Second Interim Report on reported violations of international humanitarian law and international human rights law in Ukraine

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OSCE ODIHR

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ODIHR Director's Foreword

Following the military attack launched by the Russian Federation in Ukraine on 24 February, the ongoing war continues to have a devastating impact on civilians, with the United Nations verifying over 16,000 civilian casualties in the country of which almost 6,000 have died, and assessing that the actual numbers are considerably higher. The conflict also continues to raise significant concerns about the respect and implementation of international humanitarian law (IHL) and international human rights law (IHRL), while shaking the European security order and the international legal framework — including the core principles of the Helsinki Final Act of 1975.

In line with its monitoring mandate, and following the launch of its First Interim Report in July 2022, ODIHR continues its Ukraine Monitoring Initiative, monitoring and documenting the most serious violations of IHL and IHRL affecting the lives of civilians and prisoners of war taking place as a result of this armed conflict.

In line with its established monitoring methodology, for this Second Interim Report, ODIHR has continued to collect information through desk research, including using open-source investigation techniques to verify digital evidence, and has, to date, conducted 120 in-person interviews in Ukraine and in Estonia with witnesses and survivors of alleged violations. In doing so, ODIHR continues to demonstrate its ability and commitment to adapt to the challenging situation and implement its mandate.

This Second Interim Report provides an updated assessment of ODIHR's monitoring for violations of IHL and IHRL by focusing on events that occurred between 1 July and 1 November 2022. Largely confirming the findings of the First Interim Report, this latest update finds credible evidence that the conduct of hostilities by the Russian Federation has continued to be characterized by a general disregard for the basic principles of distinction, proportionality and precautions set out by IHL, which may amount to war crimes and crimes against humanity, and which has led to tremendous loss of civilian life and widespread suffering over the course of the conflict. During the reporting period, there have also been some indicators, although much more limited in scope, of IHL violations by the Ukrainian armed forces.

To inform its work and findings, ODIHR has continued to request relevant information from both parties to the conflict — a practice that will be repeated as our monitoring work continues.

For this Second Interim Report, I also wish to renew my thanks to the survivors and witnesses who agreed to be interviewed and share their experiences and testimonies, all the civil society organizations and human rights defenders who helped and continue to help ODIHR with fulfilling its important mandate, as well as all ODIHR staff for all their hard work.

Matteo Mecacci
ODIHR Director

Executive Summary

I

1. The military attak by the Russian Federation in Ukraine which began on 24 February 2022 and the resulting international armed conflict has continued to have devastating and widespread impacts on the civilian population and has led to extensive credible accounts of international humanitarian law (IHL) and international human rights law (IHRL) violations.

2. In line with its monitoring mandate, ODIHR launched the Ukraine Monitoring Initiative immediately following the start of the attack to monitor and document the most serious violations of IHL and IHRL affecting the lives of civilians and prisoners of war (POWs), and it has continued to do so since the launch of its *First Interim Report* in July 2022.

3. This report provides an updated assessment of alleged violations of IHL and IHRL by generally focusing on events that occurred between 1 July and 1 November 2022, while Chapter VI on the situation in Ukrainian territories occupied by the Russian Federation covers the period from 24 February until 1 November 2022 to take into account information uncovered following the reclaiming of several such territories by Ukrainian forces.

4. Conforming to its established monitoring methodology, for this Second Interim Report ODIHR has continued to collect information through desk research, including using open-source investigation techniques to verify digital evidence, and has conducted in-person interviews in Ukraine and in Estonia with witnesses and survivors of alleged violations. ODIHR has also utilized reports of international organizations and non-governmental organizations.

5. The Russian Federation and Ukraine, as parties to the conflict, remain bound by applicable provisions of IHL and their obligations under IHRL. ODIHR considers the *de facto* authorities in the occupied territories of Ukraine — including those that the Russian Federation has illegally 'annexed' — to be currently under the overall control of the Russian Federation, which is responsible for their conduct under IHL.

6. ODIHR's ongoing monitoring of the situation provides credible evidence that the conduct of hostilities by the Russian Federation has continued to be characterized by a general disregard for the basic principles of distinction, proportionality and precautions set out by IHL, which may amount to war crimes and crimes against humanity, and which has led to tremendous loss of civilian life and widespread suffering over the course of the conflict. During the reporting period, there have also been some indicators, although much more limited in scope, of IHL violations by the Ukrainian armed forces.

7. ODIHR's monitoring has identified numerous attacks by the Russian Federation that suggest serious violations of IHL which may amount to war crimes, including repeated and apparently indiscriminate strikes in densely populated

areas using explosive weapons with wide area effects, resulting in widespread civilian death and injury and extensive destruction of civilian infrastructure.

8. The reporting period was in general characterized by devastating and intensified attacks reportedly carried out against civilian infrastructure by the Russian Federation, resulting in high numbers of civilian casualties and loss of access to critical infrastructure for millions that could in itself cause greater loss of life during the winter season.

9. Indicators also suggest that the Ukrainian armed forces have, on a much smaller scale, failed to comply with IHL rules on the conduct of hostilities in some regions that are outside the government's effective control, including by using explosive weapons with wide impact effects in densely populated areas that have caused numerous civilian casualties and destruction to civilian objects.

10. ODIHR considers the decision of the Russian Federation to hold 'referenda' on 23–27 September to 'annex' Ukraine's occupied territories to be in contravention of international standards and obligations under international humanitarian law, and the referenda and their outcome are therefore illegal and have no legal force.

11. Witnesses interviewed by ODIHR provided extensive accounts of actions in contravention of the main tenets of the IHL law of occupation undertaken by the Russian Federation in its administration of the occupied territories, including issuance of Russian passports, the introduction of Russian currency, and unlawful conscription of Ukrainian citizens into the Russian armed forces, which may amount to a war crime. Many witnesses interviewed by ODIHR who lived in territories occupied by the Russian Federation described deplorable living conditions, including insufficient access to clean drinking water, food, medical care, electricity, and gas, exacerbated by the occupying authorities' selective blocking of humanitarian aid, indicating the Russian Federation's failure to abide by its obligations under international law as an occupying power.

12. Furthermore, disturbing accounts provided to ODIHR by witnesses and survivors describe IHL and IHRL abuses committed by Russian Federation forces against civilians in occupied territories, such as unlawful killings, abductions, kidnapping and other forms of arbitrary deprivation of liberty including instances of enforced disappearances as well as torture, ill-treatment and conflict-related sexual violence. As an aggravating factor, the sheer number of accounts of allegedly systematic torture and other forms of ill-treatment inflicted upon civilians by the occupying forces seems to suggest that these practices were carried out in a context of impunity. Other violations of IHL, including looting and appropriation of private property, were reportedly accompanied by IHRL violations, including suppression of peaceful protest.

13. Witnesses also provided accounts of unlawful forcible transfers and deportations of civilians within and outside occupied territories, including children, who have reportedly been transferred to the Russian Federation and other Russian-occupied territories, which may amount to a war crime under IHL. Witnesses who reported being forcibly transferred, deported or evacuated from the occupied territories described facing perilous conditions, including abuses by Russian armed forces, at checkpoints and during so-called 'filtration' procedures.

14. During the reporting period, continued restrictions on access to POWs were reason for deep concern as highlighted repeatedly by the International Committee of the Red Cross (ICRC), particularly in light of extensive reports by former Ukrainian POWs of abuse at the hands of Russian authorities including torture, ill-treatment, and inhumane and degrading treatment during detention. Some concerning reports of ill-treatment of Russian POWs by Ukrainian authorities have also been documented.

15. ODIHR also monitored some reported IHRL abuses, although much more limited in scope, by Ukrainian armed forces and law enforcement authorities, including unlawful killings, arbitrary arrest and detention, including instances of enforced disappearance, as well as torture and other ill-treatment, including in some cases against individuals alleged to have cooperated with Russian Federation authorities during occupation.

16. In light of these systematic continuing violations of IHL and IHRL, ODIHR makes a series of recommendations, calling on both parties to the conflict to respect applicable international law, and to fulfil their duty to investigate violations and bring those responsible to justice in fair trials. In particular, ODIHR continues to urge the Russian Federation to distinguish at all times between civilians and civilian objects and military objectives in order to avoid preventable loss of civilian life. ODIHR also calls upon both parties to ensure full respect for the rights of POWs under IHL and to immediately grant unimpeded access to the ICRC and other relevant organizations to all places where POWs are detained.

17. The Russian Federation should also cease its continuous attacks on civilian infrastructure that have the effect of increasing widespread civilian suffering, especially in the winter season. ODIHR calls upon the Russian Federation to immediately halt the reported forcible transfer and deportation of civilians within and outside occupied territories, including children, and to cease any attempts to change the legal status of children forcibly transferred or deported in contravention of international law. ODIHR calls upon Ukraine to promptly and impartially investigate allegations of rights violations against individuals in territories under its effective control, including those alleged to have cooperated with occupying Russian Federation forces, and to bring perpetrators of abuses to justice.

Introduction

II

18. The military attack that the Russian Federation initiated in Ukraine beginning in the early hours of 24 February 2022 and the resulting international armed conflict continues to raise significant concerns about the respect and implementation of international humanitarian law (IHL) and international human rights law (IHRL). Throughout the past nine months, ODIHR and various other international actors have exhaustively documented widespread civilian suffering along with compelling evidence of IHL and IHRL violations, primarily by the Russian Federation.

19. OSCE human dimension commitments emphasize the vital importance of participating States' realization of their binding human rights obligations under international treaties.[1] Those human dimension commitments likewise reaffirm the binding nature of States' obligations under IHL, including the Geneva Conventions.[2]

20. As set forth in ODIHR's *Interim Report on reported violations of international humanitarian law and international human rights law in Ukraine* published in July 2022 ("*First Interim Report*"),[3] a core element of ODIHR's mandate is to assist the OSCE participating States in the implementation of their human dimension commitments.[4] Building on its experience in monitoring human rights in crisis situations,[5] immediately after the Russian Federation launched the military attack in Ukraine on 24 February, ODIHR established the Ukraine Monitoring Initiative. The Initiative's purpose has been to monitor and document the most serious violations of IHL and IHRL and provide accurate, timely and up-to-date information and analysis to the OSCE leadership, participating States and to a broader public audience. This Second Interim Report serves that purpose and, although ODIHR's monitoring activities do not seek to establish individual criminal responsibility, it aims to contribute to ensuring accountability for violations of IHL and IHRL, building upon the findings and recommendations of the *First Interim Report*.

1 See for example Concluding Document of Budapest, (Budapest 1994), CSCE, 6 December 1994, pp. 13, 35.
2 See for example Concluding Document of Helsinki — The Fourth Follow-up Meeting, Helsinki, 10 July 1992 (hereafter referred to as Helsinki 1992), paras. 47-52; Budapest 1994, Chapter IV, Code of conduct on politico-military aspects of security, paras. 29–35.
3 ODIHR, *Interim Report on reported violations of international humanitarian law and international human rights law in Ukraine*, 20 July 2022, <https://www.osce.org/odihr/523081>.
4 Helsinki 1992. See the *First Interim Report* for additional detail on ODIHR's mandate.
5 The reporting of the Ukraine Monitoring Initiative builds upon ODIHR's experience of monitoring human rights in crisis situations. That experience includes analysis and consolidation of the data gathered by the OSCE Kosovo Verification Mission into the publication "Kosovo: As Seen, As Told" (1998-1999). A limited follow-up investigation in Kosovo* (this designation is without prejudice to positions on status and is in line with UN Security Council resolution 1244 and the International Court of Justice Opinion on the Kosovo declaration of independence) was conducted by analysts working for the OSCE ODIHR on the report, with the support of the then OSCE Mission in Kosovo. ODIHR has exercised its monitoring mandate in a number of missions in the past, including with work on Guantanamo Bay detainees, the Andijan massacre, as well as with the deployment of the Human Rights Assessment Missions (HRAM) to Georgia in 2008 and Ukraine in 2014 and 2015. For instance, the HRAM 2015, through extensive meetings and interviews with over 100 civil society actors, Ukrainian authorities, internally displaced persons (IDPs) and cross-boundary travellers, received numerous credible, consistent and compelling accounts of human rights violations and legal irregularities in Crimea.

Background to the Report

III

A. METHODOLOGY

21. ODIHR adapted its human rights monitoring methodology, broadly in line with the *Manual on Human Rights Monitoring* by the Office of the UN High Commissioner for Human Rights (OHCHR),[6] for the purposes of, and circumstances faced by, the Ukraine Monitoring Initiative.

22. ODIHR collected information through desk research, including using open-source investigation techniques to verify digital evidence, and in-person interviews. To date, ODIHR has conducted four monitoring visits within Ukraine, conducting interviews in Uzhhorod, Lviv, Kyiv and towns and villages in Kyiv region, as well as two monitoring visits to Estonia. During these visits, ODIHR conducted 120 in-person interviews (60 women, 51 men, including eight interviews with two people, such as married couples), with internally displaced persons (IDPs), refugees, and people who have remained in their homes who are survivors of, or witnesses to alleged violations of IHL and IHRL. ODIHR wishes to convey its gratitude to all the interviewees who provided testimony.

23. In addition, ODIHR collected information from relevant intergovernmental organizations (IGOs), non-governmental organizations (NGOs), and civil society organizations (CSOs) in various forms, including by holding in-person meetings in Ukraine and other countries or at events organized by the OSCE and ODIHR. On 8 November, ODIHR sought information from the authorities of Ukraine and the Russian Federation through letters of inquiry to both parties on the human rights situation and on the effects of the international armed conflict on civilians and prisoners of war (POWs), as well as alleged violations of IHL and IHRL. ODIHR received a response from Ukraine and has taken the timely information into account in the drafting of this report. ODIHR did not receive a response from the Russian Federation as of the date of publication; however, representatives of both countries sent information at various stages of the drafting process and this was taken into consideration in the preparation of the report. More information will be reflected at a later stage of reporting.

24. As prior to the first deployment to Ukraine in the framework of the Initiative, ODIHR continued the practice of scoping visits, speaking to refugees who sought safety outside Ukraine, humanitarian workers, human rights defenders, CSO activists and representatives of relevant authorities on the ground. This approach strengthened the methodology and informed the report.

25. All ODIHR monitors deploying to Ukraine are experienced in trauma-informed interviewing techniques and applied human rights monitoring principles in practice, including the 'do no harm' principle, seeking to avoid

6 Manual on Human Rights Monitoring, Revised Edition, Office of the UN High Commissioner for Human Rights, 1 January 2011, <https://www.ohchr.org/en/publications/policy-and-methodological-publications/manual-human-rights-monitoring-revised-edition>.

(re)traumatization of interlocutors. This victim-centred approach meant that, among others, ODIHR did not interview children and, as a general rule, did not interview people who had already been interviewed by similar entities.

26. ODIHR wishes to thank all who facilitated its work and the preparation of this *Second Interim Report* (the Report), which would not have been possible without the cooperation of the authorities of Ukraine, and other stakeholders and partners, including NGOs on the ground.

27. In the course of the Initiative's monitoring and reporting activities, ODIHR has made an effort to coordinate work and exchange information and experience with other entities involved in monitoring and documenting the situation, including intergovernmental organizations, the Independent International Commission of Inquiry on Ukraine, as well as local and international non-governmental organizations. Cooperation and coordination with various international entities was essential in other areas of ODIHR's work on Ukraine as well.

B. SCOPE AND TIMEFRAME

28. ODIHR began monitoring the conduct of hostilities for potential violations of IHL and IHRL, in line with its mandate, immediately after the start of the Russian Federation's military attack in Ukraine.

29. In its monitoring activities, ODIHR prioritized the most pressing issues affecting the lives of civilians in the midst of armed conflict and of prisoners of war (POWs). This included monitoring: the use of means and methods of warfare prohibited under IHL; instances of willful killings, torture and other inhumane and degrading treatment or punishment, and conflict-related sexual violence (CRSV) against people in the power of the enemy; the deportation of civilians; and denial of humanitarian relief to populations in need. Developments on the ground broadened the scope of the monitoring covered in this Report to the general administration of the territories under the occupation of the Russian Federation.

30. This Report provides an updated assessment of alleged violations of IHL and IHRL by focusing generally on events that occurred between 1 July and 1 November 2022. Taking into consideration developments on the ground and in order to include survivors' and witnesses' accounts about alleged violations that occurred during the Russian Federation occupation in territories recently reclaimed by Ukraine, the chapter of the Report on the situation in occupied territories covers a wider temporal scope, starting from 24 February until 1 November 2022. On the issues concerning the alleged violations of IHL and IHRL committed on those territories, the Report outlines events that took place

in Ukrainian territories under the occupation of the Russian Federation,[7] with the exception of the monitoring of the treatment of civilians or POWs removed from the territory of Ukraine.

31. In line with applicable international law, ODIHR considers the *de facto* authorities in those parts of Ukrainian territory that are currently under occupation by the Russian Federation to be currently under the overall control of the Russian Federation. This means that the administrations of these regions are involved in the same international armed conflict and are bound by the same IHL rules, and that the Russian Federation is responsible for their conduct under IHL. ODIHR considers the so-called 'annexation' of these and other territories under the Russian Federation's occupation illegal and effecting no change to their status as Ukrainian territory under international law.[8]

C. STRUCTURE OF THE REPORT

32. This Report focuses on the key areas of concern that the Ukraine Monitoring Initiative identified within its mandate, providing characteristic examples and legal analysis where appropriate. A brief overview of the applicable IHL and IHRL framework is featured in Chapter IV. Chapter V covers the assessment of alleged violations of IHL on matters of indiscriminate attacks in densely populated areas using explosive weapons with wide area effects, resulting in widespread civilian death and injury and extensive destruction of civilian infrastructure. Under Chapter VI, the following issues concerning the occupied territories are broadly covered in individual sub-chapters: the administration of territories under the effective control of the Russian Federation; the humanitarian situation; and abuses against the civilian population. Chapter VII covers the treatment of POWs.

33. Chapter VIII covers some issues of concern the Ukraine Monitoring Initiative has identified in the government-controlled territories of Ukraine. Under Chapter IX, the report presents a number of interim recommendations, noting that a more thorough set of recommendations will be included in the comprehensive Final Report.

7 These territories include those under the control of the *de facto* authorities in occupied Luhansk and Donetsk regions.

8 See OSCE Chairmanship, OSCE Office for Democratic Institutions and Human Rights, OSCE Parliamentary Assembly, OSCE Secretary General, "OSCE heads condemn plan to hold illegal 'referenda' in occupied territories of Ukraine", Copenhagen, Warsaw and Vienna, 20 September 2022: <https://www.osce.org/chairmanship/526432>; ODIHR / OSCE Representative on Freedom of the media, "Annexation of Ukrainian territories is illegal and a threat to human rights, say OSCE human rights Director and OSCE media freedom Representative," Warsaw and Vienna, 6 October 2022: <https://www.osce.org/odihr/528075>.

The Legal Framework Applicable to the Armed Conflict in Ukraine

IV

34. Since the beginning of the Russian Federation's military attack in Ukraine, the two States have been involved in an international armed conflict against each other triggering the applicability of IHL.[9] The main IHL provisions applicable to conflicts of an international character, including belligerent occupation, are to be found in the Four Geneva Conventions of 1949[10] and their Additional Protocol I (AP I)[11] to which both the Russian Federation and Ukraine are parties, as well as relevant rules of Customary IHL.[12] Ukraine and the Russian Federation are both parties to several core human rights treaties setting forth IHRL norms that remain generally applicable in situations of armed conflict.

A. APPLICABLE INTERNATIONAL HUMANITARIAN LAW

35. As set forth comprehensively in the *First Interim Report*,[13] the primary IHL instruments applicable to the armed conflict in Ukraine are the Four Geneva Conventions,[14] their Additional Protocol I, the 1907 Hague Regulations,[15] and customary international law.[16] In addition, the conflict is governed by several instruments relating to the use of weapons, including some that impose an absolute prohibition on some weapons.[17] The prohibition of some other weapons or the limitation of their use has not reached a customary nature and the lawfulness of their use depends on the ratification by States of specific conventions.[18] Importantly for the purposes of this report, neither Ukraine

9 Since 2014, the Russian Federation has been occupying Crimea and Sevastopol to which the IHL of occupation applies.

10 Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, 12 August 1949; Geneva Convention (II) for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked of Armed Forces at Sea, 12 August 1949; Convention (III) relative to the Treatment of Prisoners of War, 12 August 1949; and Convention (IV) relative to the Protection of Civilian Persons in Time of War, 12 August 1949.

11 Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977.

12 Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law* – Volume 1*: Rules* (CUP 2005).

13 See ODIHR, *Interim Report on reported violations of international humanitarian law and international human rights law in Ukraine*, 20 July 2022, paras 30–32, at: <https://www.osce.org/odihr/523081>.

14 These include those Geneva Conventions relative to the treatment of the wounded and sick armed forces in the field and at sea (GC I and GC II), the treatment of prisoners of war (GC III), and the protections afforded to the civilian population caught up in international armed conflicts including in occupied territories (GC IV).

15 1907 Hague Convention IV with its annexed Regulations concerning the Laws and Customs of War on Land (Hague Regulations).

16 Customary international law binds all States regardless of their treaty commitments. The Customary IHL database contains the 161 rules of customary IHL identified in the ICRC's 2005 Study on Customary IHL and the complete collection of practice underlying that Study. See, Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law* – Volume 1: *Rules* (CUP 2005).

17 E.g., Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, 13 January 1993.

18 Both Ukraine and the Russian Federation are parties to 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, Geneva, 10 October 1980 (CCW), and related CCW Protocol on Non-Detectable Fragments (Protocol I) Geneva, 10 October 1980 (CCW Protocol I), CCW Protocol on Blinding Laser Weapons (Protocol IV to the 1980 Convention), 13 October 1995 (CCW Protocol IV), and CCW Protocol (II) on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices, Geneva, 10 October 1980 (CCW Protocol II), CCW Protocol on Prohibitions or Restrictions on the Use of Incendiary Weapons (Protocol III), Geneva, 10 October 1980 (CCW Protocol III), and CCW Protocol on

nor the Russian Federation are parties to the widely ratified Convention on Cluster Munitions.[19] The use of these weapons, which are not specifically prohibited under international law, is regulated by the basic principles related to the conduct of hostilities under IHL, namely the principle of distinction, proportionality and precautions in attack.

B. APPLICABLE INTERNATIONAL HUMAN RIGHTS LAW

36. As set forth comprehensively in the *First Interim Report*, IHRL also continues to apply in situations of armed conflict, including occupation, functioning in parallel to IHL.[20] Both Ukraine and the Russian Federation are parties to the core UN human rights treaties,[21] which bind them in their own territory as well as in territories over which they exercise jurisdiction or effective control.[22]

37. In times of public emergency threatening the life of the nation, including armed conflicts, some human rights treaties allow for the suspension of certain human rights obligations of State parties, within strict parameters and for the time necessary to overcome such emergency;[23] the government of Ukraine imposed martial law throughout the entire period covered by this report,[24] and has notified the United Nations Secretary-General of the derogation

Explosive Remnants of War (Protocol V), 28 November 2003 (CCW Protocol V). Ukraine, but not the Russian Federation, is a party to the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, 18 September 1997.

19 Convention on Cluster Munitions, 30 May 2008.

20 See ODIHR, *Interim Report on reported violations of international humanitarian law and international human rights law in Ukraine*, 20 July 2022, paras 33–34, at: <https://www.osce.org/odihr/523081>.

21 These include the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) with the exception of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW) and, for the Russian Federation, the International Convention for the Protection of all Persons from Enforced Disappearance (ICPPED). In addition to the ICCPR and ICESCR, the core UN human rights treaties include the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the Convention on the Rights of the Child (CRC), and the Convention on the Rights of Persons with Disabilities (CRPD). Ukraine remains a party to the European Convention on Human Rights (ECHR), however, as a result of the Russian Federation's expulsion from the Council of Europe, it has not been bound by the ECHR in the period since 16 September 2022.

22 See, among others, International Court of Justice, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, 9 July 2004, paras 111-112; CCPR/C/21/Rev.1/Add. 13, para. 10; CCPR/C/GC/36, para. 63; CCPR/C/120/D/2285/2013, para. 6.5; E/C.12/GC/24, para. 10. For a more detailed analysis of the human rights standards applicable in Ukraine, see *Moscow Mechanism Report*, pp. 49-53.

23 There are certain human rights from which States can never derogate, these include the right to life (except for deaths resulting from lawful acts of war), and the right to be free from torture and inhuman and degrading treatment and punishment.

24 On 15 August, the Ukrainian Parliament granted the request of President Zelenskyy to extend martial law once again for a period of 90 days, until 21 November 2022. "Ukrainian parliament extends martial law throughout entire autumn", Ukrainska Pravda, 15 August 2022, <https://www.pravda.com.ua/eng/news/2022/08/15/7363327/>.

from some of its human rights obligations,[25] in accordance with article 4 of the ICCPR and article 15 of the ECHR, for the duration of the martial law. The Russian Federation has not notified the United Nations Secretary-General of any derogations from any human rights treaty, therefore, all the human rights instruments to which it is a party remain in force.

25 The derogations decided by the Ukrainian government concern a broad range of human rights, namely those granted by Articles 3, 8(3), 9, 12, 13, 17, 19, 20, 21, 22, 24, 25, 26 and 27 of the ICCPR; Articles 4 (3), 8, 9, 10, 11, 13, 14,16 of the ECHR; arts. 1 – 3 of the Additional Protocol to the ECHR; and art. 2 of Protocol No. 4 to the ECHR, see Notes verbales No. 4132/28-110-17625 and No. 4132/28-110-17626 of 1 March, <https://treaties.un.org/Pages/CNs.aspx?cnTab=tab2&clang=_en>.

