



# DETENTION OF CIVILIANS IN THE CONTEXT OF THE ARMED ATTACK BY THE RUSSIAN FEDERATION AGAINST UKRAINE

24 February 2022 – 23 May 2023

**Photo cover page**

OHCHR Human Rights Officer in a makeshift detention place located in the basement of a residential building. © OHCHR

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**24 February 2022 – 23 May 2023**

*27 June 2023*



UNITED NATIONS  
**HUMAN RIGHTS**  
OFFICE OF THE HIGH COMMISSIONER

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*Ukraine*



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## I. EXECUTIVE SUMMARY

1. This report by the Office of the United Nations High Commissioner for Human Rights (OHCHR) examines the detention of civilians in the context of the armed attack by the Russian Federation against Ukraine. The report covers the period from 24 February 2022 to 23 May 2023 and is based on the findings of the United Nations Human Rights Monitoring Mission in Ukraine (HRMMU).<sup>1</sup> It examines compliance by the parties to the conflict with international human rights law (IHRL) and international humanitarian law (IHL), as applicable in international armed conflict. The report raises concerns regarding arbitrary detention and other violations of international law. It concludes with recommendations which aim to strengthen protection of the rights to liberty and security of persons and ensure effective remedies for victims.
2. The ongoing Russian armed attack against Ukraine, in continuing breach of the United Nations Charter and international law,<sup>2</sup> has led to a wide range of violations of IHL and IHRL. Since 24 February 2022, large numbers of Ukrainian civilians have been detained by the Russian Federation in the territory of Ukraine under its control or during occupation. Ukrainian authorities also detained civilians for conflict-related crimes. This report sets out concerns identified by OHCHR relating to conflict-related detention of civilians.
3. OHCHR emphasizes that the Government of Ukraine has continued to provide OHCHR with full and confidential access to conflict-related detainees in places of detention, with the exception of a case of 87 civilian Russian sailors detained on their vessels in Izmail. The Government of Ukraine was also engaged with OHCHR in constructive dialogue in relation to the violations attributed to its actors. The Russian Federation did not provide OHCHR with any access to conflict-related detainees, despite repeated requests. This lack of access also means that numbers and nature of cases ought not to be compared against each other.
4. In territory of Ukraine which it occupied, the Russian Federation<sup>3</sup> detained civilians in what in some cases appeared to be *de facto* security detention, without carrying out these interments in the manner required by IHL. While such detention is in principle provided for under international law, without such safeguards it constitutes arbitrary detention. It also failed to uphold due process and procedural guarantees to protect civilians enshrined in IHRL, thus creating risks of enforced disappearance, torture and ill-treatment.
5. OHCHR documented 864 individual cases (763 men, 94 women and 7 boys) of arbitrary detention perpetrated by the Russian Federation between 24 February 2022 and 23 May 2023, many of which also amounted to enforced disappearances. Many individuals were detained during so-called 'filtration' carried out by the Russian Federation in occupied territory, a process used to seek to identify possible affiliation with or support for the

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<sup>1</sup> HRMMU was deployed on 14 March 2014, at the request of the Government of Ukraine, to monitor and report on the human rights situation throughout the country and propose recommendations to the Government and other actors to address human rights violations and concerns.

<sup>2</sup> United Nations General Assembly resolution ES-11/1.

<sup>3</sup> Including through Russian-affiliated armed groups.

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Ukrainian armed forces or authorities, and to collect information about residents in occupied territory. In many of the documented cases, detentions during ‘filtration’ failed to comply with both IHL and IHRL standards and were arbitrary, and in some cases amounted to the enforced disappearance of individuals.

6. OHCHR documented the detention of 260 civilians (209 men and 51 women) by the Russian Federation based on their perceived political views or other legitimate exercise of freedom of expression. Cases included local public officials, civil society activists, humanitarian volunteers and informal leaders of communities, including teachers and priests. OHCHR further documented the detention of 88 civilians (all men) who had formerly served in the Ukrainian armed forces prior to 24 February 2022.
7. Russian armed forces<sup>4</sup> held conflict-related civilian detainees for periods ranging from several days, to weeks or months, often *incommunicado*, in unofficial places of detention. In 26 per cent of these cases, the Russian Federation transferred detainees to other locations within occupied territory or deported them to the Russian Federation, contrary to the prohibition against forcible transfers or deportations under IHL. Moreover, in many cases Russian armed forces and occupying authorities neither acknowledged the detention nor disclosed information to relatives and lawyers, for prolonged periods of time. This practice impacted particularly on relatives and friends of detainees, in desperate search for information.
8. While being held *incommunicado*, conflict-related civilian detainees were often interrogated by members of Russian armed forces. In the cases documented by OHCHR, more than 91 per cent of civilian detainees held by the Russian Federation described subjection to torture and ill-treatment, including sexual violence. In the documented cases, such treatment appeared to be carried out to force the victims to confess to provision of assistance to Ukrainian armed forces, to compel them to cooperate with the occupying authorities, or to intimidate those considered to hold pro-Ukrainian views. In many locations, the conditions of detention were so dire that the conditions of detention could themselves amount to ill-treatment, or in some cases, torture under international law.
9. In particular, OHCHR is gravely concerned by the summary execution of 77 civilians (72 men and 5 women) while they were arbitrarily detained by the Russian Federation, and the further death of one detainee (a man) as a result of torture, inhumane detention conditions and/or denial of necessary medical care.
10. In Ukraine, amendments to its criminal codes since the introduction of martial law have given Ukrainian authorities wider discretion to detain persons perceived to pose a threat to security or are suspected of committing criminal offences against national security. These amendments, combined with practices employed by Ukrainian security forces, have also resulted in an environment conducive to arbitrary detention. OHCHR documented 75 cases (57 men, 17 women and 1 boy) of arbitrary detention by Ukrainian security forces, mostly of persons suspected of conflict-related criminal offences.

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<sup>4</sup> “Russian armed forces”, for purposes of this report, include the Armed Forces of the Russian Federation, National Guard Forces of the Russian Federation and law enforcement agencies, as well as Russian-affiliated armed groups of former self-proclaimed ‘republics’, who are under the overall control of the Russian Federation.

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11. During the reporting period, Ukrainian law enforcement and security officers appeared to misuse *in flagrante* provisions to detain several civilians without a warrant for alleged membership in armed groups of self-proclaimed ‘republics’ between 2014-2020, resulting in arbitrary deprivations of liberty.
  12. The law on collaboration activities adopted on 3 March 2022, which introduced criminal liability for collaborating with an “aggressor State”, criminalizes a wide range of conduct, potentially including conduct which can be lawfully compelled by the occupying power under IHL. The Office of the Prosecutor-General has reportedly opened more than 5,400 criminal proceedings under this law, and courts have issued over 500 guilty verdicts. The vagueness and overly broad terminology in the legal provisions raise concerns with respect to the principle of legality and have led to arbitrary detention in a number of cases.
  13. OHCHR documented 65 cases where Ukrainian security forces detained civilians in unofficial places of detention for periods lasting from several hours to 4.5 months, during which they were often held *incommunicado*. This practice was reportedly used to coerce detainees to confess or make other incriminating statements.
  14. Fifty-seven per cent of interviewed detainees described being subjected to torture and ill-treatment by Ukraine, predominantly in unofficial places of detention and, to a lesser extent, in pre-trial detention facilities. Moreover, in 17 per cent of documented cases, detainees experienced poor detention conditions.
  15. A significant number of cases of arbitrary detention also amounted to enforced disappearance. In such cases, law enforcement officers, mainly from the Security Service of Ukraine (SBU), detained civilians without court authorisation; held them *incommunicado* for several days, sometimes transferring them to one or several unofficial places of detention; denied them access to counsel; and declined to disclose information to their loved ones.
  16. Respect for judicial guarantees and fair trial rights of conflict-related detainees by the Ukrainian authorities also raised concerns, some relating to poor legal aid and bias against conflict-related detainees by legal aid lawyers. OHCHR has also documented practices during earlier stages of the criminal investigation which could implicate fair trial standards. For example, several of the conflict-related detainees interviewed asserted that evidence had been planted during home searches or searches conducted at checkpoints.
  17. Comprehensive accountability for violations of IHL and IHRL perpetrated in the context of the conflict is paramount to ensure justice for victims, strengthen rule of law, and contribute to future peace and reconciliation. OHCHR is not aware of any ongoing investigations by the Russian Federation into arbitrary detentions, enforced disappearances or other violations perpetrated against those detained by its own forces. A draft law approved by the Parliament of the Russian Federation in its first reading instead would potentially provide exemption for criminal liability for such offences perpetrated in occupied territory of Ukraine, if committed for the sake of “protecting the interests of the Russian Federation.”
  18. As of 23 May 2023, criminal investigations launched by the Government of Ukraine into unlawful detentions of civilians by Russian armed forces have resulted in convictions against 23 individuals (including 19 *in absentia*). OHCHR is not aware of completion of

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criminal investigations launched by Ukrainian authorities into actions of Ukrainian State actors alleged to be involved in arbitrary detentions or enforced disappearances of conflict-related detainees.



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## II. METHODOLOGY

19. Pursuant to standard OHCHR methodology, this report is based on information gathered by OHCHR through 274 site visits, including 70 visits to official detention facilities, and through interviews with 1,136 conflict-related detainees,<sup>5</sup> their relatives, witnesses of violations, lawyers, human rights defenders and public officials in local communities. OHCHR was provided access to conflict-related detainees held by Ukraine and was able to conduct confidential interviews in places of detention. Despite repeated requests, no access was provided to conflict-related detainees held by the Russian Federation. However, OHCHR was able to interview 178 such detainees after their release, as well as their relatives and other individuals with relevant information.<sup>6</sup>
20. Information obtained through interviews was cross-checked and corroborated by on-site observations in places of detention, geographic data, official records, open-source information, court documents, trial monitoring, and other relevant information assessed as credible and reliable. Where OHCHR was not able to corroborate information through witnesses or other sources, it reached conclusions by comparing information received with sets of similar allegations giving rise to substantiated patterns of consistent conduct in specific areas or places of detention. Findings are included in the report where they meet the “reasonable grounds to believe” standard: namely where, based on a body of verified information, an ordinarily prudent observer would have reasonable grounds to believe that the facts took place as described, and where legal conclusions are drawn, that these facts meet all the elements of a violation.
21. Information in this report is used with the full and informed consent of all sources as to its use. At all stages, OHCHR strictly adhered to the “do no harm” principle and took all appropriate measures to prevent re-traumatization and to protect individuals.
22. Prior to publication, OHCHR shared the draft report with the concerned States for factual comments, as per standard practice.

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<sup>5</sup> In this report, the umbrella term “conflict-related cases” should be understood as criminal cases under charges laid down in articles [109-114<sup>2</sup>](#), [258-258<sup>4</sup>](#), [260](#), [437-442](#) of the Criminal Code of Ukraine.

<sup>6</sup> In cases where victims of violations, including minors, were experiencing trauma due to their experience, OHCHR collected information from relatives or friends of the victims with the victim’s informed consent, or from witnesses who were detained together with the victims and, in some cases, faced similar mistreatment. OHCHR also interviewed relatives, other close persons and witnesses to document violations in cases when victims remained missing or continued to be held in custody.

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### III. LEGAL FRAMEWORK

23. The Russian Federation and Ukraine are bound by treaty and customary IHL applicable to international armed conflicts, including the four Geneva Conventions of 1949, the 1977 Additional Protocol I to the Geneva Conventions, and the 1907 Hague Convention IV with its annexed Regulations concerning the Laws and Customs of War on Land.
24. IHL continues to apply in situations of international armed conflict.<sup>7</sup> States have an obligation to respect and uphold IHL in all circumstances where they exercise jurisdiction, including in places under their control or occupation, and must ensure that any restrictions on the enjoyment of human rights are compatible with the requirements of applicable IHL.<sup>8</sup> While States can derogate from certain human rights treaty obligations, derogation measures are subject to stringent conditions and must be compatible with States' obligations under international law.<sup>9</sup>

#### A. DEPRIVATION OF LIBERTY

25. The prohibition of arbitrary deprivation of liberty is enshrined in human rights treaties<sup>10</sup> and is part of customary international law<sup>11</sup> applicable in situations of international armed conflict.<sup>12</sup> While certain elements of the right to liberty may be subject to derogation under conditions laid out in human rights treaties, no derogation is permissible from the prohibition of arbitrary deprivation of liberty.<sup>13</sup> Detentions are considered arbitrary and amount to violations of the right to liberty when they are unlawful (i.e. not imposed on permissible grounds and in accordance with such procedures as are established by law). The notion of arbitrariness is also broader, and covers elements of injustice, lack of predictability and due process of law, reasonableness, necessity and proportionality.<sup>14</sup>
26. In international armed conflicts, IHL provides for internment (also commonly referred as security detention or administrative detention) of civilians - except for detention of the State's own nationals, the legal grounds of which are regulated by IHL. Security detention under IHL is permissible only if absolutely necessary for the security of the detaining power, and in occupied territory only when necessary for "imperative reasons

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<sup>7</sup> See *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Judgment, I.C.J. Reports 2008, p. 168, paras 216–217; Human Rights Committee, General Comments no. 31 (para 11), no. 35 (para. 64), no. 36 (para. 64) and no. 37 (para. 97).

<sup>8</sup> Human Rights Committee, General Comments no. 31 (para 10) and no. 36 (para. 63).

<sup>9</sup> In March 2022, Ukraine notified the United Nations Secretary-General of its derogation from certain human rights obligations under the International Covenant on Civil and Political Rights (ICCPR) for the duration of martial law. Following each extension of martial law, Ukraine has further notified the Secretary-General of the continuation of derogations. While the Russian Federation has imposed martial law in occupied areas of Ukraine in Donetsk, Kherson, Luhansk and Zaporizhzhia regions, the Russian Federation did not derogate from any provisions of the ICCPR. All notifications of derogations can be found at: <https://treaties.un.org/pages/CNs.aspx?cnTab=tab2&clang=en>. For details regarding application of Russian law in occupied territory, see OHCHR, *Report on the human rights situation in Ukraine, 1 August 2022–31 January 2023*, March 2023, paras. 41–43, available at [www.ohchr.org/en/documents/country-reports/report-human-rights-situation-ukraine-1-august-2022-31-january-2023](http://www.ohchr.org/en/documents/country-reports/report-human-rights-situation-ukraine-1-august-2022-31-january-2023).

<sup>10</sup> ICCPR, art. 9.

<sup>11</sup> A/HRC/22/44, para. 51.

<sup>12</sup> See ICRC Customary IHL study, rule 99. Available at <https://ihl-databases.icrc.org/en/customary-ihl/v1/rule99>.

<sup>13</sup> ICCPR art. 4; Human Rights Committee, General Comment No. 35, paras. 65–67. See also A /HRC/22/44.

