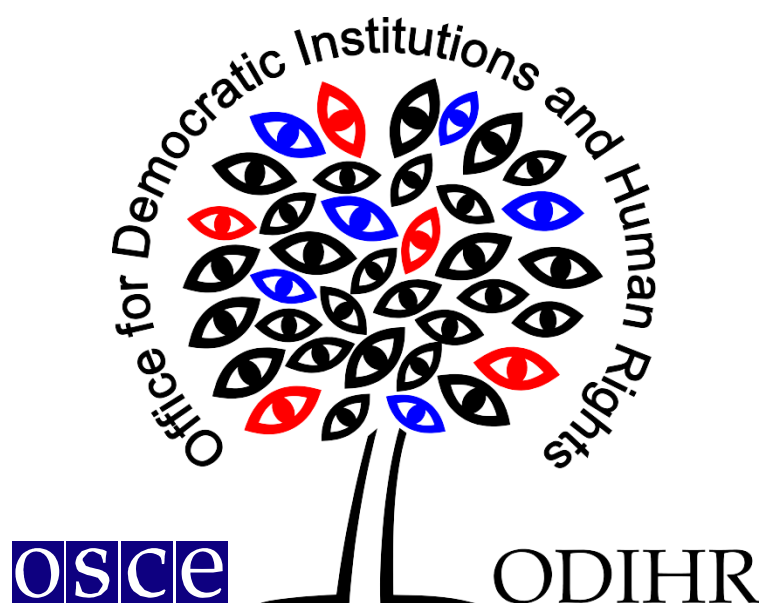


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Third Interim Report on reported violations of international humanitarian law and international human rights law in Ukraine



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I. Executive Summary

1. In line with its monitoring mandate, ODIHR launched the Ukraine Monitoring Initiative (UMI) to monitor and report on the most pressing issues affecting the lives of civilians and prisoners of war (POWs), following the Russian Federation's military attack in Ukraine on 24 February 2022. This is the Third Interim Report on Reported Violations of International Humanitarian Law and International Human Rights Law produced by the UMI.
2. The Report includes a short overview of violations in the context of the armed conflict since 1 November 2022, while the main body of the report focuses on specific issues reported to ODIHR by 119 witnesses during four monitoring deployments conducted by ODIHR from February to May 2023. The report is also informed by the UMI's remote monitoring, using open-source investigation techniques and information supplied by institutions of the Russian Federation and Ukraine and civil society organizations, among other actors, that are referenced in the report.
3. ODIHR finds that the Russian Federation armed forces continued the routine use of explosive weapons with wide area effects in densely populated areas, leading to numerous civilian casualties. Attacks on Ukraine's critical energy infrastructure continued until March 2023, with severe effects on the humanitarian situation felt to this day. From late April 2023, the Russian Federation intensified its attacks on civilian objects in residential areas, especially in the capital, Kyiv. The Ukrainian armed forces also shelled civilian areas in territories occupied by the Russian Federation, albeit on a much smaller scale.
4. The humanitarian situation continued to deteriorate, especially in the east and south of the country in areas of the fiercest fighting, where residents were often unable to escape the violence, had limited or no access to essential services and have had to face the increasing hazard of mines in residential areas.
5. Allegations of summary executions, torture and poor conditions of internment of Ukrainian POWs by the Russian authorities continued to emerge. Some reports of ill-treatment of Russian POWs by the Ukrainian authorities have also been documented. ODIHR analysed videos apparently showing the killing of POWs by both the Russian and Ukrainian armed forces.
6. There were widespread reports of arbitrary deprivation of liberty and enforced disappearances of civilians in areas under Russian Federation occupation. Women and men were apparently targeted for their real or perceived support for the Ukrainian authorities. ODIHR interviewed 19 survivors of arbitrary detention and enforced disappearance in 2023, including 13 men and six women, as well as the relatives of four individuals who remain arbitrarily detained. According to testimonies received by ODIHR, torture and ill-treatment were widespread in detention and used to extract confessions or information, or to otherwise force detainees to co-operate, as well as to humiliate, intimidate or punish them. All of the 19 survivors interviewed by ODIHR

reported having been subjected to torture or ill-treatment. ODIHR also received allegations of torture and ill-treatment for two of the four civilians who remain arbitrarily detained.

