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

1

OSCE ODIHR

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

1

20 July 2022

Interim Report on reported violations of international humanitarian law and international human rights law in Ukraine – 20 July 2022

Warsaw, 2025 OSCE/ODIHR

Published by the
OSCE Office for Democratic Institutions
and Human Rights (ODIHR)
ul. Miodowa 10
00-251 Warsaw Poland
www.osce.org/odihr

ISBN: 978-92-9271-322-5

Designed by Jerzy Skakun

Cover photograph: R. Rizvanov / Shutterstock.com

Contents

ODIHR Director's Foreword

Since the first hours of the military attack launched by the Russian Federation in Ukraine on 24 February, the terrible impact of the ongoing war on the human security of the people of Ukraine, with its devastating civilian suffering and casualties, appeared clear for all to see. At the same time, the European security order and the international legal framework have been profoundly impacted by the armed conflict, including the very core principles of the Helsinki Final Act of 1975.

As the main institution of the OSCE Human Dimension of Security and prominent human rights body worldwide, ODIHR has initiated monitoring of violations of international humanitarian and human rights law from the very beginning of this armed conflict. With monitoring initially conducted remotely through open resources and at present with the addition of ODIHR monitors deployed on the ground in Ukraine, the Office demonstrated its ability and commitment to adapt to the challenging situation and implement its mandate.

As we all know, the OSCE was established with a simple but powerful mission: to increase security in Europe through an order based on common rules and values. To this end, ODIHR was established and mandated in 1992 in Helsinki to assist the OSCE participating States in the implementation of their commonly shared commitments on the so-called Human Dimension, with a strong monitoring mandate. Over the years, ODIHR has engaged in regular monitoring across OSCE participating States and has, at times of particular concern, exercised this mandate in a more comprehensive manner. This monitoring initiative, partially, builds on these experiences and the methodology developed and refined by ODIHR over the past decades.

This Interim Report, which covers the period from the beginning of the armed conflict in February until the end of June 2022, offers initial findings and recommendations connected to violations of international humanitarian and human rights law in Ukraine by both the Russian Federation and Ukrainian military forces. Its initial conclusions express clear concern in terms of general disregard by the Russian Federation for the basic principles of distinction, proportionality and precautions set out by international humanitarian law, which may amount to war crimes and crimes against humanity. To a much

more limited extent, there are indications that Ukrainian armed forces at times also failed to comply with specific international humanitarian law rules on the conduct of hostilities.

In line with its established monitoring methodology, ODIHR has requested relevant information from both parties to the conflict to inform its work and findings, and will continue to do so in the coming months. By the end of November 2022, ODIHR will publish the next Report from this monitoring exercise, building on the findings of this Interim Report and further expanding its collection of evidence.

This Interim Report aims *inter alia* at promoting accountability for the violations of international humanitarian and human rights law in the context of the war by establishing their factual circumstances. Although the monitoring does not seek to establish individual criminal responsibility in cases of violations, its findings may be relevant for national and international bodies or institutions that are or potentially will be working on ensuring accountability and criminal responsibility for those violations.

I wish to thank 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 attack by the Russian Federation in Ukraine which began on 24 February 2022 and the ensuing armed conflict during the following four months has resulted in widespread civilian suffering and significant evidence of violations of international humanitarian law (IHL) and international human rights law (IHRL).

2. Immediately following the military attack, in line with its monitoring mandate, ODIHR launched the Ukraine Monitoring Initiative to monitor and document the most serious violations of IHL and IHRL affecting the lives of civilians and prisoners of war (POWs).

3. In line with its established monitoring methodology, ODIHR collected information through desk research, including using open-source investigation techniques to verify digital evidence, and conducted in-person interviews in Ukraine with witnesses and survivors of alleged violations. ODIHR also benefited from reports and information provided by international organizations and non-governmental organizations to produce this interim report covering events between 24 February and 30 June 2022.

4. As parties to the international armed conflict, the Russian Federation and Ukraine are bound by the provisions of IHL, while they remain bound by their obligations under IHRL. ODIHR considers the so-called "Luhansk People's Republic" and "Donetsk People's Republic" to be under the overall control of the Russian Federation, bound by the same IHL rules and that the Russian Federation is responsible for their conduct under IHL.

5. ODIHR, based on its monitoring, identified credible evidence to assess that the conduct of hostilities by the Russian Federation, during the reporting period, has been 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. This behaviour has significantly contributed to worsening the impact of the humanitarian catastrophe resulting from its military attack in Ukraine.[1] There are also indications that, to a much more limited extent, the Ukrainian armed forces failed to comply, during the reporting period, with specific IHL rules on the conduct of hostilities.

1 As of 30 June, the United Nations Office of the High Commissioner for Human Rights (OHCHR) recorded 10,977 verified civilian casualties in the country among which 4,838 civilians killed and 6,139 injured, noting that the actual numbers are considerably higher. <https://ukraine.un.org/sites/default/files/2022-07/Ukraine%20-%20civilian%20casualty%20update%20as%20of%2024.00%203%20July%202022%20ENG.pdf>. The hostilities have also resulted in mass displacement of the civilian population: The United Nations High Commissioner for Refugees (UNHCR) reported that over 8.4 million people had fled the country by 30 June (see <https://data.unhcr.org/en/documents/details/94001>) and the International Organization for Migration (IOM) reported that over 6.2 million were internally displaced as of 23 June, <https://dtm.iom.int/es/node/14291>. In addition, the hostilities had a severe impact on civilian infrastructure in housing: between 24 February and 15 May 2022, OHCHR recorded damage and destruction of 183 medical facilities and 230 educational facilities, while the extent of real destruction and damage can only be known once the active phase of the conflict is over. See paras 51-52 of <https://www.ohchr.org/sites/default/files/documents/countries/ua/2022-06-29/2022-06-UkraineArmedAttack-EN.pdf>.

6. ODIHR has documented in the report cases of attacks that *prima facie* constitute grave breaches of IHL and which may amount to war crimes by the Russian Federation. These include the attack on the Mariupol Drama Theatre and the railway station in Kramatorsk as well as numerous attacks on schools and hospitals in apparent violation of their protected status under IHL. Witnesses also reported to ODIHR monitors incidents of Russian Federation and Ukrainian armed forces using schools, hospitals and other civilian objects, or stationing themselves next to such places, endangering the civilian population and violating IHL rules.

7. ODIHR is extremely alarmed at the siege of Ukrainian cities and towns by the armed forces of the Russian Federation, preventing civilians from leaving safely and increasing the risks of being subjected to indiscriminate attacks and a plethora of other IHL violations, including potential war crimes. Likewise, ODIHR is concerned at the failure of the Russian Federation armed forces to allow rapid and unimpeded passage of humanitarian assistance which has contributed to the worsening of the humanitarian crisis in contravention of IHL.

8. Opportunities for safe evacuations from Ukrainian cities were severely limited. As confirmed by ODIHR interviews, in many cases the Russian Federation only allowed and facilitated movement of civilians to Russian-controlled territories of the so-called "People's Republic of Luhansk" and "People's Republic of Donetsk" and/or the Russian Federation in violation of the IHL prohibition of deportation of the civilian population from occupied territories. Information provided to ODIHR monitors indicates that civilians were held in Russian Federation-controlled filtration camps for weeks and months in poor conditions with insufficient food and that physical ill-treatment took place.

9. Witnesses reported to ODIHR restricted or no access to electricity, telephone networks, independent media and internet in Russian Federation-occupied areas of Ukraine. There were reports of looting of humanitarian aid by Russian Federation armed forces, as well as other changes made to the administration of occupied territories in violation of the IHL obligation to maintain, as far as possible, the laws in force prior to the occupation.

10. Survivors and witnesses reported to ODIHR instances of extrajudicial executions, sexual violence including rape, arbitrary deprivation of liberty, torture and enforced disappearances in Russian Federation-occupied areas of Ukraine. These constitute violations of IHL and may amount to war crimes, while peaceful protest against the occupation was suppressed and organizers targeted.

11. ODIHR also found evidence of violations in Government of Ukraine-controlled areas including some evidence of violence and other extrajudicial punishments meted out against alleged looters, apparently sanctioned or encouraged by the authorities.

12. ODIHR is also concerned about reports of violations of the rights of Russian and Ukrainian POWs, including lack of access to food, being held in poor conditions and evidence of physical ill-treatment and public humiliation. Captured soldiers under the control of the Russian Federation were tried and, in one instance, sentenced to death for what amounts to be solely their participation in hostilities instead of being given POW status in clear violation of IHL obligations.

13. In response to this pattern of serious IHL and IHRL violations, ODIHR makes a series of recommendations, calling on both parties to the conflict to respect and ensure respect for IHL and IHRL, and to fulfil their duty to investigate violations and bring those responsible to justice in fair trials. In particular, ODIHR calls on the Russian Federation to distinguish at all times between civilians and civilian objects and military objectives and only to direct attacks against military objectives. The indiscriminate targeting of civilian areas and facilities has, in particular, resulted in deaths, injuries and forced displacement of innocent civilians. The Russian Federation should immediately halt the deportation of civilians from occupied territories, eliminate the procedure of 'filtration' and ensure respect for all the rights afforded to civilians in the territories it occupies. ODIHR calls on Ukraine to refrain from placing military objectives within, or in the vicinity of, civilian areas as well as from using the presence of civilians to render its military objectives immune from attacks.

Introduction

II

14. 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, raises significant concerns about the respect and implementation of international humanitarian law (IHL) and international human rights law (IHRL). In the following four months, there have been clear indications of widespread civilian suffering and significant evidence of violations of IHL and IHRL.

15. A number of OSCE human dimension commitments notably recognize the vital importance of participating States' realization of their binding human rights obligations under international treaties.[2] Those human dimension commitments likewise reaffirm the binding nature of States' obligations under IHL, including the Geneva Conventions.[3]

16. As the OSCE institution with the broadest mandate in the human dimension of security, ODIHR is tasked, *inter alia*, with assisting the OSCE participating States in the implementation of their human dimension commitments.[4] ODIHR's monitoring mandate is based on a number of commitments.[5] Moreover, ODIHR serves as a point of contact for information provided by participating States,[6] and participating States have expressed their determination to co-operate within the OSCE and with its institutions and representatives in a spirit of solidarity and partnership in a continuing review of implementation.[7] The OSCE has played a role in conflict prevention and resolution in Ukraine with the OSCE Special Monitoring Mission to Ukraine (SMM) operating in the country from 2014 to 2022. ODIHR has considerable experience in monitoring human rights in crisis situations.[8]

17. Immediately after the Russian Federation launched the military attack on 24 February, ODIHR established the Ukraine Monitoring Initiative. Its purpose has

2 See for example Concluding Document of Budapest, 6 December 1994 (hereafter referred to as Budapest 1994), para 20.
3 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, paras. 29-35.
4 Helsinki 1992.
5 Helsinki 1992; Budapest 1994; Document of the Seventh Meeting of the Ministerial Council, Oslo, 2-3 December 1998; Document of the Eleventh Meeting of the Ministerial Council, Maastricht, 1-2 December 2003.
6 Document of the Fourth Meeting of the CSCE Council, Rome, 30 November-1 December 1993.
7 Istanbul Document, Istanbul, 19 November 1999.
8 This report 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), <https://www.osce.org/odihr/17772> and <https://www.osce.org/kosovo/17781>. 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.

been to monitor and document the most serious violations of IHL and IHRL and provide accurate, timely and up-to-date information to the OSCE leadership, participating States and to a public audience. This interim assessment serves that purpose and also aims to contribute to ensuring accountability for violations of IHL and IHRL. The monitoring does not seek to establish individual criminal responsibility in cases of violations.

Background to the Report

III

A. METHODOLOGY

18. The methodology of the Monitoring Initiative was adapted to the opportunities to secure information, available resources, the scope of issues monitored, and planned outputs, in line with ODIHR's human rights monitoring methodology and principles of monitoring, broadly in line with the *Manual on Human Rights Monitoring* by the Office of the UN High Commissioner for Human Rights (OHCHR)[9].

19. ODIHR collected information through desk research, including using open-source investigation techniques to verify digital evidence, and in-person interviews during the reporting period. ODIHR conducted three monitoring visits within Ukraine, visiting Uzhhorod, Lviv, Kyiv and towns and villages within Kyiv region. ODIHR conducted 53 extensive in-person interviews (31 women, 18 men, and four interviews with married couples), with internally displaced persons (IDPs) 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 thanks to all the interviewees who provided testimony. In addition, ODIHR conducted open-source investigations and verification of digital data, and collected information from relevant intergovernmental organizations (IGOs) and non-governmental organizations (NGOs). ODIHR collected information from civil society in various forms, including by holding in-person meetings in Ukraine and other countries or at events organized by the OSCE and ODIHR. ODIHR sought information from the authorities of Ukraine and the Russian Federation regarding issues contained within this report. ODIHR made efforts to coordinate its work with other IGOs, to increase efficiency and to avoid duplication of work.

20. Prior to the deployment to Ukraine, ODIHR conducted scoping visits to Poland, Hungary, Moldova and Romania, mainly at the border crossings and in their vicinity, speaking to refugees who sought safety outside Ukraine, humanitarian workers and representatives of relevant authorities on the ground. These visits informed the report and strengthened its methodology.

21. All ODIHR monitors deploying to Ukraine have been trained in trauma-informed interviewing techniques and needed to apply human rights monitoring principles in practice, including the 'do no harm' principle, thus avoiding (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.

9 See the revised version here: <https://www.ohchr.org/en/publications/policy-and-methodological-publications/manual-human-rights-monitoring-revised-edition>.

22. ODIHR wishes to thank all who facilitated its work and the preparation of the interim report. This report would not have been possible without the co-operation of the authorities of Ukraine, the OSCE Project Co-ordinator in Ukraine, and other stakeholders and partners, including non-governmental organizations on the ground.

B. SCOPE AND TIMEFRAME

23. ODIHR began monitoring the conduct of hostilities for potential violations of IHL and IHRL, in line with its mandate, following the Russian Federation's attack in Ukraine on 24 February 2022.

24. In its monitoring activities, ODIHR prioritized the most pressing issues affecting the lives of civilians caught up in armed conflict and of prisoners of war (POWs). This included monitoring the use of means and methods of warfare prohibited under IHL, instances of wilful killings, torture and other inhumane and degrading treatment against persons in the power of the enemy, deportation of civilians, as well as denial of humanitarian relief to populations in need.

25. The report covers events that have occurred and were reported on between 24 February and 30 June 2022. It outlines events that took place in Ukraine, including in territories under Russian Federation military occupation, with the exception of the monitoring of the treatment of civilians or POWs removed from the territory of Ukraine. ODIHR considers the so-called "Luhansk People's Republic" and "Donetsk People's Republic" to be under the overall control of the Russian Federation. This means that they are involved in the same international armed conflict against Ukraine and are bound by the same IHL rules, and that the Russian Federation is responsible for their conduct under IHL.

C. STRUCTURE OF THE REPORT

26. The Interim 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. Under Chapter V, the following issues are covered by individual sub-chapters: i) indiscriminate attacks and targeting of civilian objects, with frequent attacks potentially violating international law; ii) the functioning of humanitarian corridors, or lack thereof, and the possibility for civilians to evacuate to safety and in a direction of their choosing; iii) the situation in the territories that are, or had been, temporarily occupied by the Russian Federation and/or armed groups opposing the Ukrainian authorities, with a broad elaboration of the overall administration of these areas, as well as individual alleged abuses and threats

to physical security, including extrajudicial execution, the use of sexual violence as a weapon of war, disappearances and torture; iv) the alleged abuses in the territory controlled by Ukraine; and v) the treatment of POWs.

27. Under Chapter VI, the report presents a number of recommendations, noting that a more thorough set of recommendations will be included in the comprehensive Final Report.

28. At the end of the Report, an Annexe outlines the relevant norms of IHL.

The Legal Framework Applicable to the Armed Conflict in Ukraine

IV

29. Since the beginning of the Russian Federation's military attack in Ukraine on 24 February 2022, the two States have been involved in an international armed conflict against each other, triggering the applicability of international humanitarian law (IHL).[10] IHL distinguishes between two categories of armed conflict: international and non-international. Belligerent occupation is a particular form of international armed conflict. 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[11] and their Additional Protocol I (AP I)[12] to which both the Russian Federation and Ukraine are parties, as well as in relevant rules of Customary IHL.[13] Also, both Ukraine and the Russian Federation are parties to several core human rights treaties. In situations of armed conflict, with the exception of lawful derogations provided for in some human rights treaties, States remain bound by their obligations under IHRL.

A. APPLICABLE INTERNATIONAL HUMANITARIAN LAW

30. The greater part of IHL provisions applicable to the present conflict and most relevant for the purpose of the Ukrainian Monitoring Initiative are included in the Four Geneva Conventions. These set forth specific rules for 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).[14] Moreover, Additional Protocol I supplements these protections and further details and codifies the rules on the means and method of warfare in international armed conflicts. The 1907 Hague Regulations[15] are also particularly relevant as they provide, among others, important provisions on the basic principles governing the regime of belligerent occupation.

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

11 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.

12 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.