<sup>14</sup> See Human Rights Committee, General Comment no. 35, para. 12; A /HRC/22/44, para. 61.

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of security”.<sup>15</sup> Security detention that complies with IHL and applicable IHRL is in principle not arbitrary.<sup>16</sup> Decisions regarding internment in occupied territory must be made according to a regular procedure to be prescribed by the Occupying Power in accordance with the provisions of the Fourth Geneva Convention.<sup>17</sup> Minimum standards for such regular procedure are laid down in the Geneva Conventions and include the following rights, guarantees, and obligations of the detaining power: internment orders must be based on an individualised assessment and mass internment without such assessments are prohibited;<sup>18</sup> interned persons have a right to be promptly informed about the reasons,<sup>19</sup> to appeal to an independent and impartial body and have their internment periodically reviewed,<sup>20</sup> and to be registered and held in a recognized place of internment; information about internees must be transferred to the families and Central Tracing Agency;<sup>21</sup> and internment must cease as soon as the reasons for it cease to exist.<sup>22</sup> Moreover, the detaining power shall, within the shortest possible period, give its National Information Bureau information on protected persons who are kept in custody for more than two weeks, or who are interned.<sup>23</sup> The detaining power should also respect fundamental procedural guarantees provided for by IHRL, in particular, by providing access to independent legal counsel, preferably of the detainee’s own choosing, and disclosing the essence of the evidence on which the decision to detain is taken.<sup>24</sup>

27. Detention which does not conform with IHL is referred to as “unlawful confinement” and considered a grave breach under article 147 of the Fourth Geneva Convention, as well as a war crime under the Rome Statute of the International Criminal Court.<sup>25</sup> If committed as part of a widespread or systematic attack directed against a civilian population,

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<sup>15</sup> Fourth Geneva Convention, arts. 41, 42 and 78. Article 42 does not apply to the detention by the territorial State of its own nationals, in which cases IHRL applies. As a rule, none of the articles apply to a country’s own nationals. Security detention, together with assigned residence, is the most severe measure that a detaining or occupying Power may resort to with respect to protected persons. The ICRC stresses that internment in occupied territory should be even more exceptional than internment of protected persons within the territory of a party to the conflict. Commentary of 1958 to the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War, p. 367.

<sup>16</sup> Human Rights Committee, General Comment no. 35, para. 64.

<sup>17</sup> The Fourth Geneva Convention constitutes a sufficient legal basis for security detention under IHL, meaning that States are not obliged to enact additional domestic legislation to provide a legal basis for such detention. However, this does not release States from the duty to adopt procedures that regulate the review of internment. In practice, such regulations are necessary for the implementation of article 78 of the Convention.

<sup>18</sup> Commentary to the Fourth Geneva Convention of 1958, p. 367. Additional Protocol I, art. 75(2).

<sup>19</sup> Additional Protocol I, art. 75(3).

<sup>20</sup> Fourth Geneva Convention, art. 78(2).

<sup>21</sup> Fourth Geneva Convention, art. 106.

<sup>22</sup> Fourth Geneva Convention, art. 132. Additional Protocol I, art. 75(3).

<sup>23</sup> Fourth Geneva Convention, art. 136. The detaining power furthermore shall require its various departments concerned to provide the aforesaid Bureau promptly with information concerning all changes pertaining to these protected persons, as, for example, transfers, releases, repatriations, escapes, admittances to hospitals, births and deaths.

<sup>24</sup> ICCPR, art. 9; Human Rights Committee, General Comment no. 35, para. 15. See Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, United Nations General Assembly resolution 43/173, principles 14, 17 and 18.

<sup>25</sup> Article 8(2)(a)(vii). While neither Ukraine nor the Russian Federation are parties to the Rome Statute, Ukraine has accepted the Court’s jurisdiction over alleged crimes under the Statute occurring on its territory, pursuant to article 12(3). On 2 March 2022, the International Criminal Court opened an investigation into the situation in Ukraine on the basis of referrals received, encompassing any allegations of war crimes, crimes against humanity or genocide committed on any part of the territory of Ukraine by any person since 21 November 2013 (see [www.icc-cpi.int/ukraine](http://www.icc-cpi.int/ukraine)).

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“imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law” may also constitute a crime against humanity.<sup>26</sup>

28. Furthermore, conditions of detention may result in violations of other human rights, such as the prohibition of torture and ill-treatment. The Geneva Conventions set out obligations of State Parties in relation to conditions of internment centres and their locations.<sup>27</sup> IHRL establishes an obligation for States Parties to guarantee through legislation that any person deprived of liberty shall be held solely in officially recognized and supervised places of deprivation of liberty.<sup>28</sup>

## **B. FORCIBLE TRANSFERS AND DEPORTATIONS OF CIVILIANS DEPRIVED OF LIBERTY**

29. IHL prohibits individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or any third country, unless the safety of the population or imperative military reasons demand evacuation.<sup>29</sup> Any evacuation must comply with safeguards prescribed in IHL and applicable IHRL and must not involve movement of protected persons to places outside the occupied territory, unless it is physically impossible to do otherwise.<sup>30</sup> Unlawful deportation or forcible transfer of a protected person is considered a grave breach of IHL.<sup>31</sup>

## **C. ENFORCED DISAPPEARANCE**

30. The prohibition of enforced disappearance is enshrined in various international human rights treaties and instruments. It is prohibited by the International Covenant on Civil and Political Rights (ICCPR), to which Ukraine and the Russian Federation are States Parties, as well as by the International Convention for the Protection of All Persons from Enforced Disappearance (ICPED), to which Ukraine is a State Party.<sup>32</sup> In its Declaration on the Protection of all Persons from Enforced Disappearance, the United Nations General Assembly condemned any act of enforced disappearance as an offence to human dignity and a grave and flagrant violation of human rights and fundamental freedoms.<sup>33</sup> On the basis of existing State practice and *opinio juris*, the Working Group on Enforced or Involuntary Disappearances (WGEID) has affirmed that the Declaration reflects, codifies and consolidates relevant customary international law.<sup>34</sup>
31. Under IHRL, an enforced disappearance occurs when the following cumulative elements are met: (1) a person is deprived of liberty; (2) the deprivation of liberty is carried out by

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<sup>26</sup> Rome Statute, art. 7(1)(e).

<sup>27</sup> Fourth Geneva Convention, arts. 83, 85.

<sup>28</sup> ICPED, art. 17(2)(c); Declaration on the Protection of all Persons from Enforced Disappearance, art. 10; Human Rights Committee, General Comment no. 35, para. 58.

<sup>29</sup> Fourth Geneva Convention, art. 49.

<sup>30</sup> Fourth Geneva Convention, art. 49; Commentary to the Fourth Geneva Convention of 1958, pp. 278-281.

<sup>31</sup> Fourth Geneva Convention, art. 147.

<sup>32</sup> ICCPR, art. 6; ICPED, art. 1. In its General Comment no. 36, the Human Rights Committee affirmed that enforced disappearance results in a violation of the right to life as well as other rights recognized in the ICCPR (para. 58).

<sup>33</sup> General Assembly resolution 47/133 (1992).

<sup>34</sup> A/HRC/51/31/Add.3, para. 72.

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State agents, or by persons or groups of persons acting with the authorization, support or acquiescence of the State; and (3) this is followed by a refusal to acknowledge the detention, or concealment of the person's fate or whereabouts, which place the person outside the protection of the law.<sup>35</sup> An enforced disappearance constitutes a continuous violation until the State acknowledges the detention or releases information pertaining to the fate or whereabouts of the individual.<sup>36</sup> When committed as part of a widespread or systematic attack directed against any civilian population, enforced disappearance may also constitute a crime against humanity.<sup>37</sup>

32. Secret detention is prohibited and cannot be justified under any circumstances, including in states of war or public emergency. By definition a secret detention violates a State's obligation not to practice, permit, or tolerate enforced disappearance.<sup>38</sup>
33. The prohibition of enforced disappearance further imposes positive obligations for States, including the duty to protect individuals from enforced disappearance; to adopt adequate and effective safeguards to prevent enforced disappearance; to effectively investigate potential cases of enforced disappearance until the fate and whereabouts of the person have been established; to prosecute and punish perpetrators; and to ensure that victims enjoy their rights to an effective remedy, truth and reparations.<sup>39</sup>
34. The Fourth Geneva Convention contains specific provisions and procedural safeguards that contribute to clarifying the fate and whereabouts of protected persons. These include the right of internees to directly inform their families and the Central Tracing Agency within a week of their internment,<sup>40</sup> the duty to inform internees in advance of any transfers so as to enable them to inform their next of kin,<sup>41</sup> and the right to receive visitors and maintain communication with the outside world on a regular basis.<sup>42</sup>

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<sup>35</sup> ICPED, art. 2; Declaration on the Protection of all Persons from Enforced Disappearance, preamble; Human Rights Committee, General Comment no. 36, para. 58; *Hidalgo Rea v. Mexico* (CCPR/C/131/D/3259/2018), para. 9.5.

<sup>36</sup> WGEID, General Comment on Enforced Disappearance as a Continuous Crime, para. 1; Declaration on the Protection of All Persons from Enforced Disappearance, art. 17(1); *Hidalgo Rea v. Mexico* (CCPR/C/131/D/3259/2018), para. 9.5.

<sup>37</sup> ICPED, art. 5; Rome Statute, arts. 7(1)(i) and 7(2)(i). The Rome Statute requires an element of intent regarding the removal a person from the protection of the law for a prolonged period of time. This element is not required under IHRL.

<sup>38</sup> ICPED, arts. 17(1)-(2); E/CN.4/1997/34, para. 24.

<sup>39</sup> See ICPED, Part I; Human Rights Committee, General Comment no. 36, para. 58.

<sup>40</sup> Fourth Geneva Convention, article 106.

<sup>41</sup> Fourth Geneva Convention, article 128.

<sup>42</sup> Fourth Geneva Convention, articles 107 and 116. These rights can be restricted in line with article 5 of the Fourth Geneva Convention.

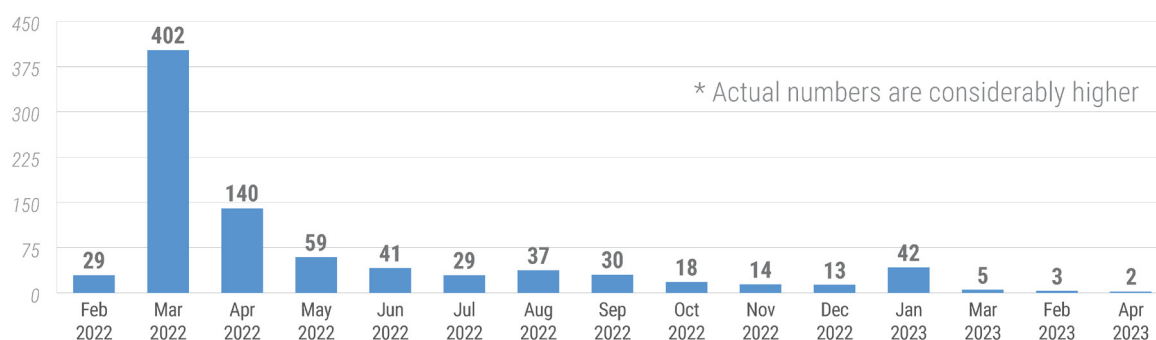


## IV. DETENTION OF CIVILIANS BY THE RUSSIAN FEDERATION

35. Soon after the Russian Federation launched its full-scale armed attack against Ukraine on 24 February 2022, reports of civilians being detained by Russian armed forces or going missing in areas under their control were made in the media, in statements by Ukrainian authorities, and through other sources. At the same time, OHCHR documented an increase in the number of conflict-related detentions in parts of Donetsk and Luhansk regions that were under the control of Russian-affiliated armed groups, and in the Autonomous Republic of Crimea and the city of Sevastopol, Ukraine (Crimea), occupied by the Russian Federation since 2014.
36. OHCHR documented 864 cases (763 men, 94 women and 7 boys) of arbitrary detention by Russian armed forces between 24 February 2022 and 23 May 2023. Many of these cases also amount to enforced disappearances. Individuals were apprehended in the regions of Kyiv, Chernihiv, Sumy, Kharkiv, Donetsk, Luhansk, Kherson, Mykolaiv, Zaporizhzhia and Odesa (near Zmiinyi island), and in Crimea.

### ARBITRARY DETENTIONS BY THE RUSSIAN FEDERATION, DOCUMENTED BY OHCHR\*, from 24 February 2022 to 23 May 2023

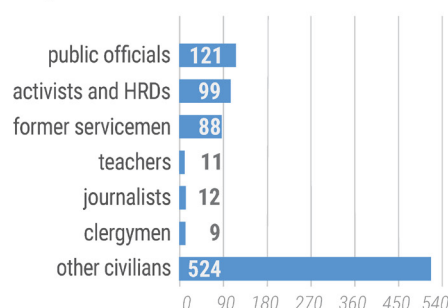
#### 1. By month of initial apprehension



#### 2. By gender



#### 3. By affiliation



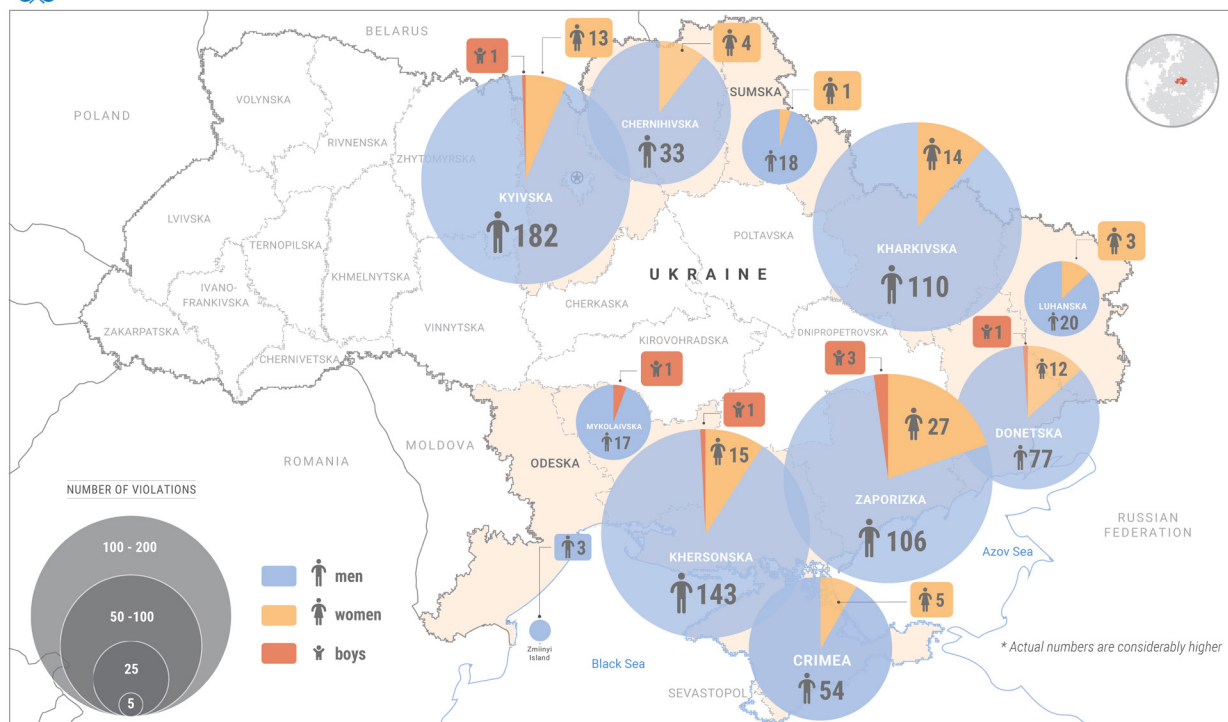
Creation Date: 19 June 2023 Source: OHCHR HRMMU

37. OHCHR located 161 places of detention where conflict-related detainees have been confined. 124 were located in territory of Ukraine occupied by the Russian Federation,

including 5 places in Crimea. 35 places of detention – pre-trial detention facilities (SIZOs), penitentiary colonies and temporary tent camps – are located in the Russian Federation. OHCHR has also identified two places in the Republic of Belarus used by Russian armed forces as temporary or transit places of detention for conflict-related detainees (and also for prisoners of war (POWs)) transferred from the northern regions of Ukraine.