Updated Assessment of Alleged Violations of IHL During the Conduct of Hostilities

V

38. IHL requires all parties to a conflict to abide by certain norms in order to minimize harm caused to the civilian population and civilian objects. These include, first, *distinction*: parties to the conflict may direct attacks only against combatants and military objectives and must at all times distinguish between civilians and combatants as well as between civilian objects and military objectives.[26] Indiscriminate attacks which are of a nature to strike military objectives and civilians and civilian objects without distinction are unlawful.[27] The second core principle is *proportionality*: attacks that would cause harm to the civilian population and civilian objects that would be excessive in relation to the anticipated military advantage are prohibited.[28] The final core principle is *precautions*: parties to the conflict must take all feasible measures in the conduct of their military operations to avoid or minimize harm to civilians and civilian objects.[29]

39. The ongoing military attack by the Russian Federation in Ukraine has led to a devastating number of documented civilian deaths and injuries and an unprecedented level of damage and destruction of civilian objects. As of 30 October, the Office of the United Nations High Commissioner for Human Rights (OHCHR) had verified 16,295 civilian casualties[30] in the country, among which 6,430 civilians killed including 402 children,[31] and 9,865 injured including 739 children.[32] OHCHR believes that the actual numbers are considerably higher.[33] In addition, tens of thousands of civilian objects across the country, including residential buildings, medical establishments,[34] and educational institutions[35] were damaged or destroyed.[36] Most of the civilian deaths and injuries, as well as damage and destruction of civilian objects, resulted from attacks in which explosive weapons with wide area effects were used in densely populated

26 AP I, art. 48; and Customary IHL Rules 1 and 7. For a definition of civilian objects and military objective see, AP I, art. 52(1) and 52(2); and Customary IHL Rules 9 and 8.
27 AP I, art. 51(4); and Customary IHL Rule 11.
28 AP I, art. 51(5)(b), Customary IHL Rule 14.
29 AP I, arts. 57 and 58; and Customary IHL Rules 15-21.
30 "Ukraine: civilian casualty update 31 October 2022", UN, Office of the High Commissioner for Human Rights, 31 October 2022, <https://ukraine.un.org/sites/default/files/2022-11/Ukraine%20-%20civilian%20casualty%20update%20as%20of%2030%20October%202022%20ENG.pdf>.
31 This figure includes 2,511 men, 1,716 women, 167 girls and 201 boys, as well as 34 children and 1,801 adults whose sex was yet unknown.
32 This figure includes 2,107 men, 1,515 women, 205 girls and 292 boys, as well as 242 children and 5,504 adults whose sex was not yet known.
33 The receipt of information by OHCHR 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), Izium (Kharkiv region), Lysychansk, Popasna, and Sievierodonetsk (Luhansk region), where there are allegations of numerous civilian casualties. See: "Ukraine: civilian casualty update 31 October 2022", UN, Office of the High Commissioner for Human Rights, 31 October 2022, <https://ukraine.un.org/sites/default/files/2022-11/Ukraine%20-%20civilian%20casualty%20update%20as%20of%2030%20October%202022%20ENG.pdf>.
34 Medical facilities and their personnel benefit from special protection under IHL and should never be targeted. See, GC IV, arts. 18 and 20-22; AP I art. 12 and 15; and Customary IHL Rules 28-29 and 25 and AP I, art. 52(1) and (3); Customary IHL Rules 10, 38 and 40. According to the Ministry of Health of Ukraine, at least 1,100 medical facilities had been damaged and at least 144 completely destroyed as of 1 November. *See:* Ministry of Health of Ukraine, Facebook, 6 November 2022, <https://www.facebook.com/moz.ukr/posts/pfbid02sB4aCmd59Gk10itCcuQLqRVzGcXuXXVyEuM4WeDFc3QmXc8QYsAd8UY5vdLnFt9el>.
35 According to the Ministry of Education and Science of Ukraine, at least 2,714 educational facilities had been damaged or destroyed as of 31 October. *See:* Ministry of Education and Science of Ukraine, accessed 31 October 2022, at: <http://saveschools.in.ua/en/>.
36 Ukrainian Civilian Objects Attacks and Casualties Interactive Map, at: <https://attacks.stopwar.team/>.

areas.[37] In addition, the widespread hostilities have caused mass displacement of civilians. At the end of October, 6.5 million people were displaced within Ukraine[38] and an additional 7.6 million have become refugees across Europe.[39]

40. The evidence gathered by ODIHR during the reporting period[40] largely confirms the findings of the *First Interim Report*. The unabated scale and frequency of reportedly indiscriminate attacks carried out in populated areas of Ukraine has led to widespread civilian deaths and injuries and strongly suggest that the Russian Federation continues to conduct hostilities with a general disregard for the basic principles of IHL noted above. There are also indications that the Ukrainian armed forces have, on a much smaller scale, failed to comply with IHL rules on the conduct of hostilities in some regions that are outside the government's effective control.

A. THE USE OF EXPLOSIVE WEAPONS IN POPULATED AREAS

41. According to OHCHR, 95 per cent of civilian deaths and injuries in Ukraine recorded between 1 August and 31 October were caused by the use of explosive weapons with a wide impact area, including shelling from heavy artillery and multi-launch rocket systems, missile and air strikes.[41] These are weapons designed for the open battlefield and, given their inherent inaccuracy, their use in densely populated areas is very likely to cause indiscriminate and disproportionate harm to civilians and civilian infrastructure.

42. Newly discovered evidence,[42] as well as ODIHR's previous monitoring,[43] has confirmed that the Russian Federation has repeatedly carried out attacks

37 "Ukraine: civilian casualty update 31 October 2022", UN, Office of the High Commissioner for Human Rights, 31 October 2022, <https://ukraine.un.org/sites/default/files/2022-11/Ukraine%20-%20civilian%20casualty%20update%20as%20of%2030%20October%202022%20ENG.pdf>.

38 International Organization for Migration (IOM), information as of 27 October 2022, <https://dtm.iom.int/ukraine>.

39 United Nations High Commissioner for Refugees, accessed on 26 October 2022, <https://data.unhcr.org/en/situations/ukraine>.

40 This section covers the period from 1 July to 1 November 2022. Since 24 February, ODIHR has been collecting information on the potential violations of the rules on the conduct of hostilities by the parties to the conflict. As ODIHR is not in a position to conduct detailed assessments of violations of IHL norms in relation to individual attacks, its findings are based on certain patterns observed in the course of its monitoring activities, which allow it to make provisional conclusions regarding the degree of compliance with particular IHL norms by the warring parties. This section is an updated assessment of the situation, covering the period from 1 July to 1 November 2022.

41 "Update on the human rights situation in Ukraine: 1 August – 31 October 2022", UN, Office of the High Commissioner for Human Rights, 2 December 2022, p. 1, <https://www.ohchr.org/sites/default/files/documents/countries/ua/2022-12-02/HRMMU_Update_2022-12-02_EN.pdf?fbclid=IwAR20Ux9nKnprX-rZO6SXTWP6Vk-ZVoiCT3Fhxn-bDRg_Bk7Ew-9LuvXSsvYs>.

42 See for instance: "Report of the Independent International Commission of Inquiry on Ukraine, UN Doc. A/77/533, 18 October 2022, <https://www.ohchr.org/sites/default/files/2022-10/A-77-533-AUV-EN.pdf>; "Ukraine: Unlawful Russian Attacks in Kharkiv", Human Rights Watch, 16 August 2022, <https://www.hrw.org/news/2022/08/16/ukraine-unlawful-russian-attacks-kharkiv>.

43 For initial findings see: "Interim Report on reported violations of international humanitarian law and international human rights law in Ukraine", OSCE, Office for Democratic Institutions and Human Rights, 20 July 2022, at paras 48-49, <https://www.osce.org/files/f/documents/c/d/523081_0.pdf>.

using explosive weapons with wide area impact in densely populated urban areas across Ukraine, leading to numerous civilian casualties as well as extensive damage and destruction of civilian objects. Many of these attacks appear to clearly disregard the prohibition on launching indiscriminate and disproportionate attacks, a conduct that may amount to war crimes.

43. For instance, on 1 July, 21 civilians were killed (including one child) and 39 were injured (including six children) as a result of a missile attack on a nine-storey residential building and a recreation centre in Serhiivka (Odesa region), according to OHCHR.[44] The evidence strongly suggests that there were no Ukrainian military targets in the area and that the weapons used were a type of guided missile designed to hit ships and therefore inaccurate and inappropriate for use in urban areas.[45] On 9 July, at least 48 civilians (including one child) were killed when a rocket hit a five-storey residential building in Chasiv Yar (Donetsk region), according to the information provided by State Emergency Service of Ukraine.[46]

44. To a much lesser extent, the Ukrainian armed forces reportedly continued[47] to use explosive weapons with a wide impact area in their attacks on populated areas in the territories of Donetsk and Luhansk regions that are outside of government's control, causing civilian casualties.[48] For example, a representative of the *de facto* authorities in occupied Donetsk region stated that, on 4 August, six civilians (including one child) were killed and five were injured in the shelling of Voroshylovskyi district of Donetsk (Donetsk region),[49] although ODIHR was unable to independently verify this report.

44 "Report on the human rights situation in Ukraine: 1 February–31 July 2022", UN, Office of the High Commissioner for Human Rights, 27 September 2022, at para. 24, <https://www.ohchr.org/sites/default/files/documents/countries/ua/2022-09-23/ReportUkraine-1Feb-31Jul2022-en.pdf>.

45 According to the Operational Command "South" of the Ukrainian armed forces, Russian Tu-22 aircraft launched the attack on Serhiivka using Kh-22 missiles. «В наслідок нічного ракетного удару по Одеській обалісті є загиблі та постраждалі» ["There are dead and injured as a result of night rocket attack on Odesa region"], Official website of the city of Odesa, 1 July 2022, <https://omr.gov.ua/ua/news/228730/>. An investigation by Amnesty International confirmed the weapons used were most likely Kh-22 guided missiles, and documented that there was no indication of any Ukrainian military target or activity in the area at the time. "Ukraine: Civilians killed by 'reckless' Russian attacks on Serhiivka apartment block and beach resort", Amnesty International, 7 July 2022, <https://www.amnesty.org/en/latest/news/2022/07/ukraine-civilians-killed-by-reckless-russian-attacks-on-serhiivka-apartment-block-and-beach-resort/>. The Russian Federation confirmed conducting military operations in the area, but maintained they were aimed at a military target approximately 65 kilometres from Serhiivka. See Ministry of Defence of the Russian Federation, Telegram, 1 July 2022, <https://t.me/mod_russia/17310>.

46 "Chasiv Yar: more than 40 dead in a home strike in the Donetsk region", BBC News Russian Service, 12 July 2022, <https://www.bbc.com/russian/news-62141201>; see also State Emergency Service of Ukraine, Telegram, 13 July 2022, <https://t.me/dsns_telegram/8268>.

47 For initial findings see: "Interim Report on reported violations of international humanitarian law and international human rights law in Ukraine", OSCE, Office for Democratic Institutions and Human Rights, 20 July 2022, at para. 50, <https://www.osce.org/files/f/documents/c/d/523081_0.pdf>.

48 Between 24 February and 30 October, OHCHR recorded 1,893 casualties (429 killed and 1,464 injured) in non-government-controlled areas of Donetsk and Luhansk regions. See: "Ukraine: civilian casualty update 31 October 2022", UN, Office of the High Commissioner for Human Rights, 31 October 2022, <https://ukraine.un.org/sites/default/files/2022-11/Ukraine%20-%20civilian%20casualty%20update%20as%20of%2030%20October%202022%20ENG.pdf>.

49 The Joint Centre for Control and Coordination on ceasefire and stabilization of the demarcation line in "Donetsk People's Republic", Telegram, 4 August 2022, <https://t.me/DNR_SCKK/9817>.

45. IHL generally prohibits weapons that by their design or use are of a nature to cause superfluous injury or unnecessary suffering.[50] The use of any weapon not specifically prohibited under international law must respect the basic IHL principles of distinction, proportionality and precautions. Therefore, if the inherent design of a weapon means it cannot be directed at a specific military target, it is prohibited as its use would constitute an indiscriminate attack.[51] Even if not indiscriminate by nature, the circumstances under which a weapon is used may nevertheless breach the prohibition of indiscriminate attacks. This is the case of the use of certain explosive weapons with wide impact area in residential and urban settings, as the following section will highlight.

B. ATTACKS AGAINST CRITICAL CIVILIAN INFRASTRUCTURE

46. Since 10 October, Russian armed forces have significantly intensified targeting of energy power plants and infrastructure in cities and settlements across Ukraine. These attacks, launched by way of massive missile, rocket and loitering munitions strikes, have caused widespread civilian casualties and subjected millions of Ukrainians to disruptions in electricity, water, heating supplies, and telecommunications networks, leaving around 40 per cent of the country's energy infrastructure damaged as of 1 November, according to the president of Ukraine, Volodymyr Zelenskyy.[52]

47. On 10 October, at least 12 civilians were killed and over 100 were injured as a result of a series of missile and rocket strikes on the capital Kyiv and other cities of Ukraine, according to the OHCHR.[53] Many civilian objects, including dozens of residential buildings and critical civilian infrastructure, including at least 12 energy facilities, were damaged or destroyed in eight regions of the country.[54] During another round of attacks on 17 October, five civilians (including a pregnant woman) were killed as a result of a loitering munition strike at a residential building in the centre of Kyiv,[55] and an additional five civilians were killed and 14 were injured as a result of a missile strike on the energy infrastructure in Sumy region, according to the head of Sumy regional

50 AP I, art. 35; and Customary IHL Rule 70. The following weapons have been cited among others as causing unnecessary suffering if used in certain or all contexts: expanding bullets; explosive bullets; poison and poisoned weapons, including projectiles smeared with substances that inflame wounds; biological and chemical weapons.

51 AP I, art. 51(4)(b) and (c); and Customary IHL Rule 12. The following weapons have been among others as being indiscriminate in certain or all contexts: chemical, biological; and nuclear weapons.

52 "Zelenskyy: Up to 40% of Ukraine's energy system destroyed by Russian attacks", The Kyiv Independent, 1 November 2022, <https://kyivindependent.com/news-feed/zelensky-up-to-40-of-ukraines-energy-system-destroyed-by-russian-attacks>.

53 "Ukraine: Attack on civilians and infrastructure", UN, Office of the High Commissioner for Human Rights, Press Briefing Note, 11 October 2022, <https://www.ohchr.org/en/press-briefing-notes/2022/10/ukraine-attack-civilians-and-infrastructure>.

54 *Ibid.*

55 "Update: Death toll after Russia's October 17 attack on Kyiv rises to 5", The Kyiv Independent, 18 October 2022, <https://kyivindependent.com/uncategorized/update-death-toll-after-russias-oct-17-attack-on-kyiv-rises-to-5>.

military administration.[56] Similar attacks also occurred on 22 and 31 October, and have led to more damage to the country's critical infrastructure, further restricting civilian access to essential services.[57] In total, between 10 and 31 October, the UN OHCHR Human Rights Monitoring Mission in Ukraine (UN HRMMU) reported that at least 43 civilians were killed and 160 injured by attacks of the Russian armed forces on cities and energy supply objects across Ukraine.[58]

48. The fact that many of these attacks were apparently launched indiscriminately, resulting in many civilian deaths and injuries as well as extensive destruction of civilian objects, suggests that the Russian Federation in several instances failed to abide by the core IHL principle of distinction, a conduct that may amount to war crimes. In addition, the impact of the damage to key infrastructure on the civilian population and, in particular, on the most vulnerable groups ahead of the winter season is especially concerning. Although some electricity power plants may qualify as military objectives and lawful targets under IHL,[59] this is not the case for all. In addition, IHL obliges the warring parties to take into account the effects of attacks on civilians and civilian infrastructure by prohibiting attacks that are expected to cause harm to civilians and damage to civilian objects that is excessive in relation to the concrete and direct military advantage anticipated.[60] Furthermore, parties to the conflict must take constant care to spare civilians and civilian objects while planning military operations by taking all feasible precautions to avoid, and in any event to minimize, incidental loss of civilian life and damage to civilian objects.[61] Such precautions include the choice of weapons that would be more likely to avoid incidental harm to civilians or civilian objects[62] as well as timing the attacks when civilians are less likely to be affected and giving effective warning to the civilian population prior to the launch of the attack.

49. In the absence of all the facts and circumstances surrounding each attack it is difficult to make an individual assessment of their lawfulness at this stage. However, the number of casualties among the civilian population and the extent of the damage to civilian infrastructure, together with the choice to use explosive weapons with wide-area effects, which are known to have

56 Dmytro Zhyvytskyy, Telegram, 17 October 2022, <https://t.me/Zhyvytskyy/5312>.
57 "Ukraine: Energy infrastructure damage – situation overview for 10-24 October", REACH, 9 November 2022, <https://www.impact-repository.org/document/reach/560e8efe/REACH_UKR2213_Overview_Energy_Infrastructure_Damage_November_2022.pdf>; *see also:* Denys Shmyhal, Telegram, 31 October 2022, <https://t.me/Denys_Smyhal/3849>.
58 "Update on the human rights situation in Ukraine: 1 August – 31 October 2022", UN, Office of the High Commissioner for Human Rights, 2 December 2022, p. 2, <https://www.ohchr.org/sites/default/files/documents/countries/ua/2022-12-02/HRMMU_Update_2022-12-02_EN.pdf?fbclid=IwAR20Ux9nKnprX-rZO6SXTWP6Vk-ZVoiCT3Fhxn-bDRg_Bk7Ew-9LuvXSsvYs>.
59 Military objectives are defined in art. 52(2) AP I: "Military objectives are objects that, by their nature, location, purpose, or use, make an effective contribution to military action, and whose total or partial destruction, capture, or neutralization offers a definite military advantage".
60 Principle of proportionality, AP I, art. 51(4)(b), Customary IHL Rule 14.
61 AP I, arts. 57 and 58; and Customary IHL Rules 15-21.
62 AP I, art. 57(2)(a); and Customary IHL Rule 17.

devastating humanitarian effects in densely populated areas, seem to suggest that, even if in some cases the attacks may have been directed at legitimate military targets, the Russian Federation failed to respect the core IHL principles of proportionality and precautions in attacks which may amount to war crimes. IHL also prohibits attacks targeting objects indispensable to the survival of the civilian population.[63] Given the extent of the electricity and water shortages caused by the systematic attacks, in combination with their timing — just before winter when temperatures are frequently below freezing — there is reason to believe that, at least in some instances, such attacks on critical infrastructure may in themselves result in depriving the civilian population of objects indispensable for its subsistence, or force people to leave in contravention of IHL.[64]

50. Furthermore, the President of the Russian Federation expressed public approval of the attacks on two occasions by saying that the shelling of the Ukrainian cities on 10 October was "*a response to the bombing of the Crimean bridge*"[65] which took place on 8 October and which the Russian Federation attributed to the Ukrainian armed forces[66] and that the shelling on 31 October was carried out "*partially in response*" to the attack on the Russian Black Sea Fleet in Sevastopol Bay[67] which took place on 29 October.[68] It is important to note that IHL strictly prohibits attacks carried out as a form of reprisal against the civilian population and civilian objects.[69]

63 AP I, art. 54(2); and Customary IHL, Rule 54.
64 Commentary 1987, art. 54 AP I, para. 2111.
65 *See more* «Встреча постоянных членов Совета Безопасности» ["Meeting with the permanent members of the Security Council"], Official website of the President of the Russian Federation, 10 October 2022, <http://kremlin.ru/events/president/news/69568>. On 8 October, a powerful explosion occurred on the Crimean bridge connecting the Taman Peninsula of the Krasnodar region in the Russian Federation and the Kerch Peninsula of Crimea, presently occupied by the Russian Federation. As a result of the explosion, four people were reportedly killed. In addition, two sections of the bridge collapsed, which reduced its transport capacity for a short period of time. The Crimean bridge has been serving as a key automotive and rail military supply line from the Russian Federation into Crimea and other occupied territories in southern Ukraine.
66 «Путин заявил, что взрыв на Крымском мосту организовали спецслужбы Украины. Он назвал это терактом» ["Putin said that the explosion on the Crimean bridge was organized by the Ukrainian special services. He called it a terrorist attack"], Meduza, 9 October 2022, <https://meduza.io/news/2022/10/09/putin-zayavil-chto-podryv-krymskogo-mosta-organizovali-spetssluzhby-ukrainy>.
67 SMOTRI media, Telegram, 31 October 2022, <https://t.me/smotri_media/29045>.
68 On 29 October, a drone attack was carried out on the Russian Federation's Black Sea Fleet in the Crimean port city of Sevastopol, reportedly causing damage to one of the warships. According to the Russian Federation, it was the Ukrainian armed forces who carried out the attack with the help of British troops. Ukraine did not comment on the incident. *See more* "Massive drone attack on Black Sea Fleet – Russia", BBC News, 29 October 2022, at: <https://www.bbc.com/news/world-europe-63437212>.
69 GC IV, arts. 28 and 33; AP I, arts. 51(6), 52(1) and 54(4); CIHL, Rules 145 and 146.

C. ATTACKS AGAINST WORKS AND INSTALLATIONS CONTAINING DANGEROUS FORCES, IN PARTICULAR NUCLEAR POWER STATIONS

51. During the reporting period, there have been reports of attacks at, and in the area of the Zaporizhzhia Nuclear Power Plant (ZNPP)[70] — Ukraine's largest operating nuclear power station located in the city of Enerhodar in the south-east Zaporizhzhia region, that has been under control of the Russian Federation since 4 March. After conducting a visit to the ZNPP in early September,[71] the International Atomic Energy Agency (IAEA) confirmed that military activities, including shelling, had caused damage to the ZNPP's facilities.[72] The IAEA team also observed the presence of Russian military personnel, vehicles and equipment around the ZNPP.[73]

52. IHL stipulates that "works or installations containing dangerous forces", namely dams, dykes and nuclear electrical generating stations, shall not be attacked, even where these objects are military objectives, if such attacks may cause the release of dangerous forces and consequent severe loss of life among the civilian population.[74] Deliberately targeting a nuclear power facility in the knowledge that such an attack would cause excessive loss of life to civilians or damage to civilian objects may constitute a war crime.[75] This prohibition also applies to attacks against military objectives located at, or in the vicinity of nuclear power stations as they are also likely to pose colossal risks to the civilian population, including the potential short- and long-term effects on life, health, and the environment.[76] In parallel, parties to the conflict shall avoid locating any military objectives in the vicinity of nuclear electrical generating stations.[77]

70 *See, for instance:* "Update 89 – IAEA Director General Statement on Situation in Ukraine", International Atomic Energy Agency", 9 August 2022<https://www.iaea.org/newscenter/pressreleases/update-89-iaea-director-general-statement-on-situation-in-ukraine>; "Update 91 – IAEA Director General Statement on Situation in Ukraine", International Atomic Energy Agency, 12 August 2022, <https://www.iaea.org/newscenter/pressreleases/update-91-iaea-director-general-statement-on-situation-in-ukraine>. "Shelling resumes near Ukraine nuclear plant, despite risks", Associated Press, 8 September 2022, <https://apnews.com/article/russia-ukraine-war-nuclear-plant-shelling-continues-d12ded8c3d79fe6f2a062546e5ced95b>; "Ukraine's ZNPP Must Be Urgently Protected, IAEA's Grossi Says After Plant Loses All External Power Due to Shelling", International Atomic Energy Agency, 8 October 2022, <https://www.iaea.org/newscenter/pressreleases/ukraines-znpp-must-be-urgently-protected-iaeas-grossi-says-after-plant-loses-all-external-power-due-to-shelling>.

71 "IAEA mission arrives at Zaporizhzhia Nuclear Power Plant", Ukrainska Pravda, 1 September 2022, <https://www.pravda.com.ua/eng/news/2022/09/1/7365670/>.

72 "Nuclear safety, security and safeguards in Ukraine. 2nd Summary report by the Director General", International Atomic Energy Agency, 22 September 2022, pp.13-15, <https://www.iaea.org/sites/default/files/22/09/ukraine-2ndsummaryreport_sept2022.pdf>.

73 *Ibid.*, p.13.

74 AP I, art. 56(1).

75 AP I, art. 85(3)(c); ICC Statute, art. 8(2)(b)(iv).

76 *Ibid.*

77 AP I, art. 56(5).

The Situation in Ukrainian Territories Occupied by the Russian Federation[78]

VI

78 As noted in the methodology section (Chapter II), while this report focuses on events that occurred between 1 July and 1 November 2022, this Chapter will cover a wider temporal scope starting from 24 February until 1 November 2022 in order to take into consideration developments on the ground and to allow ODIHR to include victims' accounts about alleged violations of IHL and IHRL that occurred during the Russian Federation occupation in territories recently reclaimed by Ukraine.

A. THE ADMINISTRATION OF THE OCCUPIED TERRITORIES

53. Occupation of territory as prescribed by IHL does not entail a transfer of sovereignty to the occupying power (annexation) and it is presumed to be a transitional and temporary regime. The occupying power shall preserve, as far as possible, the *status quo ante* in the occupied territory, which means that it should refrain from bringing irreversible changes including territorial and demographic changes to such territories. Furthermore, the occupying power is responsible for restoring and ensuring law and order and public safety by respecting, unless it is absolutely prohibited from doing so, the laws in force in the territory before occupation[79] and by ensuring to the fullest extent of its available means and without discrimination that the basic needs of the civilian population are met.[80] The evidence suggests that the Russian Federation is generally failing to abide by these provisions.

Issuance of Russian Federation passports and introduction of Russian currency

54. As indicated in the *First Interim Report*, Russian authorities started to announce the issuance of Russian passports to Ukrainian citizens in the occupied territories as early as May 2022.[81] On 25 May 2022, the Russian president signed a decree simplifying the process to acquire Russian citizenship and passports for residents of Kherson and Zaporizhzhia regions.[82] This procedure has been in place for residents of Donetsk and Luhansk regions since July 2019.[83]

55. As stated by one witness to ODIHR: "*Russian passports were offered to locals within one month of occupation of the village. […] Some people took Russian passports as they needed to sell vegetables [in Crimea]. […] It was easy to get Russian passports, if your nationality [ethnic affiliation] is Russian: you just needed to go to Crimea. If you have a Russian passport, you do not need to wait in the queue for three hours to cross Crimea, like Ukrainians [Ukrainian passport holders] do*".[84] Another witness interviewed indicated that in Kupiansk (Kharkiv region),

79 See Hague Regulations art. 43; and GC IV art. 64.
80 See GC IV art. 55; and AP I art. 69.
81 "Interim Report on Reported Violations of International Humanitarian Law and International Human Rights Law in Ukraine", OSCE/ODIHR, 20 July 2022, para. 80, <https://www.osce.org/odihr/523081>.
82 «Указ Президента Российской Федерации от 25.05.2022 № 304 «О внесении изменений в Указ Президента Российской Федерации от 24 апреля 2019 г. № 183 «Об определении в гуманитарных целях категорий лиц, имеющих право обратиться с заявлениями о приеме в гражданство Российской Федерации в упрощенном порядке»» [Decree of the President of the Russian Federation from 25.05.2022 No. 304 "On introducing amendments to the Presidential Decree of the Russian Federation from April 24, 2019 No 183 'On defining for humanitarian purposes the categories of people who have the right to apply for citizenship of the Russian Federation in a simplified manner'"], <http://publication.pravo.gov.ru/Document/View/0001202205250004#print>.
83 «Указ Президента РФ от 24 апреля 2019 г. N 183 «Об определении в гуманитарных целях категорий лиц, имеющих право обратиться с заявлениями о приеме в гражданство Российской Федерации в упрощенном порядке» (с изменениями и дополнениями)» [Presidential Decree No 183 of April 24, 2019 "On determining for humanitarian purposes the categories of people who have the right to apply for citizenship of the Russian Federation in a simplified manner" (as amended and supplemented)], <https://base.garant.ru/72229888/>.
84 ODIHR Witness Interview UKR.WS.107 at para. 29.