7. ODIHR interviewed 27 witnesses in 2023 who reported conflict-related sexual violence, of which 16 (11 men and five women) were survivors themselves. Survivors and witnesses reported allegations of rape, threats of rape and sexual violence, sexual harassment (including verbal harassment through the use of derogatory name calling) electrocution of genitals, and forced nudity. Conflict-related sexual violence was reportedly committed against women and men, civilians and POWs and, overwhelmingly, while in detention.
8. ODIHR gathered further evidence of forcible displacements of civilians within and from areas of Ukraine occupied by the Russian Federation, including children. These included self-evacuations where dire conditions necessitated civilians to flee and 'deportations' by the occupation authorities to Ukrainian government-held territory. Witnesses detailed to ODIHR cases of children who were not returned to their parents following participation in recreational camps in the Autonomous Republic of Crimea and the City of Sevastopol (Crimea).
9. ODIHR continued to receive reports of unlawful restrictions to the rights to freedom of peaceful assembly and expression in occupied territories. Assemblies critical of the Russian Federation were reportedly dispersed using excessive force, including live ammunition, and participation in such protests was linked to cases of abduction and enforced disappearances. Occupation authorities targeted other forms of dissent, including social media posts.
10. Witnesses described in detail to ODIHR continued attempts by the Russian Federation authorities to pressure residents of the occupied territories to obtain Russian Federation passports.
11. ODIHR makes a series of recommendations, calling on both parties to the conflict to address the issues highlighted in this report, as well as to respect and ensure respect for International Humanitarian Law and International Human Rights Law.

II. Introduction

12. OSCE human dimension commitments emphasize the vital importance of participating States' realization of their binding human rights obligations under international treaties.¹ Those human dimension commitments reaffirm the binding nature of States' obligations under International Humanitarian Law (IHL), including the Geneva Conventions.²
13. In line with its core mandate to assist OSCE participating States in the implementation of their human dimension commitments,³ ODIHR established the Ukraine Monitoring Initiative (UMI) immediately after the military attack that the Russian Federation initiated in Ukraine on 24 February 2022, prioritizing the most pressing issues affecting the lives of civilians and Prisoners of War (POWs). This includes monitoring: the use of means and methods of warfare prohibited under IHL; instances of wilful killings, torture and other inhuman and degrading treatment or punishment, and conflict-related sexual violence (CRSV); the deportation of civilians, including children; and the denial of humanitarian relief to populations in need. Due to developments on the ground and information provided to ODIHR by witnesses, the scope of the monitoring was broadened to additionally focus on acts by occupying forces aimed at fundamentally altering the demographic composition, character and nature of occupied territories, in violation of a cornerstone principle of IHL according to which occupation is presumed to be a transitional and temporary regime.
14. ODIHR developed its human rights monitoring methodology for the purposes of, and circumstances faced by, the UMI. In particular, ODIHR adopts a trauma-informed approach, guided by the principles of 'do no harm', informed consent and awareness of the risks of re-traumatization. More information about the UMI methodology is available on ODIHR's website.⁴
15. This report, the third published by ODIHR since the start of the UMI, builds upon the findings and recommendations of the Interim Report on reported violations of international humanitarian law and international human rights law in Ukraine published in July 2022 (First Interim Report)⁵ and the Second Interim Report on reported violations of international humanitarian law and international human rights law in Ukraine

¹ See for example Concluding Document of Budapest, 6 December 1994 (hereafter referred to as Budapest 1994), para. 20, <<https://www.osce.org/files/f/documents/5/1/39554.pdf>>.

² See for example Concluding Document of Helsinki — The Fourth Follow-up Meeting, Helsinki, 10 July 1992 (hereafter referred to as Helsinki 1992), paras. 47-52; Budapest 1994, paras. 29–35, <<https://www.osce.org/mc/58330>>.

³ Helsinki 1992. See "Interim Report on reported violations of international humanitarian law and international human rights law in Ukraine", ODIHR, 20 July 2022, <<https://www.osce.org/odihr/523081>>; and "Second Interim Report on reported violations of international humanitarian law and international human rights law in Ukraine", ODIHR, 14 December 2022, <<https://www.osce.org/odihr/534933>> for additional detail on ODIHR's mandate.

⁴ See "Ukraine Monitoring Initiative Methodology", OSCE/ODIHR, 17 July 2023, <<https://www.osce.org/odihr/548611>>.

⁵ "Interim Report", ODIHR, 20 July 2022, *op.cit.* note 3.

published in December 2022 (Second Interim Report).⁶ It aims to further contribute to ensuring accountability for violations of IHL and IHRL committed in the context of the armed conflict in Ukraine.