**UKRAINE: APPREHENSIONS BY THE RUSSIAN FEDERATION, DOCUMENTED BY OHCHR\***, from 24 February 2022 to 23 May 2023



Creation Date: 19 June 2023 Source: OHCHR HRMMU

## A. PATTERNS OF DEPRIVATION OF LIBERTY

38. The paragraphs below describe practices relating to the deprivation of liberty by the Russian Federation in the territory of Ukraine under its occupation, which were documented by OHCHR. The practices identified suggest that the Russian Federation has in some cases been engaging in *de facto* security detention, without fulfilling minimum standards of rights prescribed in IHL, or integrating fundamental procedural safeguards required under IHRL that protect civilians during international armed conflict.<sup>43</sup>

<sup>43</sup> See para. 26 above.

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## Detentions based on perceived support of Ukrainian armed forces

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*"If they shoot me at the checkpoint, don't show any emotions and go on. You will only be allowed to cry afterwards."*

- A man from Donetsk region to his wife at a checkpoint
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39. In territory of Ukraine that fell under their control after 24 February 2022, Russian armed forces have detained civilians alleged to be providing assistance to Ukrainian armed forces; in particular, by transmitting military information, storing weapons and ammunition, or sheltering wounded combatants.<sup>44</sup> However, the grounds for determining that an individual engaged in such assistance were both vague and broad, raising concerns that the documented cases constituted arbitrary deprivations of liberty.
40. Russian armed forces searched individuals, including their telephones or other electronic communication devices, during raids in settlements. Men and women were detained based on their possession of military-style or tactical clothes, off-road camouflaged vehicles, civilian firearms, amateur radio-equipment, binoculars, telescopes and civilian drones, as well as Ukrainian symbols, literature or tattoos characterised as "nationalistic". In some cases, Russian armed forces raided communities and detained individuals, without being able to identify the specific individuals they claimed to be searching for.<sup>45</sup> In at least ten documented cases (nine women and one man), Russian armed forces detained civilians because they had a relative in the Ukrainian armed forces.
41. Once apprehended, civilians were held for several days, weeks or months in unofficial places of detention<sup>46</sup> where Russian armed forces were stationed. Women, men and children were usually detained together.
42. Victims were often interrogated and tortured, including through sexual violence, by Russian servicepersons or law enforcement officers, ostensibly to force them to confess to assisting the Ukrainian armed forces or to share information believed to be held about these forces. OHCHR underlines that under IHL, internment for the sole purpose of interrogation or intelligence gathering is not permissible, unless the individual in question is otherwise deemed to represent a serious security threat.<sup>47</sup>
43. In an illustrative case, Russian armed forces repeatedly detained a civilian woman in several locations in Kherson and Mykolaiv regions. On 31 July 2022, Russian servicemen entered a village in Beryslavskiy district (Kherson region) and detained the woman in her home. They accused her of passing information to her brother in the Ukrainian armed forces. She was transferred to a Russian military base in Chaikine village, held *incommunicado* for two days, then released. The next day, another group of Russian

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<sup>44</sup> OHCHR notes, with respect to sheltering wounded combatants, that Article 18(1) of the 1977 Additional Protocol II provides that the civilian population may, even on its own initiative, offer to care for the wounded or sick.

<sup>45</sup> In such cases, victims or witnesses felt that the soldiers who detained them were under orders and decided to bring anyone to their commanders just to comply with the orders.

<sup>46</sup> Both IHRL and IHL require that individuals be detained in recognized places of detention.

<sup>47</sup> See Section III.A above; ICRC Opinion Paper, Internment in Armed Conflict: Basic Rules and Challenges, November 2014, p. 9.

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servicemen arrested her and brought her to a police detention facility in Snihurivka (Mykolaiv region). She was held *incommunicado* for three days, interrogated, and beaten with a plastic bottle filled with water. Then she was transferred to Nova Kakhovka (Kherson region) and detained *incommunicado* until mid-September 2022 in a makeshift cell in the passport office inside a former police station. She was interrogated and tortured by officers of the Federal Security Service (FSB), who subjected her to sexual violence, including by attaching wires to her nipples and administering electric shocks.<sup>48</sup> They also threatened to rape her and showed her a phallic object sheathed with a condom. When released, she returned home to find that Russian soldiers had been stationed in her house and stolen her property.

44. OHCHR has also documented cases where civilians were detained while on the move for entirely lawful reasons – for instance, while fleeing from hostilities, commuting to work, visiting relatives, or trying to evacuate family and friends from danger zones. OHCHR was told that Russian armed forces had accused them of gathering sensitive military information or otherwise supporting the Ukrainian armed forces based solely on their presence in areas subject to hostilities or movement of Russian armed forces. In the absence of information indicating reasonable grounds to believe that the individuals in question posed genuine threat to the security of the Russian Federation, OHCHR has serious concerns about the legality of these detentions under IHL.
45. For example, on 28 February 2022, a civilian man was driving from Kyiv to Makariv district to evacuate his colleague when he encountered Russian soldiers and armoured personal carriers (APCs) near Kopyliv village. He stepped out of his car to show that he was not a threat, but the soldiers hit him with a rifle barrel, searched his car, and seized his tools and oil. They took him to a forested area where Russian troops were stationed and held him in the basement of an abandoned barn for several days. After finding a car navigation application on his phone, they tortured him to force him to confess that he was a spy. They beat him, stabbed his palm and subjected him to a mock execution. As his shoes had been taken by the Russian servicemen and he was later held in cold temperatures, he suffered severe frostbite on his feet (which later led him to lose large parts of both his heels and feet). In mid-March 2022, the victim was transferred in a convoy that came under shelling several times to the Russian Federation. There, he was detained in a tent camp in Kursk region, then transferred to a hospital, and later placed in a SIZO where he was subjected to beatings, including during a so-called “admission procedure”,<sup>49</sup> and received inadequate medical care and food. During his detention in the Russian Federation, his requests to contact his relatives were denied.<sup>50</sup> The victim was never charged with a crime and was released during a prisoner exchange in April 2022.
46. OHCHR notes that the victims in the cases described above were not charged with crimes during the prolonged initial period of detention, and rather appeared to be *de facto*

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<sup>48</sup> The perpetrators stopped electrocuting her only when she started bleeding from her nose.

<sup>49</sup> Regarding this practice, see OHCHR, *Report on the human rights situation in Ukraine, 1 February to 31 July 2022*, September 2022, para. 65; OHCHR, *Report on the Treatment of Prisoners of War and Persons Hors de Combat in the Context of the Armed Attack by the Russian Federation against Ukraine: 24 February 2022 – 23 February 2023*, March 2023, para. 60.

<sup>50</sup> On the rights of internees to transmit internment cards to their families and to send and receive letters and cards, see Fourth Geneva Convention, arts. 106–107.

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interned. In the cases described, no procedural safeguards appeared to be implemented as required by IHL and IHRL, rendering the detention arbitrary.<sup>51</sup>

### **Detention of former servicepersons of Ukrainian armed forces**

47. OHCHR documented 88 cases of detention of former members of Ukrainian armed forces (all men), in particular those who took part in the Anti-terrorist Operation (ATO) and Joint Forces Operation (JFO)<sup>52</sup> in Donetsk and Luhansk regions from 2014 to 2022, but who did not participate in hostilities after 24 February 2022. Servicemen who retired or were discharged before 2014 were also detained.
48. For example, on 13 March 2022 in the village of Volokhiv Yar (Kharkiv region), members of Russian-affiliated armed groups arrived in a minivan at the home of a former Ukrainian serviceman who had participated in the ATO from 2014 to 2016. They searched his house, detained him and seized his car. The victim's wife learnt about his detention from neighbours. A week later, two members of Russian-affiliated armed groups returned and searched the house again, without identifying themselves to his wife, justifying their actions, or providing her with information about the fate and whereabouts of her husband. Another resident later informed the wife that he had seen her husband detained in the home of the former head of the village. She approached the occupation authorities and Russian-affiliated armed groups to enquire about her husband, but they refused to provide any information. As of 23 May 2023, more than one year after the victim was arrested, his whereabouts and fate remain unknown.
49. In another case, on 4 September 2022, Russian servicepersons in an APC entered the occupied town of Kalanchak (Kherson region), stormed into the house of a former ATO participant and took him to an unknown location. Neighbours informed the victim's mother, who approached the occupation authorities to enquire about her son, but they neither provided information about his whereabouts nor confirmed his detention. She later learned from a detainee released from the police department in the town of Chaplynka (Kherson region) that her son was detained there. In late October 2022, using unofficial contacts, the victim's mother managed to have a short phone conversation with him. In November 2022, she learned from a lawyer that her son had been transferred to Crimea and charged with "participation in the armed formation of a foreign state that contradicts the objectives of the Russian Federation" in relation to his former military service and participation in the ATO.<sup>53</sup>
50. OHCHR is concerned that Russian armed forces deprived former servicemen of their liberty, solely on the basis of their previous military service, rather than any current activity. If confirmed, such cases would constitute arbitrary detention, as mere previous

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<sup>51</sup> See section III.A above.

<sup>52</sup> On 13 April 2014, the Government of Ukraine launched an "anti-terrorist operation", which allowed for the application of military and counter-terrorism measures against groups of armed people, backed by the Russian Federation, who were seizing government buildings in Donetsk and Luhansk regions. On 30 April 2018, the ATO framework was transformed into the Joint Forces Operation. The JFO provided for the implementation of military and special legal and organizational measures under the authority of the Commander of the JFO and the Joint Operative Headquarters of the Armed Forces of Ukraine.

<sup>53</sup> He was charged with article 208(2) of the Criminal Code of the Russian Federation in relation to his former military service and participation in the ATO.



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alignment with the enemy party is not, in itself, sufficient to justify internment.<sup>54</sup> OHCHR is further concerned by the apparent lack of respect for the procedural safeguards enshrined in the Geneva Conventions with regards to internment, in particular the right of internees to challenge their internment and have it reviewed on a regular basis, the right to transmit internment cards to family members informing them of their internment and transfer within a week, and the right to send and receive letters and cards. The majority of these detainees documented by OHCHR were subsequently deported to the Russian Federation or transferred to Crimea, raising concerns in terms of the prohibition of deportations in the Fourth Geneva Convention.<sup>55</sup>

### Detention based on opinion or affiliation

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*“You know why you are here. Because of your pro-Ukrainian views, you are already in big trouble”*

- An FSB officer to an arbitrarily detained man from Kherson being interrogated and tortured
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51. OHCHR is concerned about cases of detention based on an individual’s real or perceived political opinion or affiliation, or following the legitimate exercise of freedom of opinion and expression. Under IHRL, deprivation of liberty is arbitrary when it is based on the legitimate exercise of rights. IHRL also prohibits any interference with the right to hold opinions, or discrimination on the basis of political or other opinion.<sup>56</sup> As noted above, detention based on political opinion or as a means of suppressing dissent would be unlawful. Political alignment with the enemy party is not in itself sufficient grounds for security detention.
52. OHCHR documented detention by Russian armed forces of local public officials, particularly heads of local communities or their deputies, as well as civil society representatives, humanitarian volunteers, and informal community leaders such as teachers and priests. They also detained persons with real or perceived pro-Ukrainian views or affiliation with Ukrainian political entities, including persons who peacefully protested against Russian occupation in public spaces or via social media, people found with patriotic literature or Ukrainian State symbols, and individuals with, for example, tattoos deemed “patriotic”.<sup>57</sup> OHCHR notes that the Occupying Power’s duty to respect the population’s allegiance to an ousted sovereign is reflected in IHL.<sup>58</sup> Information received from released victims suggests that such detentions were carried out to intimidate victims and local residents, and to compel them to comply with directions of occupation

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<sup>54</sup> The detaining party must have good reason to believe the person represents a real threat to security. The mere fact that a person is aligned with an enemy party cannot be considered sufficient. *Prosecutor v Delalic and others*, IT-96-21-T, International Criminal Tribunal for the former Yugoslavia (ICTY), 16 November 1998, para. 577.

<sup>55</sup> Fourth Geneva Convention, art. 49.

<sup>56</sup> Human Rights Committee, General Comments no. 35 (para. 17) and no. 34 (para. 9); A/HRC/22/44, paras. 38(b) and (e).

<sup>57</sup> For example, tattoos with the Ukrainian flag or coat of arms, with lines from poems of Ukrainian poets or quotes of Ukrainian prominent figures, or with traditional Ukrainian ornaments.

<sup>58</sup> Fourth Geneva Convention, arts. 51, 67–68(3); 1907 Hague Convention IV with its annexed Regulations concerning the Laws and Customs of War on Land, regulation 45.