Russian citizenship became necessary to receive medical help, work, or go to Ukrainian territory.[85] One witness told about the pressure inflicted on residents to apply for Russian passports in Enerhodar (Zaporizhzhia region): "*There are different indirect ways to pressure. With my mum, they said: 'Either you apply to be part of Russian staff or you don't get your salary'.*"[86]

56. In addition to the issuance of Russian passports, as reported in the media, the Russian rouble started to be officially introduced alongside the Ukrainian hryvnia in various occupied territories as of May 2022.[87] Witnesses interviewed by ODIHR reported that some shop owners were forced to use the rouble as a currency in order to conduct their business, with some of them having to close as a result.[88] In Kherson, one witness explained to ODIHR: "*For a short period, the Ukrainian hryvnia was used, then all cash withdrawal bank terminals were suspended and the Russian rouble was introduced. As a result, in the beginning, most people lived on savings*".[89] Some witnesses raised concerns about the depreciating exchange rate of the Ukrainian hryvnia to the Russian rouble.[90] According to a testimony, in Kherson region, "*The prices were going up depending on the situation on the front; the value of the Ukrainian hryvnia was going higher when the Ukrainian armed forces would achieve military successes*".[91] Another Kherson witness stated that, at the beginning of May 2022, the exchange rate was originally 1 hryvnia to 2 roubles, but then Russian authorities changed it to 1 hryvnia to 1 rouble, making prices unaffordable for Ukrainians.[92]

57. As stated above, under IHL, occupation is a temporary regime and the occupying power should not take far-reaching measures that would demonstrate that it treats the situation as final. Pressuring or coercing the civilian population to change their nationality to that of the occupying power as well as replacing the local currency to that of the occupying power clearly runs against this principle and strongly suggests the intention of the Russian Federation, later proved by facts, to attempt to annex the territories in violation of international law. Furthermore, making accessibility to humanitarian aid or other basic services dependent upon the acceptance of a Russian passport and using the rouble as currency is discriminatory and prohibited under IHL.[93]

85 ODIHR Witness Interview UKR.WS.087 at para. 55.
86 ODIHR Witness Interview UKR.WS.109 at para. 37.
87 "Russian-controlled Ukraine Region Declares Ruble Official Currency", Barron's, 23 May 2022, <https://www.barrons.com/news/russian-controlled-ukraine-region-declares-ruble-official-currency-01653316808>.
88 ODIHR Witness Interviews UKR.WS.095 at para. 57. and UKR.WS.073 at para. 20.
89 ODIHR Witness Interview UKR.WS.097 at para. 11.
90 ODIHR Witness Interviews UKR.WS.097 at para. 10, and UKR.WS.115 at para. 34.
91 ODIHR Witness Interview UKR.WS.097 at para. 13.
92 ODIHR Witness Interview UKR.WS.046 at para. 17.
93 See GC IV art. 27(3); and AP I arts. 69-70.

The illegal annexation of occupied territories by the Russian Federation

58. Between 23 and 27 September 2022, so-called 'referenda' on joining the Russian Federation took place in Kherson, Zaporizhzhia, Donetsk, and Luhansk regions. On 30 September 2022, Russian President Vladimir Putin formally declared the annexation of Kherson, Luhansk, Donetsk, and Zaporizhzhia regions[94] and, on 5 October, he signed the annexations into law.[95]

59. As OSCE/ODIHR stated on 20 September, any elections or referenda on the territory of Ukraine can only be announced and conducted by legitimate authorities in compliance with national legislation and international standards.[96] Any so-called 'referenda' planned by or with the support of the forces illegally exercising *de facto* control in the occupied territories of Ukraine is in contravention of international standards and obligations under international humanitarian law, and the 'referenda' and their outcome therefore were illegal and have no legal force.

60. This illegal 'annexation' was also accompanied by a 19 October 2022 decree by the Russian President introducing Russian martial law in the four occupied regions.[97] This decree purports to grant authority to the Russian authorities to introduce various restrictive measures, including freedom of movement restrictions, forced relocation of residents, and mobilization.[98] One witness from Kherson region reported to ODIHR that, following the introduction of martial law in the region, house raids by Russian authorities would happen more frequently.[99] Another witness in Zaporizhzhia region stated that this decree was just a 'formalization' of the restrictive measures already imposed by the Russian authorities.[100] The introduction of martial law, as any other measure emanating from the illegal annexation of territories, has no legal value under international law.

94 "Putin announces Russian annexation of four Ukrainian regions", Al Jazeera, 30 September 2022, <https://www.aljazeera.com/news/2022/9/30/putin-announces-russian-annexation-of-four-ukrainian-regions>.
95 "Russia's Putin signs law annexing occupied Ukrainian regions", Al Jazeera, 5 October 2022, <https://www.aljazeera.com/news/2022/10/5/putin-signs-laws-annexing-4-ukrainian-regions>.
96 OSCE Chairmanship, OSCE Office for Democratic Institutions and Human Rights, OSCE Parliamentary Assembly, OSCE Secretary General, "OSCE heads condemn plan to hold illegal 'referenda' in occupied territories of Ukraine", Copenhagen, Warsaw and Vienna, 20 September 2022: <https://www.osce.org/chairmanship/526432>; see also ODIHR / OSCE Representative on Freedom of the media, "Annexation of Ukrainian territories is illegal and a threat to human rights, say OSCE human rights Director and OSCE media freedom Representative," Warsaw and Vienna, 6 October 2022: <https://www.osce.org/odihr/528075>.
97 "Executive Order on measures implemented in Russian regions following Presidential Executive Order of October 19, 2022, on introducing martial law in the DPR, LPR and the Zaporozhye and Kherson regions", 19 October 2022, <http://en.kremlin.ru/events/president/news/69632>.
98 *Ibid.*, at paras 1 and 3 onwards.
99 ODIHR Witness Interview UKR.WS.107 at para. 27.
100 ODIHR Witness Interview UKR.WS.116 at para. 31.

Unlawful conscription of civilians from occupied territories

61. During the occupation of territories in Ukraine, there have been credible reports of Ukrainian citizens being illegally conscripted in territories occupied by the Russian Federation.[101] These include reports of the disproportionate conscription of Crimean Tatars in the occupied territories of the Autonomous Republic of Crimea and the City of Sevastopol (Crimea).[102] The conscription of citizens of an occupied territory to the armed forces of the occupying authority constitutes a war crime under IHL.[103]

62. OHCHR has previously reported on the conscription of Ukrainian citizens by Russian forces in territories under Russian control.[104] These included men working in the public sector who were "requested by their employer or local military 'commissariats' to come immediately to designated assembly points" or "stopped on the street by representatives of local 'commissariats' and forcefully taken to the assembly points, where they observed hundreds of other recruits".[105] As noted by OHCHR, these men lacked any military training or experience and were sent to the frontline just a few days after their recruitment.[106]

63. The forced mobilization of Ukrainian civilians into the Russian Federation armed forces was also reflected in various testimonies collected by ODIHR. One witness recalled that forcibly mobilized soldiers coming from Horlivka and Makiivka (Donetsk region) came to his yard in Mariupol on 21 March 2022: "*They were taken from their jobs without training and normal equipment. They were really scared — they had air guns, not a real weapon. I speak about those people because I think there are some victims too. […] they were not happy about the developments*".[107] Another witness told ODIHR that a forcibly mobilized soldier from the so-called 'Donetsk People's Republic' was living in his block of flats in Mariupol (Donetsk region): "*He said […] 'I was very drunk the eve on*

101 Between 1 February and 31 July, the OHCHR documented 65 such cases. See: "Report on the Human Rights Situation in Ukraine – 1 February to 31 July 2022", UN Office of the High Commissioner for Human Rights (OHCHR), 27 September 2022, para. 75, <https://www.ohchr.org/sites/default/files/documents/countries/ua/2022-09-23/ReportUkraine-1Feb-31Jul2022-en.pdf>.

102 *See, e.g.*, "Ukraine: Statement by the Spokesperson on Russian conscription and mobilisation in Crimea", European Union External Service, 1 November 2022, <https://www.eeas.europa.eu/eeas/ukraine-statement-spokesperson-russian-conscription-and-mobilisation-crimea_en>; "Russia's draft is targeting Crimean Tatars and other marginalized groups, according to activists.", The New York Times, 26 Sept. 2022, <https://www.nytimes.com/2022/09/27/world/europe/russias-draft-sweeps-up-crimean-tatars-and-other-marginalized-groups-activists-say.html>; see also "Human rights violations committed against Crimean Tatars in Crimea", Council of Europe, Parliamentary Assembly, Resolution 2387 (2021), 23 June 2021, <https://pace.coe.int/en/files/29360/html>. Art. 27(3) GC IV generally prohibits any discrimination in the treatment of protected persons, in particular based on race, religion or political opinion.

103 GC IV art. 147; ICC Statute art. 8(2)(a)(v).

104 "Situation of Human Rights in Ukraine in the Context of the Armed Attack by the Russian Federation", UN Office of the High Commissioner for Human Rights (OHCHR), 29 June 2022, para. 109, <https://www.ohchr.org/sites/default/files/documents/countries/ua/2022-06-29/2022-06-UkraineArmedAttack-EN.pdf>.

105 *Ibid.*

106 *Ibid.*

107 ODIHR Witness Interview UKR.WS.034 at paras 25-28.

the day I was mobilized, I went to buy vodka and they just caught me and told me I was now mobilized in the army'".[108]

64. Several witnesses told ODIHR that the risk of forced mobilization in occupied territories prompted them to flee. According to one witness, in Donetsk region: "*We stayed until a month ago [September 2022], when there was the referendum and we understood that we could be mobilized. Being a member of the Russian army was not an option to us, so we had to flee*".[109] Another witness from Kherson recalled: "*Even before the mobilization [recently announced by Russia] the Russians closed the corridors for men of the age eighteen to thirty-five years old. When I heard about this, I knew that it was time to leave Kherson because they [Russian forces] were planning to mobilize male local people. […] I decided to escape*".[110] One witness from Luhansk told ODIHR that Russian forces at checkpoints were instructed not to let people from the territories occupied by the Russian Federation in Donetsk and Luhansk regions leave: *"At every checkpoint they would look at your place of registration, if it would be the city of Luhansk or Donetsk, they would not let you pass and you would be returned to be mobilized".*[111]

65. IHL is clear in stating that the civilian population of an occupied territory must not be compelled to show allegiance to the occupying power,[112] and, as mentioned above, explicitly prohibits the Russian Federation as the occupying power from forcing people in occupied territories to serve in its own armed forces or auxiliary forces.[113] IHL also prohibits all forms of pressure or propaganda aimed at securing voluntary enlistment.[114] As enlisting in Russian-affiliated armed groups (or any other "unlawful armed formation") is considered a criminal offense under Ukrainian domestic law,[115] cases have been reported of Ukrainians who had been forcibly recruited by Russian-affiliated groups being captured and prosecuted by the Ukrainian authorities for treason or for joining unlawful armed formations.[116] It should be noted in this regard that these individuals, as members of the Russian Federation armed forces in a formal sense, are entitled to POW status and, as such, must not be prosecuted for the mere fact of having taken part in hostilities. The Ukrainian authorities should abide by IHL and refrain from prosecuting any member of the Russian

108 ODIHR Witness Interview UKR.WS.114 at para. 30.
109 ODIHR Witness Interview UKR.WS.116 at para. 7.
110 ODIHR Witness Interview UKR.WS.097 at para. 31.
111 ODIHR Witness Interview UKR.WS.112 at paras. 18 and 35.
112 See art. 45 Hague Regulations.
113 See art. 51 GC IV.
114 *Ibid.*
115 Under art. 260 of the Ukrainian Criminal Code membership in an unlawful armed formation is punishable by 2 to 15 years of imprisonment, and under art. 111.2 (State treason) actions against sovereignty or national defence of Ukraine during martial law is punishable by 15 years to lifetime in prison with confiscation of property, in UN, Office of the High Commissioner for Human Rights, Report on the human rights situation in Ukraine, 1 February to 31 July 2022, 27 September 2022, para. 76, fn 48, available at: <https://www.ohchr.org/en/documents/country-reports/report-human-rights-situation-ukraine-1-february-31-july-2022>.
116 UN, Office of the High Commissioner for Human Rights, Report on the human rights situation in Ukraine, 1 February to 31 July 2022, 27 September 2022, para. 76, at: <https://www.ohchr.org/en/documents/country-reports/report-human-rights-situation-ukraine-1-february-31-july-2022>.

Federation armed forces in their power for having directly participated in hostilities.

Administration of the Zaporizhzhia Nuclear Power Plant

66. Following the Russian invasion of Ukraine, the ZNPP, the largest nuclear power plant in Europe, was taken over by Russian forces[117] and then claimed as Russian federal property by presidential decree on 5 October following the illegal 'annexation' of parts of Zaporizhzhia region.[118] The Ukrainian Ministry of Foreign Affairs declared the decree "null and void", while the head of the IAEA stated that the ZNPP was to be considered a Ukrainian facility.[119] As described below, since the takeover, there have been credible reports of ZNPP employees being threatened, detained, abducted, and tortured.

67. Numerous witnesses described the capture of the plant by Russian forces. As explained by one, when arriving in the city of Enerhodar (Zaporizhzhia region): "*Their [Russian forces'] first target was to occupy the [Z]NPP, so they rushed there first. Then they went to the city*".[120] Another witness recalled: "*they [the Russians] started a fight with the [Ukrainian] National Guard detachment and started shelling the ZNPP premises. At one point, they entered the perimeter of the ZNPP. They burned down a structure very close to the plant. Then they occupied the territory of the ZNPP*".[121]

68. There have been numerous reports of ZNPP employees being subjected to abuses, including torture and other ill-treatment, by Russian armed forces.[122] In addition, Enerhoatom, the Ukrainian nuclear energy company that was operating the ZNPP before its occupation, reported the abduction of several ZNPP employees, including the head of the ZNPP Ihor Murashov on 30 September,[123] and the deputy head of the ZNPP Valerii Martyniuk on 10

117 On 4 March, Ukraine informed the IAEA that Russian forces had taken control of the ZNPP. "Nuclear Safety, Security and Safeguards in Ukraine – 2nd Summary Report by the Director General", International Atomic Energy Agency, September 2022, para. 22, <https://www.iaea.org/sites/default/files/22/09/ukraine-2ndsummaryreport_sept2022.pdf>.

118 "Putin asserts control over Ukraine nuclear plant, Kyiv disagrees", Reuters, 5 October 2022, <https://www.reuters.com/world/europe/zaporizhzhia-plant-operate-under-russian-supervision-after-annexation-ria-2022-10-05/>.

119 "Statement of the Ministry of Foreign Affairs of Ukraine on the attempted seizure of the Zaporizhzhia Nuclear Power Plant by Russia", Ministry of Foreign Affairs of Ukraine, 6 October 2022, <https://mfa.gov.ua/en/news/statement-ministry-foreign-affairs-ukraine-attempted-seizure-zaporizhzhya-nuclear-power-plant-russia>; "IAEA chief says Zaporizhzhia nuclear plant is Ukrainian", Reuters, 7 October 2022, <https://www.reuters.com/world/europe/iaea-chief-zaporizhzhia-nuclear-power-plant-is-ukrainian-facility-2022-10-06/>.

120 ODIHR Witness Interview UKR.WS.118 at para. 18.

121 ODIHR Witness Interview UKR.WS.109 at para. 6.

122 "Ukraine: Russia's military activities at nuclear plant risk safety in the region", Amnesty International, 6 September 2022, <https://www.amnesty.org/en/latest/news/2022/09/ukraine-russias-military-activities-at-nuclear-plant-risk-safety-in-region/>; "Russians are torturing us so we don't talk to UN, Ukraine nuclear plant workers say", The Telegraph, 25 August 2022, <https://www.telegraph.co.uk/world-news/2022/08/25/russians-torturing-us-dont-talk-un-ukraine-nuclear-plant-workers/>; "Ukraine nuclear workers recount abuse, threats from Russians", AP News, 5 October 2022, <https://apnews.com/article/russia-ukraine-kyiv-business-153cc4ffe3a9eede8f852d22abd5ed01>.

123 Energoatom, Telegram, 1 October 2022, <https://t.me/energoatom_ua/9909>.

October.[124] According to Enerhoatom, more than 150 ZNPP employees have been abducted since the beginning of the war, with the fate of some still unknown.[125]

69. Even employees of the ZNPP who did not face such severe human rights violations reportedly faced intense pressure from occupying Russian forces. On 26 October 2022, Enerhoatom reported that the Russian authorities at the ZNPP were pressuring the ZNPP employees to cooperate with the Russian State Atomic Energy Corporation, Rosatom, in control of the ZNPP, stating: "[t]he occupiers keep trying to force Zaporizhzhia NPP employees to sign contracts with Rosatom and invent new ways to persuade people to cooperate."[126] In its two reports, the IAEA also shared accounts of ZNPP personnel working "under unbelievable pressure" while operating the ZNPP, something the agency described as unsustainable and potentially leading to "increased human error with implications on nuclear safety".[127]

70. The allegations of arbitrary detention, enforced disappearances, torture and other forms of ill-treatment against civilian employees of ZNPP are strongly indicative of IHL and IHRL violations. As discussed later in this report, arbitrary detention of civilians in occupied territories as well as torture and other forms of ill-treatment are strictly prohibited under applicable international law.[128]

B HUMANITARIAN SITUATION

71. International law expressly states that the occupying power must ensure, to the fullest extent possible, that the basic needs of the civilian population living in occupied territory are met.[129] These include food and medical supplies, as well as clothing, bedding, means of shelter, and other supplies essential to the population's survival.[130] Furthermore, the occupying power must refrain from discrimination in the provision of such supplies; special treatment may only be granted on the basis of the medical condition, age or sex of the affected persons.[131]

124 Energoatom, Telegram, 11 October 2022, <https://t.me/energoatom_ua/10100>.
125 "About 50' Zaporizhzhia Nuclear Plant Staff in Russian Detention", Barron's, 19 October 2022, <https://www.barrons.com/news/about-50-zaporizhzhia-nuclear-plant-staff-in-russian-detention-energoatom-01666172712?refsec=topics_afp-news>.
126 Energoatom, Telegram, 26 October 2022, <https://t.me/energoatom_ua/10381>.
127 "Nuclear Safety, Security and Safeguards in Ukraine – 2nd Summary Report by the Director General", International Atomic Energy Agency, September 2022, para. 42, <https://www.iaea.org/sites/default/files/22/09/ukraine-2ndsummaryreport_sept2022.pdf>; "Nuclear Safety, Security and Safeguards in Ukraine – Summary Report by the Director General", International Atomic Energy Agency, April 2022, <https://reliefweb.int/report/ukraine/nuclear-safety-security-and-safeguards-ukraine-summary-report-director-general-24-february-28-april-2022>.
128 For a detailed legal analysis of these offences, see the respectively the subsections on *ii. Arbitrary detention and enforced disappearances* and *iii. Torture and other forms of ill-treatment.*
129 GC IV, arts. 55-59; AP I, art. 69; Customary IHL, Rule 55.
130 *Ibid.*
131 GC IV, arts. 27(3) & 55 GP I, arts. 69 & 75 (1).

Access to food, water, electricity, gas, and Internet connection

72. Testimonies gathered by ODIHR indicate that the Russian Federation appears to have failed to uphold its above-mentioned obligations in the territories it occupied, including by leaving the civilian population with little to no access to basic services and supplies. Witnesses discussed how access to basic amenities was disrupted with the advancement of occupying forces and how critical infrastructure was destroyed, leading to many residents struggling to endure the occupation.

73. In Kharkiv and Luhansk regions, witnesses recounted how water, electricity and gas connections were disrupted for extensive periods of time with the advancement of Russian forces, and how critical infrastructure was destroyed by occupying forces.[132] Access to food was also hindered during the occupation. One resident of Kharkiv region stated that on 24 February 2022, "*[f]or the next few hours, the Russian army was passing by our buildings and occupied our city. During the next few weeks, they cut the connections, the electricity, and they took the food out of the city.*"[133] Several witnesses stated that they were surprised by the advent of the war, and thus were not prepared with a stockpile of food and water, forcing residents to access supermarkets to gather what limited supplies they could under peril.[134] Witnesses also recount seeing occupying authorities and forces seizing food supplies, such as grain, oil, flour, as well as farm machinery, and taking them towards the Russian border.[135]

74. One witness from Nova Maiachka in Kherson region noted that the electricity and internet was cut on the day that occupying forces entered the settlement.[136] Also in Kherson region, another witness in Nova Kakhovka recalled how they retained electricity and water, but the internet connection was cut once occupying forces entered the city.[137] A further witness stated that in Kherson, the internet was cut first, and the electricity was cut three or four months later.[138]

75. In Mariupol (Donetsk region), witnesses who were present when hostilities started and who lived under occupation recall the suspension and disruption of water, gas, electricity, and internet connection as early as 25 February 2022.[139] One witness from Mariupol stated that a Russian aircraft "*destroyed*

132 ODIHR Witness Interviews UKR.WS.095 at para. 14; UKR.WS.091 at para. 6; UKR.WS.090 at para. 6; UKR.WS.094 at para. 9.
133 ODIHR Witness Interview UKR.WS.091 at para. 6.
134 ODIHR Witness Interviews UKR.WS.114 at paras 5, 9; UKR.WS.111 at paras 22, 25; UKR.WS.110 at para. 11; UKR.WS.106 at paras 4, 7; UKR.WS.096 at paras 7, 23; UKR.WS.117 at para. 16; UKR.WS.091 at para. 6. *See further* UKR.WS.040 at para. 9; UKR.WS.049 at para. 11.
135 ODIHR Witness Interviews UKR.WS.095 at para. 17; UKR.WS.091 at para. 23.
136 ODIHR Witness Interview UKR.WS.107 at paras 5, 8.
137 ODIHR Witness Interview UKR.WS.108 at paras 9, 14.
138 ODIHR Witness Interview UKR.WS.097 at paras 10, 15.
139 ODIHR Witness Interviews UKR.WS.086 at para. 4; UKR.WS.092 at paras 39, 93; UKR.WS.120 at para. 8; UKR.WS.117 at para. 10; UKR.WS.114 at para. 7; UKR.WS.111 at paras 8, 14-15; UKR.WS.110 at para. 9; UKR.WS.103 at paras 7-8; UKR.WS.100 at paras 12, 14, 17, 22; UKR.WS.096 at para. 7.

supermarkets, gas stations and water facilities."[140] Residents were forced to use portable stoves or make cooking fires outside, often eating only once per day.[141]

76. Across all the occupied territories, witnesses referred to the lack of clean drinking water, which forced many residents to drink 'technical water' from appliances, such as radiators.[142] This lack of clean water also led to poor hygiene and illness among residents who spent weeks in crowded shelters with poor sanitary conditions, debris, and freezing temperatures.[143] Many civilians risked their lives in an attempt to source water whilst under occupation and shelling.[144] Where civilians did find water sources, they described them as unusable, either because they were damaged by Russian shelling or because they were spoiled.[145]

Access to health care and education

77. Access to medical care in occupied territories was limited. Witnesses interviewed by ODIHR describe a lack of functional medical facilities, ambulances and doctors as well as increasing fears that even the smallest of wounds would be a death sentence.[146] As one witness described, "*[t]here were so many dead bodies. People were dying because there were no ambulances or doctors. Even with a small shrapnel wound we were expecting to die.*"[147] Due to the scarcity and blocking of some humanitarian aid entering many occupied territories (see below), many residents with pre-existing conditions and chronic illnesses were unable to obtain their required medication.[148] If medication was available, it was very expensive. One witness described that the newly opened Russian pharmacies in occupied areas provided Russian medication but it was very expensive.[149]

78. Where medical facilities did exist, witnesses reported being denied access to them by occupying authorities and described how civilian infrastructure was

140 ODIHR Witness Interview UKR.WS.120 at para. 14.
141 ODIHR Witness Interviews UKR.WS.086 at para. 28; UKR.WS.120 at paras 11, 21; UKR.WS.117 at para. 10; UKR.WS.114 at paras 12, 20; UKR.WS.111 at para. 15; UKR.WS.110 at paras 12, 14, 17.
142 ODIHR Witness Interviews UKR.WS.057 at para. 36; UKR.WS.092 at paras 94, 98; UKR.WS.094 at para. 13; UKR.WS.120 at para. 21; UKR.WS.114 at para. 20; UKR.WS.103 at para. 20.
143 ODIHR Witness Interviews UKR.WS.120 at para. 21; UKR.WS.110 at para. 20; UKR.WS.096 at para. 26; UKR.WS.092 at para. 96; UKR.WS.090 at para. 11.
144 ODIHR Witness Interviews UKR.WS.117 at para. 18; UKR.WS.114 at para. 12; UKR.WS.113 at para. 17; UKR.WS.100 at para. 22; UKR.WS.096 at paras 11-12.
145 ODIHR Witness Interviews UKR.WS.114 at para. 20; UKR.WS.103 at para. 20; UKR.WS.092 at paras 94, 105; UKR.WS.085 at para. 82.
146 ODIHR Witness Interviews UKR.WS.103 at para. 31; UKR.WS.120 at para. 22.
147 ODIHR Witness Interview UKR.WS.120 at para. 22.
148 ODIHR Witness Interviews UKR.WS.096 at paras 23, 26; UKR.WS.087 at para. 21; UKR.WS.093 at paras 27-28; see also "Accessing health care in Ukraine after 8 months of war: The health system remains resilient, but key health services and medicine are increasingly unaffordable", World Health Organization, 24 October 2022, <https://www.who.int/europe/news/item/24-10-2022-accessing-health-care-in-ukraine-after-8-months-of-war--the-health-system-remains-resilient--but-key-health-services-and-medicine-are-increasingly-unaffordable>. See further UKR.WS.061 at para. 83; UKR.WS.073 at para. 11; UKR.WS.078 at para. 11.
149 ODIHR Witness Interview UKR.WS.093 at para. 59; *see also* UKR.WS.108 at para. 27.

appropriated and converted into military hospitals for occupying forces.[150] One witness explained to ODIHR that in Kupiansk (Kharkiv region), by July 2022, following the introduction and implementation of Russian citizenship, Ukrainian citizens could not receive medical help without first obtaining Russian citizenship, nor could a person travel to the territory of Ukraine for care — only to the Russian Federation.[151] Ukrainian authorities have also accused occupying forces of looting medical equipment and ambulances and pressuring residents to seek medical care in the territory of the Russian Federation.[152]

79. Under the law of occupation, the occupying power has the duty to ensure that the medical needs of the civilian population under its control continue to be satisfied, without discrimination, including by securing the functioning of an adequate health care infrastructure (medical and hospital establishments and services, public health and hygiene).[153] Deliberately obstructing access to medical supplies, as reported by witnesses testimonies collected by ODIHR, runs contrary to the Russian Federation's duty as the occupying power. Even in the limited cases where requisitions of hospitals and medical supplies are allowed for the care of the occupying forces' wounded and sick, their lawfulness is conditional to the requirements of the civilian population being met.[154]