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

14 It is a matter of debate whether the rules of IHL regulating belligerent occupation only start to apply once the enemy exercises full authority over a (part of a) territory, or, according to a functional approach, already during the invasion, as soon as a protected person falls into the power of the enemy. There may be different answers depending on the rule concerned. However, it seems reasonable to believe that, in order to avoid protection gaps and as far as the protection of civilians is concerned, the law of occupation should apply as soon as civilians fall into enemy hands outside the enemy's own territory. See also, *Moscow Mechanism Report*, 13 April 2022, pp. 7-8, <https://www.osce.org/files/f/documents/f/a/515868.pdf>.

15 Convention (IV) with its annexed Regulations concerning the Laws and Customs of War on Land, 18 October 1907 (Hague Regulations)..

31. With regard to the use of weapons, international law specifically prohibits the use of certain weapons under any circumstances and such prohibition is in most cases of a customary nature, which means that it binds all States regardless of their treaty commitments. This is the case, for instance, of the prohibition of biological[16] and chemical[17] weapons. 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. Both Ukraine and the Russian Federation are parties to the Convention on Certain Conventional Weapons (CCW)[18] and related Protocols prohibiting the use of non-detectable fragments (CCW Protocol I),[19] and blinding laser weapons (CCW Protocol IV),[20] and limiting the use of mines, booby-traps and other devices (CCW Protocol II),[21] as well as incendiary weapons (CCW Protocol III),[22] and explosive remnants of war (CCW Protocol V).[23] Furthermore, Ukraine is a party to the Convention on Anti-Personnel Landmines[24] whereas the Russian Federation is not and neither Ukraine nor the Russian Federation are parties to the widely ratified Convention on Cluster Munitions.[25] 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.

32. Lastly, all parties to the conflict are also bound by those provisions of IHL that are considered to be part of customary international law of international armed conflicts and that are included in the International Committee of the Red Cross (ICRC) database on Customary IHL.[26]

16 Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction, 10 April 1972.
17 Convention on the prohibition of the development, production, stockpiling and use of chemical weapons and on their destruction, 13 January 1993.
18 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, 10 October 1980.
19 CCW Protocol on Non-Detectable Fragments (Protocol I), 10 October 1980.
20 CCW Protocol on Blinding Laser Weapons (Protocol IV), 13 October 1995.
21 CCW Protocol (II) on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices. 10 October 1980.
22 CCW Protocol on Prohibitions or Restrictions on the Use of Incendiary Weapons (Protocol III). 10 October 1980.
23 CCW Protocol on Explosive Remnants of War (Protocol V), 28 November 2003.
24 Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, 18 September 1997.
25 Convention on Cluster Munitions, 30 May 2008.
26 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, <https://ihl-databases.icrc.org/customary-ihl/eng/docs/home>. See also, Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law* – Volume 1: Rules (CUP 2005).

B. APPLICABLE INTERNATIONAL HUMAN RIGHTS LAW

33. In addition to IHL, IHRL continues to apply in situations of armed conflict, including occupation.[27] The two legal frameworks apply in parallel and are complementary, meaning that one body of law may reinforce the protections provided by the other.[28] Generally, some situations might be exclusively regulated by IHL, some others may be exclusively regulated by IHRL and others might be regulated by both legal frameworks. In this latter scenario, issues may arise in terms of which norm prevails and the principle of the *lex specialis derogat legi generali* — which essentially means that more specific rules (in cases of international armed conflict that would be IHL) will prevail over more general rules — is commonly used to solve the conflict.[29] However, a case by case approach is generally recommended as well as following the logic put forward by the OHCHR stating that, "the more effective the control over persons or territory, the more human rights law would constitute the appropriate reference framework",[30] which is particularly relevant in situations of belligerent occupation.

34. Both Ukraine and the Russian Federation are parties to the core UN human rights treaties,[31] including 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). At present, both states are also parties to the European Convention on Human Rights (ECHR). However, as a result of the Russian Federation's expulsion from the Council of Europe,[32] the latter will no longer be bound by it after 16 September 2022. Accordingly, both parties to the conflict are bound by human rights obligations set out in these instruments in their own territory as well

27 International Court of Justice (ICJ), *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, 9 July 2004, para. 106; *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Judgment, I.C.J. Reports 168 (2005), para. 216.

28 Human Rights Committee, *General Comment no. 31: Nature of the General Legal Obligation on States Parties to the Covenant*, UN Doc. CCPR/C/21/Rev.1/Add.13, 26 May 2004, para. 11; see also Human Rights Council, Resolution 9/9, UN Doc. A/HRC/RES/9/9, 18 Sept 2008.

29 ICJ, *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, 8 July 1996, para.25; and ICJ, *Construction of a Wall*, para 106. For a more detailed analysis of the interplay between IHL and IHRL, see the *Moscow Mechanism Report*, 13 April 2022, pp. 53-54, <https://www.osce.org/files/f/documents/f/a/515868.pdf>.

30 OHCHR, *International legal protection of human rights in armed conflict*, Doc. HR/PUB/11/01, Nov 2011, p. 63.

31 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, 21 December 1965 (CERD), the Convention on the Elimination of All Forms of Discrimination against Women, 18 December 1979 (CEDAW), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 10 December 1984 (CAT), the Convention on the Rights of the Child, 20 November 1989 (CRC), and the Convention on the Rights of Persons with Disabilities, 13 December 2006 (CRPD).

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

as in territories over which they exercise jurisdiction or effective control.[33] 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 the emergency.[34] On 23 February, a State of Emergency was declared in Ukraine for a period of 30 days and the next day, on 24 February, the government of Ukraine imposed martial law[35] for a term of 30 days which was subsequently extended multiple times.[36] On 1 and 4 March, Ukraine notified the United Nations Secretary-General of the derogation from some of its human rights obligations[37] 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.

33 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: https://www.osce.org/files/f/documents/f/a/515868.pdf.

34 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.

35 Martial law was introduced on 24 February pursuant to Decree No. 64/2022 "On the Introduction of Martial Law in Ukraine".

36 On 22 May, the Ukrainian Parliament granted the request of President Zelenskyy to extend once again martial law for a period of 90 days, until 23 August 2022, <https://itd.rada.gov.ua/billInfo/Bills/Card/39638>.

37 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 270f 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 Nos. 4132/28-110-17625 and 4132/28-110-17626 of 1 March, <https://treaties.un.org/Pages/CNs.aspx?cnTab=tab2&clang=_en>.

Assessment of Alleged Violations of IHL and IHRL

V

A. INDISCRIMINATE ATTACKS TARGETING CIVILIANS AND CIVILIAN OBJECTS

35. The Russian Federation's armed attack in Ukraine has caused widespread destruction throughout the country and has had a devastating impact on the population leading to the death and injury of thousands of civilians. As of 30 June, OHCHR recorded 10,977 verified civilian casualties in the country among which 4,838 civilians killed and 6,139 injured. OHCHR believes that the actual numbers are considerably higher.[38] In addition, tens of thousands of civilian objects across the country, including multi-storey residential buildings and houses, medical establishments and educational institutions, have been damaged or destroyed.[39]

36. 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. These patterns allow it to make provisional conclusions regarding the degree of compliance with particular IHL norms by the warring parties.

37. Based on its monitoring activities, ODIHR has gathered credible evidence suggesting that the conduct of hostilities by the Russian Federation's armed forces in Ukraine is characterised by a general disregard for the basic principles of distinction, proportionality and precautions set out by IHL. The evidence collected suggests the extensive use by the Russian Federation's armed forces of explosive weapons with wide area effects in densely populated areas. In many documented cases such weapons were equipped with cluster munitions. Furthermore, ODIHR is gravely concerned by the use of siege warfare by the Russian Federation in the cities of Mariupol, Izium and Chernihiv, which have caused countless civilian casualties and a catastrophic humanitarian situation.

38. There are also indications that the Ukrainian armed forces have at times failed to comply with IHL rules on the conduct of hostilities by using explosive weapons with wide area effects in populated areas controlled by the *de facto* authorities of the so-called "Donetsk People's Republic" and "Luhansk People's Republic", as well as placing military objectives within or in the vicinity of civilian areas.

38 UN, Office of the High Commissioner for Human Rights, 'Ukraine: civilian casualty update 4 July 2022', <https://ukraine.un.org/en/190717-ukraine-civilian-casualties-17-july-2022>.

39 Ukrainian Civilian Objects Attacks and Casualties Interactive Map, at: <https://attacks.stopwar.team/> [last accessed 20 July 2022].

Attacks that prima facie constitute grave breaches of international humanitarian law

The attack on Mariupol Drama theatre

39. On 16 March at around 10 a.m. local time, the Donetsk Regional Academic Drama Theatre in Mariupol (Donetsk region) was destroyed by a powerful explosive, most likely an air bomb[40]. The theatre was serving as a shelter for hundreds of civilians, as well as a distribution point for water and food and a gathering point for evacuations. The exact number of civilians killed by the airstrike is unknown. There could have been anywhere from a few hundred to more than a thousand people in and around the theatre at the time of the attack, according to different estimates. Immediately after the attack, Mariupol city council announced that about 300 people had been killed.[41] A later investigation by the Associated Press[42] argued that up to 600 people may have been killed in the attack, while a recent report by Amnesty International suggests that the number of casualties is much lower than previously reported.[43]

40. The theatre was clearly recognizable as a civilian object, and civilian activity at the theatre was easily identifiable.[44] Several days prior to the attack, the word 'children' was painted in Russian, in large letters, on the ground outside the theatre, visible on satellite imagery.[45] According to an independent investigation conducted by Amnesty International, there was no legitimate military objective in the vicinity of the theatre, as well as no significant military presence in the area before or at the time of the attack.[46]

41. There are strong reasons to believe that the attack was carried out by the Russian armed forces. Amnesty International suggested that the airstrike was most likely carried out by a Russian fighter aircraft which dropped two 500 kg bombs on the theatre that struck close to each other and detonated simultaneously.[47]

40 "Ukraine: Mariupol Theatre Hit by Russian Attack Sheltered Hundreds", Human Rights Watch, 16 March 2022, <https://www.hrw.org/news/2022/03/16/ukraine-mariupol-theater-hit-russian-attack-sheltered-hundreds>.
41 "300 people were killed in Russian airstrike on Mariupol theatre, Ukrainian authorities say", CNN, 25 March 2022, <https://edition.cnn.com/2022/03/25/europe/ukraine-mariupol-theater-dead-intl/index.html>.
42 "AP evidence points to 600 dead in Mariupol theatre airstrike", Associated Press, 4 May 2022, <https://apnews.com/article/Russia-ukraine-war-mariupol-theater-c321a196fbd568899841b506afcac7a1>.
43 "Ukraine: 'Children': The attack on the Donetsk Regional Academic Drama Theatre in Mariupol", Amnesty International, 30 June 2022, London, p.3, <https://www.amnesty.org/en/documents/eur50/5713/2022/en/>.
44 *Ibid*, p.4.
45 "Russia bombed a theatre in Mariupol that had 'Children' written in Russian outside, satellite images show", Washington Post, 17 March, <https://www.businessinsider.com/russian-bombed-theater-had-children-written-nearby-satellite-images-2022-3?r=US&IR=T>.
46 "Ukraine: 'Children': The attack on the Donetsk Regional Academic Drama Theatre in Mariupol", Amnesty International, 30 June 2022, London, p.5, <https://www.amnesty.org/en/documents/eur50/5713/2022/en/>.
47 *Ibid*, p.33.

42. While the Russian Federation denied its involvement in the attack by claiming that the theatre was destroyed from within by the Ukrainian armed forces' Azov regiment as part of a 'false flag operation',[48] numerous survivors and eyewitnesses of the attack,[49] including witnesses interviewed by ODIHR monitors,[50] reported hearing the sound of an aircraft in the area immediately before the strike. If the circumstances of the case are confirmed, it is reasonable to conclude that, in attacking the theatre, the Russian Federation deliberately targeted civilians in blatant disregard of the principle of distinction under IHL.[51] Indiscriminate attacks are prohibited under IHL and amount to war crimes.[52]

The attack on the railway station in Kramatorsk

"I saw that my daughter had no trainers on her feet, then I realised that she had no feet."
— A survivor of the Kramatorsk attack interviewed by ODIHR[53]

43. On 8 April at around 10:30 a.m. local time, the railway station in Kramatorsk (Donetsk region) was hit by a missile.[54] There were about four thousand civilians at the station at the time of the attack, waiting to be evacuated by train.[55] As a result of the attack, 60 civilians were killed (seven of whom were children) and 111 were injured (including six children).[56] Many of those injured lost limbs, including a survivor of the attack who was interviewed by ODIHR monitors, who lost her leg and whose daughter lost her feet from the explosions.[57]

44. It was later established that the weapon used in the attack was a Tochka-U missile equipped with cluster munitions.[58] Contrary to the claims

48 "Ukraine says Russia strikes Mariupol theatre sheltering residents, Moscow denies attack", Reuters, 16 March 2022, at: <https://www.reuters.com/world/russian-bombing-hits-theatre-mariupol-sheltering-residents-city-council-2022-03-16/>.
49 "Ukraine: 'Children': The attack on the Donetsk Regional Academic Drama Theatre in Mariupol", Amnesty International, 30 June 2022, London, p.32, <https://www.amnesty.org/en/documents/eur50/5713/2022/en/>.
50 ODIHR Witness Interviews UKR.WS.028 at para. 26; UKR.WS.034 at para. 18.
51 Additional Protocol I, art. 48.
52 Additional Protocol I, art. 51(4); ICC Statute art. 8(2)(b)(i) and (ii). For a more detailed analysis on the IHL principles regulating the conduct of hostilities see Annexe.
53 ODIHR Witness Interview UKR.WS.038 at para.14.
54 "Ukraine war: What do we know about the Kramatorsk train station attack", Euronews with AP, AFP, 8 April 2022, <https://www.euronews.com/2022/04/08/ukraine-war-what-do-we-know-about-the-kramatorsk-train-station-attack>.
55 "4,000 people were at the train station in Kramatorsk during the missile attack", Suspilne Novyny, 8 April, <https://suspilne.media/226565-u-kramatorsku-na-vokzali-pid-cas-raketnogo-udaru-znahodilos-4-tisaci-ludej/>.
56 "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, Reporting period: 24 February–15 May 2022, 29 June 2022, at para. 32.
57 ODIHR Witness Interview UKR.WS.038 at para. 14.
58 "Kramatorsk station attack: What we know so far", BBC, 9 April, <https://www.bbc.com/news/world-europe-61036740>.

by the Russian Federation,[59] there is substantial evidence indicating that its armed forces have been using Tochka-U systems during the current conflict.[60]

45. Between 24 February and 15 May 2022, OHCHR was able to identify and corroborate at least ten attacks by the Russian Federation armed forces and 25 attacks by Ukrainian armed forces using Tochka-U missiles.[61]

46. Ukraine claimed that it was the Russian Federation armed forces who deliberately targeted civilians at the train station that day.[62] The Russian Federation denied responsibility for the attack, arguing that it had not planned any military operations close to Kramatorsk.[63] Based on the collected evidence, it is reasonable to believe that the Russian Federation deliberately attacked civilians seeking safety at Kramatorsk train station in violation of the principle of distinction.[64] Indiscriminate attacks are strictly prohibited under IHL and amount to war crimes.[65]

The use of explosive weapons in populated areas, including cluster munitions

"Shelling was coming from all sides, and during the night it was as light as during the daytime"
— A resident of the Saltivka neighbourhood of Kharkiv, interviewed by ODIHR[66]

47. According to OHCHR, most of the civilian deaths and injuries which have occurred in Ukraine since 24 February have been caused by the use of explosive weapons with a wide impact area, including shelling from heavy artillery and multi-launch rocket systems, missiles and air strikes.[67]In many documented cases such weapons were carrying cluster munitions.[68]

59 "Tochka-U missiles not in service in Russian armed forces – mission to UN", TASS, 16 March 2022, <https://tass.com/politics/1423317>.
60 "Russia's Kramatorsk 'Facts' Versus the Evidence", Bellingcat, 14 April 2022, <https://www.bellingcat.com/news/2022/04/14/russias-kramatorsk-facts-versus-the-evidence/>.
61 "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, Reporting period: 24 February–15 May 2022, 29 June 2022, para. 30, <https://www.ohchr.org/sites/default/files/documents/countries/ua/2022-06-29/2022-06-UkraineArmedAttack-EN.pdf>.
62 Iryna Venediktova, Telegram, 8 April, <https://t.me/pgo_gov_ua/3595>.
63 Russian Ministry of Defence, Facebook, 8 April 2002, <https://www.facebook.com/mod.mil.rus/posts/3200528216856579>.
64 Additional Protocol I, art. 48.
65 Additional Protocol I, art. 51(4); ICC Statute art. 8(2)(b)(i) and (ii). For a more detailed analysis on the IHL principles regulating the conduct of hostilities see Annexe.
66 ODIHR Witness Interview UKR.WS.007 at para. 7.
67 "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. 26, <https://www.ohchr.org/sites/default/files/documents/countries/ua/2022-06-29/2022-06-UkraineArmedAttack-EN.pdf>.
68 *Ibid*, para. 27; See also: "Intense and Lasting Harm: Cluster Munitions attacks in Ukraine, May 2022", Human Rights Watch, < https://www.hrw.org/report/2022/05/11/intense-and-lasting-harm/cluster-munition-attacks-ukraine'>.