16. The report begins with a short overview of reported violations of IHL and IHRL committed in the context of the armed conflict between 1 November 2022 and 31 May 2023. Following this, the main body of the report focuses on information provided to ODIHR during interviews conducted in the first half of 2023, giving prominence to the voices of witnesses and survivors. ODIHR conducted four monitoring deployments from February to May 2023, with two visits to Ukraine and two to Estonia. During these monitoring visits, ODIHR interviewed 119 survivors of, or witnesses to, alleged violations of IHL and IHRL (62 women and 57 men) in the course of 113 in-person interviews.⁷ ODIHR interviewees included internally displaced persons (IDPs), refugees, and former prisoners of war (POWs) and came from various regions and cities, including Chernihiv, Donetsk, Kharkiv, Kherson, Kyiv, Luhansk, Mariupol, Melitopol, Sievierodonetsk and Zaporizhzhia. ODIHR wishes to convey its gratitude to all the interviewees who provided testimony. ODIHR reached out to the authorities in Ukraine and the Russian Federation to express its interest in conducting in-person interviews with civilians and former POWs located on their respective territories. Additionally, ODIHR received information from the authorities of Ukraine and the Russian Federation, their respective National Human Rights Institutions, relevant intergovernmental organizations (IGOs), and civil society organizations, which is referenced in the report.

III. Overview of the situation since 1 November 2022

17. ODIHR's monitoring activities⁸ show that, between 1 November 2022 and 31 May 2023, the Russian armed forces continued to routinely use explosive weapons with wide area effects⁹ in their attacks on densely populated urban areas of Ukraine, leading to numerous

⁶ “Second Interim Report”, ODIHR, 14 December 2022, *op.cit.* note 3.

⁷ These included six interviews with two people who specifically requested to be interviewed together. To date, ODIHR has conducted a total of 11 monitoring deployments in the framework of the UMI. These included six visits within Ukraine, conducting interviews in Uzhhorod, Lviv, Kyiv and towns and villages in the Kyiv region, as well as five monitoring visits to Estonia. During these visits, ODIHR conducted 233 in-person interviews, including 14 interviews with two people who specifically requested to be interviewed together, with 247 survivors of, or witnesses to, alleged violations of IHL and IHRL (128 women, 119 men).

⁸ Since 24 February 2022, ODIHR has been collecting information on potential violations of the rules on the conduct of hostilities by the parties to the conflict. As ODIHR is not in a position to conduct detailed assessments of violations of IHL norms in relation to individual attacks, its findings are based on certain patterns observed in the course of its monitoring activities, which allow it to make provisional conclusions regarding the degree of compliance with particular IHL norms by the warring parties. For more information on the legal framework, see “The legal framework applicable to the armed conflict in Ukraine”, OSCE/ODIHR, 17 July 2023, <<https://www.osce.org/odihr/548614>>.

⁹ These are weapons designed for the open battlefield and, given their inherent inaccuracy, their use in densely populated areas is very likely to cause indiscriminate and disproportionate harm to civilians and civilian infrastructure.

civilian casualties as well as extensive damage and destruction of civilian objects.¹⁰ For instance, on Saturday 14 January 2023, at about 3:30 p.m. (local time), a long-range anti-ship Kh-22¹¹ missile hit a multi-story residential building in Dnipro (Dnipropetrovsk region), which, according to the Dnipropetrovsk region military administration, killed 46 civilians and injured 80.¹² ODIHR could not identify any military objectives in the area. On the same day, ODIHR recorded a wave of Russian missile strikes on other cities and towns across the country, including in the Kharkiv, Kyiv, Lviv and Mykolaiv regions. The Russian Federation denied responsibility for the attack on the residential building in Dnipro by claiming that “the Russian military is not launching missile strikes against civilian objects in Ukraine”.¹³ Based on the information available to ODIHR, including the location and timing of the attack, as well as the type of weapons used, there are reasonable grounds to believe that the Russian armed forces hit the residential building in disregard of the strict IHL prohibition of indiscriminate attacks.¹⁴

18. Until early March 2023,¹⁵ the Russian Federation also continued its series of missile and loitering munition strikes targeting Ukraine's critical energy infrastructure,¹⁶ raising concerns regarding the IHL prohibition on attacks targeting objects indispensable to the survival of the civilian population.¹⁷ These attacks caused numerous civilian casualties¹⁸ and extensive damage and destruction to civilian infrastructure facilities.¹⁹ These

¹⁰ According to updated figures made available by the Office of the United Nations High Commissioner for Human rights (OHCHR), 90 per cent of civilian deaths and injuries in Ukraine recorded between 24 February 2022 and 21 May 2023 were caused by the use of explosive weapons with a wide impact area, including shelling from heavy artillery and multi-launch rocket systems, missiles, and air strikes. See “Ukraine: civilian casualties as of 21 May 2023”, United Nations Office of the High Commissioner for Human Rights, 22 May 2023, <<https://ukraine.un.org/en/232654-ukraine-civilian-casualties-21-may-2023>>. Regarding ODIHR's previous findings see also “Interim Report”, *op.cit.* note 3, at paras 47-51; “Second Interim Report”, *op.cit.*, note 3, at paras 44-48.