80. In addition, access to education is critical during armed conflicts, especially for the psychological well-being of children. Under the law of occupation, the occupying power has an obligation to take measures necessary to assure the continuity of children's education in occupied territories.[155] According to witnesses interviewed by ODIHR, access to education in occupied territories was both scarce and of poor quality, and schools were compelled to adopt a Kremlin-curated curriculum.[156] Parents described their fears of sending their children to school whilst under occupation and under shelling, despite the effect it would have on their education.[157] As described above, many schools in occupied areas were either closed outright, damaged beyond purpose, or became dysfunctional due to a lack of teachers, in part due to an ultimatum

150 ODIHR Witness Interviews UKR.WS.102 at para. 25; UKR.WS.101 at para. 17.
151 ODIHR Witness Interview UKR.WS.087 at para. 55.
152 "Russia is trying to make the Kherson region literally an exclusion zone; the world must react to this – address by the President of Ukraine", Presidential Office of Ukraine, 28 October 2022, <https://www.president.gov.ua/en/news/rosiya-namagayetsya-zrobiti-hersonshinu-bukvalno-zonoyu-vidc-78773>.
153 GC IV, arts. 55-57; AP I, arts. 14 and 69.
154 GC IV, arts. 56-57; AP I, art. 14. As a general rule, the requisitioning of medical supplies, and other articles available in the occupied territory is not permitted. Exceptions to this rule are only allowed subject to three cumulative conditions: (i) the requirements of the civilian population have first been taken into account; (ii) requisitions must be intended for use by the occupation forces and administrative personnel only; and (iii) it is required that fair value be paid for any requisitioned goods.
155 GC IV, art. 50(1).
156 ODIHR Witness Interviews UKR.WS.098 at para. 10; UKR.WS.101 at para. 20; UKR.WS.106 at para. 29; UKR.WS.107 at para. 37; UKR.WS.111 at para. 34; UKR.WS.112 at para. 12; UKR.WS.105 at para. 30; *see also* "Weaponizing education: Russia targets schoolchildren in occupied Ukraine", Atlantic Council, 20 September 2022, <https://www.atlanticcouncil.org/blogs/ukrainealert/weaponizing-education-russia-targets-schoolchildren-in-occupied-ukraine/>; "Ukraine war: History is rewritten for children in occupied areas", BBC News, 31 August 2022, <https://www.bbc.com/news/world-62577314>.
157 ODIHR Witness Interview UKR.WS.104 at paras 25-26.

conveyed by the occupying authorities to teach the new Russian curriculum or resign.[158]

81. One witness described to ODIHR a shortage of teachers in his child's school in Luhansk region following numerous resignations, which led to serious deficiencies in the education provided: *"[t]here was a plumber teaching mathematics…some teachers teaching three different subjects*."[159] He added that occupying authorities were bringing teachers from the Russian Federation and recruiting unqualified individuals to teach primary school education.[160] The same witness described coercion from the school's administration to send his children back to school: *"[T]he principal started threatening to report us to the military commander and he said that the secret services would take us to their 'basement'"*, which is a colloquial term for detention and potential torture as explained by several witnesses interviewed by ODIHR.[161]

82. Occupying forces also reportedly seized school material and equipment. In Kupiansk (Kharkiv region), a witness working in a school told ODIHR that Russian forces ordered the workers at the school to "*pack all the Ukrainian textbooks and put them in a truck.*"[162] Similarly, an interviewee from Kharkiv region recalls how occupying forces went to her children's school, fired all the teachers and "*took all equipment from the school, even the toilets*".[163] Another witness explained that in Kherson "*the Russians brought teachers and books into the schools. They took out the subject Ukrainian language and literature and renamed it Local Language and History*", adding that "*once Russian forces took over my university, during the first day they looted the university's equipment, computers, stuff, and removed the Ukrainian flags*".[164]

83. IHL explicitly sets out that the occupying power shall facilitate, with the cooperation of the national and local authorities, the proper working of all institutions devoted to the care and education of children.[165] This includes refraining from interfering with the proper working of educational

158 ODIHR Witness Interviews UKR.WS.085 at para. 101; UKR.WS.101 at para. 20; UKR.WS.104 at paras 25-26; UKR.WS.106 at para. 29; UKR.WS.112 at paras 12-13; UKR.WS.105 at paras 28, 30; see also "Ukraine war: History is rewritten for children in occupied areas", BBC News, 31 August 2022, <https://www.bbc.com/news/world-62577314>; "Ukraine: Education International condemns Russian attacks against teachers and education in occupied territories", Education International, 30 September 2022, <https://www.ei-ie.org/en/item/26750:ukraine-education-international-condemns-russian-attacks-against-teachers-and-education-in-occupied-territories>.

159 ODIHR Witness Interview UKR.WS.112 at para. 12.

160 ODIHR Witness Interview UKR.WS.112 at para. 13; *see also* "Ukraine Detains Russian Teachers In Occupied Territories As It Recaptures Territory", Radio Free Europe / Radio Liberty, 13 September 2022, <https://www.rferl.org/a/ukraine-detains-russian-teachers-occupied-territory/32031705.html>.

161 ODIHR Witness Interviews UKR.WS.112 at para. 11. *See also* UKR.WS.087 at paras 16, 81, UKR.WS.088 at paras 25, 27, UKR.WS.091 at paras 31, 33, UKR.WS.116 at para. 32.

162 ODIHR Witness Interview UKR.WS.098 at paras 7-11.

163 ODIHR Witness Interview UKR.WS.091 at para. 37.

164 ODIHR Witness Interview UKR.WS0.97 at paras 24-25.

165 GC IV, art. 50(1).

institutions for children[166] — for example by firing staff or removing equipment — and to support local authorities to fulfil their educational obligations.[167] Children who are separated from their parents must be educated by people of their own nationality and language whenever possible.[168] Relevant provisions of IHRL also reinforce the duty of the occupying power to take appropriate measures to implement the right of every child to education.[169] In light of available evidence, the Russian Federation appears to have failed to uphold its obligations to ensure adequate access to medical care to the civilian population as well as the continuity of children's education in occupied territories in violation of IHL and IHRL.

Delivery of humanitarian aid

84. As mentioned above, the occupying power bears the primary responsibility to provide for the basic needs of the population under its control.[170] However, IHL stipulates that when such needs are not adequately fulfilled, the occupying power must agree to relief schemes offered by other States or impartial humanitarian organizations and facilitate the rapid and unimpeded passage of aid materials into territories under its control.[171]

85. According to witnesses interviewed by ODIHR, the delivery of humanitarian aid and supplies from outside sources in occupied territories was impeded due to ongoing occupation and blockades on towns and cities.[172] They attested that, on the limited and sporadic occasions when aid was distributed in occupied areas, this aid was provided to civilians by Russian occupying authorities or affiliated parties (such as United Russia) who were accompanied by reporters who filmed the distribution.[173] One witness interviewed by ODIHR who was living in Savyntsi (Kharkiv region) stated that *"[a]t the beginning of the war there was Ukrainian and Russian humanitarian aid and then the Russians blocked the Ukrainian aid, and there was only theirs. It came once per month. They blocked it at the beginning of May, end of April."*[174] Likewise, in Kupiansk (Kharkiv region) another witness

166 The relevance of the principle of non-interference is related to the fact that occupation is supposed to be temporary and the main responsibility of the occupying power is to avoid measures that would obstruct or preclude the regular functioning of the education system as it was before the occupation.
167 Pictet Commentary to the Fourth Geneva Convention (1958), art. 50, pp. 286-287.
168 GC IV, art. 24. This requirement is in line with the duty to ensure the continuity of education and in order to "exclude any religious or political propaganda designed to wean children from their natural milieu". Pictet Commentary to the Fourth Geneva Convention (1958), art. 50, p. 188.
169 This includes by accepting relief actions providing education materials, or allowing outside organizations to build school facilities. Convention on the Rights of the Child (CRC), arts. 28-29; *see also* International Covenant for Economic, Social and Cultural Rights (ICESCR), art. 13.
170 GC IV, art. 55; AP I, art. 69; Customary IHL, Rule 55.
171 GC IV, art. 59; AP I, art. 69; Customary IHL, Rule 55. However, such relief action may not relieve the occupying power of its responsibilities to ensure the fulfilment of the needs of the population. GC IV, art. 60.
172 ODIHR Witness Interviews UKR.WS.089 at para. 13; UKR.WS.087 at para. 43; UKR.WS.093 at paras 25, 27; *see also* UKR.WS.119 at para. 13.
173 ODIHR Witness Interviews UKR.WS.089 at para. 13; UKR.WS.095 at para. 10; UKR.WS.091 at para. 10; UKR.WS.087 at paras 43-44; UKR.WS.117 at paras 40; UKR.WS.103 at para. 19; UKR.WS.102 at para. 15; UKR.WS.096 at para. 28; UKR.WS.098 at para. 23; UKR.WS.120 at para. 32.
174 ODIHR Witness Interview UKR.WS.089 at para. 13.

stated that "*nobody was allowed to enter Kupiansk, including trucks which delivered food/goods and medicine into the city*."[175]

86. In territories where deliveries of aid and basic supplies were denied, witnesses interviewed by ODIHR reported that the onus fell upon the local infrastructure and volunteer residents to distribute aid.[176] In Kherson, for example, one witness recounted how "*Russians didn't let into the city any deliveries of food and similar stuff*", so food items were provided to residents with help from volunteers and food factories in Chornobaivka (Kherson region).[177]

87. According to testimonies collected by ODIHR, when occupying authorities did distribute humanitarian aid, they did so restrictively and with reported ulterior motives. One witness from Kupiansk explained how occupying authorities created a storage site in a technical college, drew up a list of those who needed aid the most and hired taxis to distribute it, which residents then had to pay for.[178] Similarly, one witness who was in Vovchansk (Kharkiv region) described how aid was only distributed upon the handover of personal data which was reportedly used during 'illegal' elections in the city, and that Russian soldiers told her she would be "punished" if she continued to refuse aid under these circumstances.[179]

88. Witness accounts collected by ODIHR suggest that the Russian Federation not only appears to have failed to adequately respond to the basic needs of the population under its control but, in a number of cases, it also prevented humanitarian aid from other States or impartial humanitarian organizations to reach the people in need, in violation of its obligation as the occupying power.

C. ABUSES AGAINST THE CIVILIAN POPULATION

89. Civilians living under occupation are at all times entitled to respect for their persons, honour, family rights, religious convictions, and manners and customs, without discrimination.[180] Their private property is also protected.[181] The occupying power should guarantee that civilians are treated humanely under all circumstances and it must protect them from any act of violence, including by third parties.[182] As illustrated by the following sub-sections, accounts provided by witnesses interviewed by ODIHR as well as by

175 ODIHR Witness Interview UKR.WS.087 at para. 21.
176 ODIHR Witness Interviews UKR.WS.093 at para. 25; UKR.WS.117 at para. 40.
177 ODIHR Witness Interview UKR.WS.093 at para. 25; *see also* UKR.WS.102 at para. 31.
178 ODIHR Witness Interview UKR.WS.087 at paras 43-44, 46.
179 ODIHR Witness Interview UKR.WS.091 at para. 10; *see also* "'Everyone who took a humanitarian card will have to vote' – the occupiers force the population to participate in 'referenda'", The Odessa Journal, 23 September 2022, <https://odessa-journal.com/everyone-who-took-a-humanitarian-card-will-have-to-vote-the-occupiers-force-the-population-to-participate-in-referenda/>.
180 Hague Regulations, art. 46; GC IV art. 27; AP I, art. 75
181 Hague Regulations, art. 46.
182 GC IV, arts. 13, 27, 33-34.

authoritative reports from international organizations describe numerous allegations of some of the most serious violations of IHL and IHRL committed against civilians, such as unlawful killings, abductions, kidnapping and other forms of arbitrary deprivation of liberty including instances of enforced disappearances as well as torture, ill-treatment and conflict-related sexual violence. Furthermore, numerous cases of forcible transfer and deportations of civilians from occupied territories, including children, continue to be reported.

Unlawful killings

90. There is a large and increasing body of evidence of civilians being unlawfully killed, including wilfully killed and summarily executed in the territories that were or remain under the control of the Russian Federation armed forces.

91. As already noted in the *First Interim Report*,[183] following the retreat of Russian forces from Kyiv and Chernihiv regions, and partially from Sumy and Kharkiv regions in the beginning of April, reports on unlawful killings of civilians were made by international governmental and non-governmental organizations such as OHCHR, Amnesty International, and Human Rights Watch, and in the media.[184] In Kyiv region alone, over 1,346 civilian bodies had reportedly been recovered by local authorities as of 18 July.[185] Documented evidence shows that while some civilians died as a direct result of hostilities, stress or lack of access to adequate medical care, a significant number of civilians were arbitrarily or wilfully killed, or subjected to a summary execution by small arms and light weapons (SALW), stabbing or torture.[186]

92. UN HRMMU and the UN Independent International Commission of Inquiry on Ukraine managed to corroborate numerous cases of unlawful killings and established circumstances under which these civilians were killed by members of Russian armed forces: some were shot in their vehicles while trying to flee; others were shot in the street while crossing the road on foot or gathering essentials for life; some victims' dead bodies were found with their

183 See: "Interim Report on reported violations of international humanitarian law and international human rights law in Ukraine", ODIHR, 20 July 2022, paras 81-86, <https://www.osce.org/odihr/523081>.

184 "Update on the human rights situation in Ukraine, 24 February – 26 March 2022", UN, Office of the High Commissioner for Human Rights, 28 March 2022, <https://www.ohchr.org/sites/default/files/2022-03/HRMMU_Update_2022-03-26_EN.pdf>; ""He is not coming back". War crimes in northeast areas of Kyiv oblast", Amnesty International, 6 May 2022, <https://www.amnesty.org/en/documents/eur50/5561/2022/en/>; "Ukraine: Russian Forces' Trail of Death in Bucha", Human Rights Watch, 21 April 2022, <https://www.hrw.org/news/2022/04/21/ukraine-russian-forces-trail-death-bucha>; "Ukraine: The children's camp that became an execution ground", BBC News, 16 May 2022, <https://www.bbc.com/news/world-europe-61442387>; "In Bucha Burials Continue for Victims of Wartime Atrocities", The New York Times, 18 August 2022, <https://www.nytimes.com/2022/08/18/world/europe/ukraine-bucha-burials.html>; "Accounting of bodies in Bucha nears completion", The Washington Post, 8 August 2022, <https://www.washingtonpost.com/world/2022/08/08/ukraine-bucha-bodies/>.

185 "1,346 bodies of civilians killed by Russians already found in Kyiv region", Kyiv Post, 18 July 2022, <https://www.kyivpost.com/russias-war/1346-bodies-of-civilians-killed-by-russians-already-found-in-kyiv-region.html>.

186 "Report on the human rights situation in Ukraine", UN, Office of the High Commissioner for Human Rights, 1 February to 31 July 2022, 27 September 2022, para. 34, <https://www.ohchr.org/en/documents/country-reports/report-human-rights-situation-ukraine-1-february-31-july-2022>.

hands tied behind their back, which points to the fact that they were executed; and some victims bore signs of being tortured before being killed.[187] While most victims were men, many women and children were also killed.[188] OHCHR has documented summary executions and attacks on civilians in 102 villages and towns of Kyiv, Chernihiv and Sumy regions, verifying information about the death of 441 civilians (341 men, 72 women, 20 boys and 8 girls).[189]

93. Testimonies obtained by ODIHR give details of unlawful killings of civilians by occupying Russian forces during the occupation. One witness from Bucha (Kyiv region) recounted that her ex-husband was killed by Russian forces there in March. She stated the Ukrainian military found his body in his house booby-trapped with three mines, and that *"[h]is hands had been tied with a wire; it looked as if he had been shot in the head and blood was splattered on the wall."*[190] Another Bucha resident who helped collect bodies during the occupation described to ODIHR: *"[i]n one of the houses, we saw a pile of dead bodies. It was a whole family; there was one child there. They had been tortured and burnt... We took bodies from apartments, from basements; 90% of them were shot in the head with their hands tied. They took people, they tortured them and shot them."*[191] Another witness in Kyiv region recalled that a person from their community with an intellectual disability had been *"killed by three shots in the back of his head."*[192] A witness from Chernihiv region recalled that on 27 February, Russian soldiers killed six civilians who lived near the main road and were chosen randomly; according to the witness, two of the victims, who were smoking outside, were taken by Russian soldiers for interrogation and discovered later with their bodies bearing signs of torture.[193]

94. Throughout the reporting period, new allegations of unlawful killings of civilians continued to emerge from territories that have been or remain under

187 Report of the Independent International Commission of Inquiry on Ukraine, UN Doc. A/77/533, 18 October 2022, paras 67-73, <https://www.ohchr.org/en/documents/reports/a77533-independent-international-commission-inquiry-ukraine-note-secretary>; "Report on the human rights situation in Ukraine", UN, Office of the High Commissioner for Human Rights, 1 February to 31 July 2022, 27 September 2022, paras 37-39, <https://www.ohchr.org/en/documents/country-reports/report-human-rights-situation-ukraine-1-february-31-july-2022>, "Situation of human rights in Ukraine in the context of the armed attack by the Russian Federation, Reporting period: 24 February-15 May 2022", UN, Office of the High Commissioner for Human Rights, 29 June 2022, para. 80, <https://www.ohchr.org/en/documents/country-reports/situation-human-rights-ukraine-context-armed-attack-russian-federation>.

188 "Report on the human rights situation in Ukraine", UN, Office of the High Commissioner for Human Rights, 1 February to 31 July 2022, 27 September 2022, paras. 37, <https://www.ohchr.org/en/documents/country-reports/report-human-rights-situation-ukraine-1-february-31-july-2022>;<https://www.ohchr.org/en/documents/country-reports/situation-human-rights-ukraine-context-armed-attack-russian-federation>.

189 Killings of Civilians: Summary Executions and Attacks on Individual Civilians in Kyiv, Chernihiv, and Sumy Regions in the Context of the Russian Federation's Armed Attack Against Ukraine', UN Office of the High Commissioner for Human Rights, December 2022, < 2022-12-07-OHCHR-Thematic-Report-Killings-EN.pdf>, para. 3.

190 ODIHR Witness Interview UKR.WS.072 at paras 24 and 25.

191 ODIHR Witness Interview UKR.WS.084 at para. 30.

192 ODIHR Witness Interview UKR.WS.081 at para. 25.

193 ODIHR Witness Interview UKR.WS.083 at para. 11.

Russian occupation.[194] For instance, in the city of Izium (Kharkiv region) that was occupied by Russian armed forces until September, following the exhumation of 436 bodies from a mass burial site, local authorities reported that some of the bodies had ropes around their necks, tied hands, broken limbs and gunshot wounds, and that all but 21 of the victims were civilians.[195] Among one of the cases of unlawful killings investigated by UN HRMMU in Izium, the Russian armed forces killed a local forensic expert (an elderly man with a disability) on 7 May, as they attempted to requisition his car.[196]

95. ODIHR also received allegations of unlawful killings of civilians in Mariupol (Donetsk region) that occurred when the city was under siege by the Russian armed forces: "*When people were running from the buildings, they were shot at... When we were running from our house, we were shot at ourselves, even though we were with our daughter and wearing white armbands.*"[197]

96. Following these disturbing accounts, it is important to reiterate that the willful or intentional killing of civilians is strictly prohibited under IHL.[198] The murder of civilians is listed as a war crime and — if committed as part of a widespread or systematic attack directed against any civilian population — as a crime against humanity under the ICC Statute.[199] This IHL prohibition is reinforced by the application of IHRL, whereby extrajudicial killings, defined as a deliberate and targeted murder of a person without the lawful authority granted by judicial proceedings, amount to the most serious violation of the right to life.[200]

Arbitrary deprivation of liberty and enforced disappearances

97. During the reporting period, there have also been continuous credible reports of Ukrainian citizens being arbitrarily deprived of their liberty as well as abused and tortured while detained by Russian authorities in areas under

194 *See* ODIHR Witness Interviews, UKR.WS.086; UKR.WS.104; "Update on the human rights situation in Ukraine, Reporting period: 1 August – 31 October 2022", UN, Office of the High Commissioner for Human Rights, 5 December 2022, p.2, < https://www.ohchr.org/sites/default/files/documents/countries/ua/2022-12-02/HRMMU_Update_2022-12-02_EN.pdf>; "Ukraine: Three Men's Bodies Found in Forest", Human Rights Watch, 4 October 2022, <https://www.hrw.org/news/2022/10/04/ukraine-three-mens-bodies-found-forest>; Ukraine: "UN rights office set to probe 'mass graves' un newly liberated east", 16 September 2022, https://news.un.org/en/story/2022/09/1126801; "Ukraine: Mass graves in Izium is a macabre reminder of the cost of Russian aggression", Amnesty International, 16 September 2022, <https://www.amnesty.org/en/latest/news/2022/09/ukraine-mass-graves-in-izium-is-a-macabre-reminder-of-the-cost-of-russian-aggression/>; Office of the Prosecutor General of Ukraine: *"Three bodies with traces of violent death discovered in the village of Vysokopillia"*, Telegram, 4 November 2022, <https://t.me/pgo_gov_ua/7163>.

195 Oleh Syniehubov, Telegram, 24 September 2022, <https://t.me/synegubov/4304>.

196 "Update on the human rights situation in Ukraine, Reporting period: 1 August – 31 October 2022", UN, Office of the High Commissioner for Human Rights, 5 December 2022, p.2,

197 ODIHR Witness Interview UKR.WS.086 at para. 29.

198 GC IV, arts. 32 and 147; AP I, art. 75(2)(a); Customary IHL Rule 89.

199 ICC Statute, arts. 8(2)(b) and 7(1)(a) respectively.

200 International Covenant for Civil and Political Rights (ICCPR), art. 6.

Russian occupation. This is covered in more detail below.[201] As of 31 October, UN HRMMU had documented 457 cases of arbitrary detention and enforced disappearance of civilians (395 men, 61 women, and 1 boy) attributable to the Russian armed forces and affiliated armed groups. Among the victims, 20 (19 men and 1 woman) died in detention or were eventually found dead.[202] Accounts of alleged enforced disappearances in occupied territories include abductions of local authorities, journalists, human rights defenders and other citizens by Russian authorities in Kyiv, Kharkiv, Kherson, Donetsk, Chernihiv, and Zaporizhzhia regions, among others.

98. One witness from Chernihiv region interviewed by ODIHR recalled being interrogated after her friend's daughter was arrested on suspicion of providing information to Ukrainian military forces: *"They told me to come with them and bring my phone. I was to talk with a man from the FSB [Federal Security Service]. I asked for how long would I be there, and they said 'if you don't come with your phone or if you lie, we will arrest you'. They told me to put something over my eyes, I put a hat over my eyes. They put duct tape around this hat. They tied my hands behind my back."*[203] Another witness from Zaporizhzhia region reported seeing the abduction of a civilian on or around 15 June. He recalled that, from a distance of about 10 meters, he saw a car with 'Z' marks on it approaching his friend, Russian soldiers wearing military fatigues stepping out of it, hitting him on the head with their guns and putting him in their car. The witness said his friend was released only after one month. [204]

99. Reports of abductions of local authorities are also numerous. One witness from Kharkiv region stated that, before installing a new mayor in the village where she lived, the Russian military forces tried to force the existing village mayor to cooperate; she heard from his family he was then imprisoned in the Russian Federation, before later being released with injuries requiring hospitalization.[205] Another witness in Kherson told ODIHR that the head of the department of tax services there was kidnapped and held for four days.[206]

100. These accounts credibly indicate serious violations of IHL. Deprivation of liberty of civilians in armed conflicts is only permissible for imperative

201 *See* ODIHR Witness Interviews, UKR.WS.010; UKR.WS.027; UKR.WS.035; UKR.WS.037; UKR.WS.057; UKR.WS.080; UKR.WS.083; UKR.WS.091; UKR.WS.093; UKR.WS.109 *see also* "Update on the human rights situation in Ukraine, Reporting period: 1 August – 31 October 2022", UN, Office of the High Commissioner for Human Rights, 5 December 2022, p.4, <https://www.ohchr.org/sites/default/files/documents/countries/ua/2022-12-02/HRMMU_Update_2022-12-02_EN.pdf>; Report of the Independent International Commission of Inquiry on Ukraine, UN Doc. A/77/533, 18 October 2022, <https://www.ohchr.org/en/documents/reports/a77533-independent-international-commission-inquiry-ukraine-note-secretary>, paras 75-80; "Ukraine: Torture, Disappearances in Occupied South", Human Rights Watch, 22 July 2022, <https://www.hrw.org/news/2022/07/22/ukraine-torture-disappearances-occupied-south>.

202 "Update on the human rights situation in Ukraine, Reporting period: 1 August – 31 October 2022", UN, Office of the High Commissioner for Human Rights, 5 December 2022, p.4, <https://www.ohchr.org/sites/default/files/documents/countries/ua/2022-12-02/HRMMU_Update_2022-12-02_EN.pdf>.

203 ODIHR Witness Interview UKR.WS.008 at paras 42, 83.

204 ODIHR Witness Interview UKR.WS.109 at para. 24.

205 ODIHR Witness Interviews UKR.WS.091 at para. 27, UKR.WS.088 at para. 26.

206 ODIHR Witness Interview UKR.WS.093 at paras 28-29.

security reasons of the detaining power; in this case, these are limited to assigned residence or to internment under very narrow circumstances,[207] or detention related to legitimate criminal proceedings.[208] Citizenship or alignment with an enemy party is not a sufficient reason for detention, and nor is the deprivation of liberty for the sole purpose of gathering intelligence.[209] If deprivation of liberty is not in line with applicable law, it amounts to unlawful confinement which is a grave breach of IHL and a war crime.[210] Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law, if committed as part of a widespread or systematic attack directed against a civilian population, may constitute a crime against humanity.[211]

101. In any case, all persons deprived of their liberty for reasons related to an armed conflict must be treated humanely. IHL protects them against all acts of violence, as well as against intimidation, insults, and public curiosity. They are entitled to respect for their lives, their dignity, their personal rights and their political, religious and other convictions and must be afforded appropriate conditions of detention, the medical care they require, and the judicial or procedural guarantees corresponding to their status.[212] If it is corroborated that some civilians were held in undisclosed locations this may qualify as enforced disappearance that is prohibited under Customary IHL[213] and, if committed as part of a widespread or systematic attack directed against a civilian population, it may amount to a crime against humanity.[214]

207 It must be noted that internment is a security measure and cannot be used as a form of punishment. Furthermore, the need for such detention must be assessed on a case by case basis, as IHL prohibits collective punishments, see AP I, art. 75(2)(d). It is only allowed if absolutely necessary based on "serious and legitimate reasons" that a person would undertake acts which would seriously prejudice the security of the detaining power, such as sabotage or espionage. International Criminal Tribunal for the former Yugoslavia, *Prosecutor v Delalic and others*, case No. IT-96-21-T, Trial Chamber, Judgment of 16 November 1998 paras. 576-577. An individual interned for imperative reasons of security must be released as soon as the reasons which necessitated his internment cease to exist. GC IV, art. 132. An individual detained for legitimate security reasons also has the right to certain procedural guarantees. In situations of occupation, the decision to detain must be made according to a regular procedure, and must be subject to appeal with periodical review, if possible, every six months. Reasons for the deprivation of liberty shall be provided to the detained person promptly in a language they understand, see GC IV, art. 78 and AP I, art. 75(3).