48. Overwhelming evidence gathered by international governmental and non-governmental human rights organisations, such as OHCHR, Amnesty International and Human Rights Watch, shows that the Russian Federation's armed forces have been routinely using weapons that are very likely to have indiscriminate effects,[69] such as unguided artillery and unguided aerial bombs, often equipped with cluster munitions, in their attacks on densely populated urban areas across Ukraine. In cities like Mariupol[70], Kharkiv,[71] Izium,[72] Borodianka,[73] Chernihiv[74] and Mykolaiv[75] the continuous shelling of residential neighbourhoods with highly inaccurate weapons has led to the death and injury of hundreds of civilians, as well as the wholesale destruction of civilian housing and vital infrastructure.

49. There are numerous well-documented cases[76] where the use of explosive weapons with wide-area effects in populated areas by the Russian Federation armed forces has led to a high number of civilian casualties, each of which raises concerns about the respect of the principle of proportionality and of the prohibition of indiscriminate attacks under IHL[77]. For instance, on 3 March, a Russian aircraft dropped several unguided bombs at an intersection on Chornovola Street in a residential neighbourhood in the centre of Chernihiv. Forty-seven civilians were killed and 32 were wounded in the attack, according to local authorities.[78] On 15 April, the Russian Federation's armed forces fired cluster munitions around Myru Street in a residential neighbourhood southeast of the city centre of Kharkiv, killing at least nine

69 For a more detailed analysis on the use of weapons under IHL, see Annexe.
70 "Ensure safe passage, aid for Mariupol civilians", Human Rights Watch, 21 March 2022, <https://www.hrw.org/news/2022/03/21/ukraine-ensure-safe-passage-aid-mariupol-civilians>.
71 "Anyone can die at any time: Indiscriminate attacks by the Russian armed forces in Kharkiv, Ukraine, June 2022", Amnesty International, <https://www.amnesty.org/en/latest/news/2022/06/ukraine-hundreds-killed-in-relentless-russian-shelling-of-kharkiv-new-investigation/>; see also "Ukraine: Deadly Attacks Kill, Injure Civilians, Destroy Homes", 18 March 2022, Human Rights Watch, <https://www.hrw.org/news/2022/03/18/ukraine-deadly-attacks-kill-injure-civilians-destroy-homes>.
72 "Beleaguered town of Izium at breaking point after constant attack from Russian forces: new testimony", Amnesty International, 16 March 2022, <https://www.amnesty.org/en/latest/news/2022/03/ukraine-beleaguered-town-of-izium-at-breaking-point-after-constant-attack-from-russian-forces-new-testimony/>.
73 "He is not coming back. War crimes in Northwest areas of Kyiv Oblast", Amnesty International, 6 May 2022, p. 21, < https://www.amnesty.org/en/documents/eur50/5561/2022/en/>.
74 "Russian strikes killed scores civilians in Chernihiv", 10 June 2022, Human Rights Watch, <https://www.hrw.org/news/2022/06/10/ukraine-russian-strikes-killed-scores-civilians-chernihiv>.
75 "Cluster munitions repeatedly used on Mykolaiv", 17 March 20202, Human Rights Watch, <https://www.hrw.org/news/2022/03/17/ukraine-cluster-munitions-repeatedly-used-mykolaiv>.
76 "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 Reporting period: 24 February – 15 May 2022, 29 June 2022, para. 27, <https://www.ohchr.org/sites/default/files/documents/countries/ua/2022-06-29/2022-06-UkraineArmedAttack-EN.pdf>; see also: "Russia's Use of Cluster Munitions and Other Explosive Weapons Shows Need for Stronger Civilian Protections", Human Rights Watch, 21 March 2022, <https://www.hrw.org/news/2022/03/21/russias-use-cluster-munitions-and-other-explosive-weapons-shows-need-stronger>.
77 Additional Protocol I, arts. 51(5)(b) and 51(4)(b) and (c). For a more detailed analysis on these principles see Annexe.
78 Chernihiv Region Military Administration website 3 March 2022, <https://cg.gov.ua/index.php?id=452667&tp=page>.

civilians and injuring more than 35 (including several children).[79] On 27 June, at least 18 civilians were killed and 59 injured (25 of them taken to intensive care) in a Russian missile strike on a shopping centre in Kremenchuk (Poltava region), according to the State Emergency Service of Ukraine.[80] As of 29 June, 36 people remained missing, as rescue efforts continued.[81]

50. There are also allegations concerning the use by Ukrainian armed forces of weapons that are very likely to have indiscriminate effects, including cluster munitions, in attacks on populated areas in the eastern part of the country that have killed and injured civilians. For example, on 14 March, the *de facto* authorities of the so-called "Donetsk People's Republic" claimed to have intercepted a Ukrainian Tochka-U missile carrying cluster munitions over the centre of Donetsk.[82] Following the detonation of sub-munitions at the missile crash site, 17 civilians were reportedly killed and 36 were injured.[83] Ukrainian armed forces denied any involvement in the attack.[84] In addition, between 24 February and 15 May 2022, OHCHR managed to document at least 20 incidents where Ukrainian missiles carrying cluster sub-munitions hit populated areas. Ten such incidents have resulted in at least 279 civilian casualties, among which 83 were killed and 196 were injured.[85]

51. Neither the Russian Federation nor Ukraine are parties to the widely ratified 2008 Convention on Cluster Munitions[86] banning the use of such weapons. However, any weapon the use of which is not specifically prohibited under international law must respect the basic IHL principles of distinction, proportionality and precautions. Thus, in the present conflict, weapons that may not be indiscriminate by design, if used under specific circumstances, such as in densely populated areas, can still breach the prohibition of indiscriminate attacks. This is the case of the use of explosive weapons with wide-area effects and, in particular, cluster munitions in residential areas.[87]

79 "Anyone can die at any time: Indiscriminate attacks by the Russian armed forces in Kharkiv, Ukraine, June 2022", Amnesty International, <https://www.amnesty.org/en/latest/news/2022/06/ukraine-hundreds-killed-in-relentless-russian-shelling-of-kharkiv-new-investigation/>.
80 Emergency service of Ukraine, Facebook page, 28 June 2022, <https://www.facebook.com/MNS.GOV.UA/posts/pfbidoqwLkkWJPXF9VFhuR4SKSXMG2PEqmDYvaZPVJxpGjpU8CqsccMZtgzoaLTx2ty5Bxl>.
81 Dmytro Lunin, Telegram, 28 June 2022, <https://t.me/DMYTROLUNIN/2739>.
82 "Pushilin says Tochka-U missile shot down over Donetsk was carrying cluster munitions", TASS, 14 March 2022, <https://tass.ru/mezhdunarodnaya-panorama/14060121>.
83 Letter from the permanent representative of the Russian Federation to the United Nations, addressed to the Secretary-General and the President of the Security Council, 15 March 2022, <https://digitallibrary.un.org/record/3968732>.
84 "In Donetsk, 20 people died as a result of a rocket hit. 'This is definitely a Russian missile' — Ministry of Defence of Ukraine", RFE/RL website, 14 March 2022, <https://www.radiosvoboda.org/a/news-donetsk-raketa-20-zahyblyh/31752622.html>.
85 "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.30, <https://www.ohchr.org/sites/default/files/documents/countries/ua/2022-06-29/2022-06-UkraineArmedAttack-EN.pdf>.
86 As of 30 June 2022, 110 states have ratified the convention on Cluster Munitions and 13 more have signed the convention but have not yet ratified it. See: United Nations treaty collection Convention on Cluster Munitions at: <https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XXVI-6&chapter=26&clang=_en>.
87 For a more detailed analysis on the use of weapons under IHL, see Annexe.

Attacks on medical facilities and educational institutions

52. Since the beginning of the armed conflict, numerous hospitals and schools[88] in Ukraine have been coming under attack in apparent violation of their protected status under international humanitarian law.[89] The Ministry of Health of Ukraine reported that, between 24 February and 18 May, 628 medical facilities were damaged and at least 100 were completely destroyed.[90] During the same period, OHCHR managed to verify the damage and destruction of 182 medical facilities.[91] According to the Ministry of Education and Science of Ukraine, 1,899 educational facilities had been damaged and 215 destroyed in hostilities as of 30 June.[92] OHCHR verified 230 attacks against educational institutions between 24 February and 15 May, while noting that the real figures are considerably higher.[93] According to OHCHR, most of the hospitals and schools have been damaged by the use of explosive weapons in populated areas.[94]

53. The reported number of attacks against hospitals and schools suggests that the Russian Federation armed forces have been acting with overall disrespect for their protected status under IHL by either damaging them in indiscriminate shelling or, in some cases, by deliberately targeting them. For instance, on 24 February, a Russian ballistic missile carrying cluster munitions struck just outside a hospital in Vuhledar (Donetsk region), killing four civilians and injuring ten (including six healthcare workers).[95] On 25 February, an Uragan rocket dropped cluster munitions on the Sonechko nursery and kindergarten in Okhtyrka (Sumy region), that was being used as a shelter by local residents. As a result of the attack, three civilians were killed (including one child), and another child was injured.[96] On 9 March, fully operational maternity hospital No.3 in Mariupol was hit by an airstrike. At least 17 civilians were injured in the attack, one of whom was a woman in the very late stage of pregnancy,

88 The numbers provided in the report are estimates by Ukrainian officials and OHCHR. Real numbers are considerably higher and require further verification following the active phase of the armed conflict.

89 Medical facilities and their personnel benefit from a special protection under IHL and should never be targeted. For more information on the protection afforded to hospitals and schools under IHL, see Annexe.

90 Ministry of Health of Ukraine, Telegram, 18 May 2022, <https://t.me/mozofficial/2460>.

91 "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 51, <https://www.ohchr.org/sites/default/files/documents/countries/ua/2022-06-29/2022-06-UkraineArmedAttack-EN.pdf>.

92 Ministry of Education and Science of Ukraine, website, <http://saveschools.in.ua/en/>.

93 "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. 52, <https://www.ohchr.org/sites/default/files/documents/countries/ua/2022-06-29/2022-06-UkraineArmedAttack-EN.pdf>.

94 *Ibid*. para. 50

95 "Ukraine: grave concern", UN, Office of the High Commissioner for Human Rights, Press Briefing Note, 12 March 2022, <https://www.ohchr.org/en/press-briefing-notes/2022/03/ukraine-grave-concerns>.

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

who later died from the injuries she sustained. The foetus could not be saved either.[97]

54. There are also allegations of schools and hospitals being damaged and destroyed by Ukrainian armed forces in the territories controlled by the *de facto* authorities of the so-called "Donetsk People's Republic" and "Luhansk People's Republic".[98]

55. In addition, several incidents were reported to ODIHR monitors during interviews where Russian and Ukrainian armed forces used hospitals and schools or were stationed next to them, endangering the civilian population.[99]

B. THE USE OF METHODS OF WARFARE IN CONTRAVENTION OF IHL

Placement of military positions near civilian objects and the use of 'human shields'

56. There is evidence that both the Russian Federation and Ukrainian armed forces have been placing their military positions in residential areas or near civilian objects, thereby endangering the civilian population. According to witness testimonies collected by ODIHR monitors, in Mariupol and Bucha the Russian Federation armed forces were often stationed in empty apartments or yards of private houses, from where they were launching their military operations.[100] For instance, a resident of Mariupol explained that "Russian troops would normally enter abandoned buildings and would station themselves there. They would put their machine guns into the civilian apartments and then open fire from the apartments. The Ukrainian armed forces could not return fire because they did not know if there were civilians [present]."[101] Similarly, Amnesty International received witness reports, according to which Ukrainian armed forces took up positions in residential neighbourhoods and launched strikes from them in various districts of Kharkiv.[102] These acts contravene the IHL principle of precautions against the effect of attacks, whereby the parties to the conflict must avoid, to the maximum extent feasible, locating military

97 "Ensure Safe Passage, Aid for Mariupol Civilians", Human Rights Watch, 21 March 2022, <https://www.hrw.org/news/2022/03/21/ukraine-ensure-safe-passage-aid-mariupol-civilians>.
98 "Hospital building in Donetsk damaged in artillery fire", Donetsk News Agency, 13 June 2022, <https://dan-news.info/pravoporyadok/zdanie-bolnicy-v-donecke-povrezhdeno-ognem-ukrainskoj-artillerii/>; see also: <https://lug-info.com/news/tri-sotrudnika-bol-nicy-v-severodonecke-pogibli-pri-obstrele-vsu-narodnaya-miliciya>; <https://lug-info.com/news/dva-zhitelya-debal-cevo-poluchili-raneniya-pri-obstrele-vsu-povrezhdeny-doma-shkola-detsad>.
99 ODIHR Witness Interviews UKR.WS.023 at paras. 8, 20; UKR.WS.002 at p. 6; UKR.WS.047 at paras 16-17.
100 ODIHR Witness Interviews UKR.WS.042 at para. 23; UKR.WS.044 at para. 39; UKR.WS.036 at para. 19.
101 ODIHR Witness Interview UKR.WS.036 at para. 19.
102 "Anyone can die at any time: Indiscriminate attacks by the Russian armed forces in Kharkiv, Ukraine, June 2022", Amnesty International, <https://www.amnesty.org/en/latest/news/2022/06/ukraine-hundreds-killed-in-relentless-russian-shelling-of-kharkiv-new-investigation/>.

objectives within or near densely populated areas in order to refrain from endangering civilians.[103]

57. There are also reports of the use of 'human shields' by both Russian and Ukrainian armed forces. According to OHCHR, at the time when the village of Yahidne (Chernihiv region) was controlled by the Russian Federation armed forces, 360 civilians (including 74 children and 5 persons with disabilities) were forced to stay for 28 days in the basement of a school that Russian Federation armed forces were using as a base. Because of the deplorable living conditions in the basement, ten older people died.[104] In early March, Ukrainian forces made their base in a care home for older people and persons with disabilities in Stara Krasnyanka (Luhansk region). The care home could not be evacuated because the surroundings had been mined by Ukrainian forces. Exchanges of fire between Ukrainian forces posted in the care home and approaching Russian affiliated armed groups escalated until, on 11 March, the latter attacked the care home with heavy weapons killing an unknown number of patients and staff.[105] These incidents raise serious concern about the use of the presence of civilians to render certain areas immune from military operations.

Siege as a method of warfare

"At this point airstrikes were everywhere, we cooked under fire and bomb explosions."
— A resident of Mariupol interviewed by ODIHR Monitors.[106]

58. In the course of the armed conflict, Ukrainian cities and towns, including Mariupol, Izium and Chernihiv, have been fully or partially besieged by Russian armed forces for various periods of time. In most of the besieged areas, civilians were unable to leave safely and were at increased risk of being targeted or subjected to indiscriminate attacks. In all instances, the siege included full or partial encircling of the city, heavy bombardment, and in the majority of cities this was combined with intense street fighting between Ukrainian and Russian armed forces. The siege of Ukrainian cities, whether full or partial, long or short, caused major destruction of residential buildings and severe damage to civilian infrastructure which resulted in partial or full deprivation of basic needs in water, food, medicine, heating and electricity supplies for the civilian population. Residents of the besieged cities were often trapped in their apartments or shelters for prolonged periods of time, with

103 Additional Protocol I, art. 58(b), for more detailed information on the principle of precautions see Annexe.
104 "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. 37.
105 *Ibid*, paras 35-36.
106 ODIHR Witness Interview UKR.WS.034 at para. 15.

almost no access to essential goods and were heavily dependent on the delivery of humanitarian aid which was often intentionally obstructed.[107]

59. In the city of Mariupol, the consequences of the Russian siege, that lasted almost two months until the surrender of Ukrainian forces, were particularly catastrophic. As a result of extensive shelling and bombardments of the city, up to 90 per cent of residential buildings have been damaged or destroyed.[108] The damage to and destruction of other civilian objects and infrastructure has also been massive. From the first days of the siege, the city was cut off from electricity, gas and water supplies, and the centralized sewage system ceased to function.[109] All hospitals in the city were reportedly damaged and destroyed.[110] Civilians were dying not only as a direct consequence of hostilities, but also because of the lack of access to life saving medicines and medical care. According to OHCHR, between February and the end of April, Mariupol was "likely the deadliest place in Ukraine".[111]

60. IHL does not prohibit the use of sieges *per se* as a method of warfare. Nonetheless, considering that such practice entails a partial or complete isolation of the besieged area with the view of obtaining surrender or annihilation of the adversary, when civilians are involved there are a number of IHL provisions that will inevitably be in contradiction to siege warfare.[112] In the present context, the most important ones are the prohibition of starvation of the civilian population,[113] which may amount to a war crime under the ICC Statute,[114] and the prohibition of attacking, destroying, removing or rendering useless objects indispensable to the survival of the civilian population (e.g. foodstuffs, agricultural areas, crops, livestock, drinking water and irrigation systems).

107 "Ensure safe passage, aid for Mariupol civilians", Human Rights Watch, 21 March 2022, <https://www.hrw.org/news/2022/03/21/ukraine-ensure-safe-passage-aid-mariupol-civilians>; see also "Ukraine: Civilians in Besieged Chernihiv Need Access to Essentials", Human Rights Watch, 31 March 2022, <https://www.hrw.org/news/2022/03/31/ukraine-civilians-besieged-chernihiv-need-access-essentials>; "Ukraine: Beleaguered town of Izium at breaking point after constant attach from Russian forces – new testimony", Amnesty International, 16 March 2022, <https://www.amnesty.org/en/latest/news/2022/03/ukraine-beleaguered-town-of-izium-at-breaking-point-after-constant-attack-from-russian-forces-new-testimony/>.