¹¹ This type of guided missile is designed to hit ships rather than land objects, which makes it inaccurate and therefore inappropriate for use in urban areas. The Kh-22 missiles have previously been used by the Russian armed forces in a number of attacks in Ukraine which resulted in civilian casualties and damage to civilian objects, including in the 1 July 2022 attack on a nine-story residential building and a recreation centre in Serhiivka (Odesa region) in which 21 civilians were killed and 39 were injured. See “Second Interim Report”, *op.cit.*, note 3, at para. 46.

¹² Dnipropetrovsk region military administration, Telegram, 19 January 2023, <https://t.me/adm_dp/7505>.

¹³ “Kremlin links missile landing on house in Dnipro with work of Ukraine's air defense system”, RBC, 16 January 2023, <<https://www.rbc.ru/politics/16/01/2023/63c51b619a7947cbd8839591>>.

¹⁴ AP I, art. 51(4), <https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.34_AP-I-EN.pdf>; Customary IHL Rule 11, <<https://ihl-databases.icrc.org/en/customary-ihl/v1>>.

¹⁵ Between 10 October 2022 and 9 March 2023 ODIHR recorded at least 18 waves of such attacks in 20 of the country's 24 regions, as well as in the capital, Kyiv.

¹⁶ See “Second Interim Report”, *op.cit.*, note 3, at paras 49-53.

¹⁷ AP I, art. 54, <https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.34_AP-I-EN.pdf>; See “Second Interim Report”, *op.cit.*, note 3, at paras 51-52.

¹⁸ From 10 October 2022 to 31 January 2023, OHCHR documented 495 civilian casualties resulting from such strikes, among which 116 dead and 379 injured. See “Report on the Human Rights Situation in Ukraine: 1 August 2022 – 31 January 2023”, UN Office of the High Commissioner for Human Rights, 24 March 2023, at para. 39, <<https://www.ohchr.org/sites/default/files/documents/countries/ukraine/2023/23-03-24-Ukraine-35th-periodic-report-ENG.pdf>>.

¹⁹ According to the Office of the Prosecutor General of Ukraine, between 1 November 2022 and 1 April 2023, Russian armed forces have carried out 175 strikes on electric power facilities in the country, as a result of which 84,778 civilian infrastructure facilities were damaged or destroyed. Information from the Office of the

sustained winter strikes targeting Ukraine's critical energy infrastructure also had a tremendous impact on the humanitarian situation, with the effects on electricity supplies felt to this day. It is reported that these strikes have over time affected up to 12 million people resulting in limited or no access to energy.²⁰

19. In late April 2023, the Russian Federation intensified missile, loitering munition and air strikes on several regions of Ukraine, especially on the capital, Kyiv, which was subjected to seventeen attacks in May alone.²¹ These often struck residential areas, caused civilian casualties and impacted civilian objects, including functioning medical facilities,²² without pursuing any discernible legitimate military objective.
20. Although on a much smaller scale, the Ukrainian armed forces have also engaged in shelling populated areas in the Russian Federation occupied territories of Ukraine, which resulted in civilian casualties and damage to civilian objects.²³ For example, on 28 April 2023, seven civilians (six women and one child) were reported killed when an MLRS shell hit a route taxi in the centre of Donetsk (Donetsk region), according to the High Commissioner for Human Rights in the Russian Federation and a representative of the de facto authorities in occupied Donetsk region, corroborated by ODIHR monitoring.²⁴

Prosecutor General of Ukraine. See also "Report: Human Rights Situation in Ukraine", OHCHR, 24 March 2023, *op. cit.*, note 18, at para. 39.

²⁰ "Uncovering the reality of Ukraine's decimated energy infrastructure", UNDP, 12 April 2023, <<https://www.undp.org/ukraine/blog/uncovering-reality-ukraines-decimated-energy-infrastructure>>.

²¹ Kyiv city military administration, Telegram, 30 May 2023, <https://t.me/VA_Kyiv/1937>.

²² These include the 28 April missile strike on a nine-story residential building in Uman (Cherkasy region), which, according to Ukrainian authorities, killed 23 civilians (including six children) and injured six, see Ihor Klymenko, Facebook, 29 April 2023, <<https://www.facebook.com/100063549430817/videos/2559859704313623/>>; the 3 May aerial attack on the city of Kherson (Kherson region), in which 21 civilians were killed and 48 injured (including two children), see Kherson Regional Prosecutor's Office, Telegram, 3 May 2023, <<https://t.me/phogovua/1805>>; the 7-8 May missile strikes on a Ukrainian Red Cross mobile hospital in Mykolaiv (Mykolaiv region) and warehouse with humanitarian aid in Odesa (Odesa region), see Ukrainian Red Cross, Facebook, 8 May 2023, <<https://www.facebook.com/RedCrossUkraine/posts/pfbid0k9b4pLuwgV8dtwSjjYHHC7rWt2odHxyys357GVQVWsSz2itjXH61keN5XaUY1itdl>>; and the 26 May strike on the City Hospital No. 14 in Dnipro (Dnipropetrovsk region), in which at least two civilians were killed and 31 were injured (including eight medical workers and two children), see Mykola Lukashuk, Telegram, 26 May 2023, <https://t.me/mykola_lukashuk/4745>.