208 If criminal charges are brought against a civilian living under occupation, the accused is entitled to all fair trial guarantees as set out in IHL and IHRL.

209 International Criminal Tribunal for the former Yugoslavia, *Prosecutor v Delalic and others*, case No. IT-96-21-T, Trial Chamber, Judgment of 16 November 1998 paras. 576-577; see also ICRC Guidelines, 'International Humanitarian Law and the Challenges of Contemporary Armed Conflicts' 11, 30IC/07/8.4 (October 2007), Annex 1, para. 380.

210 GC IV, art. 147, see also Customary IHL Rule 99; ICC Statute, art. 8(2)(a)(vii).

211 ICC Statute art. 7(1)(e).

212 GC IV, arts. 68-78 and 79-141; Customary IHL Rules 90 and 100-102.

213 Customary IHL, Rule 98. Whilst the term does not appear in IHL treaties, ED violates or threatens to violate a range of customary rules including the prohibition of arbitrary deprivation of liberty, torture or other forms of cruel inhuman treatment, and murder, as well as the requirements to register persons deprived of their liberty, and to respect family lives.

214 ICC Statute art. 7(1)(i). Although not mentioned as a separate war crime in the ICC Statute, enforced disappearance will usually involve the commission of acts which constitute war crimes such as torture, cruel or inhuman treatment, murder or denial of fair trial rights.

Torture and other forms of ill-treatment

102. Alarming reports on alleged torture and ill-treatment of civilians, including people arbitrarily detained, continue to emerge from territories which had been or are under Russian occupation. According to witnesses and survivors interviewed by ODIHR, the forms of torture and inhuman and degrading treatment or punishment included beatings,[215] electric shocks,[216] suffocation,[217] being forced into painful stress positions,[218] mock executions,[219] and threats of mutilation.[220]

103. Many witnesses recounted how civilians in the occupied territories were subjected to beatings by members of Russian forces, including for refusing to cooperate with them,[221] speaking Ukrainian in public,[222] or taking photos of Russian soldiers.[223] One witness testimony suggested that such ill-treatment of the civilian population by Russian armed forces was so regular that it constituted an inherent element of the occupation: "*My uncle [...] he stayed, the Russians took his phone and beat him up and broke five ribs. Everyone has this kind of story.*"[224] A witness who stayed in Bucha (Kyiv region) during the occupation explained to ODIHR: "*My friend was apprehended in the street and was badly beaten but let go... [a] driver and his assistant were apprehended by the Russians, taken to the building of the city hall. They kept them there for a day, beat them, taped their hands with Sellotape.*"[225]

104. Some witnesses ODIHR interviewed described beatings, torture and other ill-treatment by Russian forces with the apparent aim to coerce people into cooperation with the occupying forces[226] or to extract information or confessions.[227] A woman from a village in Kherson region stated that four Russian soldiers had searched her daughter's house, beat and tortured her husband with electric shocks and held a gun to his head because they believed that they had been shot at from the area of the house.[228]

105. According to a female witness from Kharkiv region whose husband was serving in the Ukrainian military, Russian soldiers came to her home, seized her and her children's laptops and took her for interrogation: "*[t]hey interrogated me in a very violent way. They threatened me with a shocker, they*

215 ODIHR Witness Interviews UKR.WS.099 at paras 19-20; UKR.WS.107 at para. 20.
216 ODIHR Witness Interviews UKR.WS.107 at paras 16, 26; UKR.WS.109 at paras 45–47.
217 ODIHR Witness Interview UKR.WS.010 at para. 11.
218 ODIHR Witness Interview UKR.WS.050 at paras 22-26.
219 ODIHR Witness Interview UKR.WS.050 at para. 23–26.
220 ODIHR Witness Interview UKR.WS.027 at para. 20.
221 ODIHR Witness Interview UKR.WS.099 at para. 19.
222 ODIHR Witness Interview UKR.WS.107 at para. 20.
223 ODIHR Witness Interview UKR.WS.099 at para. 20.
224 ODIHR Witness Interview UKR.WS.077 at para. 18.
225 ODIHR Witness Interview UKR.WS.059 at paras 43 and 44.
226 ODIHR Witness Interview UKR.WS.088 at paras 29 and 30.
227 ODIHR Witness Interview UKR.WS.118 at para. 44.
228 ODIHR Witness Interview UKR.WS.107 at para. 26.

were threatening to rape me, to torture me. They said that I would be placed in a basement which was a torture place."[229] Another witness, whose friend was abducted in his region, recalled to ODIHR that *"[t]hey [Russian military forces] kept him for thirty days, and tortured him; he showed me the injuries. They even made stitches on his leg then tore them off from his flesh; there were lots of scars."*[230]

106. One witness described to ODIHR how in Irpin (Kyiv region), where the Russian armed forces were engaged in heavy fighting, one commander detained him and his young son, who he threatened with torture to boost the morale of his soldiers: *"[t]hey put a black plastic bag on my son's head and tied his hands with tape behind his back. The soldier asked the commander what we shall do with the boy. The commander said "take him to the neighbour's yard and kill him".* Eventually, after hours of begging, the witness reported being able to persuade the commander to release his child, but not before the commander tormented him by slowly lowering his axe over the boy's foot, threatening to cut it off.[231]

107. One man from Enerhodar described to ODIHR the torture with electric shocks he endured in early April at a police station in Zaporizhzhia region. He stated he was first made to lie on the floor while water was poured over him and then ordered to stretch out his hands, then *"[t]hey wrapped something around my small fingers. They usually use low voltage but high amperage. One person put his foot on my right shoulder and one on my left one. One stepped on my legs to keep me quiet and they applied the electricity. My entire body was trembling. I believe they put down this military jacket for me not to break my skull, because my head was also trembling very heavily. They applied it five times. I showed it to them that I was short of breath and could die. I knew that I could not stand it anymore and I fainted. They stopped and raised me and tried to slap my face so that I regained consciousness."*[232]

108. Another witness from Enerhodar (Zaporizhzhia region) described his experience of torture as follows: "*the type of torture would be that they would put handcuffs on your wrist then they would be putting your forearm on the floor and then they would be kicking so that the handcuff would dig into your bones. […] Another type of torture was that they would tie my arms to a bar, and they would keep me hanging on the bar. They would have two chairs and would put that bar on the chairs' back and you would be suspended like that for a long time."*[233]

109. One man interviewed by ODIHR described how, as he was attempting to flee the occupied Sklozavod district in Bucha toward Kyiv, he was stopped by Russian forces together with another man, after which the men were made to kneel

229 ODIHR Witness Interview UKR.WS.091 at para. 13.
230 ODIHR Witness Interview UKR.WS.008 at paras 25 and 109.
231 ODIHR Witness Interview UKR.WS.042 at paras. 25 and 26.
232 ODIHR Witness Interview UKR.WS.109 at paras 45–47.
233 ODIHR Witness Interview UKR.WS.118 at para. 58.

down; he stated: "*they beat us fairly severely… they punched me in the face, and I fell to the ground and my ears started ringing. They broke my nose, and I was bleeding a lot for the rest of the day.*"[234] Later, he added, the men were taken to a forest where they were threatened with amputation of their feet, hands and ears. He described how the two men were made to spend one night in a pit in the ground where they endured mock executions, and after one more night in a police van, the men were released by Russian forces and were able to walk towards territory under Ukrainian control.[235]

110. In recent months, extensive reporting by human rights organizations[236] and media[237] have also provided compelling accounts of torture and ill-treatment of civilians in the occupied territories. Among other abuses, victims have reported beating with metal rods, resulting in broken jaws, broken ribs, and lost teeth, along with waterboarding, electric shocks and death threats.[238] Others have recounted experiences of torture with pliers, hammers, and other items.[239] Some victims have also relayed that they had to watch while their relatives were tortured.[240]

111. In addition, some victims were killed after being subjected to torture or died from torture. UN HRMMU has documented numerous cases when civilian bodies were found with bound hands and legs, multiple knife wounds and severed fingers.[241] One witness from Bucha (Kyiv region) interviewed by ODIHR described indicators that a relative had most likely been tortured or otherwise ill-treated prior to being killed: *"[t]he body was examined at the morgue. The skull was broken, and the bullet was inside the skull, and the hands were tied behind his back".*[242]

234 ODIHR Witness Interview UKR.WS.050 at para. 22.
235 ODIHR Witness Interview UKR.WS.050 at paras 23–35.
236 "Ukraine: Torture, Disappearances in Occupied South", Human Rights Watch, 22 July 2022, <https://www.hrw.org/news/2022/07/22/ukraine-torture-disappearances-occupied-south>; "Unlawful confinement and torture in Dymer, Kozaruvychi and Katyuzhanka, Ukraine", IPHR, Truth Hounds, and Global Diligence LLP, 3 October 2022, <https://www.iphronline.org/unlawful-confinement-and-torture-in-dymer-kozarovychi-and-katyuzhanka-ukraine.html>; "Ukraine: Russian Forces Tortured Izium Detainees. Survivors describe beatings, electric shock, water-boarding", Human Rights Watch, 19 October 2022, <https://www.hrw.org/news/2022/10/19/ukraine-russian-forces-tortured-izium-detainees>.
237 "Accounts of Torture Emerge From Kherson, Ukraine's 'City of Fear'", The New York Times, 14 November 2022, <https://www.nytimes.com/2022/11/14/world/europe/kherson-torture-russia-ukraine.html>; "Ukraine war: Accounts of Russian torture emerge in liberated areas", BBC News, 13 September 2022, <https://www.bbc.com/news/world-europe-62888388>; "Ukraine police say bodies of more than 500 civilians found in Kharkiv", CNN, 7 October 2022, <https://edition.cnn.com/2022/10/07/europe/kharkiv-bodies-intl/index.html>.
238 "Ukraine: Russian Forces tortured Izium Detainees. Survivors describe beatings, electric shock, water-boarding", Human Rights Watch, 19 October 2022, <https://www.hrw.org/news/2022/10/19/ukraine-russian-forces-tortured-izium-detainees>.
239 "Unlawful confinement and torture in Dymer, Kozarovychi and Katyuzhanka, Ukraine", IPHR, Truth Hounds, and Global Diligence LLP, 3 October 2022, <https://www.iphronline.org/unlawful-confinement-and-torture-in-dymer-kozarovychi-and-katyuzhanka-ukraine.html>.
240 *Ibid.*
241 "Report on the human rights situation in Ukraine, 1 February to 31 July 2022", UN, Office of the High Commissioner for Human Rights, 27 September 2022, para. 38, <https://www.ohchr.org/sites/default/files/documents/countries/ua/2022-09-23/ReportUkraine-1Feb-31Jul2022-en.pdf>.
242 ODIHR Witness Interview UKR.WS.072 at para. 25.

112. It bears emphasizing strongly that torture and inhumane treatment, including wilfully causing great suffering or serious injury to body and health, are strictly prohibited by IHL and constitute war crimes.[243] If carried out as part of a widespread or systematic attack directed against any civilian population, torture and inhumane treatment may also qualify as crimes against humanity.[244] Under IHRL, the prohibition of torture and other inhuman and degrading treatment is absolute and does not allow for derogation, even in times of armed conflict.[245] As an aggravating factor, the number of disturbing accounts of allegedly systematic torture and other forms of ill-treatment inflicted upon civilians by the occupying forces seems to suggest that these unlawful acts were carried out in a context of impunity.

Conflict-related sexual violence

113. ODIHR has been paying particular attention to allegations of conflict-related sexual violence (CRSV)[246] in the context of the Russian Federation's military attack in Ukraine. As detailed below, during the reporting period, numerous reports of sexual violence perpetrated against civilians continued to emerge from territories which were or remain under Russian occupation.

114. As noted in the *First Interim Report* covering the period from 24 February to 1 July, human rights organizations and the media began reporting credible allegations of civilians being raped or otherwise sexually abused by members of the Russian armed forces starting in early April, following the withdrawal of Russian troops from Kyiv and Chernihiv regions.[247] Further reports of CRSV that occurred during this period have since been documented by ODIHR and other international organizations, such as OHCHR and the UN Independent International Commission of Inquiry on Ukraine.[248] Most recently, reports of alleged sexual violence by members of Russian armed forces have surfaced

243 GC IV art. 32; AP I arts. 75(1)-(2) and 11; see Customary IHL, Rules 90, 92. There are some acts which have been considered to meet the required threshold of torture *per se* such as mutilation, severe beating, sexual violence (including rape), prolonged denial of sleep, food, hygiene and medical assistance, as well as threats to torture, rape or kill relatives. See also ICC Statute, art. 8(2)(a)(ii).

244 ICC Statute, art. 7(1)(f) and (k).

245 Under IHRL, the prohibition of torture and other inhuman and degrading treatment is enshrined in Article 7 of the ICCPR and Article 2 of the UN Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (CAT).

246 The term 'conflict-related sexual violence' refers to 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.

247 *See* OSCE, Office for Democratic Institutions and Human Rights, "Interim Report on reported violations of international humanitarian law and international human rights law in Ukraine", 20 July 2022, paras 96-105, <https://www.osce.org/files/f/documents/c/d/523081_0.pdf>.

248 *See:* "Report on the human rights situation in Ukraine: 1 February–31 July 2022", UN, Office of the High Commissioner for Human Rights, 27 September 2022, paras 54-57, <https://www.ohchr.org/sites/default/files/documents/countries/ua/2022-09-23/ReportUkraine-1Feb-31Jul2022-en.pdf>; Report of the Independent International Commission of Inquiry on Ukraine, UN Doc. A/77/533, 18 October 2022, paras 88-98, <https://www.ohchr.org/sites/default/files/2022-10/A-77-533-AUV-EN.pdf>.

from Kharkiv and Kherson regions, as the Ukrainian armed forces began regaining control of these territories.[249]

115. Several witnesses interviewed by ODIHR recounted incidents of sexual violence, which included rape of a group of women, attempted rape, unwanted sexual touching and forced nudity as well as threats of rape by members of the Russian armed forces during occupation in Kyiv and Kharkiv regions.[250] One witness from a village near Kyiv region told ODIHR that during the occupation, a Russian soldier took his wife to a neighbour's house, forced her to undress, and started touching her breasts while repeatedly demanding that she have sex with him; after she refused, the soldier realized that the owner of the house was there all the time and decided to let the victim go.[251] Another witness from Kharkiv region, whose husband served in the Ukrainian armed forces, told ODIHR that she was threatened with rape while being interrogated by Russian soldiers.[252]

116. UN HRMMU and the UN Independent International Commission of Inquiry on Ukraine have documented extensive evidence of CRSV committed against Ukrainian women, girls, and men, including by occupying Russian forces, and often alongside other forms of violence.[253] UN HRMMU reports that the majority of documented cases of CRSV against women, men, and girls by members of the Russian armed forces and law enforcement authorities, as of 31 October, have included cases of rape, gang rape, forced nudity and forced public stripping, sexual torture and sexual abuse and have occurred in different regions of Ukraine and in a penitentiary facility in the Russian Federation.[254] The UN Independent International Commission of Inquiry on Ukraine has reported that victims in documented cases have ranged from four to over 80 years old.[255]

249 "Update on the human rights situation in Ukraine: 1 August–31 October 2022", UN, Office of the High Commissioner for Human Rights, 2 December 2022, p. 2, <https://www.ohchr.org/sites/default/files/documents/countries/ua/2022-12-02/HRMMU_Update_2022-12-02_EN.pdf>; "Ukraine: Russian forces tortures Izium detainees", Human Rights Watch, 19 October 2022, <https://www.hrw.org/news/2022/10/19/ukraine-russian-forces-tortured-izium-detainees>; *See also:* "In newly liberated villages, Ukrainian investigators uncover horrific claims of Russian sexual violence", CNN, 3 November 2022, <https://edition.cnn.com/2022/11/02/europe/russia-ukraine-kherson-sexual-violence-intl/index.html>; "The smell of torture and destruction lingers in liberated Izium", Le Monde, 28 September 2022, <https://www.lemonde.fr/en/international/article/2022/09/28/the-smell-of-torture-and-destruction-lingers-in-liberated-izium_5998397_4.html>; "It was horror: Ukrainians Share Grim Tales of Russian Occupation.", New York Times, 20 October 2022, <https://www.nytimes.com/2022/10/20/world/europe/ukraine-civilians-russia-occupation.html?searchResultPosition=12>.

250 ODIHR Witness Interview WS.UKR.040, paras 24-27 (*See ODIHR First Interim Report, paras. 98-101*), ODIHR Witness Interview UKR.WS.060, para. 36; ODIHR Witness Interview UKR.WS.091, paras 13 and 31.

251 ODIHR Witness Interview UKR.WS.060, para. 36.

252 ODIHR Witness Interview UKR.WS.091, paras 13 and 31.

253 "Report on the human rights situation in Ukraine: 1 February–31 July 2022", UN, Office of the High Commissioner for Human Rights, 27 September 2022, paras 54-57, <https://www.ohchr.org/sites/default/files/documents/countries/ua/2022-09-23/ReportUkraine-1Feb-31Jul2022-en.pdf>; Report of the Independent International Commission of Inquiry on Ukraine, UN Doc. A/77/533, 18 October 2022, paras 88-98, <https://www.ohchr.org/sites/default/files/2022-10/A-77-533-AUV-EN.pdf>.

254 "Update on the human rights situation in Ukraine: 1 August–31 October 2022", UN, Office of the High Commissioner for Human Rights, 2 December 2022, p. 2, <https://www.ohchr.org/sites/default/files/documents/countries/ua/2022-12-02/HRMMU_Update_2022-12-02_EN.pdf>.

255 Report of the Independent International Commission of Inquiry on Ukraine, UN Doc. A/77/533, 18 October 2022, para. 88, <https://www.ohchr.org/sites/default/files/2022-10/A-77-533-AUV-EN.pdf>.

Other forms of CRSV, including forced nudity, unwanted sexual touching, sexual abuse and threats of sexual violence, were documented against women, men and girls.[256]

117. On 28 October, the Ukrainian Parliament Commissioner for Human Rights announced that 43 criminal cases of sexual violence had been opened against members of the Russian armed forces by the Ukraine Prosecutor General's Office since 24 February, and the age of the victims ranged from four to 85 years old.[257]

118. It is important to note that, at this stage, it is not possible to assess the actual scale of CRSV committed against civilians in Ukraine. The number of cases of sexual violence documented[258] to date cannot be considered as representative; due to active hostilities, continuing occupation of parts of the territory by Russian armed forces, and mass displacement, among other factors, it is likely that many incidents have not been reported. Separately, victims of CRSV are often unwilling or unable to report due to various factors, including trauma, the stigma associated with sexual violence, the inability to access a reporting mechanism, or intimidation.

119. Whether used as a military tactic to terrorize, humiliate, and dehumanize individuals or communities, as a means to force populations to flee, or as a method to punish people in captivity, sexual violence committed in the context of an armed conflict is a serious violation of IHL and amounts to a war crime.[259] Rape and other forms of sexual violence may constitute a crime against humanity if committed as part of a widespread or systematic attack directed against a civilian population,[260] or torture.[261] Additionally, sexual violence infringes upon the fundamental rights of victims, such as the right to liberty and security of person,[262] the right to be protected from torture or other cruel, inhuman and degrading treatment and punishment,[263] and the right to the highest attainable standard of physical and mental health.[264]

256 Id. at para. 97; "Report on the Human Rights Situation in Ukraine: 1 February–31 July 2022", UN, Office of the High Commissioner for Human Rights, 27 September 2022, para. 54, <https://www.ohchr.org/sites/default/files/documents/countries/ua/2022-09-23/ReportUkraine-1Feb-31Jul2022-en.pdf>.
257 Dmytro Lubinets, Telegram, 28 October 2022, <https://t.me/dmytro_lubinetzs/1066>.
258 As of 31 October 2022, the UN HRMMU has documented 86 cases of CRSV including 53 cases of sexual violence used as part of torture and ill-treatment in the context of detention, "Update on the human rights situation in Ukraine: 1 August–31 October 2022", UN, Office of the High Commissioner for Human Rights, 2 December 2022, p. 2, <https://www.ohchr.org/sites/default/files/documents/countries/ua/2022-12-02/HRMMU_Update_2022-12-02_EN.pdf>.
259 GC IV, art. 27; AP I, arts. 75-77; and Customary IHL Rule 93. ICC Statute, art. 8(2)(b)(xxii).
260 ICC Statute, art. 7(1)(g).
261 The International Criminal Tribunal for Rwanda (ICTR) concluded that rape could constitute torture as it was used for "purposes such as intimidation, degradation, humiliation, discrimination, punishment, control or destruction of a person": *Prosecutor v Akayesu*, case No. ICTR-96-4-T, Trial Chamber, Judgment of 2 September 1998, para. 687.
262 ICCPR, art. 9.
263 ICCPR art. 7; CAT arts. 1, 16; CRC arts. 19, 37(a) and the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), art. 5(b).
264 ICESCR art. 12, see also CESCR, general comment n. 14, para. 8.

Evacuations, forcible transfers, and deportations of civilians, including children, from the occupied territories and the 'filtration process'

120. The Russian Federation military attack and subsequent occupation of many regions of Ukraine has continued to result in the significant displacement of civilians, including children.[265] Some of these displacements, into territories occupied by the Russian Federation as well as to the Russian Federation itself, may qualify under IHL as the forcible transfer or deportations of civilians from occupied territories, including children, which are unlawful regardless of the motive and raise serious concerns.[266] In addition, accounts of individuals who have crossed or attempted to transit across borders affected by the conflict, including in testimonies gathered by ODIHR, describe abusive 'filtration' procedures many of which also constitute rights violations under IHRL.

121. It remains impossible accurately to assess the scale of forcible transfers of civilians taking place within territories occupied by the Russian Federation and deportations of civilians to the territory of the Russian Federation. This is mainly due to lack of access to the territories concerned as well as to contradicting figures from the different stakeholders involved. As of 3 October 2022, UNHCR estimated that 2,852,395 Ukrainian citizens had crossed the border to the Russian Federation since 24 February 2022.[267] In late July, the Russian News Agency (TASS) reported that over 2.8 million Ukrainians had entered the Russian Federation from Ukraine, including 448,000 children.[268] On 6 October, Volodymyr Zelenskyy, president of Ukraine, claimed that 1.6 million Ukrainians had been forcibly taken to the Russian Federation.[269] On 20 October, Daria Herasymchuk, the representative of the president of Ukraine

265 "Ukraine — Internal Displacement Report — General Population Survey Round 10 (17 – 27 October 2022)", The International Organization for Migration (IOM) website, 27 October 2022, <https://displacement.iom.int/reports/ukraine-internal-displacement-report-general-population-survey-round-10-17-27-october-2022>; "Report on the human rights situation in Ukraine", UN, Office of the High Commissioner for Human Rights, Reporting period: 1 February – 31 July 2022, 27 September 2022, para. 77, <https://www.ohchr.org/sites/default/files/documents/countries/ua/2022-09-23/ReportUkraine-1Feb-31Jul2022-en.pdf>; UNHCR, "Operational Data Portal: Ukraine Refugee Situation", 29 November 2022, <https://data.unhcr.org/en/situations/ukraine/>. *See also* IOM, "Area Baseline Assessment Ukraine – Round 16: 31 October – 11 November 2022", 11 November 2022, <https://displacement.iom.int/sites/g/files/tmzbdl1461/files/reports/DTM%20Ukraine_Rd%2016%20-%2031October-11November_Recorded_IDP_21_Oblasts_2022_Public_Raion_Eng%20%281%29.pdf>.

266 GC IV, art. 49. ODIHR uses the term 'deportation' in line with the definition provided by the International Criminal Tribunal for the Former Yugoslavia (ICTY), in the *Stakić Case* (22 March 2006, para. 278) where the ICTY Appeals Chamber held "that the actus reus (material element) of deportation is the forced displacement of persons by expulsion or other forms of coercion *from the area in which they are lawfully present, across a de jure state border or, in certain circumstances, a de facto border*, without grounds permitted under international law" (emphasis added). Conversely, "forcible transfer" implies the forced displacement of civilians within the occupied territory.

267 UNHCR, "Operational Data Portal: Ukraine Refugee Situation", 29 November 2022, <https://data.unhcr.org/en/situations/ukraine/>.

268 "'We had no choice': 'Filtration' and the Crime of Forcibly Transferring Ukrainian Civilians to Russia", Human Rights Watch, 1 September 2022, <https://www.hrw.org/report/2022/09/01/we-had-no-choice/filtration-and-crime-forcibly-transferring-ukrainian-civilians#_ftn107>.

269 "We need your support to bring back peace faster – address by the President to the participants of the session of the General Assembly of the Organization of American States, which is ongoing in Lima", President of Ukraine: Volodymyr Zelenskyy official website, 6 October 2022, <https://www.president.gov.ua/en/news/nam-potribna-vasha-pidtrimka-shob-priskoriti-nastannya-miru-78305>.

for children's rights and child rehabilitation, stated that 8,709 children were transferred or deported to other territories occupied by the Russian Federation and the territory of the Russian Federation itself. [270]

Evacuations and deportations of civilians

122. As described by some witnesses who spoke to ODIHR, the process of departing from Ukrainian territories occupied by the Russian Federation, and those under siege such as Irpin and Mariupol, became increasingly difficult throughout the first months following the invasion.[271] In the spring of 2022, the Ukrainian authorities announced that official humanitarian corridors had been agreed between it and the Russian Federation,[272] but they reported in June that only about half were viable.[273] On various occasions in the autumn, the Ukrainian authorities reported that evacuations from the occupied territories had become increasingly dangerous and irregular due to intensified fighting,[274] as well as restrictions on movement enforced by the Russian occupying authorities.[275]

123. Witnesses who spoke with ODIHR described circumstances suggesting the forcible transfer and deportation of Ukrainian civilians within Ukrainian territories occupied by the Russian Federation or to the Russian Federation's own territory. Describing a situation in Mariupol (Donetsk region), one witness

270 «Скільки українських дітей примусово депортували до Росії: відповідь ОП» ["How many Ukrainian children were forcibly deported to Russia: the OP's response"], Tetiana Hrusha, Ukrainian Media Center, Unian, 20 October 2022, <www.unian.ua/society/skilki-ukrajinskih-ditey-primusovo-deportuvali-do-rosiji-vidpovid-op-12017295.html>.