108 "Mariupol Mayor Cites 'Thousands Dead', Says 'Complete Evacuation' Needed", RFE/RL website, 27 March 2022, < https://www.rferl.org/a/lviv-attack-humanitarian-corridors/31772646.html>.

109 ODIHR Witness Interviews UKR.WS.026 at paras 12-21; UKR.WS.034 at paras 7-10; UKR.WS.034 at paras 10-11.

110 UN, Office of the High Commissioner for Human Rights, High Commissioner updates the Human Rights Council on the situation in Mariupol, Ukraine, Statement, 16 June 2022, <https://www.ohchr.org/en/statements/2022/06/high-commissioner-updates-human-rights-council-mariupol-ukraine>.

111 *Ibid*.

112 Among others, the prohibition of collective punishment (art. 33 GC IV; art. 75 AP I; and Customary IHL Rule 103) and the prohibition of human shields (GC III, art. 23; GC IV, art. 28; AP I, art. 51(7); and Customary IHL Rule 97). *See*, EJIL:Talk!, G. Gaggioli, *Joint Blog Series on International Law and Armed Conflict: Are Sieges Prohibited under Contemporary IHL?*, 30 January 2019, available at:<https://www.ejiltalk.org/joint-blog-series-on-international-law-and-armed-conflict-are-sieges-prohibited-under-contemporary-ihl/>.

113 AP I, Art 54(1); and Customary IHL Rule 53.

114 ICC Statute, Article 8(2)(b)(xxv).

61. The number of civilian casualties,[115] the degree of destruction of civilian objects and infrastructure, coupled with the impossibility of safely evacuating the city and the intentional obstruction of humanitarian aid delivery, as well as the inhumane conditions in which the residents of areas under siege were forced to live, infer an unlawful use of siege warfare by the Russian Federation entailing a plethora of violations of IHL.[116]

C. THE HUMANITARIAN SITUATION IN AREAS AFFECTED BY THE ARMED CONFLICT

62. The great majority of victims interviewed by ODIHR have had a direct experience of shelling since the Russian Federation military attack in Ukraine began on 24 February. The situation has been especially difficult in the regions of Kyiv, Chernihiv, Sumy, Kharkiv, Donetsk, Luhansk, Zaporizhzhia, Kherson, and Mykolaiv. A witness from Mariupol told ODIHR monitors that shelling of the city was constant from day one of the war. Electricity, water, and gas were cut off and the heating was stopped on 2 March, while television, telephone and internet connections were unavailable as of 6 March. In order to survive people had to melt snow and get water from rain puddles as the ability to move around the city to get water from wells was very limited due to constant fighting. There was no food or medicine as all shops as well as pharmacies and the majority of hospitals had closed down or were destroyed.[117] According to other interviewees, the situation was even worse in smaller towns such as Rubizhne and Volnovakha where, due to ongoing street fights, residents were forced to stay in shelters and basements for dozens of days in a row in a permanent atmosphere of fear and intimidation, with no possibility to purchase water and food.[118] State services did not function and people could only receive assistance from volunteers who acted in a personal capacity. Similar situations with scarcity of food, little or no access to water, electricity and heating were described by interviewees from Kharkiv, Izum, Irpin, and Chernihiv. The electricity and gas supplies were intermittent in the cities of Kherson, Melitopol and Sumy. This information is confirmed by the reports of other organizations conducting independent assessment and monitoring[119] as well as by official statements from the Ukrainian authorities.[120]

115 In Mariupol, which is now under Russian control, the number of civilian casualties as a result of the siege remains unknown.
116 For a more detailed analysis of the use of siege under IHL see Annexe.
117 ODIHR Witness Interview UKR.WS.028 at paras 7–8.
118 ODIHR Witness Interviews UKR.WS.011 at paras 8–10; UKR.WS.016 at para. 7; UKR.WS.017 at para. 23.
119 "Ukraine: Russia's cruel siege warfare tactics unlawfully killing civilians — new testimony and investigation", Amnesty International, 1 April 2022, <https://www.amnesty.org/en/latest/news/2022/04/ukraine-russias-cruel-siege-warfare-tactics-unlawfully-killing-civilians-new-testimony-and-investigation/>.
120 Official Telegram channels of Head of Chernihiv military state administration Viacheslav Chaus, <https://t.me/chernigivskaODA/575>, Head of Luhansk region military administration Serhiy Haidai, at: Telegram: Contact @luhanskaVTSA, Head of Donetsk region military administration Pavlo Kyrylenko, at: Telegram: Contact @pavlokyrylenko_donoda, Head of Kherson region military administration Hennadii Lahuta, at: Telegram: Contact @khersonskaODA, Head of Zaporizhzhia region military administration Oleksandr Satukh, at: Telegram: Contact @starukhofficial.

Obstacles to the delivery of humanitarian assistance

63. Based on the assumption that each party to the armed conflict bears primary responsibility to meet the humanitarian needs of the population under its control, IHL stipulates that when such needs are not adequately fulfilled, the parties concerned must agree to relief schemes offered by impartial humanitarian organizations as well as allow and facilitate the rapid and unimpeded passage of such essential aid in territories under their control.[121]

64. In order to facilitate the evacuation of civilians from areas of active combat and to allow the delivery of humanitarian assistance, on 3 March Ukrainian and Russian Federation officials agreed to periodically establish humanitarian corridors.[122] Despite official arrangements, in the following months, effective and safe humanitarian corridors agreed by both parties were very rarely established.

65. Delivery and distribution of humanitarian aid has often been unsafe and ineffective. A witness from Chernihiv told ODIHR monitors that it was incredibly difficult to get humanitarian aid without being exposed to great danger. According to the interviewee, drones were flying over the city and, when people were spotted queueing for humanitarian assistance, attacks on this area would start, making it impossible to get the aid safely.[123] Another interviewee from Nova Kakhovka claimed that Russian forces would not allow international or Ukrainian humanitarian aid into the city. According to the witness, the Russians brought some humanitarian supplies such as food and medicine to the city but, instead of giving it to people, the aid was sold.[124] Ukrainian officials accused the Russian Federation forces of preventing and blocking delivery of humanitarian aid from Ukrainian-controlled territories.[125] The Ukrainian Red Cross Society also voiced its concern about the lack of agreement to a ceasefire by the parties, making the delivery of international humanitarian aid almost impossible.[126] This preliminary evidence indicates that the Russian Federation armed forces and those of the so-called "Donetsk People's Republic" and "Luhansk People's Republic" did not facilitate the rapid and unobstructed passage of humanitarian assistance and contributed to the worsening of the devastating humanitarian crisis in areas affected by the armed conflict in contravention of IHL.

121 For a more detailed analysis of humanitarian access under IHL see Annexe.
122 "Russia and Ukraine agreed on humanitarian corridors. There may be no fire in some towns and villages", BBC, 3 March 2022, <https://www.bbc.com/ukrainian/news-60594131>.
123 ODIHR Witness Interview UKR.WS.002 at para. 7.
124 ODIHR Witness Interview UKR.WS.005 at para. 10.
125 "Ukraine accuses Russia of blocking aid convoy to besieged Mariupol", Pavel Polityuk and Natalia Zinets, REUTERS, 15 March 2022, <https://www.reuters.com/world/europe/ukraine-aims-deliver-aid-mariupol-open-more-humanitarian-corridors-2022-03-15/>.
126 Statement of Maksym Dotsenko, Director–general of the Ukrainian Red Cross Society, Press briefing, 30 March 2022, <https://www.euractiv.com/section/health-consumers/news/red-cross-humanitarian-aid-cannot-reach-ukrainian-cities-where-hostilities-continue/>.

The evacuation of civilians from areas affected by the conflict

66. The number of agreed humanitarian corridors allowing the safe evacuation of civilians has been limited and information about their time and place was often communicated at the very last moment which affected civilians' ability to use them. In addition, even when passing through agreed humanitarian corridors, civilians had to go through numerous checkpoints; the Russian Federation armed personnel and representatives of the so-called "Luhansk People's Republic" and "Donetsk People's Republic" armed forces would decide whether the evacuation could continue and who was allowed to pass through that day. One witness told ODIHR monitors that the evacuation transport provided by the Ukrainian authorities was not suitable for people who had difficulties in movement or other disabilities preventing them from evacuating.[127]

67. Given the scarcity and ineffectiveness of agreed humanitarian corridors, despite the great risks incurred, many desperate people from besieged and fully occupied areas of Ukraine decided to evacuate by their own means with the assistance of local volunteers outside the agreed humanitarian corridors. As reported by witnesses interviewed by ODIHR, who unlike others were able to flee, harassment and other abuses by armed forces of the Russian Federation and/or the so-called "Donetsk People's Republic" and "Luhansk People's Republic" at checkpoints was standard practice. One of the ODIHR's interviewees who fled Mariupol had attempted to evacuate from Berdyansk twice (on 18 and 20 April respectively)[128] through officially agreed humanitarian corridors. Each time she was turned back at the very last checkpoint by Russian Federation forces who stated that they had no plans to open humanitarian corridors on those days.[129] Only when the interviewee attempted to use smaller, unofficial roads and opted to bribe Russian troops at the checkpoint did she, and the driver travelling with her, pass through.[130] Several other interviewees confirmed that the Russian Federation armed forces and/or representatives of the so-called "Luhansk People's Republic" and "Donetsk People's Republic" were demanding bribes in either money or cigarettes and food at checkpoints.[131] Another witness interviewed by ODIHR recalled that, when he had reached the final checkpoint, Russian soldiers told him that after that checkpoint was Ukrainian territory and that he had three minutes to reach it before they would start shooting at him.[132]

127 ODIHR Witness Interview UKR.WS.026 at para. 53.
128 ODIHR Witness Interview UKR.WS.028 at paras 40–42.
129 ODIHR Witness Interview UKR.WS.028 at para. 42.
130 ODIHR Witness Interview UKR.WS.028 at para. 43.
131 ODIHR Witness Interviews UKR.WS.002 at para. 20; UKR.WS.022 at para. 20.
132 ODIHR Witness Interview UKR.WS.011 at para. 7.

The deportation of civilians from occupied territories

68. According to OHCHR, Russian armed forces and armed groups of the so-called "Luhansk People's Republic" and "Donetsk People's Republic" were offering and guaranteeing safety to those who wished to evacuate from Mariupol only along evacuation routes leading to territory controlled by the so-called "Luhansk People's Republic" and "Donetsk People's Republic", or to the Russian Federation.[133] This was also confirmed by ODIHR's interviews with evacuated civilians from Mariupol,[134] Rubizhne[135]and Troitske.[136] Additionally, reports from civil society organizations and the media are consistent in highlighting that, from Mariupol and other cities of the Donbas region, the evacuations 'offered' more or less forcefully by the Russian authorities would only be directed at the territory of the Russian Federation and territories controlled by the so-called "Luhansk People's Republic" and "Donetsk People's Republic".[137] The Russian Federation denied accusations of forced deportation of Ukrainians and stated that people chose to leave voluntarily.[138]

69. Presently, it is not possible accurately to assess the scale of civilian deportation from Russian-occupied territories to the territory of the Russian Federation or to the territories controlled by the so-called "Luhansk People's Republic" and "Donetsk People's Republic". This is mainly due to lack of access to the territories concerned as well as very contradicting figures from the authorities of both parties to the conflict. Also, it is difficult to assess the type of coercion, if any, exercised over these people in order to carry out such deportations. IHL strictly prohibits individual or mass deportation of the civilian population within or outside occupied territory regardless of the motive.[139] Forced deportation of civilians outside occupied territories is a grave breach of IHL[140] and constitutes a war crime.[141] The fact that the Russia Federation claims that deportations were 'voluntary' may not be relevant in assessing their lawfulness. Indeed, deportations can be 'forcible', even in the absence of physical force, through the creation by the Russian Federation of a coercive environment, such as the one caused by conflict-related violence,

133 "Situation of human rights in Ukraine in the context of the armed attack by the Russian federation. 24 February – 15 May 2022", UN OHCHR Report, 29 June 2022, p. 19, <https://www.ohchr.org/sites/default/files/documents/countries/ua/2022-06-29/2022-06-UkraineArmedAttack-EN.pdf?fbclid=IwAR3AZC5fGvTs7nq3sp3UQtnHy3BOStwFbtOOIhbboux6hN9Cgk_1WzhtMj4>.
134 ODIHR Witness Interview UKR.WS.033 at para. 20.
135 ODIHR Witness Interview UKR.WS.017 at paras 29-30.
136 ODIHR Witness Interview UKR.WS.030 at paras 61-62.
137 "Mariupol says Russia forcefully deported thousands of people", Reuters, 20 March 2022, <https://www.reuters.com/world/europe/ukraines-mariupol-says-russia-forcefully-deported-thousands-its-people-2022-03-20/>; "Russians forcibly deport women and children from occupied Donetsk and Luhansk regions to Russia" (transl.), ZMINA, 22 March 2022, <https://zmina.info/news/rosiyany-prymusovo-vyvozyat-do-rfzhinok-ta-ditej-z-tymchasovo-okupovanyh-doneczkoyi-ta-luganskoyi-oblastej/>.
138 "Moscow denies deporting Ukrainians to Russia", TeleTrader, 22 March 2022, <https://www.teletrader.com/moscow-denies-deporting-ukrainians-torussia/news/details/57536310?ts=1648496942911>.
139 GC IV, art. 49(1).
140 GC IV, art. 147.
141 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).

leaving residents with no other choice but to leave.[142] As an exception to the prohibition of deportations, the occupying power may 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.[143]

70. People who were deported or evacuated to territories controlled by Russian armed forces or forces of the so-called "Luhansk People's Republic" and "Donetsk People's Republic" had to undergo a filtration process. The filtration process included body searches, a detailed check of all personal belongings and identification documents, questioning, and taking pictures and fingerprints. As confirmed by witnesses interviewed by ODIHR, the 'filtration' bases were located in cities under the control of the so-called "Luhansk People's Republic" and "Donetsk People's Republic" such as Yalta,[144] Milove,[145] and Volodrsk.[146] People were divided into two groups: women and children in one, and men — who had to undergo a more extensive check — in another.[147] The 'filtration' process could take from a few days up to a few weeks,[148]during which time, according to testimonies collected by ODIHR, accommodation and living conditions were very poor with food provided only once a day.[149] One interviewee stated that he believed that during 'filtration' Russian armed personnel were beating people on the second floor of the building they were in (likely the school building in Volodarsk) as the interviewee saw a young man taken upstairs and he heard screams coming from there.[150] Another witness recounted that while the filtration officers were going through her telephone, they discovered that she identified as someone from the lesbian, gay, bisexual, transgender and intersex (LGBTI) community and worked for an NGO that deals with LGBTI issues. The witness was then questioned about her former partners and asked intimate questions about intercourse. The witness explained that this interrogation consisted only of verbal humiliation and intimidation, nothing of a physical nature.[151]

142 In a situation of coercion and violence such as the one experienced by civilians in the besieged city of Mariupol for example, 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.
143 GC IV, art. 49(2).
144 ODIHR Witness Interview UKR.WS.028 at para. 37.
145 ODIHR Witness Interview UKR.WS.030 at paras 62 – 63.
146 ODIHR Witness Interview UKR.WS.012 at paras 25 – 26.
147 ODIHR Witness Interview UKR.WS.033 at para. 23.
148 ODIHR Witness Interview UKR.WS.012 at para. 34.
149 ODIHR Witness Interview UKR.WS.012 at para. 29.
150 ODIHR Witness Interview UKR.WS.012 at para. 25.
151 ODIHR Witness Interview UKR.WS.023 at para. 33.

71. People who passed 'filtration' received a paper that stated "fingerprinting passed"[152] and were allowed to move further, if they wished, in transport provided by the Russian forces that would take them to the Russian Federation or to the territories controlled by the so-called "Luhansk People's Republic" and "Donetsk People's Republic". After being deported, some people were able to go back to Ukraine via very long journeys at their own expense. An additional concern is that people with no financial means to travel, and often without documents or connections, are 'forced' to stay indefinitely in the territory of the Russian Federation or of the so-called "Luhansk People's Republic" and "Donetsk People's Republic", against their will. Those who wished to remain in the territories controlled by Russian forces and forces of the so-called "Luhansk People's Republic" and "Donetsk People's Republic", in the cities and regions of Donetsk, Lugansk, Kherson, Zaporizhzhia and Kharkiv, had to go back to their places of residence and obtain a permit to move around the territories. People in Mariupol who remain in the city are now able to go through the 'filtration' procedure in locally opened 'militia' or 'police' stations and/or at departments of the Ministry of Internal Affairs of the so-called "Donetsk People's Republic".[153]

72. Very limited information is available on the situation of people who did not pass the 'filtration' process. A witness told ODIHR during an interview that those, predominately men, who do not pass the 'filtration' are being further interrogated by representatives of the Federal Security Service of the Russian Federation[154]. Reportedly, the process includes torture, ill-treatment, humiliation, and isolation.[155] In some instances, people are forced to sign testimonies that they were interrogated and tortured by Ukrainian forces.[156] Further, those who have not passed 'filtration' are being sent to bigger 'filtration' camps and prisons, where they are held in inhumane and degrading conditions.[157] Information about their situation remains unknown.

