example, the area that can be totally burned up by «Solntsepyok» is up to 40,000 square meters, and it is carried out with completely unguided missiles.
6. *“According to media reports, Ukrainian forces used cluster munitions in Husarivka, Kharkiv oblast, on 6 or 7 March 2022, when Russia occupied the village.”* [page 50 of the Report]. **Comment by Ukraine:** since the beginning of the full-scale invasion of the Russian Federation on the territory of Ukraine, no criminal proceedings have been registered on the facts of use by the Armed Forces of Ukraine of cluster munitions, “Tochka-U” missile systems or other prohibited types of weapons.
7. *“The incident having occurred in the village of Vilkhivka in the Kharkiv region on 27 March 2022...”* [page 69 of the Report]. **Comment by Ukraine:** two criminal proceedings based on the facts of possible mistreatment of prisoners of war have been initiated since February 24, 2022. One of them is based on the fact of possible mistreatment of prisoners of war by unidentified persons in military uniform on March 27, 2022, in the Kharkiv region; and another one is based on the fact of possible mistreatment of prisoners of war by representatives of the volunteer battalion near the village of Dmytrivka, Buchansky district, Kyiv region. All necessary measures are being taken to ensure a comprehensive and independent investigation of the circumstances of these criminal offenses, the pre-trial investigation is ongoing.
8. *“The trials have, in the majority, produced positive reactions. Yet, words of caution can also be heard, especially within the legal academia<sup>424</sup>. The respect of the fair trial guarantees during the trials gives rise to doubts.”* [page 75 of the Report]. **Comment by Ukraine:** regarding the right to a fair trial and due process on V.Shishimarin, A.Bobikin and A.Ivanov we would like to inform the following. The Criminal Code of Ukraine establishes that appearing with a confession, sincere repentance or active assistance in the detection of a criminal offense are mitigating circumstances. Considering these provisions of the Ukrainian legislation, A.Bobikin and A.Ivanov by testifying on investigated circumstances contributed to the investigation of the crime they were accused of. As a result, the court took into the account such behaviour of the defendants and defined it as a circumstance that mitigated their punishment. As for V.Shishimarin, at the stage of pre-trial investigation he pleaded guilty to the alleged crime only when most of the investigative actions, indicating him as a criminal, had been conducted. His defence attorney (lawyer V.Ovsyannikov) was present at all court hearings, and investigative actions on the suspect were also conducted with his immediate participation. During the pre-trial investigation and the trial, facts that reliably indicate that V.Shishimarin could not be considered as a military man acting at the

commander's order, were established. The punishment imposed on the convicted person is within the sanction of the article, and corresponds to the severity of the crime, taking into account two aggravating circumstances established by the court. The criminal law provides for the possibility, at the convicted person's request, to change the sentence to a fixed-term one, defining specific term of serving the sentence. There were no complaints either from V. Shishimarin, or his lawyer, about inadequate detention conditions, torture or inhumane treatment. In accordance with the Ukrainian legislation, persons in custody in the courtroom stay behind an appropriate barrier. Such a barrier, in particular a glass cabin, provide the necessary isolation of defendants, guaranteed protection of participants of the court hearings from defendants' unlawful actions, as well as protection of the defendants themselves. The fact that defendants stay behind the glass barrier is stipulated by the Ukrainian legislation and in no way caused any bias in the court. The presumption of innocence for each defendant was unconditionally respected, and their right to defense and a fair trial was ensured (for example, all convicted persons' sentences were appealed by their defence attorneys). In view of the abovementioned, assumptions of violation of the presumption of innocence are insufficiently substantiated in the Report.

08 July 2022