271 ODIHR Witness Interviews UKR.WS.067 at para. 73; UKR.WS.085 at para. 77.

272 "To date, nine humanitarian corridors have been agreed upon in Kyiv, Sumy, Kharkiv and Donetsk regions – Iryna Vereshchuk", President of Ukraine: Volodymyr Zelenskyy official website, 15 March 2022, <https://www.president.gov.ua/en/news/na-sogodni-pogodzheno-devyat-gumanitarnih-koridoriv-u-kiyivs-73569>; "Ten Humanitarian corridors have been agreed upon in Ukraine on March 19 – Iryna Vereshchuk, President of Ukraine: Volodymyr Zelenskyy official website, 19 March 2022, <https://www.president.gov.ua/en/news/v-ukrayini-na-19-bereznya-pogodzheno-desyat-gumanitarnih-kor-73669>; "Iryna Vereshchuk: 10 humanitarian corridors agreed for April 8", Ukraine Government Portal: Official Website, 8 April 2022, <https://www.kmu.gov.ua/en/news/irina-vereshchuk-8-kvitnya-pogodzheno-10-gumanitarnih-koridoriv>.

273 «Україна намагалась відкрити 350 гумкоридорів через дії росії спрацювали лише 165 – Верещук» ["'Ukraine tried to open 350 humanitarian corridors, only 165 worked because of Russia's action' – Vereshchuk"], Media Center Ukraine (Ukrinform), 20 June 2022, <www.ukrinform.ua/rubric-ato/3511174-ukraina-namagalas-vidkriti-350-gumkoridoriv-cerez-dii-rosii-spracuvali-lise-165-veresuk.html>.

274 «Обстріл колони у Запоріжжі: загиблих і поранених стало більше, серед них діти» ["Shelling of the civilian humanitarian column in Zaporizhzhia: the number of dead and injured people including children is growing"], Pravda.com.ua, 30 September 2022, <https://www.pravda.com.ua/news/2022/09/30/7369883/>; «Україна працює над відкриттям гумкоридору з тимчасово окупованих територій» ["Ukraine is working to open a humanitarian corridor from the temporarily occupied territories"], Ukraine Media Center (Ukrinform,) 20 October 2022, <www.ukrinform.ua/rubric-society/3597325-ukraina-pracue-nad-vidkrittam-gumkoridoru-z-timcasovo-okupovanih-teritorij.html>.

275 «За жовтень із небезпечниз регіонів, ТОТ і ДОТ евакуювалося близько 18 тисяч українців» ["About 18,000 Ukrainians evacuated from dangerous regions, TOT and DOT in October"], Ministry for Reintegration of the Temporarily Occupied Territories of Ukraine, 25 October 2022, <https://minre.gov.ua/news/za-zhovten-iz-nebezpechnyh-regioniv-tot-i-dot-evakuyuvalosya-blyzko-18-tysyach-ukrayinciv#main-content>; Ivan Fedorov, Telegram, 20 October 2022, <https://t.me/ivan_fedorov_melitopol/732>; Ivan Fedorov, Telegram 25 October 2022, <https://t.me/ivan_fedorov_melitopol/754>. *See further* "Vladimir Putin declares martial law in occupied regions of Ukraine", Financial Times, 19 October 2022, <https://www.ft.com/content/8cdb1346-0950-41aa-b3e2-fbc28542f506>.

told ODIHR that *"one Kadyrovets [Chechen] soldier walked down to our basement and announced that we need to take out our things… then two small rural trucks came to transport us… we travelled several hours without knowledge about our destination […] we were transferred to Vyshneve, Kherson region…around 300 to 350 people from different places"*.[276] Another witness informed ODIHR that the Russian authorities announced evacuations from Balakliya (Kharkiv Region), but not from the smaller village the witness was located in within the region, and evacuees could only go to the Russian Federation.[277]

124. Some witnesses told ODIHR that, as the living situation in occupied territories was becoming unbearable, due to active hostilities or other forms of hardship caused by the occupation, they voluntarily decided to evacuate through the Russian Federation since it was the only available route to reach Europe.[278] Two witnesses stated that they had to omit their intention to reach Europe when questioned by Russian authorities because they feared threats or mistreatment.[279] Several witnesses also reported that some people were able to utilize the services of private carriers through messaging apps such as Telegram to evacuate, with prices reportedly starting at approximately 300 US dollars per person which few people could afford.[280]

125. Once in the territory of the Russian Federation, several witnesses reported to ODIHR that their Ukrainian passports were taken from them by representatives of the Russian authorities and people were offered, and in some instances strongly pressured, to apply for Russian citizenship.[281] The accounts of several other witnesses suggest that many individuals who were not able to prove that they were joining family members already in the Russian Federation or covertly arrange transfer to Europe with non-profit or for-profit carriers, could be relocated to remote areas of the Russian Federation by train.[282] In the experience of one witness, who reported being one of many Ukrainians on a train, they travelled for three days without knowledge of what their final destination would be.[283] She stated that *"[T]hey did not say where we were stopping, where we were going. We were travelling by train for three days. The people in the train were all Ukrainian coming from Mariupol [and] from Luhansk…There were lots of kids, disabled people, and elderly people."*[284]

276 ODIHR Witness Interview UKR.WS.100 at paras 23-35.
277 ODIHR Witness Interview UKR.WS.089 at para. 27.
278 ODIHR Witness Interviews UKR.WS.094 at paras 13 and 23-29; UKR.WS.095 at paras 23-35; UKR.WS.098 at paras 35-41.
279 ODIHR Witness Interview UKR.WS.085 at para. 51; UKR.WS.089 at para. 14.
280 ODIHR Witness Interview UKR.WS.046 at paras 19-20. *See also* UKR.WS.095 at para. 51; UKR.WS.090 at paras 24-25, 51; UKR.WS.109 at para. 54; UKR.WS.073 at para. 24; UKR.WS.063 at para. 89.
281 ODIHR Witness Interviews UKR.WS.086 at para. 22; UKR.WS.100, at para. 57; UKR.WS.114 at para. 46.
282 ODIHR Witness Interviews UKR.WS.094 at paras 30, 32-38, UKR.WS.100 at paras 60-64; UKR.WS.114 at paras 39-48; UKR.WS.117 at para. 37.
283 ODIHR Witness Interview UKR.WS.94 at paras 29-32, 42-49.
284 ODIHR Witness Interview UKR.WS.94 at paras 29-32.

126. Regardless of which route civilians took to leave the occupied territories, they had to go through numerous checkpoints controlled by Russian Federation armed personnel and representatives of the *de facto* authorities of the occupied Luhansk and Donetsk regions.[285] Witnesses described such checkpoints as very dangerous, with perils posed by ongoing fighting, inhumane conditions, and the risk of abuses perpetrated by Russian forces controlling the checkpoints.[286] Many witnesses who spoke to ODIHR reported having to pay bribes in order to pass unscathed (consisting of money or cigarettes for example),[287] or having their personal belongings, such as electronics, stolen during searches.[288]

127. It is difficult to assess the type of coercion, if any, exercised over these people in order to force them to leave, but many indicators suggest circumstances that would constitute international law violations. IHL strictly prohibits individual or mass forcible transfers as well as deportations of the civilian population within or outside occupied territory regardless of the motive.[289] Forcible transfer and deportation of civilians within or outside occupied territories are grave breaches of IHL and amount to war crimes.[290]

128. It is important to note that transfers and deportations can be 'forcible', even in the absence of physical force, through the creation by the occupying power of a coercive environment, such as the one caused by conflict-related violence, leaving residents with no other choice but to leave.[291] Several witnesses who spoke with ODIHR, while stating that they had 'voluntarily' decided to leave their homes, stressed that they did so because of fear for their and their families' lives due to constant shelling and fighting, pervasive violence

285 ODIHR Witness Interviews UKR.WS.109 at paras 11-12; UKR.WS.057 at para. 50; UKR.WS.105 at paras 30-31.
286 ODIHR Witness Interviews UKR.WS.102 at paras 33, 40 – 44; UKR.WS.109 at para. 11; UKR.WS.047 at para. 21; UKR.WS.057 at paras 56-57; UKR.WS.093 at paras 71, 73-74.
287 ODIHR Witness Interviews UKR.WS.057 at para. 50; UKR.WS.095 at para. 51; UKR.WS.090 at paras 24-25, 51; UKR.WS.073 at para. 24.
288 ODIHR Witness Interviews UKR.WS.093 at para. 74; UKR.WS.104 at para. 21; UKR.WS.050 at para. 18.
289 GC IV, art. 49(1).
290 GC IV, art. 147; ICC Statute, art. 8(2)(a)(7). If committed as part of a "widespread or systematic attack against any civilian population" it also amounts to a crime against humanity, ICC Statute, art. 7(2)(d). As the only exception to the prohibition of deportations, the occupying power may forcibly evacuate a given area for the "security of the population or imperative military reasons". However, such evacuations must not involve the displacement of protected persons outside occupied territory except when, for material reasons, it is impossible to do otherwise. GC IV, art. 49(2). It is important to note that forced evacuations of civilians from occupied territories cannot be justified and considered as lawful if the reasons causing the displacement in the first place result from the occupying power's own unlawful conduct. ICTY, *Prosecutor v. Milomir Stakic* (Appeal Judgement), IT-97-24-A, 22 March 2006, paras. 284-287. The Russian Federation authorities' deportations of civilians from Mariupol, for example, cannot be justified as lawful "evacuations" because the dire humanitarian crisis and the dangers the civilian population was subjected to directly resulted from the Russian Federation actions including the continuous shelling of the city and the enforcement of the siege preventing civilians from seeking safety and selectively blocking access to humanitarian aid convoys.
291 In a situation of coercion and violence, such as the one experienced by civilians in the besieged city of Mariupol, a consent to escape shelling, violence and hunger can hardly be considered as a free, genuine choice to leave one's house and belongings to relocate elsewhere. See, among others, International Tribunal for the Former Yugoslavia (ICTY), *Prosecutor v. Krajisnik*, Case number IT-00-39-T, ICTY Trial Chamber, Judgment, 27 Sep 2006, paras. 724, 729; *Prosecutor v. Popović*, Case No. IT-05-88-T, ICTY Trial Chamber, Judgment, 10 June 2010, paras. 896-97 and 900; *Prosecutor v. Krnojelac et al.*, Case No. IT-97-25, ICTY Appeal Chamber, Judgement, 17 September 2003, para. 229.

and abuses by the occupation forces, and the extremely dire humanitarian conditions they were forced to endure.[292]

129. Additionally, forced evacuations exceptionally allowed under IHL must be temporary in that the persons evacuated "shall be transferred back to their homes as soon as hostilities in the area in question have ceased".[293] Reports given to ODIHR by civilians forcibly evacuated to the territory of the Russian Federation and pressured into surrendering their Ukrainian nationality suggest an intention by the Russian authorities to render the relocation permanent, in contravention to international law.

The 'filtration' process

130. The accounts of witnesses who spoke with ODIHR supported extensive reports of NGOs and media on the alleged mistreatment of civilians carried out by Russian armed forces and armed representatives of the de facto authorities of the occupied Luhansk and Donetsk regions during the so-called 'filtration' process in the occupied territories.[294] As described in ODIHR's *First Interim Report,*[295] the 'filtration' process frequently includes extensive body searches, detailed checks of all personal belongings, including mobile devices, interrogations about an individual's background, family connections, political beliefs and opinions about the war, and gathering of personal identity data, including biometrics.[296]

131. As some witnesses explained to ODIHR, in order to evacuate to an occupied territory, a person had to go to a designated 'filtration' centre to obtain approval.[297] Furthermore, as one interviewee described, people had to arrive and wait for 'filtration' at their own expense, sometimes staying in line for

292 ODIHR Witness Interviews UKR.WS.094 at paras 13, 23-29; UKR.WS.095 at para. 23; UKR.WS.098 at paras 24-29.
293 GC IV, art. 49(2).
294 "We had no choice. "'Filtration' and the Crime of Forcibly Transferring Ukrainian Civilians to Russia", Human Rights Watch, 1 September 2022, <https://www.hrw.org/report/2022/09/01/we-had-no-choice/filtration-and-crime-forcibly-transferring-ukrainian-civilians#_ftn107>; "Report on the human rights situation in Ukraine: 1 February – 31 July 2022", UN, Office of the High Commissioner for Human Rights, 27 September 2022, paras 78-80, <https://www.ohchr.org/sites/default/files/documents/countries/ua/2022-09-23/ReportUkraine-1Feb-31Jul2022-en.pdf>; "Like a Prison Convoy" Russia's Unlawful Transfer and Abuse of Civilians in Ukraine during 'Filtration'", Amnesty International, 10 November 2022, p. 5, <http://amnestyfr.cdn.prismic.io/amnestyfr/5a606ecd-6bd4-40db-8e61-f49deef785f8_EUR+5061362022+-+EN+-+Forcible+Transfers+-+Embargoed+10+Nov+2022.pdf>.
295 ODIHR, *Interim Report on reported violations of international humanitarian law and international human rights law in Ukraine*, para. 70, 20 July 2022, <https://www.osce.org/odihr/523081>.
296 «Три рівні зла. Фільтраційні російські табори» ["Three levels of evil. Russian Filtration Camps"], Ukrinform, 29 July 2022, <www.ukrinform.ua/rubric-ato/3539588-tri-rivni-zla-filtracijni-rosijski-tabori.html>; "We had no choice. 'filtration' and the Crime of Forcibly Transferring Ukrainian Civilians to Russia", Human Rights Watch, 1 September 2022, <https://www.hrw.org/report/2022/09/01/we-had-no-choice/filtration-and-crime-forcibly-transferring-ukrainian-civilians#_ftn107>; Report on Violations of International Humanitarian and Human Rights Law, War Crimes and Crimes Against Humanity committed in Ukraine (1 April – 25 June 2022), ODIHR, 14 July 2022 pp. 68-69, 108, <www.osce.org/files/f/documents/3/e/522616.pdf>.
297 ODIHR Witness Interviews UKR.WS.023 at para. 33; UKR.WS.085 at paras 15-16.

weeks.[298] One witness from Kupiansk (Kharkiv region) described this process, saying that *"filtration around the city was really strict. Russians could stop the person and check the 'phones, even children were checked. And if there were photos of damages, they took the person to the 'basement'"*.[299]

132. According to testimonies collected by ODIHR, in many cases people were subjected to threats, invasive and intimidating interrogations, and other forms of ill-treatment as well as other violations including of the right of freedom of movement[300] and of the right to privacy[301] in contravention of IHL and IHRL.[302] OHCHR has also reported allegations of CRSV against women at checkpoints during the 'filtration' process.[303]

Forcible transfers and deportations of unaccompanied children

133. Various reports collected throughout the reporting period provide evidence that the Russian Federation has adopted a policy with regards to unaccompanied children that may be contrary to applicable international law. Numerous credible allegations of forced transfer and deportation of unaccompanied children within the occupied territories of Ukraine, as well as to the Russian Federation's own territory, have been documented in recent months.[304] Speaking to such reports, the UN Assistant Secretary General for Human Rights has stated before the UN Security Council that there have been *"credible allegations of forced transfers of unaccompanied children to Russian occupied territory, or to the Russian Federation itself."*[305]

298 ODIHR Witness Interviews UKR.WS.085 at para. 16.
299 ODIHR Witness Interview UKR.WS.087 at para. 16. As previously noted, *'basement'* is a colloquial term for detention and potential torture as explained by several witnesses interviewed by ODIHR.
300 The right to freedom of movement is guaranteed by art. 12 of the ICCPR.
301 The right to privacy is guaranteed by art. 17 of the ICCPR.
302 ODIHR Witness Interviews UKR.WS.057 at paras 76-77; UKR.WS.092 at paras 126-127, 129; UKR.WS.097 at paras 33-34; UKR.WS.109 at para. 12; UKR.WS.110 at para. 22; UKR.WS.114 at paras 33-34 *See also* UKR.WS.098 at para. 21.
303 "Report on the Human Rights Situation in Ukraine: 1 February–31 July 2022", UN, Office of the High Commissioner for Human Rights, 27 September 2022, para. 57, <https://www.ohchr.org/sites/default/files/documents/countries/ua/2022-09-23/ReportUkraine-1Feb-31Jul2022-en.pdf>; ODIHR Witness Interview UKR.WS.092 at para. 127.
304 E.g., "'We had no choice': 'Filtration' and the Crime of Forcibly Transferring Ukrainian Civilians to Russia", Human Rights Watch, 1 September 2022, <https://www.hrw.org/report/2022/09/01/we-had-no-choice/filtration-and-crime-forcibly-transferring-ukrainian-civilians#_ftn107>; "Like a Prison Convoy" Russia's Unlawful Transfer and Abuse of Civilians in Ukraine during 'Filtration'", Amnesty International, 10 November 2022, pp. 26–27, <https://www.amnesty.org/en/documents/eur50/6136/2022/en/>; "Using Adoptions, Russia Turns Ukrainian Children Into Spoils of War", The New York Times, 22 October 2022, <https://www.nytimes.com/2022/10/22/world/europe/ukraine-children-russia-adoptions.html>; "How Moscow grabs Ukrainian kids andmakes them Russians", AP News, 13 October 2022, <https://apnews.com/article/ukrainian-children-russia-7493cb22c9086c6293c1ac7986d85ef6>; *see also* Мінреінтеграції [Ministry of Reintegration of Temporarily Occupied Territories], Telegram, 11 October 2022, <https://t.me/minre_ua/1798>; General Staff of the Armed Forces of Ukraine, Facebook, 13 October 2022, <https://m.facebook.com/GeneralStaff.ua/posts/pfbidoQebqXRnXrKeE1XcvkKGEYXd-vQf9QypfXLk6qfNCE37qJBYZCSwxPQqGEoMegJjAsl?_rdr>; «Дети из Херсонской области выехали на отдых в другие регионы России» ["Children from Kherson region went on vacation to other regions of Russia"], ria.ru, 14 October 2022, <https://ria.ru/20221014/deti-1824187647.html>. *See further* ODIHR Witness Interview UKR.WS.104 at paras 25-26.
305 "Human rights concerns related to forced displacement in Ukraine", UN OHCHR, 7 September 2022, <www.ohchr.org/en/statements/2022/09/human-rights-concerns-related-forced-displacement-ukraine>. *See*

134. Media reports indicate that the Russian Federation has also transferred Ukrainian children from occupied territories where there is active fighting into occupied Crimea or the territory of the Russian Federation for 'vacation' and for purported safety reasons.[306] Ukrainian officials have reported that, once these children have reached their destination, the Russian Federation does not allow them to return as per the initially agreed plan, as stated for example by the mayor of Melitopol.[307] One witness interviewed by ODIHR stated that, following attacks in Kherson, schools were closed and many parents agreed to an offer by the Russian authorities to send their children for a short holiday to a resort in occupied Crimea, but now they cannot communicate with their children or bring them back home.[308] It is not currently possible to verify the precise number of children transferred within occupied territories or deported to the Russian Federation, but estimates range in the thousands.[309]

135. In May 2022, the Russian President adopted a decree establishing a simplified procedure to grant Ukrainian children without parental care Russian citizenship, which allows them to be legally adopted by Russian families.[310] The decree also allows the heads of orphanages in the occupied territories of Ukraine to apply for Russian citizenship for children in their care, unless the child is placed in that institution temporarily; the consent of the child is not

also "Like a Prison Convoy" Russia's Unlawful Transfer and Abuse of Civilians in Ukraine during 'Filtration'", Amnesty International, 10 November 2022, p. 11, <https://www.amnesty.org/en/documents/eur50/6136/2022/en/>.

306 Дети из Херсонской области выехали на отдых в другие регионы России ["Children from Kherson region went on vacation to other regions of Russia"], RIA Novosti, 15 October 2022, <https://ria.ru/20221014/deti-1824187647.html>; «З окупованих міст на Запоріжжі вивезли понад 300 дітей і не повертають батькам» ["More than 300 children were transported from occupied cities in Zaporizhzhia Region and they are not being returned to their parents"], Radio Svoboda, 28 October 2022, <www.radiosvoboda.org/a/news-dity-vyvezennia-rf-zaporizhua/32105112.html>.

307 ODIHR Witness Interview UKR.WS.104 at paras 25-26.

308 *Ibid.*

309 As of 9 November, the Ukrainian authorities reported that of more than 10,500 children officially recorded as having been forcibly transferred or deported to occupied territories and to the territory of the Russian Federation itself, the Ukrainian government had secured return of only 96 children. «Верещук: Україні вдалося повернути з Росії лише 69 депортованих дітей» ["Vereshchuk: Ukraine managed to return only 69 deported children from Russia"], Radio Svoboda, 9 November 2022, <www.radiosvoboda.org/a/news-deportatsiya-vereshchuk-dity/32121385.html>. The Ukrainian government has set up a website that provides current data on missing and deported children and provides a simple search mechanism for individuals looking for their missing child. "Children of War", Ukraine Ministry for Reintegration of the Temporary and Occupied Territories and National Information Bureau website, 29 October 2022, <https://childrenofwar.gov.ua/>. As of 5 December, the website reported that 13,028 Ukrainian children had been deported. *See also* «Національне інформаційне бюро» ["National Information Bureau"], Ministry of Reintegration of the Temporarily Occupied Territories of Ukraine, 17 March 2022, <https://www.minre.gov.ua/rubric/nacionalne-informaciyne-byuro> (a hotline has been established by the Ukrainian government for relatives of missing children).

310 «Указ Президента Российской Федерации от 30.05.2022 № 330 "О внесении изменений в Указ Президента Российской Федерации от 24 апреля 2019 г. № 183 "Об определении в гуманитарных целях категорий лиц, имеющих право обратиться с заявлениями о приеме в гражданство Российской Федерации в упрощенном порядке" и Указ Президента Российской Федерации от 29 апреля 2019 г. № 187 "Об отдельных категориях иностранных граждан и лиц без гражданства, имеющих право обратиться с заявлениями о приеме в гражданство Российской Федерации в упрощенном порядке» ["Decree of the President of the Russian Federation of 30.05.2022 No. 330"], Russian Federation official internet portal of legal information, 30 May 2022, <http://publication.pravo.gov.ru/Document/View/0001202205300008>.

required, unless the child is between fourteen and eighteen years old.[311] UN OHCHR has expressed concern about the adoption of the decree, noting that IHL prohibits the Russian Federation from changing the personal status of such children and that the Russian Federation procedures "do not appear to include steps for family reunification or in other ways ensure respect for the principle of the best interests of the child."[312] Since the procedural changes were enacted, several media reports have quoted Russian officials as stating that Ukrainian children from occupied parts of Ukraine have been 'adopted' by Russian families.[313]

136. These accounts raise serious concerns from an IHL and IHRL perspective. As mentioned above, deportation of civilians, including children, from occupied territories is strictly prohibited regardless of the motive and amounts to a war crime.[314] The occupying power must take all necessary steps to facilitate the identification of children and the registration of their parentage and "it may not, in any case, change their personal status" including their nationality.[315] Even in the case of occupation, it is the authorities of the country in question (Ukraine) who have the primary responsibility to look after and provide for the children who are orphaned or separated from their parents as a result of

311 «Указ Президента Российской Федерации от 30.05.2022 № 330 "О внесении изменений в Указ Президента Российской Федерации от 24 апреля 2019 г. № 183 "Об определении в гуманитарных целях категорий лиц, имеющих право обратиться с заявлениями о приеме в гражданство Российской Федерации в упрощенном порядке" и Указ Президента Российской Федерации от 29 апреля 2019 г. № 187 "Об отдельных категориях иностранных граждан и лиц без гражданства, имеющих право обратиться с заявлениями о приеме в гражданство Российской Федерации в упрощенном порядке» ["Decree of the President of the Russian Federation of 30.05.2022 No. 330"], Russian Federation official internet portal of legal information, 30 May 2022, <http://publication.pravo.gov.ru/Document/View/0001202205300008>. *See also* "Moscow says babies born in occupied Kherson will automatically get Russian citizenship," New York Times, 16 June 2022, <https://www.nytimes.com/2022/06/16/world/europe/ukraine-kherson-babies-russian-citizenship.htm>.

312 "Human rights concerns related to forced displacement in Ukraine", UN OHCHR, 7 September 2022, <www.ohchr.org/en/statements/2022/09/human-rights-concerns-related-forced-displacement-ukraine>.

313 E.g., «Нас торопят, с Москвы звонят'. Как мальчик из Донбасса оказался в российской семье и получил российское гражданство», ["'We are in a hurry, they are calling from Moscow.' How a boy from Donbass ended up in a Russian family and received Russian citizenship"], BBC Russian, 20 September 2022, https://www.bbc.com/russian/features-62917712>; "Using Adoptions, Russia Turns Ukrainian Children Into Spoils of War", The New York Times, 22 October 2022, <https://www.nytimes.com/2022/10/22/world/europe/ukraine-children-russia-adoptions.html>; «Мария Львова-Белова: Семьи из шести регионов РФ возьмут под опеку 108 детей-сирот из Донбасса» [Maria Lvova – Belova: Families from six regions of the Russian Federation will take custody over 108 orphans from Donbas], RGRU, 15 July 2022, <https://rg.ru/2022/07/15/mariia-lvova-belova-semi-iz-shesti-regionov-rf-vozmut-pod-opeku-108-detej-sirot-iz-donbassa.html>; "How Moscow grabs Ukrainian kids and makes them Russians", AP News, 13 October 2022, <https://apnews.com/article/ukrainian-children-russia-7493cb22c9086c6293c1ac7986d85ef6?utm_source=homepage&utm_medium=TopNews&utm_campaign=position_07>. The Russian authorities have also announced that children from the occupied territories "left without parental care" have been granted citizenship. See, e.g., «14 ребят из Донбасса получили в Подмосковье российское гражданство» ["14 children from Donbas received Russian citizenship in the Moscow region"], Commissioner for Children's Rights in the Moscow Region, 5 July 2022, <https://detimo.mosreg.ru/sobytiya/novosti-ministerstva/06-07-2022-11-19-36-14-rebyat-iz-donbassa-poluchili-v-podmoskove-rossi>.

314 In addition, forcibly transferring children of a national group to another group, with intent to destroy that national group in whole or in part, may constitute an element of genocide, as defined under Article 2 of the Convention on the Prevention and Punishment of the Crime of Genocide 1948, and replicated in Article 5 of the ICC Statute.

315 GC IV, art. 50(2).

the war.[316] The occupying power enters into the matter only when the local authorities are unable to carry out their duties and when there is no relative or friend who can provide for the maintenance and education of the children concerned. Applicable IHL also provides that "[n]o Party to the conflict shall arrange for the evacuation of children, other than its own nationals, to a foreign country" except for a temporary evacuation where compelling health or medical treatments so require.[317] In this latter scenario, the parents or legal guardians should provide written consent to such evacuation.[318] Furthermore, relevant IHRL provides that States must respect "the right of the child to preserve their identity, including name, nationality, and family relations, without unlawful interference"[319] and "must ensure that children are not separated from their parents against their will, other than in accordance with due process and where this would serve their best interests".[320] In light of these standards, the reported actions of the Russian authorities described above raise serious concerns from the perspective of international law provisions aimed at protecting children in armed conflict.

Looting and appropriation of property

137. Following the invasion and occupation of territories, instances of looting committed by occupying authorities and forces have been widely documented across Ukraine. Witnesses interviewed by ODIHR over the course of several deployments all attest to the looting of public and private property by occupying forces.