²³ For instance, between 24 February 2022 and 21 May 2023, OHCHR recorded 3,154 casualties (705 killed and 2,449 injured) in non-government-controlled areas of Donetsk and Luhansk regions. See "Ukraine: civilian casualties as of 21 May 2023", *op. cit.*, note 10. See also "Update on the human rights situation in Ukraine: 1 February 2023 – 30 April 2023", UN, Office of the High Commissioner for Human Rights, 13 June 2023, p. 1, <https://www.ohchr.org/sites/default/files/2023-06/23-06-UkraineHRMMU-three-months-update-ENG_0.pdf>; Information from the High Commissioner for Human Rights and the Presidential Council for the Development of Civil Society and Human Rights in the Russian Federation; The Joint Centre for Control and Coordination on ceasefire and stabilization of the demarcation line in Donetsk People's Republic, Telegram channel, <https://t.me/DNR_SCKK>; The Joint Centre for Control and Coordination on ceasefire and stabilization of the demarcation line in Luhansk People's Republic, Telegram channel, <https://t.me/LPR_JCCC>.

²⁴ Information from the High Commissioner for Human Rights in the Russian Federation. See also D.V. Pushilin, Telegram, 28 April 2023, <<https://t.me/pushilinden/3377>>; Updated report of The Joint Centre for Control and Coordination on ceasefire and stabilization of the demarcation line in Donetsk People's Republic: Documentation of the aftermath of shelling in the Kyiv district of Donetsk, Telegram, 28 April 2023,

21. During the reporting period, the humanitarian situation in Ukraine continued to deteriorate with the situation in the eastern and southern regions of the country being especially grave. ODIHR's monitoring has highlighted the particularly difficult situation in locations close to the frontline in the Donetsk region, such as Avdiivka, Bakhmut, Marinka and Vuhledar. Here the civilian population has found itself trapped in intense fighting, with very little or no means of escape and has had to cope without regular access, or any access, to clean water, electricity, gas, sanitation and health services. Humanitarian access to such areas was heavily restricted and, at times, non-existent.²⁵ The humanitarian situation also remained dire in parts of the territory formerly under occupation by the Russian Federation which have been reclaimed by the Ukrainian armed forces, such as Vovchansk (Kharkiv region) and Kherson (Kherson region) which continue to be subjected to constant shelling from the Russian armed forces and affiliated groups. ODIHR also received information from credible witnesses regarding the conduct of Russian forces and affiliated groups as they retreated from occupied territory and the humanitarian impact on the local population. For instance, a witness from Kherson mentioned how Russian forces “destroyed things completely” as they were retreating from the city in November 2022, leaving the population with very little: *“There was no internet. There was some gas but no electricity after liberation. There were mines everywhere so it took time to repair. People went to the river to get water and they were shot at by the forces on the Russian [-controlled] side.”*²⁶
22. Finally, many of the witnesses interviewed by ODIHR referred to the presence of mines in the vicinity of their homes, villages and the roads they used or attempted to use while leaving,²⁷ raising concerns about the extent of mine contamination and its severe impact, both immediate and future, on the Ukrainian population. While explosive ordnance contamination has been a critical challenge for Ukraine for years, the Russian Federation military attack severely exacerbated the situation, making Ukraine one of the world’s most heavily mined countries.²⁸

<https://t.me/DNR_SCKK/14830> and <https://t.me/DNR_SCKK/14818>; “At least seven people killed and two wounded in shelling of Donetsk centre - Health Ministry”, Donetsk News Agency, 28 April 2023, <<https://dan-news.ru/pravoporyadok/kak-minimum-sem-chelovek-pogibli-i-dvoe-raneny-v-rezultate-obstrela-centra/>>.

²⁵ By 23 May 2023, the UN Office for the Coordination of Humanitarian Affairs (OCHA) reported that humanitarians had lost access to almost 60,000 people in around forty towns and villages close to the frontlines in the Donetsk, Kharkiv and Luhansk regions. See “Ukraine: UN delivers aid to millions, as civilian suffering continues”, UN News, 26 May 2023, <<https://news.un.org/en/story/2023/05/1137102>>.