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authorities. Internment of protected persons by the Occupying Power may be used only where considered necessary for imperative reasons of security.<sup>59</sup> Internment may not be used to punish a person for past activity, or to seek to generally deter the future activity of others.<sup>60</sup>

53. OHCHR received information that arrests were usually carried out by Russian armed forces and FSB officers, who typically arrived in large numbers in armed vehicles, wearing balaclavas and carrying combat weapons. Without identifying themselves, they broke into the victims' homes through doors and windows, and threatened anyone inside with weapons. They held the individuals they arrested *incommunicado*, tortured and ill-treated them, and forced them to sign statements or record videos implying future cooperation with the occupation authorities. OHCHR notes that information about such incidents rapidly spread across communities, especially in small settlements, sowing fear among the residents.
54. For example, OHCHR documented the enforced disappearance of the head of a local community in Izium (Kharkiv region). In early March 2022, four Russian servicemen came to the victim's house, threatened him, and punched him several times to compel him to cooperate with the occupying authorities. On 18 June 2022, Russian servicemen returned to the victim's house and ordered him to follow them, telling his wife he would be back the same day. They transported him blindfolded to an unknown place where he was held in a cell for two days and beaten with a wooden object<sup>61</sup> to compel him to cooperate with the occupying authorities. Afterwards, he was transferred to a parking garage, beaten and electrocuted several times while blindfolded. His wife approached the occupation authorities, but was not informed about his whereabouts and fate. After 21 days, the victim was released. On 19 July 2022, Russian servicepersons arrested and detained the victim again for two days in a former district police station in dire conditions, during which time they beat him to extract information regarding his telephone calls.
55. In Crimea, OHCHR documented an increase in arrests and detentions following 24 February 2022, including of participants in peaceful public assemblies,<sup>62</sup> persons suspected of membership in religious organizations banned in the Russian Federation, journalists (including citizen journalists), activists of Crimean Solidarity, and individuals perceived to have pro-Ukrainian or anti-war political views. Those with anti-war political views were prosecuted for "public actions directed at discrediting" and "obstructing" the Russian armed forces.<sup>63</sup> In five cases documented by OHCHR, those convicted for these offences were arbitrarily detained for between 5 and 15 days, which amounts to

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<sup>59</sup> Fourth Geneva Convention, art. 78.

<sup>60</sup> ICRC Opinion Paper, November 2014, p. 9. Available at [www.icrc.org/en/document/internment-armed-conflict-basic-rules-and-challenges](http://www.icrc.org/en/document/internment-armed-conflict-basic-rules-and-challenges).

<sup>61</sup> The victim was blindfolded during the torture session and perpetrators beat him with what they called a "paddle".

<sup>62</sup> Russian authorities have maintained the general restriction on "public and mass events" introduced in response to the COVID-19 pandemic, which effectively banned peaceful assemblies in Crimea, without providing a justification for the necessity of maintaining such general restrictions. By means of a series of orders, however, the so-called Head of the "Republic of Crimea" made individual exceptions to the general prohibition. The exceptions only included public events that expressed support for the Russian President, the Russian armed forces and the "special military operation" in Ukraine, as well as other "patriotic" and sports events and official public events organized in coordination with regional and local occupying authorities.

<sup>63</sup> Punishable under the Russian Federation Code of Administrative Offenses (art. 20.3.3) and the Russian Federation Criminal Code (arts. 207.3 and 280.3).

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punishment for the legitimate exercise of the right to freedom of expression in violation of IHRL and, depending on circumstances, IHL.

56. On 29 April 2022, a local activist and citizen journalist from Feodosiia disappeared on her way home from work in Koktebel. On the same day, six FSB officers searched her parents' house. When the father questioned them about his daughter, one officer replied that she was under "a 10-day arrest for handing non-classified information to a foreign State", but he refused to disclose where she was being held. In the following days, the victim's relatives visited the place where she was taken and obtained CCTV footage from a nearby petrol station. The footage showed three men forcibly taking the activist into a car and driving away. Local police did not examine the video despite the relatives' request. On 7 May 2022, the victim's lawyer was able to ascertain that she was being held at the Simferopol SIZO. Prior to that, the FSB had held her in an unofficial place of detention where officers interrogated her and pressured her to sign a self-incriminating statement. After her whereabouts became known, she was charged with illegal possession of explosives<sup>64</sup> and later convicted and sentenced to seven years in prison.<sup>65</sup>

### Detention in the context of 'filtration' procedures

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*"Many took turns to sleep in a tiny space. Others – including myself – could not sleep due to stress and anxiety. It felt as if time stopped."*

- A former civilian detainee describing his detention in a small room together with 32 people by Russian armed forces in the context of 'filtration' in Donetsk region

57. Starting from March 2022, Russian armed forces and affiliated armed groups subjected civilians to a so-called 'filtration' process – a system of security checks and personal data collection during which many civilians were detained for periods ranging from several days to several months. The process appeared to be carried out in order to identify their possible affiliation with or support for, the Ukrainian armed forces or authorities, and to collect information about residents in occupied territory.<sup>66</sup> OHCHR documented such 'filtration' processes in Russian-occupied areas of Kharkiv, Kherson, Luhansk and Zaporizhzhia regions, with the most comprehensive system being in Donetsk region (in particular Mariupol and its surrounding areas), which included a network of so-called 'filtration camps'.

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<sup>64</sup> Russian Federation Criminal Code, art. 222.1(1).

<sup>65</sup> During the trial, the victim testified that she had been abducted by FSB officers, kept against her will in a basement for nine days without any legal status or formal charges, and had been ill-treated and denied her access to a lawyer. In its judgment, the court did not address these claims, raising concerns with respect to the fairness of the trial.

<sup>66</sup> OHCHR established that the Russian armed forces mainly attempted to identify servicepersons of Ukrainian armed forces who had tried to flee, public and civil officials, judges, prosecutors, and officers of law enforcement bodies. Article 31 of the Fourth Geneva Convention provides that no physical or moral coercion shall be exercised against protected persons, in particular to obtain information from them.

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58. In some cases, such ‘filtration’ occurred at checkpoints, border and humanitarian crossing points, or during house searches. The process typically encompassed identity checks, and body, vehicle and personal belonging searches, including of electronic communication devices.
  59. In other cases, ‘filtration’ entailed prolonged detention combined with multiple rounds of interrogation and personal data collection, including biometric data. Individuals were arrested in their homes, on the streets, at checkpoints and border crossing points, or they were called to visit police stations or military commander’s offices of the occupying authorities and subsequently taken to so-called ‘filtration camps’. At these camps, civilians (men, women, boys and girls) were detained for periods ranging from several days to several weeks, while Russian armed forces inspected their identity documents, conducted body examinations, photographed them and collected their fingerprints, searched their belongings including the content stored or accessible through their electronic devices, and interrogated them about their personal background, family ties, and political views and allegiances.
  60. Russian armed forces issued a certificate to individuals who were not considered a threat and allowed them to leave. Those who raised suspicion (mostly men) were transferred to various detention centres, notably to police departments in Donetsk city and Donetsk region and to a penal colony near Olenivka.<sup>67</sup> These detainees were held from one to several months, and some were still in detention on 23 May 2023. OHCHR documented cases where victims were detained for more than three months. So-called ‘law enforcement authorities’ continued to interrogate them and to gather information about them. Upon release, some were informed that they had been held under “administrative detention”,<sup>68</sup> while others received no information at all regarding the grounds for their detention.
  61. The documented practice of such detention of civilians in the course of ‘filtration’, in particular where civilians were held for weeks or months, appears to constitute an unnecessary and disproportionate measure amounting to arbitrary detention. Those detained did not enjoy procedural guarantees. Detainees were not informed about the reasons for their detention, were held *incommunicado*, and had no access to a judicial or administrative mechanism to review or challenge their detention. Moreover, in some cases, the Russian Federation carried out mass detention and transfer of civilians from local communities to ‘filtration’ sites, as well as prolonged deprivation of liberty without an individualised assessment of the security risk of each person, which is prohibited by the Fourth Geneva Convention.<sup>69</sup>

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<sup>67</sup> Volnovaska penal colony No. 120 is located in Molodizhne village, near Olenivka town, Volnovaskyi district, Donetsk region. Most detainees who failed ‘filtration’ were held in the disciplinary isolation ward (DIZO) of this colony. For information on the DIZO, see *OHCHR report on the Treatment of Prisoners of War and Persons Hors de Combat in the Context of the Armed Attack by the Russian Federation against Ukraine: 24 February 2022 – 23 February 2023*.

<sup>68</sup> On so-called ‘administrative detention’, see further OHCHR, *Human Rights in the Administration of Justice in Conflict-Related Criminal Cases in Ukraine April 2014 – April 2020*, pp. 21–22.

<sup>69</sup> See section III.A above; Commentary on Fourth Geneva Convention, p. 367. Detention for “imperative reasons of security” (Fourth Geneva Convention, art. 78) cannot be a collective measure; each case must be decided separately. Moreover, IHL requires that the initial decision on internment and any subsequent decision to maintain it, including the reasons for internment, must be taken with respect to each individual involved.

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62. For example, OHCHR documented the case of a young man from Mariupol, Donetsk region, who was detained with his father and two other male relatives. On 13 April 2022, Russian servicemen took them to a nearby house where they were gathering men from the area. The men were told that they would undergo ‘filtration’ and were brought to a school in Kozatske village, where they were detained for 42 days. On the second day, the young man was taken to a tent camp in Bezimenne, where FSB and EMERCOM<sup>70</sup> officers interrogated, photographed and fingerprinted him, seized his passport, and searched his phone, before returning him back to the school. He heard from the guards that more than 190 men were detained at the school. The detainees slept on desks and lacked food, water and medical care. The victim said that he witnessed one detainee die from illness. The victim was never informed about the grounds of his detention, nor provided access to procedures for its review. The victim told OHCHR that when he was released on 25 May 2022, he was in a state of exhaustion and had lost 12 kilograms of body weight due to the conditions of detention.
63. In early April 2022, a 17-year-old boy was apprehended by Russian-affiliated armed groups on a street in Mariupol. He was stripped to his underwear and taken to a military commissariat for ‘filtration’. Despite pointing out that he was an unaccompanied child, he was transferred 12 kilometres away, to Sartana, Donetsk region. There, he was undressed again and questioned. Together with about 100 detained men, the boy was taken to the ‘filtration’ camp in Bezimenne, then transferred to the House of Culture in the same village. His identification card was seized and no reason was provided for his detention. He only managed to contact his relatives three days later through his brother-in-law, who was brought to the same facility. The boy slept on the floor for several weeks and fell sick due to cold temperatures and poor nutrition. In May 2022, he managed to escape after he had been taken to a hospital in Novoazovsk.
64. On 6 April 2022, Russian-affiliated armed groups detained a humanitarian volunteer at a checkpoint in Nikolske town (Donetsk region). They brought him to a makeshift detention facility and placed him in an overcrowded cell of approximately 7 square meters, holding 30 men and 3 women. The detainees had insufficient food and had to sleep standing or sitting. On several occasions, men introduced as “investigators” interrogated the victim, insisting that he confess to being a saboteur and threatening him with criminal prosecution. After three days, he was transferred to a former district police station in the town of Starobesheve and held in another overcrowded cell. Members of the so-called ‘bureau for combating organized crimes’ of Russian-affiliated armed groups interrogated him, informed him that he was under ‘administrative arrest’,<sup>71</sup> and forced him to sign papers without allowing him to read them. He was transferred several times in Donetsk region, including to a penal colony near Olenivka where he was reportedly subjected to an ‘admission procedure’ by the guards. He was interrogated several more times and threatened with prosecution and imprisonment. In early June 2022, he was released without explanation, with a document acknowledging his 30-day ‘administrative detention’. While detained, he was not allowed to inform his relatives about his fate and whereabouts, despite repeated requests.

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<sup>70</sup> Ministry of the Russian Federation for Civil Defence, Emergency Situations and Elimination of Consequences of Natural Disasters.

<sup>71</sup> See OHCHR *Human Rights in the Administration of Justice in Conflict-Related Criminal Cases in Ukraine April 2014 – April 2020*, p. 21-22.



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65. Individuals moving through Russian-occupied areas in the south of Ukraine or towards Crimea, often the only route available to leave the occupied territory, were subjected to ‘filtration’ mainly at checkpoints and the Administrative Boundary Line (ABL) with Crimea.<sup>72</sup> In one case, a young Crimean Tatar man was reportedly apprehended during ‘filtration’ at the ABL on 23 July 2022, when FSB officers discovered messages on his smartphone indicating he had loaned 500 UAH (US\$14) to a friend who volunteered in the Ukrainian battalion. The man’s family submitted a missing person’s report to the police in Crimea and went to a pre-trial detention centre in Simferopol, but the occupation authorities denied his presence there. He remained forcibly disappeared until October 2022, when criminal charges were brought against him. His relatives then learned that, before being charged, he had been held, without any formal status, in the pre-trial detention centre which his relatives had visited. On 20 April 2023, the Kievskiy District Court in Simferopol convicted him of financing an “illegal armed formation” under article 208(1) of the Russian Criminal Code and sentenced him to seven years in prison.

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<sup>72</sup> During the reporting period, OHCHR documented six new enforced disappearances at the ABL, as compared to the nine cases documented during 2014–2021, and received allegations of other cases and systematic practices that increased risks of enforced disappearances.

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## Use of unofficial places of detention

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*“It was so scary that older persons were crying and moaning at night not from pain, but because they were hungry.”*

- A woman describing conditions of detention of civilians by Russian armed forces in Kyiv region.
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66. As described above, Russian armed forces and affiliated armed groups often used unofficial makeshift places of detention. OHCHR documented 72 such locations, which included houses, basements, barns, garages, warehouses or other buildings in areas under their control.
67. OHCHR documented five incidents where conflict-related detainees (all men) were held over several days in an open space or forested area near locations where Russian armed forces were stationed. These detainees were bound, blindfolded, forced to lay on the ground, held in pits and trenches in stress positions, or tied to trees. Russian armed forces removed their shoes to prevent them from escaping, exposing their feet to the cold, which in certain cases led to frostbite. In two cases, Russian armed forces tied conflict-related detainees to trees and held them in this manner for several days. One detainee told OHCHR that a Russian soldier put a grenade between his back and a tree to prevent him from escaping. He was blindfolded and forced to remain in this position for one and a half hours, inflicting extreme distress and amounting to cruel, inhuman and degrading treatment.

## Lack of notification or acknowledgement of detention

68. In most documented cases, OHCHR observed a pattern of Russian armed forces and occupying authorities refusing to either acknowledge the fact of detention or to disclose information about the detainees' fate and whereabouts to relatives, lawyers and other persons concerned for prolonged periods of time. OHCHR also observed a failure to comply with IHL obligations to promptly transmit information about interned or detained persons to the detainee's national authority or to allow detainees to contact their relatives.<sup>73</sup>
69. In cases where relatives were present at the moment of arrest, Russian armed forces either did not provide them with information about the place where they were taking the victim or only stated that the victim would be back soon. Detainees were transferred to places of detention blindfolded, a practice which prevented those subsequently released from providing any information about the location of their place of detention.
70. When victims were held in unofficial places of detention, Russian armed forces rarely confirmed the detention to relatives or friends inquiring about them. For example, in one case, Russian servicemen arrested a man in his apartment in Melitopol, telling his wife that he would be back soon. They transported him blindfolded to the basement of what he believed to be a former governmental building. From the basement, the detainee

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<sup>73</sup> See Section III.A above.