138. According to interviews conducted with witnesses who lived under occupation in Kherson region, occupying forces removed all the equipment from sites such as offices, factories, a university, and supermarkets.[321] In addition, occupying forces who were present in the village of Komyshany were observed by one witness as breaking into people's homes, looting them, and appropriating the houses and cars.[322] Likewise, in Luhansk region, witness testimonies recounted how the occupying forces in Rubizhne and Mistky entered residential homes

316 GC IV, art. 50(3).
317 AP I, art. 78.
318 AP I, art. 78. Pursuant to the same article, "if these persons cannot be found, the written consent to such evacuation of the persons who by law or custom are primarily responsible for the care of the children is required." Also relevant is para. 3 of the same article.
319 Convention on the Rights of the Child (CRC), art. 8(1).
320 CRC, art. 9(1). In addition, any adoption must be preceded by an evaluation regarding the child's status concerning parents, relatives, and legal guardians, and, intercountry adoption is to be considered as a last resort 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. CRC, art. 21(a) and (b). Ukraine has already suspended intercountry adoption. Finally, care for children deprived of their family environment must be given with "due regard … to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background." CRC, art. 20.
321 ODIHR Witness Interviews UKR.WS.093 at para. 47; UKR.WS.097 at paras 25-26. *See also* "Russian occupiers loot homes of people who fled Kherson region, taking furniture and appliances", Ukrainska Pravda, 30 August 2022, <https://www.pravda.com.ua/eng/news/2022/08/30/7365438/>; "Russians engaging in mass theft of medical equipment, say Zelenskiy", Reuters, 28 October 2022, <https://www.reuters.com/world/europe/russians-engaging-mass-theft-medical-equipment-says-zelenskiy-2022-10-28/>.
322 ODIHR Witness Interview UKR.WS.102 at para. 23.

and garages and emptied them of private possessions before appropriating the residential buildings for the occupying soldiers.[323]

139. The looting and appropriation of empty residential properties was also reported by a witness in Savyntsi and Balakliya, Kharkiv region.[324] The witness stated that soldiers who were occupying Savyntsi "*were taking the houses of civilians who left. But also, sometimes they forced some people to leave and [then] took their houses*."[325] In one instance, the witness adds that occupying soldiers went to a house in Savyntsi and informed the resident that "*they will be living together with him and his family from now on. They said that they will be staying in this room and he and his family in that one [another room]*."[326]

140. In Donetsk region, witnesses interviewed by ODIHR also described occasions when occupying soldiers in Mariupol (Donetsk region) looted stores, residential homes, and banks.[327] One witness described how occupying soldiers visited his apartment building and asked him to open his neighbour's apartment, for which he had the keys; upon her return, the neighbour informed the witness that her belongings had disappeared.[328] A further witness reported that armed lootings took place at apartments in Mariupol, while the residents were sheltering in basements and designated bomb shelters.[329] He explained that one of his neighbours informed him that Chechen looters had entered his apartment, beaten him, and then taken his personal belongings, his car, and his motorcycle.[330]

141. Accounts given to ODIHR by witnesses, as well as accounts reported by journalists, described instances of looting and appropriation of property in Zaporizhzhia region.[331] One witness describes how occupying forces visited the witness's family farm and instructed his father to repair his vehicle,

323 ODIHR Witness Interviews UKR.WS.088 at paras 6, 8; UKR.WS.090 at paras 16, 42-44; *see also* "Two 'LNR' Machine Gunners sentenced to Prison", Kyiv Post, 9 September 2022, <https://www.kyivpost.com/ukraine-politics/two-lnr-machine-gunners-sentenced-to-prison.html>.
324 ODIHR Witness Interview UKR.WS.089 at paras 23-25.
325 ODIHR Witness Interview UKR.WS.089 at paras 23-25, *see also* "'Anyone could be taken captive at any time': Residents of the Ukrainian town of Balakliya describe life under Russian occupation", Meduza, 16 September 2022 < https://meduza.io/en/feature/2022/09/16/anyone-could-be-taken-captive-at-any-time>.
326 ODIHR Witness Interview UKR.WS.089 at para. 24.
327 ODIHR Witness Interviews UKR.WS.085 at paras 60, 62; UKR.WS.096 at paras 23-24; UKR.WS.113 at para. 55; *see also* "Russians loot the deposit boxes of Mariupol residents in the city's branch of First Ukrainian International Bank (PUMB)", Ukrainska Pravda, 3 August 2022, <https://www.pravda.com.ua/eng/news/2022/08/3/7361638/>.
328 ODIHR Witness Interview UKR.WS.085 at para. 62.
329 ODIHR Witness Interview UKR.WS.096 at para. 23.
330 ODIHR Witness Interview UKR.WS.096 at para. 24.
331 ODIHR Witness Interviews UKR.WS.116 at paras 20-25; UKR.WS.119 at paras. 11, 29; "As Russian forces retreat in north and south, Ukrainian officials say looting is intensifying", New York Times, 13 September 2022, <https://www.nytimes.com/live/2022/09/14/world/ukraine-russia-war/as-russian-forces-retreat-in-north-and-south-ukrainian-officials-say-looting-is-intensifying?smid=url-share>; "Russian Soldiers Looting as They Flee Zaporizhzhia, Kherson-Report", Newsweek, 20 October 2022, <https://www.newsweek.com/ernehodar-energoatom-ukraine-russia-nuclear-zaporizhzhia-1753417>; "RF Troops by Zaporizhzhia Nuclear Plant Reportedly Looting, Abandoning Occupied Homes", Kyiv Post, 20 October 2022, <https://www.kyivpost.com/russias-war/rf-troops-by-zaporizhzhia-nuclear-plant-reportedly-looting-abandoning-occupied-homes.html>.

which lacked essential parts, and then give it to them.[332] The same witness also describes receiving notice that, unless they were to re-register their farm under the newly installed occupying authorities and sell their produce at a lower price, their land would be seized.[333]

142. These numerous accounts of seemingly widespread looting and appropriation of private property raise serious concerns as, under IHL, private property in occupied territories must be respected and may not be confiscated.[334] Furthermore, pillage, whether through individual acts or organized by the authorities, is strictly prohibited under any circumstances and amounts to a war crime.[335]

Suppression of peaceful protests and restrictions on freedom of expression and information

143. Multiple testimonies gathered by ODIHR reflect on the heavy restrictions imposed by Russian authorities on the freedoms of peaceful assembly, expression, and information during the occupation of territories in Ukraine. Witnesses described how protests were suppressed by Russian forces, including by the disproportionate use of force, how some individuals were detained for expressing opposition to the invasion and the occupation, and how critical means of access to information were cut off during the occupation.

144. As noted in the *First Interim Report*, in the first weeks of the conflict, many assemblies took place in occupied territories to protest against the Russian military attack.[336] One witness told ODIHR that, at first, Russian forces "demonstrated their tolerance" towards the protests, but later they began restricting such assemblies.[337] For example, one witness, who was in Svatove (Luhansk region) in the first weeks of its occupation, told ODIHR that after three days of protests, the Russian authorities told residents to leave or they would open fire; she added that the mayor had urged the protestors to disperse because the Russians had threatened to replace her if she did not cooperate with them.[338]

145. Several witnesses interviewed by ODIHR also recalled the use of force by Russian authorities during assemblies. According to witnesses who participated in protests in Kherson in early March, Russian forces started

332 ODIHR Witness Interview UKR.WS.116 at paras 24-25.
333 ODIHR Witness Interview UKR.WS.116 at paras 20-21.
334 The only possible exception which does not seem to apply in the instances reported in this section is "where destruction or seizure of such property is required by imperative military necessity", see Hague Regulations art. 46; GC IV art. 147; Customary IHL, Rule 51.
335 GC IV, art. 33(2); Customary IHL, Rule 52; ICC Statute, Article 8(2)(b)(xvi).
336 "Interim Report on reported violations of international humanitarian law and international human rights law in Ukraine", ODIHR, 20 July 2022, paras 106-107, <https://www.osce.org/files/f/documents/c/d/523081_0.pdf>.
337 ODIHR Witness Interview UKR.WS.108 at para. 18.
338 ODIHR Witness Interview UKR.WS.115 at para. 6.

shooting in the air and using tear gas during demonstrations.[339] Referring to a protest in Kherson, one witness recalls: "*There were thousands of people who came to protest until they started to use weapons to disperse people. My friend was injured in the leg by shrapnel from a grenade that was thrown into the crowd*".[340] Another added that after the forcible dispersal of a protest, "*people started to disappear. It was hard to stay and protest. By the first days of April peaceful protests had stopped*".[341]

146. In terms of arrests and detention, the same witness also recalled the mass arrest of protesters during assemblies in Kherson on 27 March 2022: "*The Russian forces, mostly guards, blocked [us] with military vehicles on the road of the city. That day, they detained more than 200 people who were protesting the occupation*".[342] In the same city, another witness reported that participants of a protest that took place in the first month of the occupation were arrested from their homes the same evening.[343] Another witness told ODIHR that in Svatove, Russian forces collected a list of residents who participated in demonstrations in the beginning of its occupation and arrested them; some were detained for up to two months and others disappeared.[344]

147. Witnesses also reflected on freedom of expression restrictions. When asked about the possibility to hold protests in a village in Luhansk region, a witness told ODIHR: "*We tried, but it was not really possible. It was not possible to say anything, or you would be taken to the 'basement'.345 There were such situations in other villages. One group took the Russian flag and put it into the toilet. The Russians treated them really badly. […] They took them away. I don't know what happened to them exactly*".[346] Another witness recalled that, during protests in Kherson, one of his friends tried to take a photo of Russian soldiers and was then arrested, beaten, and detained by the Russian occupying forces.[347]

148. Finally, restricted access to critical means of information was also reflected in various testimonies collected by ODIHR. Witnesses reported that in the early days of the Russian occupation in Kherson, the Russian forces cut off all Ukrainian television and radio broadcasts,[348] broadcasting only Russian programming afterwards.[349] One such witness also stated that the Russian authorities shut down the mobile networks.[350] According to another witness, in May 2022, access to the Internet was cut for ten days in Kherson, after which

339 ODIHR Witness Interviews UKR.WS.097 at paras 7-8, UKR.WS.108 at paras 15-19, UKR.WS.106 at para 17.
340 UKR.WS.73 at para. 44.
341 ODIHR Witness Interview UKR.WS.106 at para. 19.
342 ODIHR Witness Interview UKR.WS.106 at para. 19.
343 ODIHR Witness Interview UKR.WS.097 at paras 7-8.
344 ODIHR Witness Interview UKR.WS.115 at para. 25.
345 As noted previously, *'basement'* is a colloquial term for detention and potential torture as explained by several witnesses interviewed by ODIHR.
346 ODIHR Witness Interview UKR.WS.088 at para. 25.
347 ODIHR Witness Interview UKR.WS.001 at para. 34.
348 ODIHR Witness Interview UKR.WS.001 at para. 25.
349 ODIHR Witness Interview UKR.WS.005 at para. 13.
350 *Ibid.*

the only available internet provider was from the so-called "Donetsk People's Republic".[351] Access to Ukrainian newspapers was also restricted.[352]

149. These accounts are concerning from an IHL and IHRL perspective. The rights to freedom of expression[353] and peaceful protest[354] guaranteed by IHRL continue to apply during armed conflict, including in occupied territories. The occupying power has an obligation to maintain law and order in occupied territories[355] and must respect all applicable IHRL provisions, including by refraining from using excessive force in order to disperse peaceful protests.[356]

351 ODIHR Witness Interview UKR.WS.097 at para. 15.
352 ODIHR Witness Interview UKR.WS.030 at para. 4.
353 The right to freedom of expression is granted by Article 19 of the ICCPR.
354 The right to freedom of assembly is granted by Article 21 of the ICCPR.
355 Hague Regulations, art. 43.
356 For a more detailed analysis see Moscow Mechanism Report, 13 April 2022, pp. 65-66, <https://www.osce.org/files/f/documents/f/a/515868.pdf>.

The Situation Concerning Prisoners of War

VII

150. As noted in the *First Interim Report*, since the beginning of the Russian Federation military attack in Ukraine, concerns have emerged over alleged violations, by both warring parties, of the rights and protections guaranteed to POWs by the Third Geneva Convention (GC III).[357] As the hostilities progress unabated, concerns over the treatment of POWs have continued to surface during the reporting period.[358]

151. Accurate observations into the treatment and conditions of POWs proved difficult during the reporting period, given the limited access to places of detention provided to the ICRC as well as other impartial international organizations.[359] GC III explicitly spells out the duty of all parties to the conflict to grant the ICRC unrestricted access to all POWs, and the right to visit and interview them including without witnesses wherever they are held.[360] Impeding or arbitrarily restricting visits is a violation of IHL.[361] Under IHL, the ICRC is also to be afforded full liberty to select the places it wishes to visit as well as the duration and frequency of these visits.[362] Unfortunately, as the organization has repeatedly denounced since the start of the conflict, as of today it has been able to exercise its right to visit only some of the presumed total number of POWs held by both warring parties.[363] As of 16 October, the ICRC stated that it had a team ready in Donetsk region "to visit any prisoners of war held in the area, including at the Olenivka penal facility [in an occupied part of Donetsk region]" adding, "[w]e cannot access by force a place of detention or internment where we have not been admitted."[364]

357 Third Geneva Convention relative to the Treatment of Prisoners of War, 1949.
358 As noted under Methodology above, this section covers events reportedly taking place between 1 July and 1 November 2022.
359 "Armed conflict in Ukraine: Families of all POWs need answers on their loved ones", ICRC, 20 May 2022, <https://www.icrc.org/en/document/ukraine-conflict-families-all-pows-need-answers-their-loved-ones>; "Russia-Ukraine international armed conflict: ICRC asks for immediate and unimpeded access to all prisoners of war", ICRC, 14 October 2022, <https://www.icrc.org/en/document/ukraine-russia-icrc-asks-immediate-and-unimpeded-access-to-all-prisoners-of-war>; "Russia-Ukraine: ICRC ready to visit all prisoners of war but access must be granted", 16 October 2022, <https://www.icrc.org/en/document/russia-ukraine-icrc-ready-visit-all-prisoners-war-access-must-be-granted>; "More than 8 months into Russia's armed attack on Ukraine and the ensuing escalation in hostilities the UN reports widespread abuse, torture of prisoners of war", United Nations Ukraine, 15 November 2022, <https://ukraine.un.org/en/207332-more-8-months-russias-armed-attack-ukraine-and-ensuing-escalation-hostilities-un-reports>; "Putin's conscripts can end up at Ukraine's largest POW camp. They can only hope for a trade", ABC News Australia, 1 November 2022, <https://www.abc.net.au/news/2022-11-02/ukraine-russia-prisoner-of-war-swaps-inside-prison/101603720>; Communication to ODIHR from the Permanent Mission of Ukraine to the International Organizations in Vienna, 28 November 2022.
360 GC III, art. 126(1) and (4).
361 GC III, art. 126(3) explicitly stipulates that "Visits may not be prohibited except for reasons of imperative military necessity, and then only as an exceptional and temporary measures".
362 GC III, art. 126(2) and (4).
363 In "Russia-Ukraine international armed conflict: ICRC asks for immediate and unimpeded access to all prisoners of war", ICRC, 14 October 2022, <https://www.icrc.org/en/document/ukraine-russia-icrc-asks-immediate-and-unimpeded-access-to-all-prisoners-of-war> the ICRC states: "We have been able to visit hundreds of POWs but there are thousands more who we have not been able to see."; "Armed conflict in Ukraine: Families of all POWs need answers on their loved ones", ICRC, 20 May 2022, <https://www.icrc.org/en/document/ukraine-conflict-families-all-pows-need-answers-their-loved-ones> ; "Russia-Ukraine: ICRC ready to visit all prisoners of war but access must be granted", ICRC, 16 October 2022, <https://www.icrc.org/en/document/russia-ukraine-icrc-ready-visit-all-prisoners-war-access-must-be-granted>.
364 "Russia-Ukraine: ICRC ready to visit all prisoners of war but access must be granted", ICRC, 16 October 2022, <https://www.icrc.org/en/document/russia-ukraine-icrc-ready-visit-all-prisoners-war-access-must-be-granted>. On 8 December, outside of the reporting period for this Report, the ICRC issued

152. ODIHR would like to specify that the numerous media reports and reportages that have been released portraying visits to detention centres under the control of both parties to the conflict do not assist in assessing the conditions and treatment of POWs as their authenticity cannot be verified and, in some cases, the way they are conducted in itself breaches IHL. Applicable law protects POWs from "exposure to public curiosity", which includes the simple disclosure of images of POWs both to preserve their dignity, as well as to protect them from being identified and subjected to possible acts of reprisals after their release.[365] Furthermore, although in some of the released videos POWs are seen voluntarily speaking to journalists, they remain in a situation of captivity and extreme vulnerability where their wellbeing depends entirely on an enemy power, thus their consent cannot be presumed and disclosure of their image to the public remains unlawful.

153. To illustrate the situation of access to POWs, UN HRMMU recently reported on accounts obtained through extensive interviews with Ukrainian former POWs[366] who had been held by the Russian Federation (including representatives of the *de facto* authorities of the occupied Luhansk and Donetsk regions) and current Russian POWs held by Ukraine.[367] They reported that the reason for excluding current Ukrainian POWs was that while Ukrainian authorities granted the mission confidential access to conduct all POW interviews, the Russian authorities refused, which resulted in all interviews

a press statement announcing that "[m]ore prisoners of war held by Russia and Ukraine have been visited by the International Committee of the Red Cross (ICRC) in recent weeks…. The ICRC last week carried out one two-day visit to Ukrainian prisoners of war, with another happening this week." "Russia-Ukraine international armed conflict: New visits to prisoners of war bring much-awaited news to families", ICRC, 8 December 2022, <https://www.icrc.org/en/document/russia-ukraine-international-armed-conflict-new-visits-prisoners-war-bring-much-awaited?fbclid=IwAR2p6opz_6yTn-2Gr6BHe2OHYbLjJmhWJIqZgRYf4DPYZayXejGJrlkAKRIQ>.

365 GC III, art. 13(2). There are exemptions to the prohibition, but they are exceptional and allowed only if a compelling public interest exists, or if exposing the materials is in the prisoner's vital interest, and then only insofar as that respects the POW's dignity, see 2020 ICRC Commentary to GC III of art. 13, paras. 1622, 1624 and 1627, <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=3DEA78B5A19414AFC1258585004344BD#_Toc42436486>.

366 The 15 November update includes data from 159 interviewees (139 men and 20 women). "More than 8 months into Russia's armed attack on Ukraine and the ensuing escalation in hostilities the UN reports widespread abuse, torture of prisoners of war", UN, Office of the High Commissioner for Human Rights, 15 November 2022, <https://ukraine.un.org/en/207332-more-8-months-russias-armed-attack-ukraine-and-ensuing-escalation-hostilities-un-reports>; In an update focused on 1 August-31 October, UN HRMMU stated it had interviewed 120 Ukrainian former POWs, including 104 men and 16 women. "Update on the Human Rights Situation in Ukraine: 1 August–31 October 2022", UN, Office of the High Commissioner for Human Rights, 2 December 2022, p. 4, <https://www.ohchr.org/sites/default/files/documents/countries/ua/2022-12-02/HRMMU_Update_2022-12-02_EN.pdf>.

367 These POWs were all men. UN HRMMU reported it based the findings of its 15 November report on interviews with 175 POWs held by Ukraine. "More than 8 months into Russia's armed attack on Ukraine and the ensuing escalation in hostilities the UN reports widespread abuse, torture of prisoners of war", UN, Office of the High Commissioner for Human Rights, 15 November 2022, <https://ukraine.un.org/en/207332-more-8-months-russias-armed-attack-ukraine-and-ensuing-escalation-hostilities-un-reports>; In an update focused on 1 August-31 October, UN HRMMU stated it had interviewed 33 Russian POWs. Update on the Human Rights Situation in Ukraine: 1 August–31 October 2022", 2 December 2022, UN, Office of the High Commissioner for Human Rights, p. 3, <https://www.ohchr.org/sites/default/files/documents/countries/ua/2022-12-02/HRMMU_Update_2022-12-02_EN.pdf>.

with Ukrainian POWs being held after their release.[368] Refusal by the Russian authorities to grant UN HRMMU access to places of POW internment continued as of 31 October, according to an update.[369]

154. Interviews conducted by UN HRMMU with former Ukrainian POWs illustrated "widespread practices of torture and ill-treatment in places of internment in the Russian Federation and in Ukrainian territory it occupies."[370] The report also "documented violations committed by Ukrainian state agents towards [Russian] POWs, which revealed a pattern of ill-treatment at initial stages of capture and evacuation, and sporadic cases of torture and ill-treatment at later stages of internment".[371]

155. Under IHL, POWs must be treated humanely at all times and protected against acts of violence, intimidation, insults and exposure to public curiosity.[372] Any unlawful act or omission by each party to the conflict causing death or seriously endangering the health of a POW in its custody is prohibited, and should be regarded as a serious breach of IHL that may amount to a war crime.[373]

156. Several of the Ukrainian former POWs interviewed by UN HRMMU reported that, immediately upon their capture by the Russian Federation and affiliated groups, they were subjected to torture or inhumane treatment, the pillaging of property, and physical abuse.[374] Furthermore, "[t]he vast majority" of Ukrainian POWs interviewed by UN HRMMU reported that they experienced torture and other ill-treatment during detention, including pervasive physical abuse such as severe beatings — resulting in at least one death — mock executions, suffocations, stress positions, and sexual violence.[375] Systematic ill-treatment has also been documented in recent media reports from journalists

368 "More than 8 months into Russia's armed attack on Ukraine and the ensuing escalation in hostilities the UN reports widespread abuse, torture of prisoners of war", UN, Office of the High Commissioner for Human Rights, 15 November 2022, <https://ukraine.un.org/en/207332-more-8-months-russias-armed-attack-ukraine-and-ensuing-escalation-hostilities-un-reports>.
369 "Update on the Human Rights Situation in Ukraine: 1 August–31 October 2022", UN, Office of the High Commissioner for Human Rights, 2 December 2022, p. 3, <https://www.ohchr.org/sites/default/files/documents/countries/ua/2022-12-02/HRMMU_Update_2022-12-02_EN.pdf>.
370 *Ibid.*, p. 4.
371 "More than 8 months into Russia's armed attack on Ukraine and the ensuing escalation in hostilities the UN reports widespread abuse, torture of prisoners of war", UN, Office of the High Commissioner for Human Rights, 15 November 2022, <https://ukraine.un.org/en/207332-more-8-months-russias-armed-attack-ukraine-and-ensuing-escalation-hostilities-un-reports>.
372 GC III, arts. 13 and 17, Customary IHL, Rule 92.
373 GC III, art. 13(1); ICC Statute, art. 8(2)(i), (ii) and (iii).
374 "More than 8 months into Russia's armed attack on Ukraine and the ensuing escalation in hostilities the UN reports widespread abuse, torture of prisoners of war", UN, Office of the High Commissioner for Human Rights, 15 November 2022, <https://ukraine.un.org/en/207332-more-8-months-russias-armed-attack-ukraine-and-ensuing-escalation-hostilities-un-reports>; see also "As Ukraine and Russia Step up prisoner exchanges, scarred POWs tell of abuse", Washington Post, 7 December 2022, <https://www.washingtonpost.com/world/2022/12/07/ukraine-russia-pows-exchange-prisoners/>.
375 *Ibid.*; "Update on the Human Rights Situation in Ukraine: 1 August–31 October 2022", 2 December 2022, p. 4, <https://www.ohchr.org/sites/default/files/documents/countries/ua/2022-12-02/HRMMU_Update_2022-12-02_EN.pdf>. *See also* Communication to ODIHR from the Permanent Mission of Ukraine to the International Organizations in Vienna, 5 December 2022.

who have interviewed former POWs held by the Russian Federation.[376] In one reported incident, a Ukrainian POW upon his capture was the victim of sexual violence, mutilation, and murder by Russian forces, which was filmed and later published online as early as 28 July 2022.[377] Several female POWs reported being subjected to beatings, electric shocks, threats of rape and instances of forced nudity in the presence of male guards.[378] Furthermore, some female POWs held in the Olenivka penal colony recounted how they were psychologically tormented by the screams and ill-treatment of male POWs in nearby cells.[379]

157. Former Ukrainian POWs have reported being held under poor conditions in various places, including in penal colonies, military bases, police stations, as well as improvised places of detention such as garages and barns, which lack sanitation and adequate living conditions.[380] Specifically, interviewees stated that cells were overcrowded, they were provided with an insufficient amount of, or poor quality food, and there was a lack of water and sanitation which led to illness.[381] IHL sets out strict minimum conditions of internment for POWs, addressing issues such as accommodation, food, clothing, hygiene and medical care, which, according to the above accounts seem to be blatantly disregarded by the Russia Federation.[382]

376 E.g., "Electric shocks, savage dogs and daily beatings: three weeks in Russia as a Ukrainian prisoner-of-war", The Economist, 27 October 2022, <https://www.economist.com/1843/2022/10/27/electric-shocks-savage-dogs-and-daily-beatings-three-weeks-in-russia-as-a-ukrainian-prisoner-of-war>; "Inside Olenivka, the Russian prison camp where Ukrainian vanish", The Independent, 21 August 2022, <https://www.independent.co.uk/news/world/europe/russia-ukraine-war-news-olenivka-prison-b2149435.html>.

377 See UKR.SM.013 [link not included for security]; See also "Video appears to show Russian soldier castrating Ukrainian prisoner", The Guardian, 29 July 2022, <https://www.theguardian.com/world/2022/jul/29/video-appears-to-show-russian-soldier-castrating-ukrainian-prisoner>.

378 "More than 8 months into Russia's armed attack on Ukraine and the ensuing escalation in hostilities the UN reports widespread abuse, torture of prisoners of war", UN, Office of the High Commissioner for Human Rights, 15 November 2022, <https://ukraine.un.org/en/207332-more-8-months-russias-armed-attack-ukraine-and-ensuing-escalation-hostilities-un-reports>; "Update on the Human Rights Situation in Ukraine: 1 August–31 October 2022", 2 December 2022, p. 4, <https://www.ohchr.org/sites/default/files/documents/countries/ua/2022-12-02/HRMMU_Update_2022-12-02_EN.pdf>.

379 "More than 8 months into Russia's armed attack on Ukraine and the ensuing escalation in hostilities the UN reports widespread abuse, torture of prisoners of war", UN, Office of the High Commissioner for Human Rights, 15 November 2022, <https://ukraine.un.org/en/207332-more-8-months-russias-armed-attack-ukraine-and-ensuing-escalation-hostilities-un-reports>.