²⁶ ODIHR Witness Interview UKR.WS.182 at para. 41.

²⁷ See ODIHR Witness Interviews UKR.WS.125 at paras. 25, 71; UKR.WS.131 at para. 42; UKR.WS.140 at paras 59, 68; UKR.WS.141 at para. 71; UKR.WS.148 at para. 8; UKR.WS.151 at paras 46-49, 56; UKR.WS.166 at para. 67; UKR.WS.167 at para. 7; UKR.WS.182 at paras 41, 80-81; UKR.WS.183 at paras 93-95; UKR.WS.187 at para. 85; UKR.WS.188 at paras 115, 133; UKR.WS.189 at para. 38; UKR.WS.200 at para. 49; UKR.WS.203 at para. 9; UKR.WS.205 at para. 21; UKR.WS.206 at paras 29, 50; UKR.WS.209 at para. 19; UKR.WS.218 at para. 47; UKR.WS.220 at para. 27; UKR.WS.221 at paras 6, 14, 41; UKR.WS.222 at paras 8-9; UKR.WS.226 at para. 21; UKR.WS.227 at paras 10, 60; UKR.WS.232 at para. 28.

²⁸ “Mine Action Cannot Wait”, UNDP, 4 April 2023, <<https://www.undp.org/speeches/mine-action-cannot-wait>>.

23. During the reporting period, there has been an increase of judicial cases in Ukraine related to acts of 'collaboration'. In April 2023, Ukrainian law enforcement agencies reported having registered 5,500 cases of 'collaboration' since the start of the conflict, which resulted in notification of suspicion against 1,400 people,²⁹ a significant increase from January 2023, where they had reported the registration of about 2,300 such cases.³⁰ According to media reports, 659 cases reached the court in 2022 and in each of the 272 cases that went to trial, the defendant was found guilty.³¹ At least 18 testimonies collected by ODIHR for the purpose of this report address the issue of 'collaboration' directly.³² Some of these testimonies detail the existence of coercive circumstances demonstrating the importance of making the necessary distinction between 'voluntary' co-operation with the occupying authorities, which may be legitimately prosecuted, and 'involuntary' co-operation, or co-operation under duress, which should not be.³³
24. Information on alleged 'collaborators' is often being collected by Ukrainian civil society activists and NGOs and published on the Internet with the individuals' full personal data made available.³⁴ This practice raises concerns about individuals' rights to privacy and respect for fair trial rights, including the right to be presumed innocent until proven guilty according to law.³⁵
25. ODIHR's monitoring shows there is no unified approach among Ukrainian officials on the issue of collaboration and, in particular, on who may be labelled as a collaborator.³⁶

²⁹ "Judgment, forgiveness or compassion. How Ukraine punishes collaborationism and why changes are needed", *Ukrainska Pravda*, 29 May 2023, <<https://www.pravda.com.ua/articles/2023/05/29/7404264/>>.

³⁰ «Зафіксовано понад 57,500 злочинів расистів у війні проти України – докладно», (More than 57,500 racist crimes recorded in the war against Ukraine - in detail), Mariana Reva, Spokesperson of the National Police of Ukraine, 5th Channel, 11 January 2023, Youtube, <https://www.youtube.com/watch?v=jimaHlNPkrA&ab_channel=5%D0%BA%D0%B0%D0%BD%D0%B0%D0%BB>.

³¹ «Справи проти колаборантів: у 2022 засудили майже 300 людей і нікого не виправдали», (Cases against collaborators: in 2022, almost 300 people were convicted and none acquitted), *Ukrainska Pravda*, 29 May 2023, <<https://www.pravda.com.ua/news/2023/05/29/7404340/>>.

³² ODIHR Witness Interviews UKR.WS.127, UKR.WS.129, UKR.WS.132, UKR.WS.134, UKR.WS.139, UKR.WS.140, UKR.WS.141, UKR.WS.153, UKR.WS.169, UKR.WS.177, UKR.WS.178, UKR.WS.182, UKR.WS.185, UKR.WS.188, UKR.WS.198, UKR.WS.208, UKR.WS.215, UKR.WS.224.

³³ See ODIHR Witness Interviews UKR.WS.127 at para. 11; UKR.WS.129 at para. 17; UKR.WS.132 at para. 38. See also "Second Interim Report", *op.cit.*, note 3, at para. 171.

³⁴ «ДержЗрадники» (Government Advisers), Рух Чесно, 2023, <<https://www.chesno.org/traitors/?n=&new=&dead=&category=&geoobject=&party=>>; «Список ворогів України», (List of Enemies of Ukraine), OSINT-спільнота «Molfar», 2023, <<https://www.molfar.global/vorogi-ukrayini>> confirmed by ODIHR interview UKR.WS.127 at p. 17.