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heard his wife's voice, then heard Russian servicemen deny that he was being held there. In seven cases, relatives brought parcels of food, clothing, medicine or hygiene items to the places of detention where their loved one might be held. Russian armed forces accepted the parcels but refused to acknowledge the victims' presence. In rural areas, Russian armed forces usually transferred detainees to places outside of their communities or banned local residents from approaching locations where troops were stationed, which rendered it difficult for families to actively search for victims, particularly in situations of ongoing active hostilities.

71. In cases where detainees were transferred to Russian-occupied Crimea or deported to the Russian Federation, relatives usually received information about their fate after several months of detention, but nothing about their specific whereabouts. On those occasions when detainees were allowed to send letters, the correspondence was monitored to ensure that it did not mention the name of the place of detention. Detainees were also transferred to different detention facilities within the Russian Federation, which made it difficult for relatives to verify information from released detainees and POWs.

### Mass arrests and collective detention

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*"They told us: The pit is ready. Now we can shoot you."*

- A woman from Yahidne village, Chernihiv region, detained by Russian servicemen
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72. Mass arrests and detentions without an individualized assessment of the security threat posed by each person concerned contravene both IHRL and IHL rules protecting individuals from arbitrary detention. In addition, mass arrests or collective detentions may raise concerns with respect to the prohibition of collective punishment under IHL.<sup>74</sup>
73. OHCHR documented three cases where Russian armed forces detained large groups of residents, seemingly to reduce possible risks to their military operations or to gain unimpeded access to the houses or apartments of those detained. In all of the cases, the location of detainees in or near locations where armed forces were stationed could raise concerns that the civilian detainees were used to shield military objectives from attacks on them.<sup>75</sup>
74. In Hostomel (Kyiv region), Russian armed forces detained 38 individuals, including 16 children, together in the basement of a multi-storey residential building on 13 Proskurivska Street. On 25 February 2022, Russian armed forces found residents of the building hiding in the basement. They began to bring civilians from nearby houses to the basement, reportedly to protect them from hostilities. The Russian soldiers kept the civilians confined in the basement until 16 March 2022. The detainees were held in poor conditions, in the cold, without access to proper toilets or running water, and with food

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<sup>74</sup> See Section III.A above.

<sup>75</sup> Additional Protocol I, art. 51(7).

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delivered irregularly. One detainee told OHCHR that Russian soldiers subjected the women to gender-based attacks, verbally humiliating them in relation to their appearance and threatening to deport them to Chechnya where they would be subjected to forced marriage. On 16 March 2022, Russian armed forces deported the detainees by bus to Homiel region in Belarus, where they were accommodated (unrestrained) in a sanatorium. From there, most left Belarus.

75. Between 10 and 12 March 2022, Russian armed forces took around 20 men from their homes in Naberezhna Street in Andriivka village (Kyiv region)<sup>76</sup> and held them in the last house on the street. Russian soldiers stationed in a nearby house reportedly used them as human shields. The detainees and their relatives were not informed of the legal grounds for their detention or how long it would last. The Russian armed forces only told them they were looking for an artillery spotter, and released them after three days.
76. In March 2022, Russian armed forces detained 360 residents (including 68 children (40 boys and 28 girls), 20 of whom were infants, and 5 persons with disabilities) of Yahidne village (Chernihiv region) together in the basement of a local school, which they were using as their headquarters.<sup>77</sup> The residents were detained for between 25 and 28 days<sup>78</sup> in a hot and humid basement with no beds or showers, inadequate food and no access to medical care. Ten older persons (six women and four men) died as a result, while many others developed health problems. Members of the Russian armed forces threatened the detainees with violence and execution, and sexually harassed women detainees in at least two incidents. In addition, OHCHR documented the summary execution of three civilian men from Zolotynka village<sup>79</sup> who were brought to the school for short periods of time.<sup>80</sup>

## Transfers and deportations

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***"You will be safe in the SIZO if you manage to pass the border control and not be torn apart by dogs."***

- A Russian serviceman to civilian detainees deported to the Russian Federation from Kyiv region
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77. During the reporting period, OHCHR documented 221 cases (206 men, 14 women, and 1 boy) where conflict-related detainees were transferred by the Russian Federation within the occupied territory of Ukraine, or from occupied territory to the Russian Federation,

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<sup>76</sup> Naberezhna Street in Andriivka village is about 900 metre-long street surrounded by a field from the north-east and lake from the south-west, forming a compact, relatively separated neighborhood in the village.

<sup>77</sup> The Office of the Prosecutor General informed OHCHR of slightly different figures: a total of 368 civilians including 69 children (38 boys and 31 girls). See also OHCHR *The situation of human rights in Ukraine in the context of the armed attack by the Russian Federation, 24 February to 15 May 2022*, para. 37.

<sup>78</sup> Between 3 and 5 March 2022, Russian armed forces began to escort groups of people from their homes to the school.

<sup>79</sup> Located some four kilometers west of Yahidne village.

<sup>80</sup> For example, on 21 March 2022 Russian servicemen detained a man in the village of Zolotynka. Before that, Russian servicemen occupied his house and the man moved to his neighbor's house. On 22 March 2022, the man was brought to the school where others were detained with visible signs of beatings on his body and face. After several hours, Russian servicemen took the man out. His body was found on 16 April 2022 in the woods behind the school with gunshot wounds to his legs and head.

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including through Belarus. Some of these cases may amount to forcible transfers or deportations.

78. OHCHR is also concerned about the manner in which the transfers and deportations were carried out. Detainees were transported with their hands tied and blindfolded, in stress positions in overcrowded trucks or armoured personnel vehicles, without access to toilets during long journeys. In the cases documented by OHCHR where detainees were transferred by Russian armed forces retreating from Kyiv region in March 2022, the detainees were held overnight in the open air, lying on the ground with their hands tied and eyes covered, exposed to the cold and to the risks of hostilities. Their lives were also endangered when, during movements, the Russian armed forces came under shelling.
79. In late February to March 2022, Russian armed forces used a compressor room at a metal melting plant in Dymer (Kyiv region), where they were stationed, to detain Ukrainian civilians. Women and men were held together in one room<sup>81</sup> in inhumane conditions and subjected to torture and ill-treatment. In mid-March 2022, Russian armed forces began to transport small groups of detainees from this location to the Russian Federation, without explaining the grounds for detention or informing detainees where they would be taken. For example, on 23 March 2022 Russian servicemen bound, blindfolded and transferred 17 detainees to an airport in Hostomel, where other detainees were already present. The convoy came under shelling twice while transferring detainees. The next day, Russian servicepersons took all the detainees to an old warehouse or barn in Naroulia, Belarus, where some 30 other Ukrainian detainees arrived during the night. The next day, all detainees were taken to a SIZO in Novozybkov, in the Russian Federation, where they were subjected to a violent 'admission procedure'. Their relatives first received news about their fate in mid-April 2022 from several detainees released during a POW exchange. Only in May or June 2022 did relatives begin to receive official confirmation of their detention, but without information about their specific location or fate.<sup>82</sup> As of 23 May 2023, OHCHR is aware of at least 44 men from Dymer and the surrounding area who remained detained in the Russian Federation.
80. In early November 2022, approximately 1,600 civilian prisoners (all men), who were serving sentences in penal colonies in the Kherson and Mykolaiv regions of Ukraine when the Russian attack against Ukraine began, were deported to penal colonies in Krasnodar, Rostov and Volgograd regions of the Russian Federation. The Russian authorities did not provide information to families about the transfer, fate and whereabouts of the prisoners. In some cases, the authorities did not respond to relatives inquiring about the whereabouts of a prisoner, and in at least one case, they refused to provide information to inquiring relatives, citing personal data protection legislation. Dozens of prisoners completed their sentences in the Russian Federation and were released, only to be immediately re-arrested and held in immigration detention centres based on rulings that their stay in the Russian Federation was undesirable or illegal and that they should be deported or forcefully expelled to Ukraine. However, such transfers

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<sup>81</sup> See United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), United Nations General Assembly resolution 65/229.

<sup>82</sup> In July-August 2022, some relatives received letters from detainees. However, all letters contained similar text stating, for example, that a detainee felt well, was treated appropriately and had access to medical attention, suggesting that detainees were not allowed to write freely.

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from the Russian Federation to Ukraine have been suspended since February 2022, leaving the detainees in an indefinite legal limbo. Some have been held up to six months in immigration detention, without access to legal aid or any possibility to challenge the legality of their detention, constituting arbitrary deprivation of liberty under IHRL.<sup>83</sup>

## Detention of children

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*"We see you are too bold. We will beat this out of you!"*

- Russian soldiers addressing a 15-year-old detained boy before starting to beat him for his pro-Ukrainian views
- 

81. OHCHR documented the cases of seven boys between 14 and 17 years old who were arbitrarily detained by the Russian armed forces and affiliated armed groups in Donetsk, Kyiv, Kherson, Mykolaiv, and Zaporizhzhia regions. Some were also forcibly disappeared. In all cases, the boys were ill-treated or tortured while in detention, and in one case, the boy was also deported.
82. On 26 March 2022, a 17-year-old boy and his 30-year-old brother were riding their bicycles in Kyiv region when they were arrested by members of the Russian armed forces and driven somewhere in the Chernobyl area. Reportedly, the soldiers beat the brothers with batons, kicked them, and shocked them with a taser. They then deported the brothers blindfolded and with their hands tied to Naroulia in Belarus, where they were separated and held in the building of an agricultural company. The boy was first taken to a centre for displaced people from Ukraine and then to an orphanage in Mazyr, Belarus. On 31 March 2022, the boy was able to call his mother. On 22 April 2022, the director of the orphanage took him to the Belarus-Ukraine border, where he met his mother. The detention left the boy with severe symptoms of psychological trauma. The fate and the exact whereabouts of the older brother, who was further transferred to the Russian Federation, remain unknown.
83. OHCHR is also concerned about documented cases where 90 children were detained and used as human shields by Russian armed forces in Kyiv and Chernihiv regions in February and March 2022. OHCHR has received numerous further allegations of detention of children in territory controlled by Russian armed forces and is in the process of verifying them.

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<sup>83</sup> Human Rights Committee, General Comment no. 35, para. 18.



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## B. LACK OF PROCEDURAL SAFEGUARDS AND PREVENTIVE MEASURES

84. While the Russian Federal Law on Martial Law provides for the internment of foreign citizens “in accordance with generally recognized principles and norms of international law”,<sup>84</sup> OHCHR has not received information that the Russian Federation has adopted procedures or practices to uphold the safeguards enshrined in the Fourth Geneva Convention, in particular the right to challenge lawfulness of or otherwise appeal internment decisions and to have them reviewed through fair procedures on a regular basis.
85. The case examples above illustrate how the practices of the Russian Federation with regard to detention of civilians, combined with the lack of procedural safeguards and preventive measures observed, have created an environment which creates a serious risk of arbitrary detention, and along with other serious human rights violations such as torture, ill-treatment and enforced disappearances.
86. OHCHR has found that many of the documented arbitrary detentions also amounted to enforced disappearances, either due to a refusal to acknowledge the detention or by concealment of the fate or whereabouts of persons deprived of liberty. Several common elements in the cases documented appeared to facilitate the commission of enforced disappearances, including failure to provide information regarding interned civilians to the national information bureau; denial of access of international monitors (including OHCHR) to places of detention; use of unofficial places of detention; multiple transfers of an individual between locations, creating difficulties for families to trace the detainee’s whereabouts; prolonged or complete denial of access to mechanisms to review or to challenge the detention; *incommunicado* detention; and refusal to allow communication with the outside world.

## C. TREATMENT OF DETAINEES

### Torture and ill-treatment, including sexual violence

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*“I was surprised by the people who tortured me. They were not mature men, but rather youngsters, not older than 25 to 27 years old. Where could they have gotten such brutality?”*

- A man heavily tortured by Russian servicemen while detained in Kherson region
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87. OHCHR has received credible and reliable accounts regarding the treatment of 178 civilian detainees (129 men, 42 women and 7 boys) held by the Russian Federation during the reporting period. The vast majority – 91 per cent – described to OHCHR subjection to torture and ill-treatment during detention.
88. OHCHR is gravely concerned by widespread practices of torture or ill-treatment by Russian armed forces, law enforcement and penitentiary authorities. Torture and ill-

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<sup>84</sup> No. 1-ΦK3 of 30 January 2002, art. 7(2)(16).

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treatment appear to have been carried out to force victims to confess to providing assistance to Ukrainian armed forces, to compel them to cooperate with the occupying authorities, or to intimidate those with pro-Ukrainian views. Perpetrators used methods of torture or ill-treatment such as punching and cutting detainees, putting sharp objects under fingernails, hitting with batons and rifle butts, strangling, waterboarding, electrocution, stress positions for long periods, exposure to cold temperatures or to a hot box,<sup>85</sup> deprivation of water and food, and mock executions or threats. Conflict-related detainees were also subjected to so-called ‘admission’ or ‘welcome beatings’ and random group beatings during inspections in their cells, when going to the shower, canteen or medical ward, or when walking in the yard.

89. OHCHR documented 36 cases of sexual violence against 25 men and 11 women perpetrated by actors of the Russian Federation in the context of arbitrary detention. Forms of sexual violence included rape, threats of rape against victims and their loved ones, electrocution to genitals or nipples, beating to genitals, forced stripping and nudity, and unjustified strip searches.

### Conditions of detention

90. OHCHR documented numerous violations of IHL/IHRL in relation to conditions of detention, including serious overcrowding; inadequate food, water, medical care, and sanitation; and cold temperatures. The situation was particularly dire in makeshift places of detention, where women, men and children were routinely held together. OHCHR is gravely concerned that in many detention places administered by the Russian Federation, conditions were so dire that they may have amounted to torture or ill-treatment. Moreover, detainees were often held *incommunicado*, in violation of their right to access the outside world. The uncertainty about the whereabouts and fate of their loved ones increased the suffering of the families of detainees, who relentlessly searched for any piece of information as to the detainees which they might find.

## D. VIOLATIONS OF THE RIGHT TO LIFE

91. OHCHR is gravely concerned by the summary execution of 77 civilians (72 men and 5 women) while they were arbitrarily detained, and the death of one more male detainee as a result of torture, inhumane detention conditions, and denial of medical care.<sup>86</sup>
92. On 24 March 2022, three armed men, believed to be from Russian-affiliated armed groups, arrested a man in his home in the village of Kapitolivka (Kharkiv region). The man shouted “Glory to Ukraine” just before the perpetrators kicked him, pushed him into a vehicle, and drove away. Although his parents asked the occupation authorities about the fate of their son numerous times, the authorities did not acknowledge the detention. Whilst searching for their son’s body in the local morgue in Izium, they saw the bodies of three men from Kapitolivka who had been arrested by Russian armed forces with signs

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<sup>85</sup> The “hot box” is a method of torture where a detainee is placed in solitary confinement in a box in high temperatures, in which they would experience extreme heat, dehydration, or death.