380 *Ibid.*; Communication to ODIHR from the Permanent Mission of Ukraine to the International Organizations in Vienna, 28 November 2022; "Crimes in Olenivka: Chronology, Testimonies and Names of Those Involved", Media Initiative for Human Rights, 1 December 2022, <https://mipl.org.ua/en/crimes-in-olenivka-chronology-testimonies-and-names-of-those-involved/>. *See also* Communication to ODIHR from the Permanent Mission of Ukraine to the International Organizations in Vienna, 5 December 2022.

381 "More than 8 months into Russia's armed attack on Ukraine and the ensuing escalation in hostilities the UN reports widespread abuse, torture of prisoners of war", UN, Office of the High Commissioner for Human Rights, 15 November 2022, <https://ukraine.un.org/en/207332-more-8-months-russias-armed-attack-ukraine-and-ensuing-escalation-hostilities-un-reports>; see also Communication to ODIHR from the Permanent Mission of Ukraine to the International Organizations in Vienna, 28 November 2022; "Crimes in Olenivka: Chronology, Testimonies and Names of Those Involved", Media Initiative for Human Rights, 1 December 2022, <https://mipl.org.ua/en/crimes-in-olenivka-chronology-testimonies-and-names-of-those-involved/>; "Inside Olenivka, the Russian prison camp where Ukrainian vanish", The Independent, 21 August 2022, <https://www.independent.co.uk/news/world/europe/russia-ukraine-war-news-olenivka-prison-b2149435.html>; Communication to ODIHR from the Permanent Mission of Ukraine to the International Organizations in Vienna, 5 December 2022.

382 GC III, arts. 21-38.

158. UN HRMMU has also noted that the rights of POWs to maintain contact with their families were restricted, with only a handful of Ukrainian POWs allowed to do so.[383] One witness who was interviewed by ODIHR recounted how her husband, who was a POW in the Olenivka penal colony, had been allowed to call her, but she understood he was under observation. During the 'phone call, the witness's husband explained to her "*that he was a POW, but that he was okay, was being fed, had water, and that I should not listen to the television and not to trust anyone and that he was okay*."[384] However, the witness acknowledged that her husband may have been instructed on what to say whilst in the presence of others overseeing his detention, stating that "*I could feel he was with other people, and that he was talking under duress…I presume he was using the loudspeaker and that it wasn't a private conversation*."[385] Under IHL, all POWs shall be granted the right to give news of a strictly personal nature to members of their families, wherever they may be, and to receive news from them.[386]

159. The Ukrainian government has also documented the treatment of Ukrainian POWs who were detained by the Russian Federation and who have reported that during detention they were routinely beaten, threatened, subjected to mock executions, and constantly relocated to different detention sites causing physical exhaustion.[387] In addition, the Ukrainian authorities report that former POWs have stated they were subject to forcible and coercive interrogation techniques that were used to acquire information on the location and formation of Ukrainian forces, or in some cases to confirm membership in the Azov regiment.[388]

160. The situation in Olenivka penal colony was of particular concern during the reporting period. This detention site, used to detain Ukrainian POWs including many members of the Azov regiment,[389] was the scene of one or several explosions and subsequent fires which resulted in the death of fifty-

383 "More than 8 months into Russia's armed attack on Ukraine and the ensuing escalation in hostilities the UN reports widespread abuse, torture of prisoners of war", UN, Office of the High Commissioner for Human Rights, 15 November 2022, <https://ukraine.un.org/en/207332-more-8-months-russias-armed-attack-ukraine-and-ensuing-escalation-hostilities-un-reports>; Communication to ODIHR from the Permanent Mission of Ukraine to the International Organizations in Vienna, 28 November 2022.
384 ODIHR Witness Interview UKR.WS.057 at para. 67.
385 ODIHR Witness Interview UKR.WS.057 at paras 67-69.
386 GC III, arts. 70-71; Customary IHL, Rule 125.
387 Communication to ODIHR from the Permanent Mission of Ukraine to the International Organizations in Vienna, 5 December 2022.
388 *Ibid*.
389 ODIHR Witness Interviews UKR.WS.057 at paras 67-69; UKR.WS.113 at para. 43; Communication to ODIHR from the Permanent Mission of Ukraine to the International Organizations in Vienna; "Crimes in Olenivka, Chronology, Testimonies and Names of Those Involved", Media Initiative for Human Rights, 1 December 2022, <https://mipl.org.ua/en/crimes-in-olenivka-chronology-testimonies-and-names-of-those-involved/>; "'Absolute evil': inside the Russian prison camp where dozens of Ukrainians burned to death", The Observer, 06 August 2022, <https://www.theguardian.com/world/2022/aug/06/russian-prison-camp-ukrainians-deaths-donetsk>.

three Ukrainian POWs and another seventy-five wounded.[390] Both parties to the conflict deny responsibility for the incident and have accused each other of causing it.[391] Access to the detention site prior to the incident had been denied, and was continuing as of 16 October, according to the ICRC.[392] Nonetheless, to investigate the events to attribute responsibility, the UN announced a fact-finding mission on 22 August, which will "endeavour to ascertain the facts of the incident and report to the Secretary-General upon completion of its work."[393] As of 1 December 2022, however, the fact-finding mission had not deployed and had provided no reported updates.[394]

161. The UN HRMMU also reports that Russian POWs have reported cases of torture or ill-treatment during their initial capture and interrogations by Ukrainian armed forces.[395] Interviewees who spoke to the UN HRMMU complained that they were subjected to physical abuse, such as being punched, as well as instances where they were stabbed or subjected to electric shocks.[396] In addition, many of the POWs interviewed reported that they also suffered from poor and often humiliating conditions during their evacuation to transit camps and places of internment following their capture. They described being packed into trucks, hands bound, beaten, and filmed.[397]

162. Some Russian POWs also reported they were subjected to ill-treatment by members of the Ukrainian armed forces or law enforcement during detention

390 Минобороны России [Ministry of Defence of Russia], Telegram, 29 July 2022, <https://t.me/mod_russia/18064>; "Explosions Kills Dozens of Ukrainian Captives at Russian-Held Prison", The New York Times, 29 July 2022, <https://www.nytimes.com/2022/07/29/world/europe/ukraine-prison-russia-azov.html>.

391 "Russia claims Ukraine used US arms to kill jailed POWs. Evidence tells a different story", CNN, 11 August, 2022, <https://edition.cnn.com/interactive/2022/08/europe/olenivka-donetsk-prison-attack/index.html>; "What we know about the blast that killed Ukrainian POWs in Olenivka", The Washington Post, 6 August 2022, <https://www.washingtonpost.com/world/2022/08/06/olenivka-prison-explosion-ukraine-russia/>; "Russia, Ukraine trade blame for dozens of deaths in Donetsk prison destruction", Reuters, 29 July 2022, <https://www.reuters.com/world/europe/ukraine-bombs-russian-forces-drive-retake-south-2022-07-28/>; "Russia accuses Ukraine of killing POWs with HIMARS system", Al Jazeera, 29 July 2022, <https://www.aljazeera.com/news/2022/7/29/russia-accuses-ukraine-of-killing-pows-with-himars-system>; "Ukraine war: Russia and Ukraine trade blame over prison blast", BBC, 29 July 2022, <https://www.bbc.com/news/world-europe-62344358>.

392 "Russia-Ukraine: ICRC ready to visit all prisoners of war but access must be granted", ICRC website, 16 October 2022, <https://www.icrc.org/en/document/russia-ukraine-icrc-ready-visit-all-prisoners-war-access-must-be-granted>.

393 "Members of Fact-finding Mission regarding Incident at Olenivka, Ukraine, on 29 July 2022", United Nations website, 22 August 2022, <https://www.un.org/sg/en/content/sg/personnel-appointments/2022-08-22/members-of-fact-finding%C2%Aomission-regarding-incident-olenivka-ukraine-29-july-2022%C2%Ao>.

394 "Daily Press Briefing by the Office of the Spokesperson for the Secretary-General", United Nations website, 1 December 2022, <https://press.un.org/en/2022/db221201.doc.htm>.

395 "More than 8 months into Russia's armed attack on Ukraine and the ensuing escalation in hostilities the UN reports widespread abuse, torture of prisoners of war", United Nations Ukraine website, 15 November 2022, <https://ukraine.un.org/en/207332-more-8-months-russias-armed-attack-ukraine-and-ensuing-escalation-hostilities-un-reports>; see also "Update on the Human Rights Situation in Ukraine: 1 August–31 October 2022", 2 December 2022, p. 3, <https://www.ohchr.org/sites/default/files/documents/countries/ua/2022-12-02/HRMMU_Update_2022-12-02_EN.pdf>.

396 "More than 8 months into Russia's armed attack on Ukraine and the ensuing escalation in hostilities the UN reports widespread abuse, torture of prisoners of war", United Nations Ukraine website, 15 November 2022, <https://ukraine.un.org/en/207332-more-8-months-russias-armed-attack-ukraine-and-ensuing-escalation-hostilities-un-reports>.

397 *Ibid.*

(in a penal colony and in several pre-trial facilities), including beatings, electric shocks, and in one case, a suffocation.[398] The report acknowledges that measures were implemented allowing Russian POWs to contact their families, but noted this was not the case for everyone.[399] The Russian Federation has reported instances in which the families of Russian POWs still in detention have allegedly received threats about the future of their loved ones.[400] In addition, the Russian Federation noted the continued use of POWs being made to play an active role in public interviews.[401]

163. Since the beginning of hostilities on 24 February 2022, prisoner exchanges between Ukraine and the Russian Federation have been constant. While the exact number of POWs exchanged since hostilities started is unknown, it has been reported that over 1,000 POWs have been exchanged as of early December 2022.[402]

164. As it pertains to Ukrainian soldiers of the Azov regiment, many of whom have been captured, interned, and exchanged, on 2 August 2022, following a petition by the Russian Ministry of Justice, the Russian Supreme Court declared the Azov regiment a "terrorist organization", banned in the Russian Federation, making membership in it punishable and as a consequence denying soldiers from the Azov regiment the status and the rights of POWs.[403] It is important to note that the designation of combatants as members of a "terrorist organization" is irrelevant for the purpose of IHL and it does not change their POW status and the rights it affords them. However, despite the designation, at least 150 detained members of the Azov regiment were reportedly exchanged

398 *Ibid. See also* Communication to ODIHR from the High Commissioner for Human Rights in the Russian Federation, 16 July 2022.
399 *Ibid.*
400 Communication to ODIHR from the High Commissioner for Human Rights in the Russian Federation, 16 July 2022.
401 *Ibid.*
402 "Ukraine, Russia swap 50 prisoners of war each – officials", Reuters, 26 November 2022, <https://www.reuters.com/world/europe/ukraine-russia-swap-50-prisoners-war-each-officials-2022-11-24/>. In recent months, both parties to the conflict have conducted prisoner exchanges of great scale, such as on 21 September 2022, when Russia and Ukraine conducted a prisoner swap of almost 300 people, including fighters from the Azov regiment and foreigners, and on 17 October 2022, when 108 Ukrainian women and 110 Russians were exchanged. See "Russia, Ukraine announce major surprise prisoner swap:, Reuters, 22 September 2022,; <https://www.reuters.com/world/europe/russia-releases-10-foreigners-captured-ukraine-after-saudi-mediation-riyadh-2022-09-21/>; "Prisoner swap with Russia sees 108 Ukrainian women released", The Guardian, 18 October 2022, <https://www.theguardian.com/world/2022/oct/18/prisoner-swap-with-russia-sees-108-ukrainian-women-released>; "Ukraine, Russia Carry Out Largest Prisoner Swap Since Start Of Invasion", RFE/RL, 22 September 2022, <https://www.rferl.org/a/ukraine-russia-prisoner-swap-azov-azovstal-medvedchuk-/32046219.html>; Denis Pushilin, Telegram, 17 October 2022, <https://t.me/pushilindenis/2785>; «Черговий масштабний обмін полоненими вдалося провести сьогодні. Емоційний та справді особливий – ми звільнили з полону 108 жінок. У полоні перебували мами та доньки, яких дуже чекали рідні. 37 евакуйованих з «Азовсталі», 11 офіцерів, 85 – рядових та сержантів» ["Another massive exchange of prisoners was managed to be done today. Emotional and truly special – we have freed 108 women from captivity. There were mother and daughter prisoners, who were eagerly awaited by relatives. 37 evacuated from "Azovstal", 11 officers, 85 privates and sergeants"], Twitter @AndriyYermak, 17 October 2022, <https://twitter.com/AndriyYermak/status/1582035092800622592>; Russian Ministry of Defence, Telegram, 6 December 2022, <https://t.me/mod_russia/22404>; Andrii Yermak, Telegram, 6 December 2022, <https://t.me/ermaka2022/1734>.
403 «ВС РФ признал украинский полк "Азов" террористической организацией» [Supreme Court of the Russian Federation recognized Azov regiment as terrorist organization"], Interfax.ru, 2 August 2022, <https://www.interfax.ru/russia/854896>.

for Russian POWs as part of prisoner exchanges during continued hostilities in the autumn.[404]

404 Dmytro Lubinets, Telegram, 22 September 2022, <https://t.me/dmytro_lubinetzs/942>; Dmytro Lubinets, Telegram, 17 October 2022, <https://t.me/dmytro_lubinetzs/1021>; Dmytro Lubinets, Telegram, 29 October 2022, <https://t.me/dmytro_lubinetzs/1070>.

The Situation in Territory under Ukraine's Effective Control

VIII

165. During the reporting period, concerns have arisen over alleged violations of IHRL in areas controlled by the Ukrainian government, including in reclaimed territories with regards to the treatment of individuals alleged to have cooperated with the Russian authorities during the period of occupation.

166. As of 31 July, OHCHR had documented several allegations of unlawful killings,[405] arbitrary arrest and detention, including some instances possibly amounting to enforced disappearance,[406] and torture and other ill-treatment[407] of individuals alleged to have 'collaborated' with Russian Federation authorities.[408] The latter included accounts of beatings and death threats by individuals who reported having been detained by Ukrainian law enforcement bodies.[409] In addition, of the total cases of conflict-related sexual violence it has documented, OHCHR reports a minority that are alleged to have been committed by Ukrainian armed forces, law enforcement, or members of territorial defence units, including forced nudity and threats of sexual violence, although it is not clear if such incidents were linked to allegations of 'collaboration'.[410]

167. In March 2022, following the enactment of martial law in response to the Russian armed attack on Ukraine, the Parliament of Ukraine adopted two new laws criminalizing various types of 'collaborationism', which are still in force as of 1 December.[411] These laws set forth punishments for various types of 'voluntary' cooperation with an 'aggressor state' ranging, from, depending on type and degree of action, mild sanctions such as fines and prohibition to hold certain positions in the public sector, to severe punishments of 12 to 15 years in prison.[412]

168. Some observers among civil society, the media, and Ukrainian public authorities have voiced concerns about the newly adopted legislation, noting that distinguishing between 'voluntary' and 'involuntary' cooperation with the occupying authorities can be difficult given the existence of coercive circumstances; assessing the actions of public employees, such as teachers

405 "Report on the Human Rights Situation in Ukraine: 1 February–31 July 2022", UN, Office of the High Commissioner for Human Rights, 27 September 2022, para. 40, <https://www.ohchr.org/sites/default/files/documents/countries/ua/2022-09-23/ReportUkraine-1Feb-31Jul2022-en.pdf>.
406 *Ibid.*, paras 45–46.
407 *Ibid.*, para. 50.
408 As mentioned in the legal framework section of this report (Chapter IV), in March 2022, Ukraine made note of its decision to derogate from some of its human rights obligations. It is important to note that pursuant to Article 4 of the ICCPR, there can be no derogation from the right to life (art. 6 of the ICCPR) even in situations of armed conflict and other public emergencies that threaten the life of the nation, *see* UN Human Rights Committee, General Comment no. 36 on Article 6 (2020), para. 2; derogations are also not allowed from the prohibition of torture or cruel, inhuman or degrading treatment or punishment (art. 7 ICCPR), *See also*, art. 2(2) of the UN CAT.
409 *Ibid.*
410 *See Ibid.*, para. 54 and accompanying notes.
411 Law No. 2108-IX "On Amendments to Certain Legislative Acts regarding the Establishment of Criminal Liability for Collaboration Activities", in act as of 15 March 2022, <https://zakon.rada.gov.ua/laws/show/2108-20>; Law No. 2107-IX "On Amendments to Certain Legislative Acts on Ensuring the Responsibility of Individuals Who Carry Out Collaboration Activities", in act as of 15 March 2022, <https://zakon.rada.gov.ua/laws/show/2107-20>.
412 *Ibid.*

who continue working, poses a particular challenge.[413] ODIHR noted during its interviews with witnesses that some referred to anyone who was 'speaking' with the occupying forces, including teachers and administrative workers, as 'collaborators', regardless of the specific circumstances or motives that might have justified such behaviour.[414]

169. It is concerning that the current legislation and related broad definition of the offence of 'collaborationism' may result in criminal liability simply for the act of continuing to work in occupied territories, which for some individuals may be a matter of survival. Although the Ukrainian authorities are reportedly taking steps to clarify these legislative provisions, the amendments suggested by the Cabinet of Ministers of Ukraine have been pending approval by the Parliament since August 2022.[415]

170. Separately, there has been a large number of registered cases related to "treason" since the start of 2022. According to the information provided to ODIHR by the Ministry of Justice of Ukraine, during the period from January to October 2022, 1,918 criminal offences were registered under Article 111 of the Criminal Code (relating to "treason") in the Unified Register of Pretrial Investigations in Ukraine; 540 cases have resulted in notifications of suspicion against 845 people, indictments have been raised in 203 cases against 389 people, and 183 people have been remanded to pre-trial detention in such cases.[416] The Ukrainian authorities also reported that 17 cases of 'treason' against members of the Ukrainian armed forces had been registered since 24 February 2022.[417]

413 «Зрадників ніхто не любить». Як міняють українське законодавство по колабораціонізм?» ["'No one likes traitors.' How was the law on collaboration changed?"], Oleksandr Yankovskyi, Novyny Pryazovia, Radio Svoboda, 18 August 2022, <https://www.radiosvoboda.org/a/novyny-pryazovya-kolaborant-zminy-zakonodavstvo-koho-pokarayut/31993175.html>; «Яке покарання отримають вчителі, які почали працювати за програмами окупантів» ["What is the punishment for teachers who started working according to curricula introduced by occupying forces?"], Informator, 13 September 2022, <https://informator.ua/uk/yake-pokarannya-otrimayut-vchiteli-yaki-pochali-pracyuvati-za-programami-okupantiv>; "Traitor or hero? Ukraine finds it tough to identify Russian collaborators" Tim Lister and Sanyo Fylyppov, CNN, 9 June 2022, <https://edition.cnn.com/2022/06/08/europe/ukraine-hunt-for-collaborators-intl/index.html>; *see also* "As Russia Retreats, a Question Lingers: Who Counts as a Collaborator?", New York Times, 22 September 2022, <https://www.nytimes.com/2022/09/22/world/europe/ukraine-collaborators-russia.html>.

414 ODIHR Witness Interview UKR.WS.073 at para. 39; ODIHR Witness Interview UKR.WS.009 at para. 15; ODIHR Witness Interview UKR.WS.083 at para. 24.

415 See Parliament of Ukraine, «Проект Закону про внесення змін до Кримінального кодексу України щодо удосконалення відповідальності за колабораційну діяльність» [Draft Law "On Amendments to the Criminal Code of Ukraine on Improvement of Responsibility for Collaborative Activities"], last accessed 8 December 2022, https://itd.rada.gov.ua/billInfo/Bills/Card/40205; see also "Government supported legal initiatives regarding collaborators which were made by Ministry of Reintegration of Temporarily Occupied Territories of Ukraine" [Уряд підтримав законодавчі ініціативи Мінреінтеграції по колаборантах], Official website of the Ministry of Reintegration of Temporarily Occupied Territories of Ukraine, 5 August 2022, <https://minre.gov.ua/news/uryad-pidtrymav-zakonodavchi-iniciatyvy-minreintegraciyi-po-kolaborantah>.

416 Communication to ODIHR from the Permanent Mission of Ukraine to the International Organizations in Vienna, 28 November 2022. As of September, the majority of cases were reported and investigated in the Zhytomyr, Sumy, and Kyiv regions of Ukraine.

417 Communication to ODIHR from the Permanent Mission of Ukraine to the International Organizations in Vienna, 5 December 2022.

171. The allegations of rights violations in Ukrainian government-controlled territories reported by OHCHR are also of deep concern.[418] Under IHRL, arbitrary deprivation of liberty is a violation of the right of liberty and security of person.[419] Even if the deprivation of liberty is in accordance with national laws and procedures it may still be considered arbitrary, and thus a violation of IHRL. This is the case, for example, if the grounds or procedures for a detention under national law are considered as unreasonable, or if the detention is unnecessary or disproportionate.[420] In addition, as a party to the International Convention for the Protection of All Persons from Enforced Disappearance,[421] Ukraine has an obligation to ensure the right of everyone under its jurisdiction to be protected from enforced disappearance.[422] Under the Convention, there may be no derogation from this right, or from the right to an effective remedy for enforced disappearance.[423]

418 HRMMU documented 53 cases of arbitrary detention and 32 cases that may amount to enforced disappearance committed by members of the Ukrainian armed forces and law enforcement bodies, although it is not clear if such incidents were linked to allegations of 'collaboration'. "Update on the human rights situation in Ukraine: 1 August–31 October 2022", UN, Office of the High Commissioner for Human Rights, 2 December 2022, p. 2, <https://www.ohchr.org/sites/default/files/documents/countries/ua/2022-12-02/HRMMU_Update_2022-12-02_EN.pdf>.

419 ICCPR, art. 9. As mentioned in the legal framework section of this report (Chapter IV), in March 2022, Ukraine made notice of its decision to derogate from some of its human rights obligations including article 9 of the ICCPR. However, this should not allow derogation to the fundamental guarantees against arbitrary detention, including the right to take proceedings before a court to enable the court to decide without delay on the lawfulness of detention/habeas corpus; see UN Human Rights Committee, General Comment no. 35 on Article 9 ICCPR (Liberty and security of person), paras 66–67.

420 UN Human Rights Committee, General Comment no. 35 on Article 9 ICCPR (Liberty and security of person), CCPR/C/GC/35, para. 12; see also UN Human Rights Committee, Communication No. 1629/2007, *Fardon v Australia*, Views adopted by the Human Rights Committee on 18 March 2010, para. 7.3; Communication No. 1134/2002, *Gorji-Dinka v Cameroon*, Views adopted by the Human Rights Committee on 17 March 2005, para. 5.1; Communication No. 305/1988, *Hugo van Alphen v The Netherlands*, Views adopted by the Human Rights Committee on 23 July 1990, para. 5.8.

421 Ukraine became a party to the Convention in 2015.

422 International Convention for the Protection of All Persons from Enforced Disappearance (CPED), art. 1(1).

423 CPED art. 1(2). The Human Rights Committee has held that derogation must not concern provisions of the ICCPR which are "necessary for the protection of non-derogable rights", such as the right to life, see Human Rights Committee, General Comment no. 29; and concluding observations: Israel, CCPR/CO/78/ISR, para. 12.

Updated Interim Recommendations

IX

ODIHR calls on the Russian Federation and Ukraine as parties to the conflict to:

- Respect and ensure respect for IHL and IHRL in territories under their control;
- Distinguish at all times between civilians and combatants as well as between civilian objects and military objectives, directing attacks only against military objectives;
- Refrain from launching attacks that may be expected to cause harm to civilians and civilian objects that would be excessive in relation to the military advantage anticipated;
- Take all feasible precautions to avoid, and in any event to minimize, incidental loss of civilian life, injury to civilians and damage to civilian objects;
- Refrain from using explosive weapons with wide area effects in densely populated areas;
- Sign and ratify the Convention on Cluster Munitions (2008);
- Adopt the *Political Declaration on Strengthening the Protection of Civilians from the Humanitarian Consequences Arising from the Use of Explosive Weapons in Populated Areas;*
- Disclose the location and status of all civilians of the opposing side that are under their control, including any ongoing investigations against them, and free everyone whose detention is unlawful;
- Ensure that all POWs are treated with full respect under the Geneva Convention (III) relative to the Treatment of Prisoners of War, of 12 August 1949;
- Ensure unimpeded access to the International Committee of the Red Cross and other relevant organizations to all places where POWs are detained;
- Refrain from prosecuting POWs for the mere fact of having directly participated in hostilities;
- Ensure that independent and impartial investigations are conducted into all allegations of serious violations of IHL and IHRL;
- Ratify the Rome Statute and formally become members of the International Criminal Court;
- Negotiate safe and effective humanitarian corridors for both evacuation and delivery of aid; and

- Ensure freedom of movement and freedom of return to civilians evacuating or otherwise displaced.

ODIHR calls on the Russian Federation to:

- Immediately stop launching indiscriminate attacks and abide by the IHL principle of distinction in order to avoid further preventable civilian death, injury, and damage to civilian objects;

- Immediately stop launching attacks against critical civilian infrastructure, which have led to a significant worsening of the humanitarian situation;

- Halt the forcible transfer or deportation of civilians, including children, within Ukrainian territories that are occupied by the Russian Federation or to the territory of the Russian Federation;

- Halt restrictions on freedom of movement and allow civilians to evacuate safely from areas of active hostilities and occupied territories;

- Immediately cease ongoing processes and reverse any attempts to change the legal status of Ukrainian children who have been forcibly transferred within territory occupied by the Russian Federation or deported to the Russian Federation, including to allow for their 'adoption' by Russian families;

- Stop subjecting civilians in territories occupied by the Russian Federation to extrajudicial executions, torture and other forms of ill-treatment including sexual violence;

- Halt the abduction, arbitrary detention and enforced disappearance of civilians in territories occupied by the Russian Federation and release those currently unlawfully detained;

- Halt and reverse the conscription of civilians in territories occupied by the Russian Federation into the Russian Federation armed forces;

- Eliminate the so-called 'filtration' process of civilians performed by the Russian Federation and other armed groups under its overall control in violation of civilians' right to freedom of movement and right to privacy;

- Ensure that the basic needs of the civilian population in occupied territories are adequately fulfilled, including access to food, water, electricity and medical care; and

- Ensure that all allegations of serious violations of IHL and other abuses by members of the Russian armed forces or other authorities under the overall control of the Russian Federation are promptly and effectively investigated and

that alleged perpetrators are brought to justice in fair trials in accordance with international law and standards.

ODIHR calls on Ukraine to:

- Promptly and impartially investigate allegations of rights violations against individuals in territories under its effective control, including those alleged to have cooperated with occupying Russian Federation forces, and to bring perpetrators of abuses to justice;

- Ensure that internationally agreed standards of impartiality, independence and thoroughness of criminal proceedings as well as fair trial guarantees are guaranteed at all times, including in any instances of alleged collaboration; and

- Sign into law the Bill (Bill 2689) adopted by Parliament in May 2021 designed to harmonize the Ukrainian criminal code with international criminal law and IHL, enabling the Ukrainian authorities to effectively investigate and prosecute breaches of IHL carried out on its territory.

Office for Democratic Institutions and Human Rights

OSCE ODIHR