152 ODIHR Witness Interview UKR.WS.023 at para. 33.
153 ODIHR Witness Interview UKR.WS.012 at para. 25; "Petro Andriushchenko: 'There are around two thousand men in the biggest filtration camp. They are held in inhumane conditions", LB.ua website: <https://lb.ua/news/2022/05/10/516303_petro_andryushchenko_v_naybilshomu.html>.
154 ODIHR Witness Interview UKR.WS.012 at para. 25.
155 "Horrors of Russian 'filtration' of Ukrainians: hard torture and beatings of men and women", Hugo Bachega, BBC News, Zaporizhzhia, 17 June 2022, < https://www.bbc.com/ukrainian/features-61824321>.
156 "Documents that were signed under pressure of armed forces of the Russian Federation have no legal force", KrymSOS, 28 April 2022, <https://krymsos.com/dokument%D1%8B-podpysann%D1%8Be-pod-davlenyem-voenn%D1%8Bh-rf-ne-ymeyut-yurydycheskoj-syl%D1%8B/>.
157 "Petro Andriushchenko: 'There are around two thousand men in the biggest filtration camp. They are held in inhumane conditions", LB.ua website, <https://lb.ua/news/2022/05/10/516303_petro_andryushchenko_v_naybilshomu.html>.

D. THE SITUATION IN OCCUPIED TERRITORIES

Administration of the territories under Russian occupation

73. In the areas that fell under the control of Russian forces during the reporting period, access to independent information about their administration, general developments and the human rights situation in the territories was significantly affected. According to reports as well as witness testimonies collected by ODIHR,[158] most of the residents of occupied territories experienced restricted or no access to electricity, internet and telephone connection, and Ukrainian media were increasingly replaced with pro-Russian broadcast coverage.[159]

74. As stated in an ODIHR interview, during the early days of the occupation, Russian armed forces started introducing new rules to restore public order, including curfews, limitations on vehicle and civilian movements and searches of civilian vehicles.[160] At the end of March, the media started reporting about the possibility of putting the Russian rouble into circulation in Kherson.[161]

75. The replacement of local mayors and deputy mayors, including through abductions or arbitrary arrests and detentions,[162] was often reported throughout occupied territories, with Russian military forces looking for locals willing to collaborate. As confirmed by ODIHR witness testimonies, new mayors were appointed in Melitopol and in Kherson:

76. *"The original mayor of Kherson was Ihor Kolykhayev, but at some point he was replaced by someone else who had been the mayor in the past. This new person even took Russian citizenship."*[163] According to an ODIHR witness from Melitopol, "*The Russians installed a man called Andrii Shevchik as mayor. He is a local guy, a member of the town council and he belongs to the opposition party Opposition*

158 ODIHR Witness Interview UKR.WS.034 at paras. 8-9.
159 "Ukraine war: How Russia replaces Ukrainian media with its own", BBC News, 23 April 2022, <https://www.bbc.com/news/world-europe-61154066>; "Ukrainian officials report 'shutdown of all communications' in Kherson region", Reuters, 31 May 2022, <https://www.reuters.com/world/europe/ukrainian-officials-report-shutdown-all-communications-kherson-region-2022-05-31/>; "Confirmed: #Kherson in occupied south Ukraine is now in the midst of a near-total internet blackout; real-time network data show the loss of service on multiple providers as one company say incident is 'unfortunately not an accident'", Twitter @netblocks, 30 April 2022, <https://twitter.com/netblocks/status/1520455755559747584>.
160 ODIHR Witness Interviews UKR.WS.046; UKR.WS.010 at para. 11.
161 "Shameful Rublification: Will Russia Be Able to Introduce Its Own Currency in the Occupied Territories of Ukraine", Krym.Realii, 25 March 2022, <https://ru.krymr.com/a/rossiya-ukraina-voyna-khersonskaya-oblast-rubli/31770867.html>; "This Will Cause a New Wave of Sanctions, Arestovych about the Attempt of the Occupiers to Introduce the Ruble into Circulation", 24tv.ua, 25 March 2022, <https://24tv.ua/tse-vikliche-novu-hvilyu-sanktsiy-arestovich-pro-sprobu-okupantiv_n1918964>; "Ruble zone will be introduced in Kherson region from May 1", TASS, 28 April 2022, <https://tass.com/economy/1444801?utm_source=google.com&utm_medium=organic&utm_campaign=google.com&utm_referrer=google.com>.
162 See cases of abductions of public officials in the below section on *Arbitrary deprivation of liberty of civilians and enforced disappearances* and, more specifically, ft. 198.
163 ODIHR Witness Interview UKR.WS.046 at para. 1

Block for Life. I learned about this from one of the local Telegram pages where local people posted the news."[164]

77. While under IHL replacing local authorities is not prohibited,[165] doing so forcibly, through abduction and/or arbitrary arrest and detention certainly is.[166] Russian military forces also renamed streets and some of the local shops. According to one witness who spoke to ODIHR, Russian forces renamed Myru/Mira Avenue in Mariupol to Lenin Avenue;[167] another witness stated: "*Russian occupying authorities in Kherson renamed a lot of things and even rebranded the shops to use Russian names*".[168]

78. Local businesses were affected by the occupation and many suspended their activities due to the reported extortion by the Russian military forces, creating goods shortages in some cities. For example, one witness from Melitopol told ODIHR monitors: [...] *the Russian Federal Security Services began to approach local business owners and forced them to pay 20% of their income in cash for the needs of the local Russians. If local businessmen refused to collaborate, all their equipment, machinery, property was taken away from them. If they knew that some entrepreneurs left the city for the Ukrainian territory, they automatically made the property of those businesses their own. However, even if you agreed to pay the 20%, this didn't mean you had no problems in the future because the Chechens might approach the businessperson and ask for their share in addition. Approx. 80% of local businesses suspended their activity because it wasn't easy to follow the Russian rules and in areas held by Ukraine they might be accused of collaboration. As a result, food disappeared from the stores, medicines, there were no supplies from Ukraine and no centralized supply of products from the Russian Federation.*"[169]

79. Local administrative premises and storage of humanitarian aid was also subject to looting, creating additional challenges for the local population to access essential goods and basic food products. According to one testimony given to ODIHR, "*even though some humanitarian aid was delivered [to Melitopol], the Russians appropriated it and delivered it as humanitarian aid from Russia*".[170] A witness from Enerhodar (Zaporizhzhia region) noted: "*One by one they occupied most of the administrative buildings, the building of the security*

164 ODIHR Witness Interview UKR.WS.009 at para. 9
165 GC IV, art. 54(2).
166 GC IV, art. 147, see also Customary IHL Rule 99; ICC Statute, art. 8(2)(a)(vii). For a more detailed analysis, see Annexe. For a more detailed analysis see the section below on *Arbitrary deprivation of liberty of civilians and enforced disappearances.*
167 ODIHR Witness Interview UKR.WS.044 at para. 11.
168 ODIHR Witness Interview UKR.WS.046 at para. 11.
169 ODIHR Witness Interview UKR.WS.010 at para. 13.
170 ODIHR Witness Interview UKR.WS.010 at para. 14; *see also* "Зрадниця, яку росіяни поставили в Мелітополі, привласнила українську гумдопомогу", [A traitor, appointed by Russians in Melitopol, appropriated Ukrainian humanitarian aid Pravda], 25 March 2022, <https://www.pravda.com.ua/news/2022/03/25/7334536/>.

service and the town hall. They looted all the equipment they found in these buildings; they took everything they liked."[171]

80. In late May and June, media and the Russian occupying authorities announced that Russian passports would be issued in Kherson and Melitopol.[172] Similarly, in June, the Russian authorities controlling Kherson announced that all children born after 24 February in Kherson region would automatically receive citizenship of the Russian Federation. It is important to stress that under IHL, occupation of territories does not entail a transfer of sovereignty to the occupying power 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 occupied territory, which means that it should refrain from bringing irreversible changes, including territorial and demographic changes, to such territories.[173] The occupying power is responsible for guaranteeing public order and safety and the respect for local laws for the benefit of the population under occupation. More specifically, any form of looting is strictly prohibited[174] as well as appropriation or confiscation of private property[175] and humanitarian aid.[176]

Abuses against the civilian population in territories under Russian occupation

Extrajudicial executions

81. During the reporting period, there have been credible reports of extrajudicial executions of civilians and local public authorities in territories outside the effective control of the Ukrainian authorities.[177] In addition, since 15 May, OHCHR has been working to corroborate over 300 allegations of summary executions of civilians by Russian armed forces, while noting that this figure may increase as new evidence becomes available.[178]

82. In the beginning of April 2022, after Russian armed forces withdrew from Kyiv region, media and various human rights organizations, such as Human Rights

171 ODIHR Witness Interview UKR.WS.009 at para. 8.
172 "Russia hands out passports in occupied Ukraine cities", BBC News, 11 June 2022, <https://www.bbc.com/news/world-europe-61770997>.
173 For a more detailed analysis, see Annexe.
174 GC IV, art. 33(2); Pillage constitutes a war crime under the ICC Statute, art. 8(2)(b)(xvi).
175 Hague Regulations, art. 46 prohibits the confiscation of private property except in cases listed under art. 53; see also arts. 48-49 and 51; Customary IHL Rule 51.
176 GC IV, art. 60.
177 *See* ODIHR Witness Interviews, UKR.WS.027; UKR.WS.040. UKR.WS.045; *see also* "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/sites/default/files/documents/countries/ua/2022-06-29/2022-06-UkraineArmedAttack-EN.pdf>; "Devasation and loss in Bucha, Ukraine", Human Rights Watch, 30 March 2022, <https://www.hrw.org/news/2022/03/30/devastation-and-loss-bucha-ukraine>.
178 "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/sites/default/files/documents/countries/ua/2022-06-29/2022-06-UkraineArmedAttack-EN.pdf>.

Watch and Amnesty International, found extensive evidence of extrajudicial killings of civilians in Kyiv region[179], including in Bucha.[180] According to various sources including the Office of the Prosecutor General of Ukraine, more than one thousand bodies were discovered in mass graves in the region.[181] As reported by Human Rights Watch, hundreds of civilian bodies were collected from the streets of Bucha in April.[182] In addition, satellite images provided by a UK-based NGO captured images of more than 800 grave plots in the cemetery in Kherson between 28 February and 15 April as well as a "series of mass graves" in the Yalivshchyna forest near Chernihiv.[183]

83. One male witness interviewed by ODIHR recalled an incident where he described the alleged rape and execution of four women in Irpin. He explained that Russian soldiers brought the bodies of four women to the witness and ordered him (and others nearby) to load the bodies onto a truck and set fire to it, the bodies included. He noted that the bodies of the four women looked to have been shot in the head.[184]

84. According to another witness interviewed by ODIHR, there was a Ukrainian territorial defence unit stationed in a village not far away from him in Izium. On 1 or 2 March, the witness was warned by residents of Yaremivka that he shouldn't leave the house because Russian regular army soldiers with white ribbons tied around their arms were advancing and 'purging villages'. According to what the witness saw, they were well equipped and bore no insignia, bar the white ribbon. They were reportedly chasing the Ukrainian forces as they fled. The next day, the witness heard that these Russian soldiers had killed eight people in a household.[185]

85. Finally, a witness recalled to ODIHR that *"I was checking my pets and I saw a team of soldiers surround one of the houses in the village. I heard them command those who were inside to go out. There were two men who came out. They were very skinny and from their appearance they looked like drug takers. They told them to drop their pants, I presume so they wouldn't run away. I went*

179 "Ukraine: Russian Forces Must Face Justice for War Crimes in Kyiv Oblast", Amnesty International, May 2022, <https://www.amnesty.org/en/latest/news/2022/05/ukraine-russian-forces-must-face-justice-for-war-crimes-in-kyiv-oblast-new-investigation/>.

180 "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: further evidence of Russian war crimes in Bucha and other towns – new report", Amnesty International UK, 6 May 2022, <https://www.amnesty.org.uk/press-releases/ukraine-further-evidence-russian-war-crimes-bucha-and-other-towns-new-report>.

181 "Ukraine: The children's camp that became an execution ground", BBC News, 16 May 2022, <https://www.bbc.com/news/world-europe-61442387>.

182 "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>.

183 "More context on these graves can be seen below by @Nrg8000 who identified earlier this month that more than 800 new grave plots had been dug at this site.", Twitter @Cen4infoRes, 15 April 2022, <https://twitter.com/Cen4infoRes/status/1515002644481327108>.

184 ODIHR Witness Interview UKR.WS.040 at paras 24-27. Note: for more information surrounding the rape and murder of the victims, please refer to *Conflict-related sexual violence* where the incident is discussed in more detail.

185 ODIHR Witness Interview UKR.WS.024 at para. 8.

out of the house and asked the soldiers what was going on, but they shouted at me and told me to go back into the house. Then the Commanders came and spoke to those two men then they took them to the crossroads of Kyivska and Lysenka streets — we didn't know what happened to them then, but at around that time we heard automatic gunfire. On 26 March when we decided to evacuate, we saw the bodies of these two guys lying at the crossroads. Later I asked the soldiers why they killed them, and the answer was that they were looters and they had radios on them, and they could report on their location.[186]

86. Wilful or intentional killing of civilians is strictly prohibited and constitutes a grave breach of IHL[187] and a war crime.[188]

Arbitrary deprivation of liberty of civilians and enforced disappearances

87. During the reporting period, there have been 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 Russian occupation.

88. Accounts of enforced disappearances in occupied territories include the abduction of local authorities, journalists, human rights defenders and ordinary citizens by Russian authorities.

89. With regard to ordinary citizens, a witness described to ODIHR monitors that several abductions in Kherson had occurred. She stated that one friend of hers was abducted and his fate was unknown. His apartment was searched and he was questioned about a flag he received many years before as a souvenir (the black and red flag of the Ukrainian patriotic army, which serves as a symbol for the Ukrainian nationalist movement).[189] According to the witness, *"these cases are numerous in Kherson. They kidnap people. Their modus operandi is the following: if they want to kidnap someone in a house, they would surround the house and then send someone in. Same with the apartment blocks. They do it either late evening or early morning. They blindfold you, put you in handcuffs. They do it in the presence of children too. If anyone would resist, or stand up for you, they would shoot you there and then".*[190] Another witness stated that her son, who worked as a contractor in Boyarka, Kyiv Oblast and was an ex-serviceman, went missing on 10 March 2022 and that his fate remained unknown.[191]

186 ODIHR Witness Interview UKR.WS.045 at para. 34.
187 GC IV, art. 147; AP I, art. 75(2)(a); Customary IHL Rule 89. For more detailed information see Annexe.
188 Murder is listed as a war crime and — if committed as part of a widespread or systematic attack directed against any civilian population — constitutes a crime against humanity under the ICC Statute; see ICC Statute, arts. 8(2)(b) and 7(1)(a) respectively.
189 ODIHR Witness Interview UKR.WS.037 at para. 35.
190 ODIHR Witness Interview UKR.WS.037 at para 36.
191 The interview was conducted on 5 April 2022.

90. Reports of abductions of local authorities are also numerous. One notable example is the kidnapping of Melitopol's mayor, Ivan Fedorov, on 10 March.[192] The mayor was released on 16 March following a reported exchange of nine prisoners of war by Ukrainian authorities.[193] Another witness stated that a man who lived on her street in Oleshky was kidnapped by Russian forces. He was an elected member of the municipal council.[194]

91. Witnesses provided ODIHR with alarming reports of alleged torture or other abuses while in captivity as well as extremely poor conditions of detention.

92. One witness interviewed by ODIHR recalled the abuses he suffered in detention. The witness recounted that a journalist friend of his, who was being coerced, organised a meeting in Kakhova with the witness who is also a journalist. On 12 March, at approximately 16:50 hours, the witness met at the meeting location. There, he was assaulted, knocked unconscious, bound, and taken to the Nova Kakhovka City Council building by Russian soldiers.[195] The witness was interrogated in the building of the Mayor's Office by an individual who introduced himself as Valentin Leontiev (real name: "Valentin Matushenko"). Valentin Matushenko threatened the witness with mutilation and death and expressed a desire to take revenge on him for his journalistic work on him. He then tortured the witness.[196] The witness notes that Matushenko appeared to be the superior in charge.[197] The witness then reported being transferred to the building of the Kherson Regional State Administration. There, he was handcuffed to a radiator close to a window. At this location he was interrogated further about activities linked to journalism and activism.[198] Whilst held in the Kherson Regional State Administration, the witness stated that there were also four other detained men in a room that were being interrogated.[199]

93. The same witness also reported being taken to a pre-trial detention facility located in the Nova Kakhovka Police Station on Teplo Energetiky Street, no. 3, during the night of 13 March 2022. The facility has eighteen cells, with the witness being put into a cell which was isolated from others. The witness describes the night as being freezing and the cell possessing no amenities apart from a toilet.[200] Between 14 and 15 March, the police (Russian forces) brought

192 "Russian military kidnap Melitopol mayor", UKRInform, 11 March 2022, <https://www.ukrinform.net/rubric-ato/3426787-russian-military-kidnap-melitopol-mayor.html>.
193 "'Kidnapped' Melitopol Mayor: City leader Ivan Fedorov free in swap with nine Russian conscripts", Sky News, 17 March 2022, <https://news.sky.com/story/kidnapped-melitopol-mayor-city-leader-ivan-fedorov-freed-in-swap-with-nine-russian-conscripts-12568287>.
194 ODIHR Witness Interview UKR.WS.008 at para. 15.
195 ODIHR Witness Interview UKR.WS.027 at paras 12-17.
196 ODIHR Witness Interview UKR.WS.027 at paras 18-22. Note: no specific details on torture methods were mentioned by the witness.
197 ODIHR Witness Interview UKR.WS.021 at para. 21.
198 ODIHR Witness Interview UKR.WS.027 at paras 22-24, 28-29.
199 ODIHR Witness Interview UKR.WS.027 at para. 27.
200 ODIHR Witness Interview UKR.WS.027 at paras 30-31.

more people to the detention facility and interrogated them. The witness recalls two detainees from Europe, one from Spain and one from the Netherlands.[201]

94. On 20 March 2022, this witness and an 18-year-old individual were released from detention in Kherson. The witness also detailed the reason for the 18-year-old's detention, which was linked to him taking pictures of Russian tech equipment and military vehicles.[202] Overall, the witness was "*held for almost eight days — almost without food, water, medicines, hygiene supplies and any means to clean myself.*"[203]

95. ODIHR finds these accounts deeply disturbing from an IHL and IHRL point of view. Deprivation of liberty of civilians in armed conflicts is only lawful if justified by *imperative reasons of security* for the detaining power, in this case, a party to conflict may subject civilians to assigned residence or to internment; or in case of detention for criminal proceedings. If deprivation of liberty is not in line with these grounds and procedures, it amounts to unlawful confinement which is a grave breach of IHL and a war crime.[204] Furthermore, all persons deprived of their liberty for reasons related to an armed conflict must be treated humanely and must be afforded appropriate conditions of detention, the medical care they require, and the judicial or procedural guarantees corresponding to their status.[205] If it is corroborated that some civilians were held in undisclosed locations this may qualify as enforced disappearance that is prohibited under Customary IHL.[206]

Conflict-related sexual violence

96. Several weeks after the Russian Federation invasion of Ukraine, dozens of reports of conflict-related sexual violence (CRSV) committed by Russian armed forces started to emerge especially from areas that had been under Russian occupation. Most of the sexual violence cases have been recorded in the suburbs of Kyiv after Ukrainian forces regained control over Kyiv region in April 2022.