<sup>86</sup> For more information about summary executions of victims of enforced disappearances, see OHCHR, *Summary executions and attacks on individual civilians in Kyiv, Chernihiv, and Sumy regions in the context of the Russian Federation’s armed attack against Ukraine*, December 2022.

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of torture and gun wounds. The body of their son was eventually found in a collective grave near Izium after Ukrainian armed forces regained control over the area in September 2022. Records in the local morgue show that he was buried on 12 May 2022.

93. In another documented case, several Russian servicemen came to the house of a man in the village of Novopetrivka (Mykolaiv region) on 1 November 2022. They took his phone, questioned him about his communications with his wife who had left to Government-controlled territory of Ukraine, severely beat him, and then detained him. His heavily mutilated body was found on the outskirts of the village on 10 November 2022 with a gunshot wound to the head, together with the bodies of two other men.

## **E. CONDITIONS OF RELEASE**

94. OHCHR documented the cases of 354 detainees (289 men, 56 women and 7 boys) released from detention or left behind when Russian armed forces retreated. In at least 10 of these cases, Russian armed forces released detainees under the condition that they sign statements or record videos confessing that they had cooperated with or provided support to the Russian Federation's attack against Ukraine. Such statements appeared intended to put victims at risk of criminal prosecution by the Ukrainian authorities.
95. In the Russian-occupied territory of Kharkiv, Zaporizhzhia and Kherson regions, OHCHR documented a pattern where conflict-related detainees were released and banished to Government-controlled territory. Russian armed forces forced the detainees to sign papers stating that they would leave shortly to the "territory of Ukraine", or brought the detainees to humanitarian crossing-points and ordered them to leave.<sup>87</sup> OHCHR is concerned about one documented case where a woman detainee was found killed in the 'grey zone' after she was allegedly released and banished.
96. In addition, OHCHR documented the cases of at least 57 detainees (48 men and 9 women) who were reportedly released during prisoner exchanges between the Russian Federation and Ukraine. OHCHR notes that the detention of civilians and assignment of POW status to them solely for the purpose of carrying out a prisoner exchange may amount to hostage-taking, which would be considered a war crime in this context.<sup>88</sup>

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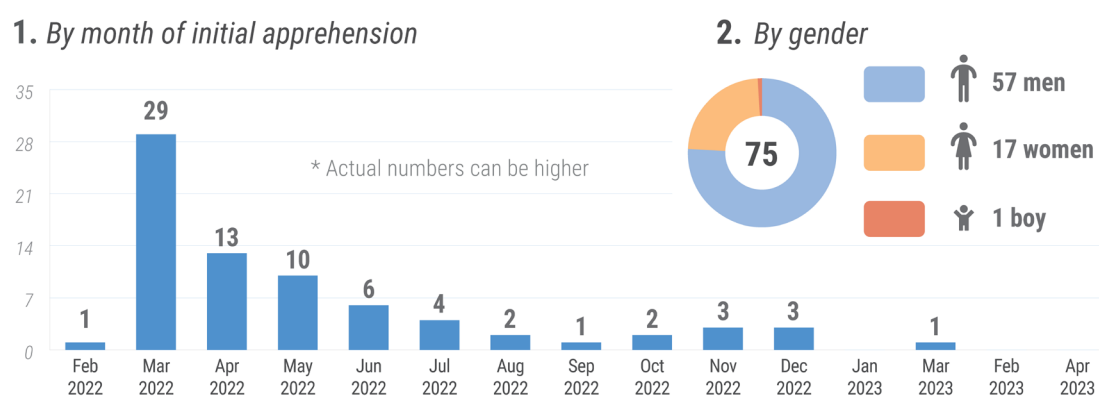
<sup>87</sup> During such episodes, Russian law-enforcement officers proclaimed 'orders on expulsion' to the released victims and recorded this on video, some of which were published online.

<sup>88</sup> Fourth Geneva Convention, arts. 34 and 147; ICRC Study on Customary IHL, Rule 96; Rome Statute of the International Criminal Court, art. 8(2)(a)(viii).

## V. DETENTION OF CIVILIANS BY UKRAINE

97. Since 1 March 2022, Ukraine has regularly notified the United Nations Secretary-General of its derogation from the right to liberty and security of person under article 9 of the ICCPR for the duration of the martial law. OHCHR notes, however, that some elements of this right are non-derogable, including the prohibition of arbitrary detention.<sup>89</sup>
98. After the introduction of martial law, Parliament amended the Criminal Code and the Criminal Procedure Code to give authorities wider discretion to detain persons who posed a threat to security or were suspected of committing criminal offences against national security.<sup>90</sup> Due to their excessive scope, the amended provisions appear to have gone beyond what is permissible under IHRL, even in times of public emergency or martial law. The result was an environment which was conducive to arbitrary detention.
99. Since 24 February 2022, OHCHR has documented a significant increase in violations of the right to liberty and security of person by Ukrainian security forces.<sup>91</sup> Out of the overall number of such cases, OHCHR documented 75 cases<sup>92</sup> of arbitrary detention of civilians (17 women, 57 men and 1 boy), some of which also amounted to enforced disappearances, mostly perpetrated by law enforcement authorities or the Armed Forces of Ukraine.

### ARBITRARY DETENTIONS BY UKRAINE, DOCUMENTED BY OHCHR\*, from 24 February 2022 to 23 May 2023



Creation Date: 19 June 2023 Source: OHCHR HRMMU

<sup>89</sup> See Section III.A above.

<sup>90</sup> Law No. 2111-IX of 3 March 2022 enabled heads of prosecutor's offices to choose pre-trial detention as a measure of restraint for 30 days, with possible extension, without judicial review. Additionally, Law No. 2201-IX of 14 April 2022 allowed for an arrest without a court ruling or authorization of the prosecutor's office for no more than 216 hours (9 days). These provisions were in force from 1 May to 24 August 2022, until abolished by Law No. 2462-IX of 27.07.2022 and permissible time for arrest without a court ruling reverted back to 72 hours, as per the Constitution of Ukraine. The explanatory notes to these laws submitted to Parliament indicated the need to expand the authority of investigators, prosecutors, judges and senior prosecutors to enable them to effectively exercise their functions related to pre-trial investigation during martial law.

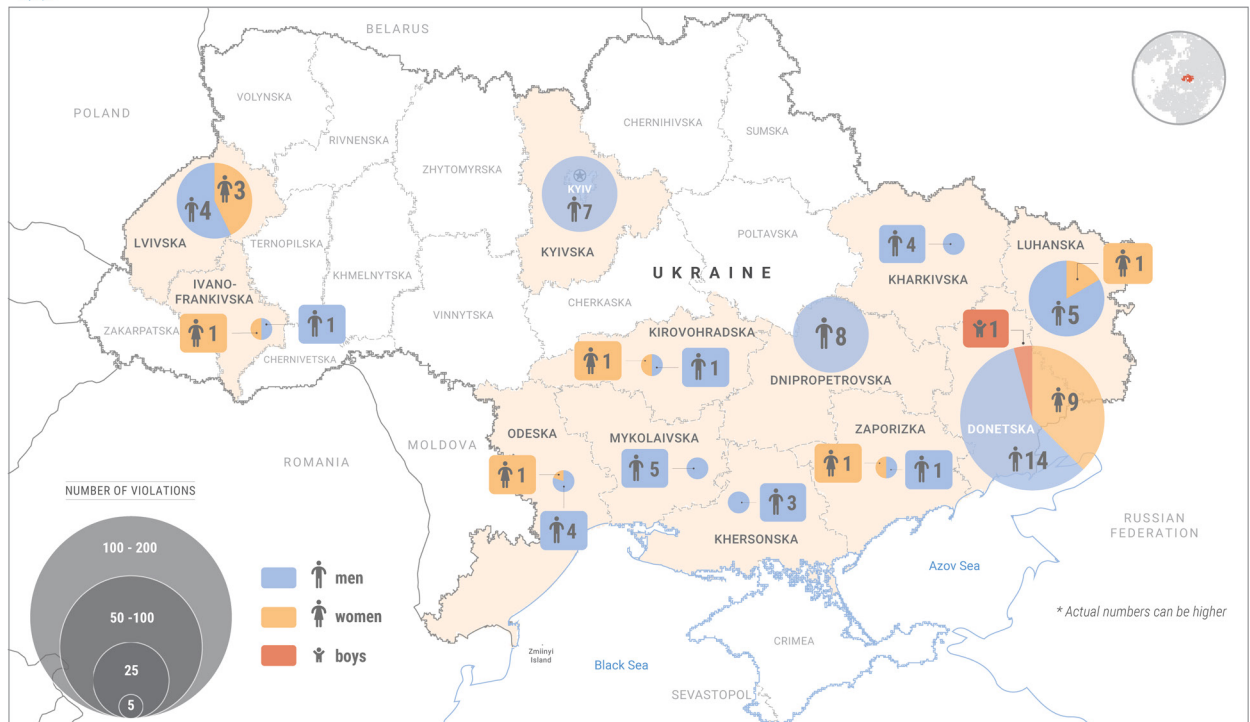
<sup>91</sup> This includes the State Security Service of Ukraine, the National Police and the Armed Forces of Ukraine.

<sup>92</sup> By comparison, in the 12 months preceding the armed attack, from 1 February 2021 to 31 January 2022, HRMMU documented three cases where conflict-related detainees were arrested or treated in violation of certain human rights. See, OHCHR, *Report on the human rights situation in Ukraine, 1 February – 31 July 2021*, para. 56; OHCHR, *Report on the human rights situation in Ukraine, 1 August 2021–31 January 2022*.

100. OHCHR visited 11 places of detention where conflict-related detainees were held. Additionally, OHCHR documented the use of 29 unofficial places of detention, including apartments, sanatoriums, basements of abandoned buildings, police precincts, basements and administrative premises of local Security Service of Ukraine (SBU) offices (Dnipro, Ivano-Frankivsk, Kostiantynivka, Kramatorsk, Kryvyi Rih, Kyiv, Mykolaiv, Odesa, Sievierodonetsk and Sloviansk), and other temporary detention facilities run by the SBU (Kyiv and Lviv).



**UKRAINE: APPREHENSIONS BY UKRAINE, DOCUMENTED BY OHCHR\***, from 24 February 2022 to 23 May 2023



Creation Date: 19 June 2023 Source: OHCHR HRMMU

## A. PATTERNS OF DEPRIVATION OF LIBERTY

### Use of *in flagrante* provisions and arrests without authorisation

101. OHCHR documented that, from February to March 2022, Ukrainian law enforcement and security officers arrested several persons without warrant for alleged membership in armed groups of self-proclaimed ‘republics’, relying on exceptions under national law that allow for the *in flagrante* arrest of a person committing a crime.<sup>93</sup> These arrests were carried out in connection with alleged actions that occurred between 2014–2020, and thus appeared not to respond to an urgent, current need to prevent or stop a crime, as required by the *in flagrante* exceptions under Ukrainian law.<sup>94</sup> Arrests not carried out

<sup>93</sup> Criminal Procedure Code of Ukraine, art. 208.

<sup>94</sup> See e.g. *Korban v. Ukraine*, application no. 26744/16, 4 July 2019, paras. 146–147, where the European Court of Human Rights found that an arrest without a court ruling in connection with alleged actions that took place more than one year earlier was contrary to article 5(1) of the European Convention on Human Rights (the right to liberty and security of person), as the Criminal Procedure Code allows for such arrests “only as a response to an urgent need to prevent or stop a crime”.

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in accordance with domestic law constitute arbitrary and unlawful deprivation of liberty.<sup>95</sup>

102. In one case, a former member of the 'Vostok' battalion affiliated with 'DPR' armed groups who participated in hostilities in 2014–2015 moved to Zaporizhzhia in 2015 and worked as a taxi driver. On 24 February 2022, several men apprehended him in a shop and brought him to the local SBU office for interrogation. After several hours, he was officially arrested according to article 208 of the Criminal Procedure Code. Prior to this he had never been questioned or notified that there was any suspicion against him.
103. In May 2022, changes to the criminal procedure were introduced pursuant to special provisions enacted under martial law. In line with these provisions, arrests without a court or prosecutor's warrant were permissible when one of two criteria were met: when there were reasonable grounds to believe there was a risk that an alleged perpetrator could escape criminal responsibility, or where the *in flagrante* arrest could take place. The law allowed initial detention for 216 hours (9 days) without any review by courts or supervising authorities.

### **Arrest and detention without timely judicial review**

104. Following the enactment of martial law on 24 February 2022, Parliament took several steps to amend detention procedures in conflict-related cases. For example, Law No. 2111-IX, which was in force between 1 May to 24 August 2022, allowed heads of local prosecutor's offices to impose pre-trial detention as a measure of restraint for conflict-related detainees for 30 days when there is no possibility to obtain court's authorization, with a possibility of extensions until completion of the pre-trial investigation.<sup>96</sup> Although such detentions were provided for by domestic law enacted in response to the security situation and accompanied by derogation from certain rights, OHCHR underlines that arrests and detention without timely judicial review raise concerns under IHRL.<sup>97</sup> Although in the majority of cases, conflict-related detainees initially detained upon the prosecutor's authorization were brought before a court for the imposition or extension of a measure of restraint within the 30-day limit, allowing for prolonged pre-trial detention without court review creates the risk that even an initially lawful detention may become arbitrary. This is especially so considering that pre-trial investigations can take months to complete, particularly in a judicial system that is overstretched due to the conflict.
105. Even under these terms, OHCHR has concerns about the lawfulness of such arrests when carried out in Kyiv, Dnipro or other areas where the court system remained

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<sup>95</sup> Human Rights Committee, General Comment no. 35, para. 11 refers to unlawful deprivation of liberty as "deprivation of liberty that is not imposed on such grounds and in accordance with such procedure as are established by law", para. 11.

<sup>96</sup> Law No. 2201-IX of 14 April 2022, amending article 615 of the Criminal Procedure Code of Ukraine. The provisions were in force until 24 August 2022.

<sup>97</sup> Protection from arbitrary detention and enforced disappearance applies in relation to any act of deprivation of liberty, and not just in situations when such deprivations are unlawful. See Working Group on Involuntary and Enforced Disappearances, General Comment on the definition of enforced disappearance, A/HRC/7/2, para. 26. OHCHR notes that while article 9(3) of the ICCPR is subject to derogation, any exceptions to the article must be proportionate and limited to that strictly required by the exigencies of the situation. ICCPR, art. 4; Human Rights Committee, General Comment no. 29, para. 4.



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functional or where its operations had been restored by the time of the arrests, and there was thus the possibility to obtain a warrant.