³⁵ See Universal Declaration of Human Rights, art. 11(1), <<https://www.un.org/en/about-us/universal-declaration-of-human-rights>>; ICCPR, art. 14(2), <<https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>>; ECHR, art. 6(2), <https://www.echr.coe.int/documents/d/echr/convention_eng>.

³⁶ See Public debate and disagreement on who should be considered as "collaborators", between Ukrainian Parliament Commissioner Lubinets and Vice-Prime Minister of Reintegration of Temporarily Occupied Territories Iryna Vereshchuk. Dmytro Lubinets, Telegram, 17 May 2023, <https://t.me/dmytro_lubinetz/2449>; Iryna Vereshchuk, Telegram, 1 May 2023, <https://t.me/vereshchuk_iryana/1900>; «Лубінець порадив

26. In the territories under occupation, according to the information collected by ODIHR, individuals who provide, or are perceived to provide, support to the Ukrainian authorities can be subjected to investigation for the commission of “terrorist acts”, “high treason”, or “sabotage” and, at times, sent to trial in the Russian Federation, including as a result of an amendment to the Criminal Code of the Russian Federation adopted on 28 April 2023.³⁷ While the occupying power shall ensure, as far as possible, public order and safety, it must respect, unless absolutely prevented, the laws in force in the territory. This is an application of a basic principle of the law of occupation.³⁸ The occupying power should thus refrain from applying its own criminal legislation and/or prosecuting individuals for acts beyond those pursuing the legitimate goal of maintaining order.

IV. Specific issues described to ODIHR in testimonies by witnesses and survivors

a. The situation concerning Prisoners of War

27. Since the beginning of the conflict in Ukraine, concerns have emerged over alleged violations, by both warring parties, regarding the failure to uphold the rights and protections guaranteed to Prisoners of War (POWs) by the third Geneva Convention (GC III).³⁹
28. ODIHR's monitoring, based on interviews with Ukrainian former POWs and open-source analysis, demonstrates a consistent trend of alleged violations perpetrated against POWs

україням в окупації брати паспорти рф: причина», (Lubinetz advised Ukrainians in occupation to take Russian passports: the reason), «Слово і Діло», 30 April 2023, <<https://www.slovoidilo.ua/2023/04/30/novyna/bezpeka/lubinez-poradyv-ukrayincyam-okupacziyi-braty-pasporty-rf-prychyna>>.

³⁷ On 28 April 2023, the Russian Federation adopted amendments to the Criminal Code providing for an increase in sentences up to life imprisonment for the commission of such crimes. See Федеральный закон от 28.04.2023 № 157-ФЗ «О внесении изменений в Уголовный кодекс Российской Федерации и статью 151 Уголовно -процессуального кодекса Российской Федерации», (Federal Law No. 157-FZ of April 28, 2023 "On Amendments to the Criminal Code of the Russian Federation and Article 151 of the Code of Criminal Procedure of the Russian Federation"), < <http://publication.pravo.gov.ru/Document/View/0001202304280051>>. Such cases have included the case of Pavlo Zaporozhets, see “Pavel Zaporozhets”, Statement from Alexey Ladin, Pavlo Zaporozhets' lawyer, Facebook, 15 March 2023, <<https://www.facebook.com/alexey.ladin.3/posts/pfbid024nX7MtW9uyumX1Btd4Epnms9LhpXV5gUiAyJgvwGjNtLV9m3BvnX98xzxHs6eqxulu>>; “Russia denies Ukrainian prisoners of war protected status, tortures out ‘confessions’ and then stages illegal ‘trials’”, Kahrkiv Human Rights Protection Group, 17 March 2023, <<https://khpg.org/en/1608811983>>; «Суд впервые в России начал рассмотрение дела по статье «Акт международного терроризма», (For the first time in Russia, the court started hearing a case under the article "Act of International Terrorism), TACC, 15 March 2023, <<https://tass.ru/proisshestiya/17269217>>.

³⁸ HR, art. 43; GC IV, art. 64.