97. Between 8 March and 29 March, three murders of civilians and two cases of sexual violence were recorded in Bohdanivka,[207] becoming one of the first reports of conflict-related sexual violence in Ukraine.

201 ODIHR Witness Interview UKR.WS.027 at paras 32-34.
202 ODIHR Witness Interview UKR.WS.027 at paras 38-40.
203 ODIHR Witness Interview UKR.WS.027 at para. 41.
204 GC IV, art. 147, see also Customary IHL Rule 99; ICC Statute, art. 8(2)(a)(vii). For a more detailed analysis, see Annexe.
205 GC IV, arts. 68-78 and 79-141; Customary IHL Rules 90 and100-102.
206 Customary IHL Rule 98. For a more detailed analysis, see Annexe.
207 "'I can do whatever I want to you' Russian soldiers raped and murdered Ukrainian civilians in the village of Bohdanivka", Meduza, 18 April 2022, <https://meduza.io/en/feature/2022/04/18/i-can-do-whatever-i-want-to-you>.

98. During its deployment to Kyiv region, ODIHR monitors collected testimony from a male witness of alleged rape in Irpin:

99. *They [Russian soldiers] took all of the women from the group to a basement in a multi-story residential house close by. As we were loading the truck, we could hear cries, shrieks, and different noises coming from the basement where the women had been taken. We presumed the women were raped. I think they were there for about two hours. Out of maybe thirty soldiers that were there, about seven or eight went into the basement. I didn't hear anyone order this, but also, no one tried to stop them. On the contrary, they were encouraging each other; it was a joke to them. They were speaking Russian so we could understand them. I can't remember the exact words, but I remember it meaning something like 'our senior command allows us to do whatever we want unless you go to Bucha because no one is waiting for you in Bucha.' I still don't know exactly what that meant, but I can presume they belonged to a unit that was headquartered there but was coming to Irpin to act like this. […]*

100. *The [Russian] soldiers killed four of those women. They carried their bodies out to where we were. The bodies had bruises and blood on them, and we saw that they had each been shot in the forehead. They were all completely naked; they didn't even have socks on. All four bodies had bruises on their breasts. There were marks of rods or sticks on their lower backs as if they had been beaten and bruises and scratches around their crotches. There were no bruises or marks on the rest of their bodies. All the bodies had the same marks. The soldiers ordered us to load them onto one of the trucks that had run out of fuel, and then they set this truck on fire, together with the four bodies.*

101. *The other women remained in the basement; we could still hear some screams; I presume the violence did not stop at that stage. They were crying. "Oh my god", some were saying, "Kill me, just shoot me". I don't know what happened to them, but I heard from a friend of a friend that later, they [women] were moved to Kyiv by Ukrainians, presumably to get some medical assistance. […] From what that person told me as if heard from these women, is that the women who died were killed because they refused to give the Russian soldiers oral sex."*[208]

102. As emphasized in the testimony collected by ODIHR, reported cases of rape are often accompanied with beatings, humiliation, and hate speech, which is also recorded in the testimonies collected by other organizations, such as Human Rights Watch. In one such case, a woman sheltering with her family in a school in Kharkiv region was reportedly repeatedly raped by a Russian soldier.[209] She stated that the soldier beat her and cut her face, neck and hair with a knife.

208 ODIHR Witness Interview UKR.WS.040 at paras 24-27.
209 "Ukraine: Apparent War Crimes in Russia-Controlled Areas", Human Rights Watch, 3 April 2022, <https://www.hrw.org/news/2022/04/03/ukraine-apparent-war-crimes-russia-controlled-areas>.

Human Rights Watch reviewed two photographs the woman shared, showing her facial injuries.[210]

103. According to the UN Special Representative of the Secretary-General on Sexual Violence in Conflict, Pramila Patten, as of 3 June 2022 the UN Human Rights Monitoring Mission in Ukraine has received 124 reports of alleged sex crimes in the context of the conflict in Ukraine. The main areas were Chernihiv, Dnipropetrovsk, Donetsk, Kharkiv, Kherson, Kyiv, Luhansk, Mykolaiv, Vinnytsia, Zaporizhzhia, Transcarpathian and Zhytomyrska regions. Patten reported that 49 of the 124 allegations of sexual abuse were against children.[211] However, it is highly likely that current figures do not represent the full picture of CRSV in Ukraine, as many victims may refrain from reporting due to trauma and fear of stigmatization.

104. As of the end of June 2022, Ukrainian law enforcement had launched 20 investigations of alleged sexual violence committed by Russian forces.[212] Trials over the cases of CRSV in Ukraine started on 23 June, with Ukraine holding a preliminary hearing in the trial of a Russian soldier, Mikhail Romanov, charged with rape in Bohdanivka.[213] As Romanov is not in custody, he is being tried in absentia. The trial is being held behind closed doors at the victim's request. Reportedly, two more suspects have been identified for similar charges.[214]

105. Rape and other forms of sexual violence, when committed in the context of an armed conflict, constitute violations of IHL and amount to war crimes under the ICC Statute.[215] The Russian Federation must abide by the prohibition of sexual violence by its armed forces and has an obligation to prosecute alleged perpetrators of such heinous crimes.

Suppression of peaceful protest

106. At the beginning of the reporting period, many rallies and demonstrations took place in areas outside the effective control of the Ukrainian authorities in order to protest against the Russian military attack. In some cities it was initially possible to hold these assemblies without intervention by the Russian authorities. One witness stated that *"early on there were no Russian military*

210 *Ibid*.
211 «Война в Украине: никакой амнистии для виновных в изнасилованиях» [War in Ukraine: no amnesty for rape perpetrators], News.un.org, 6 June 2022, <https://news.un.org/ru/story/2022/06/1425192>.
212 Соня Лукашова, «Від facebook до допитів. Чому омбудсмен Денісова втратила посаду», [From facebook to interrogations. Why did ombudsman Denisova lose her position], Pravda.com.ua, 27 June 2022, <https://www.pravda.com.ua/articles/2022/06/27/7354838/>.
213 "Ukraine begins first trial of Russian soldier charged with rape", Reuters, 23 June 2022, <https://www.reuters.com/world/europe/ukraine-begin-first-trial-russian-soldier-accused-rape-2022-06-23/>.
214 Соня Лукашова, «Від facebook до допитів. Чому омбудсмен Денісова втратила посаду», [From facebook to interrogations. Why did ombudsman Denisova lose her position], Pravda.com.ua, 27 June 2022, <https://www.pravda.com.ua/articles/2022/06/27/7354838/>.
215 GC IV, arts. 3 and 27; AP I, arts. 75-77; and Customary IHL Rule 93. See also, ICC Statute, art. 8(2)(b)(xxii).

headquarters in Melitopol so local people could organize peaceful rallies. The Russian military could not do anything (…) There was no military headquarters for about a week or two and during this period peaceful rallies could be organized (…)".[216]

107. Later, protests started to be severely restricted by the Russian authorities, usually through unjustified and disproportionate use of force against peaceful protesters, the dispersal of assemblies, and detention and arrest of assembly participants and organizers. The aforementioned witness reported to ODIHR that *"when the representatives of the Federal security services came to the city (…) the city began to change. When they appeared, people began to disappear, some people were kidnapped, the mayor was kidnapped, he is probably the most famous person who was kidnapped but also the organizers of the rallies, former military, some NGO activists. There were cases when they kidnapped Protestant priests."*[217]

108. Several witnesses interviewed by ODIHR also recalled the use of stun grenades and flash grenades by Russian authorities during assemblies. According to one witness, in Kakhovka, *"locals organized rallies and at first people were dispersed without the use of weapons but later the Russians began to use stun grenades to disperse the rallies. These grenades exploded and people were wounded by the fragments, there were six wounded people."*[218]

109. Another witness recounted to ODIHR that a peaceful rally was organized by mothers to commemorate the Ukrainian children who had died in Enerhodar during this war.[219] *"They asked the Russian occupiers for permission to hold this rally, they were mothers with children in prams and babies. Initially they asked for half an hour, they were given fifteen minutes. The mothers brought the items, the toys, they sang the Ukrainian anthem and after the fifteen minutes were over and people began to leave the Russians used stun grenades and began to shoot in the air. They were just people with their children and their bags. Three people were injured. I was in town when this took place, I saw the smoke."*[220] A witness who attended rallies in support of Ukraine in Kherson also stated that Russian troops would *"use rubber bullets and shoot in the air"*. They also used flash grenades, which she stated were thrown into the crowds.[221]

110. Finally, another witness recalled that one of his friends told him that on the 23rd day of protests in Kherson, his friend who was a photographer ("victim") attempted to take a photo of some Russian soldiers. As a result, some Russian

216 ODIHR Witness Interview UKR.WS.010 at para. 8.
217 ODIHR Witness Interview UKR.WS.010 at para. 8.
218 ODIHR Witness Interview UKR.WS.005 at para. 17.
219 The witness does not provide an accurate time/date for this rally. However, one of the videos which the witness shared might indicate it occurred in early April (2 April 2022) as the same video is attached to a tweet dated 2 April, which is claiming a protest in Enerhodar was met with violence, <https://twitter.com/TWMCLtd/status/1510191572054429696?s=20&t=jy1RXzXMy1tkWT71RnUNZQ>; a Telegram post seems to state a protest did occur on 2 April, *see* <https://t.me/energoatom_ua/4346>.
220 ODIHR Witness Interview UKR.WS.009 at para. 11.
221 ODIHR Witness Interview UKR.WS.023 at para. 21.

soldiers grabbed the victim and bound him with zip ties before beating him. The witness then stated that Russian soldiers put a hood over the victim's head and took him to an unknown building. There, the Russian soldiers made the victim kneel, took his possessions, and continued to beat him. The soldiers found some US dollars in his wallet and thus accused him of receiving money to go to meetings and threatened him with mutilation. Afterwards, he was driven to a different unknown location, still hooded, and told to count to one hundred. They had left him in this unknown location. The victim believed he was going to be executed. The witness saw the victim the next day, where he noticed the signs of his abuse.[222]

111. According to ODIHR observation and collected testimonies, a few weeks after the beginning of the war, the majority of protests and rallies in Russian-occupied territories stopped taking place following the violent repression of the Russian authorities and the dispersal of all kind of assemblies. These accounts are concerning from and IHL and IHRL perspective. Indeed, IHRL continues to apply in situations of armed conflict, including in occupied territories, hence the right to peaceful protest must be guaranteed.[223] The occupying power has an obligation to maintain law and order in occupied territories[224] and, when facing peaceful protests, must respect IHRL provisions applicable to law enforcement operations. Hence it should refrain from interfering in the exercise of the right to peaceful protest, in particular by using excessive force in order to disperse rallies.[225] In situations where the effective control over a territory changes hands, and the population views soldiers as a hostile force, the situation becomes even more dangerous. Instances of unjustified and disproportionate use of force by the occupying power causing injuries, and violence surrounding assemblies in Ukraine are evidence of this.

E. ABUSES IN UKRAINE-CONTROLLED TERRITORIES

112. Reports of alleged violations in territory controlled by the Government of Ukraine have surfaced with regards to the treatment of alleged looters.

Treatment of Alleged Looters

113. Abuses have also been recorded in relation to civilians who are alleged to have taken part in looting in territory controlled by the Government of Ukraine or territory that has recently been recaptured by Ukrainian forces.

222 ODIHR Witness Interview UKR.WS.001 at para. 34
223 The right to freedom of assembly is granted by Article 21 of the ICCPR, Article 11 of the ECHR.
224 Hague Regulations, art. 43.
225 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>.

114. In one case, a witness interviewed by ODIHR monitors noted that armed looters were present in Irpin, Bucha district of Kyiv region, until 26 March 2022 when there was a brief power vacuum following the retreat of Russian forces and the arrival of Ukrainian forces.[226]

115. Likewise, images and videos that circulated on social media platforms showed civilians and unidentified armed men meting out their own form of punishment to the individuals allegedly caught looting, including binding them to lampposts or trees and publicly beating them.[227]

116. Following reports of looting and the subsequent 'citizen arrests', some public Ukrainian authorities have publicly supported the response.[228] In some cases, statements made by public officials threatened violence. Indeed, Sergei Sukhomlin, Mayor of Zhytomyr, stated in a Facebook post:

117. *"Several people were detained in the Kroshni area trying to get into the store. I warn everyone: the police, the National Guard, and the terrorist defence units received orders not to detain — you can shoot on the spot. There will be no looting in the city. Everyone received an order to shoot on the spot."*[229]

118. Such calls from public officials and law enforcement agencies for violence against alleged looters is cause for concern. Suspected looters should be granted the right to a fair trial and be treated humanely in full respect of their human rights.

226 ODIHR Witness Interview UKR.WS.045 at paras 32-33.

227 Kyiv Politics, Telegram, 6 March 2022, <https://t.me/KyivPolitics/8909>; Kyiv Politics, Telegram, 12 March 2022, <https://t.me/KyivPolitics/9088>; "Ukraine" People accused of looting tied to poles, stripped and beaten", France 24 Website, 1 April 2022, <https://observers.france24.com/en/europe/20220404-ukraine-poles-public-humiliation-punishment-looting>; "Resistance, Calamity and Looting in a Kiev suburb", see also Pravda Gerashchenko, Telegram, 18 April 2022, <https://t.me/Pravda_Gerashchenko/13321>; *see also* Kyiv Politics, Telegram, 6 March 2022, < https://t.me/KyivPolitics/8909>; Kyiv Politics, Telegram, 12 March 2022, <https://t.me/KyivPolitics/9088>; "Ukraine. People accused of looting tied to poles, stripped and beaten", France 24 Website, 1 April 2022, <https://observers.france24.com/en/europe/20220404-ukraine-poles-public-humiliation-punishment-looting>.

228 "'Не считаю это диким'. Советник главы МВД рассказал, как относится к народной расправе над мародерами", [«I don't think it's wild.» Advisor to the head of the Ministry of Internal Affairs told how he relates to the massacre of marauders], Strana Today, 21 March 2022, < https://strana.today/news/382732-sovetnik-hlavy-mvd-rasskazal-kak-otnositsja-k-narodnoj-rasprave-nad-marodерami.html>; Oleksiy Biloshitsky, Facebook, 1 March 2022, <https://www.facebook.com/Bilosh/posts/10225038620345238>; "Ukraine" People accused of looting tied to poles, stripped and beaten", France 24 Website, 1 April 2022, original source: Oleksandr Mamai, Facebook, 2 March 2022, <http://www.facebook.com/Mamay.O.F/posts/493894282102670>.

229 "В мародеров будут сразу стрелять – мэр Житомира", [Marauders will be shot at once – Mayor of Zhytomyr] Pravda Website, 28 February 2022, original source: Sergei Sukhomlin, Facebook, 27 February 2022, <https://www.facebook.com/sukhomlyn.sergey/videos/487373989680322/?t=0>.

F. THE SITUATION OF PRISONERS OF WAR

119. Since the beginning of the Russian Federation military attack in Ukraine, concerns have emerged over alleged violations, by both of the warring parties, of the rights and protections guaranteed to Prisoners of War (POWs) by the Third Geneva Convention (GC III)[230].