106. OHCHR documented a case of twin brothers apprehended in Kyiv by the SBU on 2 March 2022. They were placed in a temporary detention facility run by the SBU in Kyiv until 5 March 2022, when their arrests were formalised by the head of the local prosecutor's officer who imposed pre-trial detention for 30 days, which was later extended for a second month. The pre-trial detention was not reviewed by a court before 3 May 2022.

### Arrest and prosecution of “collaborators”

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*“I asked guards to call my mother so she could bring me medications, but one told me that such assistance shouldn't be provided to “traitors”.*

- A conflict-related detainee held in a temporary detention facility in Luhansk region
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107. On 3 March 2022, the Parliament of Ukraine adopted Law no. 2108-IX,<sup>98</sup> which introduced criminal liability for collaborating with an “aggressor State” under Article 111-1 of the Criminal Code of Ukraine. Since then, the Office of the Prosecutor-General reported on more than 5,400 criminal proceedings for collaboration activities. As of 23 May 2023, Ukrainian courts had passed more than 500 guilty verdicts in such cases, with sanctions ranging from fines to 15 years in prison accompanied by a ban on holding certain positions and confiscation of property.<sup>99</sup>
108. OHCHR is concerned that the law criminalizes “collaboration activities” without defining these activities or other important terms with sufficient precision so as to enable individuals to regulate their conduct and reasonably foresee the legal consequences of their actions or inaction. This raises concerns with respect to compliance of the law with the principle of legality and risks arbitrary detention.<sup>100</sup> Following the enactment of the law, the Ukrainian Cabinet of Ministers stated that government institutions received “hundreds of inquiries” from citizens, businesses and local authorities about how to regulate their conduct within the new law and in light of the evolving realities of the occupation regime.
109. International law of occupation requires the Occupying Power to administer the occupied territory for the benefit of the local population, and to ensure the continued functioning

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<sup>98</sup> The Law of Ukraine “On amending certain laws of Ukraine regarding introducing criminal responsibility for collaboration activities”.

<sup>99</sup> OHCHR interviewed 15 persons (7 men and 8 women) who were arrested and detained on collaborationism charges and analysed 578 verdicts in cases on collaborationist activities.

<sup>100</sup> As outlined by the Human Rights Committee, “any substantive grounds for arrest or detention must be prescribed by law and should be defined with sufficient precision to avoid overly broad or arbitrary interpretation or application.” General Comment no. 35, paras. 12 and 22. See also European Court of Human Rights: *Khlaifia and Others v. Italy* (Grand Chamber), Application No. 16483/12, Judgement, 15 December 2016, para. 92; *Del Río Prada v. Spain* (Grand Chamber), Application No. 42750/09, Judgement, 21 October 2013, para. 125; *Medvedyev and Others v. France* (Grand Chamber), Application No. 3394/03, Judgement, 29 March 2010, para. 80.

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of educational and medical facilities.<sup>101</sup> IHL also foresees that the Occupying Power may compel protected persons to perform work necessary for the feeding, sheltering, clothing, transportation, or health of the population of the occupied territory.<sup>102</sup> The Ukrainian law on collaboration thus risks criminalising conduct which individuals are actually compelled by the Occupying Power to carry out in accordance with the law of occupation under international humanitarian law.

110. Of further concern, OHCHR has documented the arrests of several civilians involved in distribution of humanitarian aid in territory occupied by the Russian Federation. In one case, a man who distributed humanitarian aid in his village in Kharkiv region was convicted of collaboration for having held a post within unlawful bodies in occupied territory.<sup>103</sup> However, the man had been chosen by the village residents to take care of the daily operations of the village, and in particular, with regard to the distribution of humanitarian aid. Thus, he did not hold a position with the occupation authorities, and had provided a life-saving essential service for the local population. In another case, a mother of two children agreed to take a volunteer position in the occupation administration with responsibilities related only to the distribution of humanitarian aid to the local population in Kupiansk, which was established by the court. In January 2023, she was sentenced to three years in prison and a ten-year ban on holding public positions.<sup>104</sup>
111. In other cases, three women from Mykolaiv region were arrested for accepting jobs in the local administration run by the occupation authorities. They accepted the employment in order to be able to support their families and provide for basic needs. Notwithstanding the humanitarian aspect of work they performed, which included disbursement of pensions and delivery of humanitarian aid to residents, they were charged by Ukrainian authorities with carrying out “collaboration activities” and risk consequential prison terms. In one of these cases, the defendant has been already sentenced to five years in prison and a 10-year ban on obtaining certain posts.
112. The law also criminalises carrying out commercial activities “in cooperation” with occupation authorities,<sup>105</sup> but without clear definition of the scope of prohibited activities. OHCHR is concerned that this may lead to broad interpretations, potentially deeming, for example, all employment and business activities in the occupied territory as criminal. For example, OHCHR has documented cases of convictions by Ukrainian courts for collaboration activities based on registration of a commercial business with Russian occupation authorities and on payment of business taxes to Russian authorities.

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<sup>101</sup> Fourth Geneva Convention, arts. 50 and 56.

<sup>102</sup> Fourth Geneva Convention, art. 51

<sup>103</sup> Kyivskyi local court of Kharkiv city approved the plea bargain of the defendant and sentenced him with a prohibition on obtaining public posts for ten years. See the verdict in case no. 953/6890/22 of 14 December 2022, available at: <https://reyestr.court.gov.ua/Review/107866146>.

<sup>104</sup> Unified Register of Court Decisions, case 344/14125/22, available at <https://reyestr.court.gov.ua/Review/108280725>.

<sup>105</sup> Criminal Code of Ukraine, art. 111-1(4) criminalizes “transfer of material resources to illegal armed or unlawful armed formations created in the temporarily occupied territory, and/or armed or paramilitary formations of the aggressor state, and/or carrying out economic activities in cooperation with the aggressor state, illegal authorities created in the temporarily occupied territory, including the occupation administration of the aggressor state”.

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113. OHCHR is further concerned that the law provides prosecutors with wide discretion to classify alleged acts of collaboration under different criminal categories with varying severity of legal consequences, risking arbitrary distinctions and other unfairness.<sup>106</sup> OHCHR documented several cases where persons were arrested on charges of collaboration activity and held in pre-trial detention for weeks or months before the charges were re-classified to criminal misdemeanours, allowing their release from custody. In the majority of these cases, the re-classification occurred as part of plea bargains. These individuals described to OHCHR that being held in pre-trial detention placed substantial pressure on them to confess to the misdemeanours in order to be released and sanctioned with non-custodial measures. OHCHR recalls that IHRL guarantees that a person shall not be compelled to confess guilt through any physical or undue psychological pressure from the investigating authorities.<sup>107</sup>
114. Since the adoption of the law on collaboration activities on 3 March 2022, at least nine draft laws amending article 111-1 of the Criminal Code have been registered with the Parliament of Ukraine. Efforts to amend the law provide opportunities for improvements, and OHCHR would urge amendments that bring the law fully in line with international standards.

### Unofficial places of detention and incommunicado detention

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*“They beat everything they wanted out of me. Now even a lawyer will not help.”*

- A conflict-related detainee tortured by Odesa SBU officers
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115. OHCHR documented 65 cases where Ukrainian State agents held detainees for periods ranging from several hours to 135 days in unofficial places of detention, including apartments, hotels, hostels, basements and premises of local law enforcement offices. Continuing detention in unofficial places is inconsistent with the obligation of States to effectively prevent enforced disappearances. In some of the documented cases, the incommunicado deprivation of liberty in unofficial places of detention may also amount to concealment of the fate of and whereabouts of detainees, thus placing the detainee outside the protection of the law, contrary to the prohibition on enforced disappearances. The deprivation of liberty of individuals in unofficial places of detention is prohibited.<sup>108</sup>
116. OHCHR has received credible information from numerous conflict-related detainees and POWs about an unofficial place of detention located in the gym and basement of the

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<sup>106</sup> The range of measures of restraint depends on the severity of the offence. During martial law, pre-trial detention can be applied to all conflict-related crimes pursuant to article 176(6) of the Criminal Procedure Code. At the same time, offences falling under art.111-1(1) and 111-1(2) are considered criminal misdemeanours pursuant to article 12, and therefore only non-custodial measures of restraint may be applied.

<sup>107</sup> ICCPR, art. 14.3(g).

<sup>108</sup> The Working Group on Enforced or Involuntary Disappearances has held that “under no circumstances, including states of war or public emergency, can any State interests be invoked to justify or legitimize secret centres or places of detention, which, by definition, would violate the Declaration, without exception”. See General comment to the article 10 of the Declaration, E/CN.4/1997/34, para. 24.

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central SBU building in Kyiv, where up to 70 persons have been held (mostly men, but also several women). OHCHR has documented that this unofficial place of detention operated from February until at least November 2022. Detainees reportedly slept on mattresses on the floor and were prohibited from getting up or interacting. They had access to sanitary facilities three times per day, but received food only once or twice per day and water in small amounts. Several interviewees reported being blindfolded throughout the entire period of their detention, for up to one month.

117. OHCHR documented a case of a man from Kyiv who was detained in this location for 135 days without a formal authorization for his arrest. He was arrested in his apartment on 2 March 2022 and brought to the SBU building together with his wife and 85-year-old father. His wife and father were released after several days, while he was detained in the gym until 16 July 2022, when SBU officers brought him to court and an investigative judge formalised his detention and remanded him into custody for 60 days.
118. OHCHR notes that the practice of keeping detainees in unofficial places of detention outside the protection of the law appeared to be applied to coerce detainees to confess or make self-incriminating statements, which occasionally were video-recorded. Individuals told OHCHR that the stress and fear stemming from isolation and secret detention coerced them into confessing conduct they had not engaged in.
119. Detention in unofficial places was often *incommunicado*. In 18 cases, detainees (12 men and 6 women) were held *incommunicado* from four to 135 days. During that period, detainees had no access to legal representation, were often subjected to interrogations that reportedly involved torture and ill-treatment, and were not informed of the next stages of their detention. In one such case, a resident of Kharkiv region was apprehended at a checkpoint in March 2022, held in a basement in Kharkiv for two days and subsequently transferred to a facility or guardhouse in Dnipro. The guards only allowed him to contact his relatives by phone on the 24<sup>th</sup> day of his detention. He was never formally charged with a crime, provided with access to a lawyer, or presented before a judge. The man was eventually released in June 2022, after he agreed to record self-incriminating videos about aiding Russian armed forces.
120. In May 2022, a civilian was held for seven days in an unofficial place of detention within the local SBU office in Kryvyi Rih, where he was tortured for three consecutive days. After receiving the results of a polygraph test he was forced to take, SBU officers beat him on his head, ribs and legs. They stripped him and threatened to cut off his genitals, rape him and send the video to his children.
121. OHCHR documented cases of six conflict-related detainees (four men and two women) who were held *incommunicado* from one to seven days in the former premises of the police precinct in Lviv, subsequently used by SBU. During this period, SBU officers did not inform the detainees about the procedures that would follow, and their arrest was not officially recorded. OHCHR recalls that pre-trial detention facilities should not be run by the investigative authorities as it puts pressure on detainees.<sup>109</sup>

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<sup>109</sup> The Committee of Ministers, Recommendation Rec(2006)2 on the European Prison Rules of 11 January 2006.

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122. The use of unofficial places of detention by Ukrainian law enforcement agencies against conflict-related detainees has been previously documented by OHCHR, and suggests a continuing pattern of deprivation of liberty of such individuals.<sup>110</sup>

### **Detention of civilian Russian sailors in Izmail**

123. OHCHR previously documented the case of 87 civilian Russian sailors (79 men and 8 women) who were arbitrarily detained on 24 February 2022 while their vessels were docked in the port of Izmail (Odesa region). Ukrainian armed forces prohibited them from disembarking for approximately eight months. The detention appeared to lack legal basis, as the sailors were not charged with any criminal offence, nor did Ukrainian authorities provide legal basis for the detention or otherwise justify its necessity for security reasons, as required under the Fourth Geneva Convention. In addition, in contravention of requirements under IHRL and IHL, the sailors were not informed of the reasons for their detention and were not able to challenge its legality. On 23 August 2022, one sailor reportedly died because he was not provided with adequate medical care to treat his chronic health condition. After this incident, several sailors, including all the women, were released.
124. On 7 and 8 September 2022, OHCHR attempted to visit the sailors, but Ukrainian authorities denied access. On 17 October 2022, the remaining sailors were exchanged during a prisoner exchange between the Russian Federation and Ukraine.
125. While this case does not represent a wider pattern as such, it merits particular attention given the high number of individuals arbitrarily detained and the severe consequence of the death of one detainee. OHCHR is concerned that if the deprivation of liberty of the sailors was undertaken or prolonged specifically for purposes of exchanging them for Ukrainian POWs or civilian detainees, this incident may amount to hostage taking under IHL.

## **B. TREATMENT OF DETAINEES**

### **Torture and ill-treatment, including sexual violence**

126. Of those conflict-related detainees interviewed, 43 (34 men and 9 women) gave credible and reliable accounts of torture and ill-treatment of by law enforcement officers, members of the armed forces, or guards in unofficial places of detention or – to a much lesser extent – in official pre-trial detention facilities. Forty detainees reported being tortured or ill-treated during interrogations, mainly during the period immediately following their arrest and prior to being brought before court and put in an official place of pre-trial detention. Methods included beatings, electrocution with tasers, sexual violence, including beating of sexual and reproductive organs, forced nudity, threats of genital mutilation and rape against detainees or their loved ones, threats of execution, threats with loaded guns of being shot in the limbs, and threats of being brought to the

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<sup>110</sup> OHCHR, *Human Rights in the Administration of Justice in Conflict-Related Criminal Cases in Ukraine, April 2014 – April 2020*, para. 47, available at: [www.ohchr.org/sites/default/files/2022-08/Ukraine-admin-justice-conflict-related-cases-en.pdf](http://www.ohchr.org/sites/default/files/2022-08/Ukraine-admin-justice-conflict-related-cases-en.pdf).

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front line and abandoned there. Detainees told OHCHR that torture and ill-treatment were used to extract confessions or information, or to otherwise make the detainees cooperate, to extort money and property, as well as to punish, humiliate and intimidate.

127. OHCHR also documented nine cases (all men) where guards of four official pre-trial detention or temporary detention facilities beat detainees during ‘admission procedures’ or daily checks that occurred from March to May 2022. In particular, four detainees reported being beaten with fists and batons by guards in the Dnipro SIZO in spring 2022. Eleven interviewed detainees reported verbal abuse, such as by calling them “faggots”, “traitors” or “prostitutes” (when referring to women detainees).



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## Conditions of detention

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*“There was no running water in the cell and no toilet paper. The toilet was clogged, the smell was awful, and the windows could not be opened. I started vomiting.”*

- A woman conflict-related detainee held in an unofficial place of detention used by Lviv SBU
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128. Of all the detainees interviewed by OHCHR who were held in eleven official places of detention, eight (five men and three women) reported experiencing poor detention conditions for periods of time ranging from several days to two weeks.<sup>111</sup> In particular, they described inadequate accommodation (lack of bedding or sleeping mats), inadequate food, cold temperatures, and lack of hygiene products lasting between 2 and 16 days, mainly occurring in the first months after the armed attack.
129. OHCHR documented poor conditions of detention in many unofficial places of detention. Of 65 detainees held in such places of detention, 17 reported that detainees often slept on the floor or sitting on chairs and were not provided with sufficient food. In several cases, the detainee’s hands were tied overnight or were strapped to radiators. OHCHR is concerned that some of the conditions of detention may have constituted torture or ill-treatment under IHRL.

## C. ENFORCED DISAPPEARANCES

130. Civilians were detained within a criminal justice system amended to allow for broad bases of detention with weaker procedural safeguards, increasing risks of arbitrary detention. Safeguards were further diminished by the use of unofficial places of detention, a practice that OHCHR has previously documented in 2014–2021.<sup>112</sup>
131. The cumulative effects of such an environment risked placing detainees outside the effective protection of law. A significant number of cases of arbitrary detention of male civilians documented by OHCHR also amounted to enforced disappearance. In practice, these cases occurred where law enforcement officers, mainly from the SBU, detained individuals without court authorization; held them *incommunicado* for several days, sometimes transferring them to one or several unofficial places of detention; stripped them of the right to legal counsel; and left their loved ones uninformed of their fate or whereabouts.
132. As at the date of this report, the whereabouts and fate of two victims of enforced disappearance remained unknown. The first case involves a young journalist who had been a defendant in a conflict-related case since 2017, and who was abducted and tortured back in 2017 by police officers in Kramatorsk.<sup>113</sup> On 27 March 2022, he was

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<sup>111</sup> Lysychansk temporary detention facility, Kyiv SBU temporary detention facility, Dnipro SIZO, Vinnytsia SIZO and Lviv SIZO.

<sup>112</sup> See OHCHR, *Arbitrary Detention, Torture and Ill-Treatment in the Context of Armed Conflict in Eastern Ukraine 2014–2021*, chapter VI.

<sup>113</sup> As of 23 May 2023, the investigation into actions of police officers is still ongoing.

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apprehended on the street by several men believed to be law enforcement officers (judging from their uniform), who put him on the ground, took his walking stick (he had a disability), and dragged him behind the fence of a local mall. Despite his family's requests, no law enforcement authority has confirmed either his apprehension or detention. Since 28 March 2022, the National Police has been investigating the incident as an abduction, but not as enforced disappearance, with no known progress.

133. In the second case, the former head of Novoluhanske village, who had been a defendant in a 2019 conflict-related case, was apprehended near his home on 10 April 2022, in front of his six-year-old son. Five armed men in uniform forced him into a car and drove him away. Despite numerous requests by his family, his fate and whereabouts remain unknown. Since 11 April 2022, the National Police has been investigating the case as an abduction under two theories: abduction by members of armed groups and staging of the kidnapping by the victim himself. The investigators have not considered the possibility that the victim was subjected to enforced disappearance by State agents.

#### **D. VIOLATIONS OF FAIR TRIAL RIGHTS AND OTHER PROCEDURAL GUARANTEES**

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*"I am only here so that you don't get beaten and in case the investigator wants to talk to you."*

- A legal aid lawyer who arrived after a conflict-related detainee was interrogated in her absence in Mykolaiv region
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134. OHCHR found that incidents of arbitrary detention by Ukrainian authorities were often characterized by concerns regarding the effective realization of fair trial guarantees enshrined in IHRL/IHL.<sup>114</sup> Of the 75 cases of arbitrary detention documented by OHCHR, 17 raised concerns regarding respect for fair trial guarantees.
135. In 15 cases, interviewees raised concerns about poor legal aid or bias against conflict-related detainees by legal aid lawyers. In most cases where detainees were initially brought to unofficial places of detention such as SBU local offices, they were interrogated without a lawyer present, and were beaten or threatened with physical violence while being interrogated. In several cases, legal aid lawyers only appeared when SBU officers needed a detainee to sign papers which required the presence of a lawyer by law. In one case, a legal aid lawyer refused to defend a man suspected of committing treason, calling him a "traitor".
136. OHCHR noted that only in few cases did legal aid lawyers take legal action to address their client's claims of arbitrary detention or ill-treatment during arrest and detention. The ineffective representation of legal aid layers is particularly concerning, limiting the

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<sup>114</sup> Additional Protocol 1, art. 75(4); ICCPR, art. 14.

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ability of individuals to effectively challenge their detention.<sup>115</sup> For example, one detainee told OHCHR that although a free legal aid lawyer came to the temporary detention facility, the lawyer did not attempt to speak to him confidentially. The detainee believed that the lawyer's presence during the interrogation was formalistic and that the lawyer did not intend to actively defend him.

137. OHCHR has also documented six cases where human rights violations occurred at earlier stages of the criminal investigation. In several cases, SBU officers searched homes and seized objects (laptops, cell phones) without court authorization or a notice of suspicion. After several days or weeks, SBU officers returned to the same places to conduct official searches and "seize" the items that were already in their possession. In some cases, interviewees reported that SBU officers also planted evidence. In three cases, victims told OHCHR that evidence was planted during searches at entry-exit checkpoints at the State border or other checkpoints in the country.

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<sup>115</sup> OHCHR has extensively documented fair trial concerns in its report on "Human Rights in the Administration of Justice in Conflict Related Criminal Cases in Ukraine April 2014 – April 2020", available at <https://www.ohchr.org/sites/default/files/2022-08/Ukraine-admin-justice-conflict-related-cases-en.pdf>.

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## VI. ACCOUNTABILITY

138. IHRL and IHL oblige States to investigate violations committed by all parties to the conflict effectively, promptly, thoroughly and impartially and, where appropriate, to take action against those allegedly responsible in accordance with domestic and international law. Victims of violations of IHRL and IHL are to be provided with equal and effective access to justice. Victims are also to be provided with remedy and reparation for the harm suffered.<sup>116</sup> Additionally, victims and their families have the right to know the truth about the circumstances of the violations, including the identity of the perpetrators, and in the case of enforced disappearance, of the fate and whereabouts of the victim.<sup>117</sup>

### A. MEASURES TOWARDS ACCOUNTABILITY BY THE RUSSIAN FEDERATION

139. OHCHR is not aware of any ongoing investigations by the Russian Federation in relation to arbitrary detentions, enforced disappearances, torture or ill-treatment perpetrated by its own forces in Ukraine. Of serious concern, on 13 December 2022, the Parliament of the Russian Federation approved, in its first reading, a draft federal law which, *inter alia*, potentially provides exemption from criminal liability for offences under international law<sup>118</sup> committed in the Donetsk, Luhansk, Zaporizhzhia and Kherson regions of Ukraine if such offences were committed for the sake of “protecting the interests of the Russian Federation”. Such a law would not only provide impunity for serious violations of IHL and IHRL, but may also encourage further commission of such offences. OHCHR also notes that international law prohibits the granting of amnesty in relation to serious violations of IHL or gross violations of IHRL, as this would violate the State’s obligation to investigate and, where appropriate, prosecute alleged perpetrators.<sup>119</sup>

### B. MEASURES TOWARDS ACCOUNTABILITY BY UKRAINE

140. OHCHR is not aware of any completed criminal investigations launched by Ukrainian authorities into Ukrainian State actors alleged to be involved in arbitrary detentions or enforced disappearances of conflict-related detainees.
141. The Government of Ukraine reportedly launches criminal investigations into each report of detention of civilians perpetrated by the Russian Federation. Some of these proceedings have been initiated as a part of umbrella cases on war crimes and crimes against humanity. Twenty-three individuals have been convicted and sentenced (including 19 *in absentia*) in relation to arbitrary detentions, enforced disappearance and torture of conflict-related detainees. Of these, five members of the Russian armed forces have been convicted to date *in absentia* in relation to the detention of civilians in Yahidne village.

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<sup>116</sup> Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, para. 3.

<sup>117</sup> ICPEd, art. 2; Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, para. 22.

<sup>118</sup> The draft law does not specify or limit the crimes eligible for such exemption.

<sup>119</sup> See OHCHR, Rule of Law Tool for Post-Conflict States: Amnesties.

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142. The Government of Ukraine also launched a mechanism to compensate victims of conflict-related arbitrary detention and enforced disappearance. In addition to financial assistance, this mechanism provides victims with medical and rehabilitation care, including psychological services, legal assistance, housing provision, and employment and pension guarantees.<sup>120</sup>

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<sup>120</sup> The mechanism supports the inclusion of the period of detention into the individual's labour record, which is linked to pensions (including disability pensions).

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## VII. CONCLUSIONS AND RECOMMENDATIONS

143. OHCHR has documented grave and wide-ranging violations of IHRL and IHL against conflict-related civilian detainees. OHCHR identified patterns of conduct which have resulted in arbitrary detention, as well as further human rights violations including torture, ill-treatment and enforced disappearances. While such conduct was found in relation to both parties to the conflict, there was greater prevalence of conduct attributed to forces of the Russian Federation.
144. Grave violations of the human rights of conflict-related detainees, including arbitrary detention, enforced disappearances, torture and ill-treatment, must be immediately halted. Violations of IHL and IHRL must be recognised and addressed, and concrete steps taken to urgently protect the right to life and personal integrity, the right to be free from torture and cruel, inhumane or degrading treatment or punishment, the right to liberty, and to ensure adequate conditions of detention. Access to justice, fair trial rights, and accountability should also be prioritised to ensure that victims of violations find effective remedies and perpetrators are held accountable.
145. Based on the findings from this report, OHCHR urges the implementation of the following recommendations:
146. To all parties to the conflict:
- a) Immediately cease the arbitrary deprivation of liberty of civilians, releasing victims thereof in conditions of safety, and providing all victims with effective remedies;**
  - b) Ensure that legal safeguards for persons deprived of their liberty are fully upheld in line with IHRL and IHL;**
  - c) Treat all persons deprived of their liberty humanely and in full compliance with IHRL and IHL, including by providing gender-sensitive conditions of detention and ensuring due separation between men and women;**
  - d) Immediately comply with the obligation under IHL to ensure regular supervisory visits to all places where protected persons are interned or detained and to permit confidential interviews with all persons deprived of their liberty;**
  - e) Immediately halt the use of unofficial places of detention and ensure that all detainees are held only in officially recognized and supervised places of detention that fully comply with requirements under IHRL and IHL;**
  - f) Ensure that National Information Bureaus established in line with IHL effectively fulfill their key role to collect and forward information regarding protected persons in enemy hands. Further ensure that relevant national legislation is fully in line with IHL, enabling National Information Bureaus to effectively carry out all tasks stipulated under the Geneva Conventions;**



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- g) Refrain from holding individuals in *incommunicado* detention and provide immediate information on the whereabouts of detainees to their families and legal representatives;**
  - h) Ensure that all allegations of conflict-related arbitrary detention, enforced disappearances, torture and ill-treatment, including sexual violence, are effectively, promptly, thoroughly and independently investigated, regardless of the affiliation of the alleged perpetrator(s). Further ensure that perpetrators, including persons in position of command, are prosecuted and, if found guilty, punished with penalties commensurate with the gravity of their conduct;**
  - i) Put in place effective remedies for victims of violations of IHRL and IHL, encompassing reparation, restitution, compensation for the harm suffered, and just satisfaction. This includes rehabilitation measures such as access to adequate medical and psychological care, legal and social services, and specific and gender-sensitive services for survivors of sexual violence; and**

147. To the Russian Federation:

- j) Immediately cease the summary execution of civilians and take necessary measures to guarantee its non-repetition;**
- k) Grant independent monitors, including OHCHR, regular, unimpeded and confidential access to all places of detention in the territory of Ukraine which it occupies, as well as to detainees arrested in Ukraine and transferred to detention facilities located in the Russian Federation;**
- l) Ensure that the security detention of civilians is used only as an exceptional measure and in strict compliance with the Fourth Geneva Convention. Cease the practice of internment of civilians without a timely and individualized assessment of the need for the deprivation of liberty;**
- m) Meaningfully fulfil its obligations under the Fourth Geneva Convention to facilitate communication between civilian internees and their relatives;**
- n) Ensure that all civilians held in security detention are released as soon as the circumstances justifying their detention have ceased to exist. Further ensure that releases occur without conditions, in particular forced confessions or expulsions from the territory;**
- o) Ensure that individuals in occupied territory can freely exercise their rights to freedom of opinion and expression without fear of retaliation, including prosecution or imprisonment;**
- p) Immediately end transfers and deportations which contravene IHRL and IHL, including the deportation of protected persons detained in occupied territory of Ukraine to the Russian Federation or third States. Immediately and safely return such deported detainees to the territory of Ukraine;**

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- q) Ensure that, under no circumstances, are civilian detainees used to shield military targets;**
  - r) Refrain from any measures that hinder or impede accountability, including total or partial amnesties encompassing gross violations of IHRL, grave violations of IHL or other international crimes; and**

148. To Ukraine:

- s) Ensure that any arrests are carried out in accordance with the grounds and procedures established by law. Cease the overbroad use of domestic legal provisions (e.g. on *in flagrante* arrests) to justify detention without a court warrant or timely judicial review;**
- t) Amend Law No. 2108-IX, which introduces criminal liability for collaboration activities under Article 111-1 of the Criminal Code, to ensure full compliance with IHRL and IHL;**
- u) Fully uphold due process and fair trial guarantees for all individuals charged in conflict-related criminal cases; and**

149. To the international community:

- v) Take all possible measures to prevent and bring to an end violations of IHL, and use its influence to urge the parties to the international armed conflict to cease ongoing violations and provide effective remedies to all victims of arbitrary detentions and enforced disappearances, and work collectively to ensure accountability for past violations;**
- w) Continue to request access for independent human rights monitors, including OHCHR, to detainees in the hands of the Russian Federation;**
- x) Continuously urge all parties to the conflict to respect IHRL and IHL, encouraging constructive responses to UN findings, including in relation to violations committed by their own forces;**
- y) Ensure that military training provided to the armed forces of any party to the conflict includes clear and comprehensive instructions on the principles of IHRL and IHL, including in relation to deprivation of liberty;**
- z) With the view to preventing arbitrary detention and enforced disappearances, and considering the absence of designated Protecting Powers, facilitate the work of the International Committee of the Red Cross and any other impartial humanitarian organization to carry out the duties incumbent on the Protecting Powers outlined in the Geneva Conventions;**
- aa) Provide adequate funding and support for services for survivors of torture and sexual violence of all genders; and**
- bb) Provide adequate funding and support to both governmental and non-governmental organisations providing psychological and other types of services for relatives of individuals deprived of their liberty or who are missing.**



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**HUMAN RIGHTS**  
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*Ukraine*

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