120. According to the testimonies given by former POWs to media outlets, numerous violations have been taking place both in Ukraine and the Russian Federation. These violations include reports on the poor living conditions of POWs facing lack of access to food, water and sanitation, clothing and medical care[231]. Additionally, torture, beatings[232], and other abuses[233] have also been commonly denounced by POWs from both sides. Some forms of humiliations, such as forcing captured POWs to sing the anthem of the detaining power, have been recorded both by the Russian Federation[234] and Ukraine.[235] Killings of Ukrainian POWs have also been recorded in an alleged confession of one of the commanders of the so-called "Donetsk People's Republic".[236] A video that appears to show the killing of a Russian POW in the suburbs of Kyiv was also circulated on social media and, provided its authenticity is verified, might be used in prosecuting such an egregious crime.[237]

121. From the earliest weeks of the invasion, videos of captured Russian POWs started circulating on social media, causing distress over the exposure of POWs to public curiosity and the willingness to use them for propaganda purposes. The videos regularly appeared on the Ukrainian Telegram channel Look for Your Own *(Russian: Ищи своих, Ishchi Svoikh)* where Russian POWs were interrogated on camera, apologizing to the Ukrainian people, glorifying the Ukrainian armed forces and denigrating their commanders. POWs would also be asked to share their personal data, such as their names, home addresses, and the names of their parents and commanders. Recording conversations with family members and calling mothers and family members to protest against the regime was another distressing aspect of the interrogation videos. Along

230 Third Geneva Convention relative to the Treatment of Prisoners of War, 1949.
231 Daria Markina, "Held by Russia as prisoners of war, two Ukrainian helicopter pilots recount their time in captivity", CNN.com, 15 June 2022, <https://edition.cnn.com/2022/06/15/europe/ukrainian-pilots-interview-intl/index.html>.
232 Stewart Bell, "Ukrainian prisoner of war accuses Russia of torture", globalnews.ca, 22 June 2022, <https://globalnews.ca/news/8932906/ukrainian-prisoner-of-war-russia-torture/>.
233 Pjotr Sauer, "'You shake at the smallest of noises': Russian soldier tells of life as a PoW", The Guardian, 26 May 2022, at: <https://www.theguardian.com/world/2022/may/26/russian-soldier-pow-ukraine>.
234 Stewart Bell, "Ukrainian prisoner of war accuses Russia of torture", GlobalNews.ca, 22 June 2022, at: <https://globalnews.ca/news/8932906/ukrainian-prisoner-of-war-russia-torture/>.
235 "Russian prisoners forced to sing Ukrainian anthem | Ukraine War 2022", Youtube channel "Ukraine War Channel", 26 March 2022, <https://www.youtube.com/watch?v=q5bdDBnI5bU>.
236 Oleg Sukhov, "Russian fighter's confession of killing prisoners might become evidence of war crimes (AUDIO)," KyivPost.com, 6 April 2022, <https://www.kyivpost.com/article/content/war-against-ukraine/kremlin-backed-fighters-confession-of-killing-prisoners-might-become-evidence-of-war-crimes-audio-385532.html>.
237 "Video appeared to show the killing of captive Russian soldier", BBC News, 7 April 2022, <https://www.bbc.com/news/61025388>.

with the interrogation videos, Russian POWs have been forced to participate in press conferences where they were told to discuss their actions during the military invasion.[238] Such videos and practices raise serious concerns from an IHL perspective. Under GC III, POWs must be treated humanely at all times and protected against acts of violence, intimidation, insults and exposure to public curiosity.[239] Also, no physical or mental torture, nor any other form of coercion, may be inflicted on POWs to secure from them information of any kind whatsoever. POWs who refuse to answer may not be threatened, insulted, or exposed to any unpleasant or disadvantageous treatment.[240]

122. Following the criticism from IHL experts and human rights organizations,[241] some of the videos were taken down, while new ones started being published on the personal YouTube channel of the blogger Volodymyr Zolkin. [242] Although these videos included a disclaimer including the consent of the soldiers to participate in the video based on the civil codes of the Russian Federation and Ukraine, it does not release Ukrainian authorities from their obligation to refrain from exposing POWs to public curiosity and other abuses.

123. Comparable violations have been committed by the Russian authorities, as similar videos with Ukrainian POWs started appearing on Russian federal channels. POWs were shown giving interviews, describing the actions and war crimes committed by the Ukrainian Armed Forces, characterizing them as 'Nazis' and praising the detention conditions provided by the Russian authorities. Additionally, Russian state-owned and state-influenced media outlets have been sharing videos of POWs, forcing them to strip on camera[243] and show their tattoos.[244]

124. Since May 2022, Ukraine and the Russian Federation, as well as the *de facto* authorities of the so-called "Luhansk People's Republic" and "Donetsk People's Republic" acting under the overall control of the Russian Federation,[245] have been holding trials of captured POWs for alleged war crimes. As of 30

238 "Ukraine: concern at prisoners of war appearing at press conferences", Amnesty International, 7 March 2022, <https://www.amnesty.org.uk/press-releases/ukraine-concern-prisoners-war-appearing-press-conferences>.
239 GC III, arts. 13 and 17. For a more detailed analysis, see Annexe.
240 GC III, art. 17.
241 "Ukraine: Respect the Rights of Prisoners of War", Human Rights Watch, 16 March 2022, <https://www.hrw.org/news/2022/03/16/ukraine-respect-rights-prisoners-war>; *see also* Aaron Blake, "Why you should think twice before sharing that viral video of an apparent Russian POW", The Washington Post, 7 March 2022, <https://www.washingtonpost.com/politics/2022/03/07/russian-pow-videos/>.
242 YouTube channel "Volodymyr Zolkin", <https://www.youtube.com/c/volodymyrzolkin>.
243 Leonid Ragozin, "Is Putin achieving his goals in Ukraine?", Aljazeera.com, 24 May 2022, <https://www.aljazeera.com/opinions/2022/5/24/what-is-putins-end-game-in-ukraine>.
244 ««Мы что, за нацистов?»: Татуировки пленных солдат «Азова» вызвали шок на Западе», Комсомольская Правда, ["What are we, for the Nazis?": Tattoos of captured Azov soldiers caused shock in the West] kp.ru, 21 May 2022, <https://www.kp.ru/daily/27395.5/4590595/>.
245 ODIHR considers that, by exercising overall control on such entities, the Russian Federation is responsible for their conduct under IHL, including with regard to the prosecution of POWs.

June, Ukraine has announced verdicts for three Russian POWs.[246] Two POWs have been sentenced to 11 and half years in prison for reportedly shelling an educational facility in Kharkiv region[247] while another POW has been sentenced to life in prison for killing a civilian in Sumy region.[248] Meanwhile, prosecutions for sexual crimes are ongoing.[249] While POWs cannot be punished or prosecuted for the mere fact of having taken part in hostilities, they can be put on trial for alleged war crimes committed during hostilities. In such cases, POWs must be granted fair trial rights including the right to be tried by an independent and impartial court.[250]

125. On 9 June, the Supreme Court of the self-proclaimed "Donetsk People's Republic" acting under the overall control of the Russian Federation, sentenced to death two Britons, Aiden Aslin and Shaun Pinner, and a Moroccan national, Brahim Saadoun[251] for being 'mercenaries' as well as on other charges relating to participating in hostilities against the so called "Donetsk People's Republic". Although participation in hostilities may be defined as a criminal offence by the parties to the conflict, combatants in the power of the enemy are entitled to prisoner of war status and must not been prosecuted for taking active part in hostilities.[252] Additionally, the families of the convicts as well as Ukrainian officials reported that the three soldiers had been integrated into the Armed Forces of Ukraine years before the Russian military attack on Ukraine[253] and that both Pinner and Aslin hold Ukrainian citizenship.[254] This means that the three soldiers were not mercenaries[255] and should have been considered as members of the Ukrainian armed forces and, as such, should have been granted prisoners of war status.

246 In order for Ukraine to more effectively carry out such proceedings, President Zelenskyy should sign into law the Bill (Bill 2689) adopted by Parliament in May 2021 and designed to harmonize Ukrainian criminal code with international criminal law and IHL, thus providing an appropriate legal framework for the prosecution IHL-related crimes.

247 Valerie Hopkins, "2 Russian Soldiers Sentenced in Ukrainian War-Crimes Trials", The New York Times, 31 May 2022, <https://www.nytimes.com/2022/05/31/world/russian-soldiers-war-crimes-trial.html>.

248 Shaun Walker, "Ukrainian court sentences Russian soldier to life in prison for killing civilian", The Guardian, 23 May 2022, <https://www.theguardian.com/world/2022/may/23/ukrainian-court-sentences-russian-soldier-to-life-in-prison-for-killing-civilian-vadim-shishimarin>.

249 See the case of a Russian soldier whose trial in absentia for allegedly committing rape is undergoing at p. 27 of this report.

250 GC III, art. 84.

251 "Captured Britons and Moroccan man sentenced to death – Russian news agency", BBC News, 10 June 2022, <https://bbc.in/3yIpjgh>.

252 Also, under GC III, any person taking direct part in hostilities who falls into the power of an adverse party shall be presumed to be a prisoner of war. GC III stipulates that where doubt arises as to whether somebody is entitled to the status of prisoner of war, the said person is protected by the Convention until such status is determined by a competent tribunal (GC III, art.5). In this case, if the so-called "Donetsk People's Republic" authorities had doubt as to the status of the British and Moroccan soldiers, before prosecuting them for being mercenaries, they should have presumed their POW status and had it determined by a competent tribunal.

253 Josh Halliday, "Captured Britons put on Russian TV asking Boris Johnson to help free them", The Guardian, 18 April 2022, <https://www.theguardian.com/world/2022/apr/18/captured-britons-russian-tv-johnson-help-free-shaun-pinner-aiden-aslin>.

254 "Moroccan sentenced to death in Donetsk has Ukrainian nationality and isn't a mercenary, father says", Reuters, 13 June 2022, <https://theins.ru/news/252158>.

255 For the definition of mercenary under IHL see: Additional Protocol I, art. 47; Customary IHL Rule 108.

126. Another particular concern is raised by the uncertainty of the fate of the prisoners of war captured in the Azovstal steel plant in Mariupol. Although the official number of POWs captured in in the steel plant remains unknown, the figures suggested by the two parties to the conflict vary from 1,700[256] to 2,439.[257] Despite the insistence by some Russian officials that detained Ukrainian ex-fighters should face trial and not be exchanged,[258] 95 Azovstal prisoners were reportedly exchanged in June 2022.[259] The fate of the remaining Azovstal combatants continues to raise concerns as the Russian ministry of justice petitioned the Supreme Court to declare the Azov regiment a 'terrorist organization',[260] which can be regarded as an attempt to evade the obligations of the Third Geneva Convention by unlawfully depriving Azovstal prisoners of POW status and protections.

256 Emmanuel Grynszpan, "War in Ukraine: Captured Azovstal fighters face an uncertain future", *Le Monde*, 2 June 2022, <https://www.lemonde.fr/en/international/article/2022/06/02/war-in-ukraine-captured-azovstal-fighters-face-an-uncertain-future_5985463_4.html>.

257 «Пушилин: все пленные с «Азовстали» содержатся в ДНР», [Pushilin: all prisoners from Azovstal are kept in the DPR], Kommersant, 23 May 2022, <https://www.kommersant.ru/doc/5362384>.

258 Leonid Tsvetaev, «Безоговорочная капитуляция. Военные с «Азовстали» не выдвигали никаких требований» [Unconditional surrender. The military from Azovstal did not put forward any demands], Gazeta.ru website, 17 May 2022, <https://www.gazeta.ru/army/2022/05/17/1486374>.

259 Pjotr Sauer, "Ukraine announces largest exchange of prisoners of war since Russia invaded", *The Guardian*, 29 June 2022, <https://www.theguardian.com/world/2022/jun/29/ukraine-announces-largest-exchange-of-prisoners-of-war-since-russia-invaded>.

260 "Russian prosecutor asks court to declare Ukraine's Azov Regiment 'terrorist organization', Interfax reports", *Reuters*, 17 May 2022, <https://www.reuters.com/world/europe/russian-prosecutor-asks-court-declare-ukraines-azov-regiment-terrorist-2022-05-17/>.

Interim Recommendations

VI

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;
- 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 weapons that by their design or use are of a nature to cause superfluous injury or unnecessary suffering;
- Refrain from using explosive weapons with wide area effects, including cluster munitions, in densely populated areas;
- Sign and ratify the Convention on Cluster Munitions (2008);
- Disclose the location and status of all civilians of the opposing side that are in their power, including any ongoing investigations against them, and free everyone whose detention is unlawful;
- Ensure that all POWs and any other retained personnel (such as medical personnel) are treated with full respect under the Geneva Convention (III) relative to the Treatment of Prisoners of War, of 12 August 1949;
- Refrain from prosecuting captured combatants for the mere fact of having directly participated in hostilities;
- Respect their duty to investigate and prosecute under IHL alleged grave breaches of the Geneva Conventions of 1949 and the laws of war;
- Provide international investigators, including investigators of the International Criminal Court, with unimpeded access to the territory under their effective control, in order to strengthen accountability for alleged international crimes;
- Ratify the Rome Statute and formally become members of the International Criminal Court;
- Ensure the safety and effectiveness of the agreed humanitarian corridors for both evacuation and delivery of aid; and
- Ensure freedom of movement and freedom of return to civilians evacuating or otherwise fleeing violence.

ODIHR calls on the Russian Federation to:

- Refrain from launching indiscriminate attacks against the civilian population or civilian objects;
- Respect the main tenets of the law of occupation and refrain from introducing irreversible changes to the status of Ukrainian territories under military occupation;
- Immediately halt the deportation of civilians from occupied territories to the Russian Federation territory of the territories of the so-called "Donetsk People's Republic" and "Luhansk People's Republic";
- Stop subjecting civilians from occupied territories to extrajudicial executions, torture and other forms of ill-treatment while in custody;
- Immediately halt the abduction, arbitrary detention and enforced disappearance of civilians in occupied territories;
- Eliminate the procedure of 'filtration' of civilians performed by the Russian Federation and the so called "Donetsk People's Republic" and "Luhansk People's Republic" forces in violation of their right to freedom of movement and right to privacy; and
- Ensure that the death penalty is neither imposed nor carried out on anyone under their power or in captivity in territories under their overall control.

ODIHR calls on Ukraine to:

- Launch investigations in cases of alleged extrajudicial punishment, including vis-à-vis those suspected of looting;
- Ensure that internationally agreed standards of impartiality, independence and thoroughness of criminal proceedings are guaranteed at all times; 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.

Annexe

Relevant rules of international humanitarian law (IHL) applicable to the international armed conflict in Ukraine

Both the Russian Federation and Ukraine are bound by treaty and customary IHL[261] applicable in international armed conflicts, in particular the 1907 Hague Regulations (HR),[262] the 1949 Four Geneva Conventions (GC I; GC II; GC III; GC IV)[263] and their 1977 Additional Protocol I (AP I).[264] Both Ukraine and the Russian Federation are parties to several core human rights treaties. In a situation of armed conflict, with the exception of lawful derogations provided for in some human rights treaties, States remain bound by their obligations under international human rights.

Methods and means of warfare

Targeting

- When launching an attack, parties to the conflict must at all times distinguish between civilians[265] and combatants[266] as well as between civilian objects and military objectives (**principle of distinction**).[267] Attacks may only be directed against combatants and military objectives. IHL strictly prohibits indiscriminate attacks.[268] These include, for example, attacks that are not directed at a military objective and hence are targeting civilians or civilian objects;[269] or attacks that are conducted with methods or means of warfare which are intrinsically indiscriminate. In addition, IHL stipulates that, in the conduct of military operations, constant care must be taken to spare civilians and civilian objects. This means that all feasible precautions must be taken, by all parties to the conflict, to avoid, and in any event to minimize, incidental loss of civilian life, injury to civilians and damage to civilian objects (**principle of precautions** in attack).[270] For the party to the conflict planning an attack such precautions include the choice of the means and methods of attack that are more likely to avoid or minimize incidental harm to civilians or civilian

261 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).
262 Convention (IV) with its annexed Regulations concerning the Laws and Customs of War on Land, 18 October 1907 (Hague Regulations).
263 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.
264 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.
265 AP I, art. 50; and Customary IHL Rule 5.
266 AP I, art. 43(2); and Customary IHL Rules 3 and 4.
267 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.
268 AP I, art. 51(4); and Customary IHL Rule 11.
269 AP I, art. 51(4)(a); and Customary IHL Rule 12.
270 AP I, arts. 57 and 58; and Customary IHL Rules 15-21.

objects[271] as well as giving effective warning to the civilian population prior the launch of the attack.[272] Warring parties should also take precautions to protect the population under their control against the effects of attacks such as avoiding locating military objectives within or near densely populated areas.[273]

- Parties to the conflict must also respect the **principle of proportionality**[274] which prohibits attacks against military objectives, that may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated. Given that direct attacks against civilians and civilian objects are already prohibited, the proportionality evaluation is relevant only when attacks are directed against lawful military targets. Lack of compliance with the principles of distinction and proportionality constitutes grave breaches of IHL that amount to war crimes under the Rome Statute of the International Criminal Court (ICC).[275]

- **Medical facilities/units**[276] **and personnel benefit** from special protection under IHL.[277] If they are used for military purposes (e.g. storage of weapons) they will lose their protection and may be subject to attacks but under restricted circumstances and following additional precautionary measures compared to other civilian objects.[278] As Article 19 of GC IV stipulates: "Protection may (…) cease only after due warning has been given, naming, in all appropriate cases, a reasonable time limit, and after such warning has remained unheeded."

- IHL obliges the parties to the conflict to respect medical personnel assigned to medical duties and protect them from attacks in all circumstances.[279]

- **Journalists and media workers** engaged in professional missions in areas of armed conflict shall be considered as civilians and, as such, respected and protected from attacks as long as they are not taking a direct part in hostilities.[280]

- **Schools and other educational facilities:** Under IHL, schools, as civilian objects, are afforded general protection from attack.[281] If they are used for military purposes (e.g. as military barracks), they may lose such protection. Even in such cases, attacks against schools that are expected to cause

271 AP I, art. 57(2)(a); and Customary IHL Rule 17.
272 AP I, art. 57(2)(c); and Customary IHL Rule 20.
273 AP I, art. 58; and Customary IHL Rules 22-24.
274 AP I, art. 51(4)(b), Customary IHL Rule 14.
275 ICC Statute, art. 8(2)(b).
276 These include both civilian and military hospitals.
277 GC IV, arts. 18 and 20-22; AP I art. 12 and 15; and Customary IHL Rules 28-29 and 25.
278 GC IV, art. 19; AP I art. 13; and Customary IHL Rules 25, 28.
279 GC I, arts. 24-26; GC II, art. 36; GC IV art. 20; AP I, art. 15; and Customary IHL Rule 25.
280 AP I, art. 79; and Customary IHL Rule 34.
281 AP I, art. 52(1) and (3); Customary IHL Rules 10, 38 and 40.

excessive harm to civilians or civilian buildings are prohibited (principle of proportionality) and parties to the conflict must take all feasible precautions to avoid or at least minimize harm to civilians when attacking (principle of precautions). Students and teachers are presumed to be civilians and, as any other civilian, they are protected from attack unless they directly participate in hostilities,[282] regardless of whether or not a school or other educational facility has itself lost its protection against attack.

Methods of warfare

- IHL explicitly prohibits the use of **human shields**,[283] art. 51(7) of AP I stipulates that: "The presence or movements of the civilian population or individual civilians shall not be used to render certain points or areas immune from military operations, in particular in attempts to shield military objectives from attacks or to shield, favour or impede military operations. The Parties to the conflict shall not direct the movement of the civilian population or individual civilians in order to attempt to shield military objectives from attacks or to shield military operations." Under the Statute of the ICC, "utilizing the presence of a civilian or other protected person to render certain points, areas or military forces immune from military operations" constitutes a war crime in international armed conflicts.[284]

- **Sieges**: IHL does not explicitly prohibit sieges *per se* as a method of warfare. Nonetheless, considering that such practice entails complete isolation of the besieged area with the view of obtaining surrender or annihilation of the adversary, when civilians are involved, there are a number of IHL prohibitions that will inevitably restrain the use of siege warfare.[285] In the present context, the most important ones are the prohibition of starvation of the civilian population[286] which may amount to a war crime under the ICC Statute[287] and the prohibition of attacking, destroying, removing or rendering useless objects indispensable to the survival of the civilian population (e.g., foodstuffs, agricultural areas, crops, livestock, drinking water and irrigation systems).[288]

282 AP I, art. 51(2) and (3).
283 GC III, art. 23; GC IV, art. 28; AP I, art. 51(7); and Customary IHL Rule 97.
284 ICC Statute, art. 8(2)(b)(xxiii).
285 Among others, the prohibition of collective punishment (art. 33 GC IV; art. 75 AP I; and Customary IHL Rule 103) and the prohibition of human shields (GC III, art. 23; GC IV, art. 28; AP I, art. 51(7); and Customary IHL Rule 97). See, EJIL:Talk!, G. Gaggioli, *Joint Blog Series on International Law and Armed Conflict: Are Sieges Prohibited under Contemporary IHL?*, 30 January 2019, available at: https://www.ejiltalk.org/joint-blog-series-on-international-law-and-armed-conflict-are-sieges-prohibited-under-contemporary-ihl/.
286 AP I, art. 54(1); and Customary IHL Rule 53.
287 ICC Statute, Article 8(2)(b)(xxv).
288 AP I, art. 54(2); and Customary IHL Rule 54.

The use of weapons

- IHL generally prohibits weapons that by their design or use are of a nature to cause superfluous injury or unnecessary suffering.[289]

- Any weapon the use of which is not specifically prohibited under international law must respect the basic principles related to the conduct of hostilities under IHL:

    - If a particular weapon is so designed that it cannot, by nature, be directed at a specific military target or that its effects cannot be limited to a specific target, it is prohibited by IHL[290] as its use would constitute an indiscriminate attack.

    - If a particular weapon is found not to be indiscriminate by nature, the circumstances under which it 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 which is likely to violate the prohibition of indiscriminate attacks and the principle of proportionality in attacks.[291]

- Examples of weapons that by their use in the current conflict may constitute violations of IHL:

    - Explosive weapons with a wide impact area in and around residential and urban areas are likely to violate the IHL principles of distinction, proportionality and precautions and thus constitute an indiscriminate attack.

    - **Cluster Munitions**: A cluster munition is a weapon that disperses or releases explosive sub-munitions: small, unguided explosives or bomblets that are designed to explode prior to, upon or after impact. They take a heavy toll on civilians during armed conflict as well as after the end of fighting as a proportion of the sub-munitions that are released fail to detonate as intended, contaminating large areas with deadly explosive ordnance.

  Neither the Russian Federation nor Ukraine are parties to the 2008 Convention on Cluster Munitions prohibiting the use of these weapons. Nonetheless, as with any other weapon the use of which is not specifically prohibited under international law, they must respect the basic principles of IHL of distinction, proportionality and precautions.

289 AP I, art. 35; and Customary IHL Rule 70.
290 AP I, art. 51(4)(b) and (c); and Customary IHL Rule 12.
291 AP I, art. 51(4) and (5); and Customary IHL Rules 11, 12, 14.

IHL rules relevant to the humanitarian situation affecting the civilian population including IDPs

- The IHL framework regulating humanitarian access mainly revolves around four main stages:[292]
    - Each party to the conflict bears the primary responsibility to meet the humanitarian needs of the population under its control;[293]
    - Impartial humanitarian organizations have a right to offer their services in order to carry out humanitarian activities, in particular when the needs of the population affected by the armed conflict are inadequately fulfilled;[294]
    - Impartial humanitarian activities undertaken in situations of armed conflict are subject to the consent of the parties concerned.[295] However, if the essential needs of the population under their control are not met, the parties to the conflict concerned cannot withhold consent to such activities;[296]
    - Once impartial humanitarian relief schemes have been agreed to, the parties to the conflict as well as all States which are not a party to the armed conflict must allow and facilitate rapid and unimpeded passage of these relief schemes, subject to their right of control.[297] Only in case of imperative military necessity may the movements of relief schemes be temporarily restricted.[298]
- Humanitarian personnel and the objects used for humanitarian relief operations must be respected and protected at all times.[299]

Deprivation of liberty in armed conflict:

All persons deprived of their liberty for reasons related to an armed conflict must be treated humanely and must be afforded appropriate conditions of detention, the medical care they require, and the judicial or procedural guarantees corresponding to their status.

292 See, ICRC Q&A and lexicon on humanitarian access, *International Review of the Red Cross (2014), 96 (893),* pp. 369-70, September 2015.
293 For occupied territories: GC IV, art. 55; AP I art. 69.
294 GC IV arts. 23, 55 and 59; AP I, art. 69-70; and Customary IHL Rule 55.
295 AP I, art. 70(1).
296 GC IV, art. 59; and Customary IHL Rule 55.
297 AP I, art. 71(3); and Customary IHL Rule 56.
298 Customary IHL Rule 56.
299 AP I, art. 71(2); and ICRC Customary IHL Rules 31 and 32.

The two main forms of long-term detention in armed conflicts (applicable to both POWs and civilians) are **internment**, i.e., administrative detention for security reasons, and **detention for the purposes of criminal proceedings.**

- Internment is the term used in IHL to denote the detention of someone believed to pose a serious threat to the detaining authority's security, without the intention of bringing criminal charges against that person.

- Detention for the purpose of criminal proceedings is the deprivation of liberty to which a criminal suspect may be subjected, lasting until final conviction or acquittal.

Prisoners of war (POWs)

- The third 1949 Geneva Convention relative to the Treatment of Prisoners of War (GC III) provides detailed provisions on how POWs must be treated by all the parties to the conflict.

- POWs are in the hands of the enemy Power, but not of the individuals or military units who have captured them. Irrespective of the individual responsibilities that may exist, the Detaining Power is responsible for the treatment given them.[300]

- POWs must at all times be humanely treated and protected against acts of violence, intimidation, insults and exposure to public curiosity. 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.[301]

- A POW, when questioned on the subject, is bound to give only his surname, first names and rank, date of birth, and army, regimental, personal or serial number, or failing this, equivalent information. No physical or mental torture, nor any other form of coercion, may be inflicted on POWs to secure from them information of any kind whatsoever. POWs who refuse to answer may not be threatened, insulted, or exposed to any unpleasant or disadvantageous treatment of any kind.[302]

- Their internment is not a form of punishment, but a means to prevent their further participation in the conflict. They must be released and repatriated without delay after the cessation of active hostilities.[303]

300 GC III, art. 12.
301 GC III, art. 13.
302 GC III, art. 17.
303 GC III, art. 118; and Customary IHL Rule 128(a).

- A prisoner of war shall be subject to the laws, regulations and orders in force in the armed forces of the Detaining Power; the Detaining Power shall be justified in taking judicial or disciplinary measures in respect of any offence committed by a prisoner of war against such laws, regulations or orders.[304] Wherever possible, disciplinary[305] rather than judicial measures should be taken.[306]

- Judicial measures: the detaining power may prosecute and detain POWs for war crimes they may have committed or for other violations of IHL, but not for the mere fact of having taken a direct part in hostilities.[307]

Detention of civilians in Armed Conflict

- Only in cases justified by *imperative reasons of security* for the detaining power, a party to conflict may subject civilians to **assigned residence** or to **internment**.[308]

- Internment is a security measure and cannot be used as a form of punishment. This means that an internee must be released as soon as the reasons justifying his/her internments cease to exist.

- If deprivation of liberty is not in line with the grounds and procedures provided by GC IV then it amounts to **unlawful confinement** (arbitrary detention) which is a grave breach of GC IV[309]and a war crime under the ICC Statute.[310]

- Procedural safeguards: the civilian internee must be informed of the reasons for his or her internment and must be able to have the decision reconsidered as soon as possible by an appropriate court or administrative board and, if the decision is maintained, to have it reviewed periodically, and at least twice yearly.[311]

- GC IV and Additional Protocol I provide extensive protection for civilian internees during international armed conflicts.[312] The treatment and detention conditions for civilian internees are similar to those for prisoners of war. Civilian internees must be treated humanely in all circumstances.[313] 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

304 GC III, art. 82.
305 GC III, arts. 82-98.
306 GC III, art. 83.
307 GC III, arts. 99-108.
308 GC IV, arts. 41-43 and 78 (in occupied territories).
309 GC IV, art. 147, see also Customary IHL Rule 99.
310 ICC Statute, art. 8(2)(a)(vii).
311 GC IV. arts. 42, 43 and 78; AP I, art. 75; and Customary IHL Rule 99.
312 GC IV, arts. 79-141; Customary IHL Rules 100-102.
313 Customary IHL Rule 90.

convictions.[314] IHL also sets out minimum conditions of detention, covering such issues as accommodation, food, clothing, hygiene and medical care. Civilian internees must be allowed to exchange news with their families.

- Civilians can also be detained for the purpose of criminal proceedings while awaiting trial or after they have been sentenced for offences they have committed in relation to the armed conflict.[315]

Relevant IHL provisions regulating the situation in areas under Russian occupation

Administration of occupied territories

- Under IHL, a "territory is considered occupied when it is actually placed under the authority of the hostile army".[316]

- Under occupation law, the occupying power does not acquire sovereignty over occupied territory and is required to respect the existing laws and institutions of occupied territory as far as possible. It is presumed that occupation will be temporary and that the occupying power shall preserve the *status quo ante* in occupied territory. In general terms, occupation law endeavours to strike a balance between the security needs of the occupying power on the one hand and the interests of the ousted power and the local population on the other.

- Under Article 43 of the Hague Regulations, "the authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, ***while respecting, unless absolutely prevented, the laws in force in the country***."

- Under Article 64 of GC IV, "The penal laws of occupied territory shall remain in force, with the exception that they may be repealed or suspended by the Occupying Power in cases where they constitute a threat to its security or an obstacle to the application of the present Convention. Subject to the latter consideration and to the necessity for ensuring the effective administration of justice, the tribunals of occupied territory shall continue to function in respect of all offences covered by the said laws. The Occupying Power may, however, subject the population of occupied territory to provisions which are essential to enable the Occupying Power to fulfil its obligations under the present Convention (…)."

- Under Articles 50(2) and (3) of GC IV, "The Occupying Power shall take all necessary steps to facilitate the identification of children and the registration

314 GC IV, art. 27.
315 GC IV, arts. 68-78.
316 Hague Regulations art. 42.

of their parentage. ***It may not, in any case, change their personal status****, nor enlist them in formations or organizations subordinate to it.* (…) Should the local institutions be inadequate for the purpose, the Occupying Power shall make arrangements for the maintenance and education, if possible by persons of their own nationality, language and religion, of children who are orphaned or separated from their parents as a result of the war and who cannot be adequately cared for by a near relative or friend."

- The Occupying Power may not compel protected persons to serve in its armed or auxiliary forces. No pressure or propaganda which aims at securing voluntary enlistment is permitted. The Occupying Power may not compel protected persons to work unless they are over eighteen years of age, and then only on work which is necessary either for the needs of the army of occupation, or for the public utility services, or for the feeding, sheltering, clothing, transportation or health of the population of occupied country. Protected persons may not be compelled to undertake any work which would involve them in the obligation of taking part in military operations.[317]

- Under the Article 54 of the GC IV, "the Occupying Power may not alter the status of public officials or judges in occupied territories, or in any way apply sanctions to or take any measures of coercion or discrimination against them, should they abstain from fulfilling their functions for reasons of conscience." The same Article adds that the previous provision, "does not affect the right of the Occupying Power to remove public officials from their posts".

- In occupied territory: (a) movable public property that can be used for military operations may be confiscated; (b) immovable public property must be administered according to the rule of usufruct; and (c) private property must be respected and may not be confiscated; except where destruction or seizure of such property is required by imperative military necessity.[318]

Abuses by the occupying power

- ***Wilful or intentional killings of civilian***s is strictly prohibited under IHL.[319] All four Geneva Conventions list "wilful killing" of protected persons as a grave breach of IHL[320] and the prohibition of murder is also recognized as a fundamental guarantee by Additional Protocol I.[321] Murder 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.[322]

317 GC IV, art. 51.
318 Hague Regulations art. 53; and Customary IHL Rule 51.
319 Customary IHL Rule 89.
320 Particularly relevant in this case is art. 147 GC IV, listing the wilful killing of protected civilians as a grave breach and a war crime.
321 AP I art. 75(2)(a).
322 ICC Statute, arts. 8(2)(b) and 7(1)(a) respectively.

- ***Deportations***: IHL strictly prohibits individual or mass deportation or forcible transfer of the civilian population of an occupied territory to the territory of the occupying power or to that of any other country regardless of the motive.[323] Nevertheless, the Occupying Power may undertake total or partial evacuation of a given area if the security of the population or imperative military reasons so demand. Such evacuations must not involve the displacement of protected persons outside the bounds of occupied territory except when for material reasons it is impossible to avoid such displacement. Deportation of protected persons is a grave breach of GC IV[324] and a war crime under the ICC Statute.[325]

- ***Enforced Disappearances***: Enforced disappearances are prohibited by Customary IHL.[326] 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,[327] torture or other forms of cruel inhuman treatment,[328] and murder,[329] as well as the requirements to register persons deprived of their liberty,[330] and to respect family lives.[331] Parties to an armed conflict are also required to take all feasible measures to account for persons reported missing as a result of armed conflict and to provide their family members with information they have on their fate.[332] Although not listed as a war crime under 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.[333]

- ***Sexual Violence in Armed Conflict***: Rape and other forms of sexual violence (including forced prostitution, forced pregnancy and enforced sterilization), when committed in the context of an armed conflict, constitute violations of IHL[334] and amount to a war crime under the ICC Statute.[335] All parties to an armed conflict must abide by the prohibition of sexual violence and have an obligation to prosecute the perpetrators.

323 GC IV, art. 49(1).
324 GC IV, art. 147.
325 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).
326 Customary IHL Rule 98.
327 Customary IHL Rule 99.
328 GC IV, art. 32; AP I art. 75(2)(a)(ii); Customary IHL Rule 90.
329 GC IV, art. 147; AP I art. 75(2)(a)(i); and Customary IHL Rule 89.
330 GC IV, art. 136; Customary IHL Rule 123.
331 GC IV, art. 27; Customary IHL Rule 105.
332 GC IV, art. 136; Customary IHL Rule 117.
333 Enforced disappearance of persons is explicitly recognized as a crime against humanity under the ICC Statute, art. 7(1)(i).
334 GC IV, arts. 3 and 27; AP I, arts. 75-77; and Customary IHL Rule 93.
335 ICC Statute, art. 8(2)(b)(xxii).

Office for Democratic Institutions and Human Rights

OSCE ODIHR