³⁹ Third Geneva Convention relative to the Treatment of Prisoners of War, 1949 (GCIII), <https://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.32_GC-III-EN.pdf>; See “Interim Report” *op. cit.*, note 3 and “Second Interim Report”, *op. cit.*, note 3.

held by the Russian authorities, including poor conditions of detention, lack of basic amenities, ill treatment, torture, sexual violence, forced labour, pillage of belongings, the inability to maintain contact with relatives⁴⁰ and exposure to public curiosity.⁴¹ IHL sets out strict minimum conditions of internment for POWs, which, according to information received by ODIHR, including interviews conducted with former Ukrainian POWs, seem to be generally disregarded by the Russian Federation.⁴² Interviewees detail facilities as being often severely overcrowded, with inadequate access to sanitation facilities, functioning toilets, or clean drinking water. Rather, POWs were forced to drink technical water and eat food which was described as poor in quality and in small portions.⁴³ One former Ukrainian POW recounted being detained in a facility in the city of Donetsk (Donetsk region) where he was kept in a small, windowless room with 17 other people, and made to sleep on the floor. He added that, if beds were available, there were not enough, and many were forced to sleep two to a bed.⁴⁴

29. Two former POWs who were transferred to a detention facility near Olenivka (Donetsk region), described severe overcrowding. One testimony recounted that more than 500 male POWs were detained on one floor of the facility's barracks, with many *"sleeping in the corridors, on the stairs, inside the toilets, everywhere"*, whilst another POW noted that there were more than 700 in his barrack, with each barrack suitable only for 200 people.⁴⁵ Male and female POWs were described as having been detained separately within facilities, with one interviewee clarifying that, in the Olenivka penal colony, men were held in barracks, and women were held in cells.⁴⁶ One ODIHR witness added *"[W]e were not allowed to write to our families until prisoners from Azovstal appeared. They*

⁴⁰ Under IHL, POWs must be treated humanely at all times and protected against acts of violence, intimidation, insults and exposure to public curiosity. Any unlawful act or omission by each party to the conflict causing death or seriously endangering the health of a POW in its custody is prohibited, and should be regarded as a serious breach of IHL and a war crime. See GC III, arts. 13, 17, and 130. Customary IHL, Rule 92. They shall also be granted the right to give news of a strictly personal nature to members of their families, wherever they may be, and to receive news from them. See GC III, arts. 70-71; Customary IHL, Rule 125.

⁴¹ ODIHR Witness Interviews UKR.WS.157 at paras 7-13, 15, 18, 20-22, 40; UKR.WS.158 at paras 12, 18-19, 25-31, 34, 58, 60; UKR.WS.172 at paras 85-89, 119-120, 124-125, 127-131, 134; UKR.WS.183 at para. 100; UKR.WS.213 at paras 38, 41; UKR.WS.221 at paras 61-63, 66, 72, 74.

⁴² GC III, arts. 21-38 addressing issues such as accommodation, food, clothing, hygiene and medical care.

⁴³ ODIHR Witness Interview UKR.WS.157 at para. 18; UKR.WS.158 at para. 12; UKR.WS.172 at paras 81, 83; UKR.WS.221 at paras 52, 67. See also "Давали до двох чашок їжі на день: що відомо про полон «військового з яблуком»" (Given up to two cups of food a day: what is known about the captivity of the 'soldier with an apple'), Вечірній Київ, 6 February 2023, <<https://vechirniy.kyiv.ua/news/78331/>>; "Report on the Treatment of Prisoners of War and Persons *Hors de Combat* of the Armed Attack by the Russian Federation Against Ukraine", UN, Office of the High Commissioner for Human Rights, 24 March 2023, at pp 13-16, <<https://www.ohchr.org/sites/default/files/documents/countries/ukraine/2023/23-03-24-Ukraine-thematic-report-POWs-ENG.pdf>>.

⁴⁴ ODIHR Witness Interview UKR.WS.157 at paras 15, 17.

⁴⁵ ODIHR Witness Interviews UKR.WS.158 at para. 12; UKR.WS.172 at para. 80. See also UKR.WS.221 at paras 55, 58.

⁴⁶ ODIHR Witness Interviews UKR.WS.157 at para. 21; UKR.WS.158 at para. 12; UKR.WS.221 at para. 54. See also UKR.WS.158 at para. 40. See further "Please let me die": Freed Ukrainian POW describes first thoughts after Russian capture | 60 Minutes", CBS News, 6 March 2023, <<https://www.cbsnews.com/video/ukraine-pow-russia-60-minutes-video-2023-03-05/#x>>.

*allowed us to do this for show, when the Red Cross and other organizations were present... A Russian official body, the purpose of which was to observe the conditions of inmates, visited when I was [in Olenivka penal colony] but, again, this was just for show.”*⁴⁷

30. Former Ukrainian POWs interviewed by ODIHR also detailed instances whereby POWs, both male and female, were subjected to severe beatings and torture during their detention, which in some cases led to death.⁴⁸ One former Ukrainian POW explained how, after being transferred to Olenivka, he was immediately stripped naked, threatened with having his tattoo cut off, and beaten across his entire body, whilst others were taken randomly for beatings.⁴⁹ Likewise, after a further transfer to a site in Taganrog (Russian Federation), the former POW told ODIHR that he and others were routinely beaten and on occasion guards would come and take random detainees away for beatings.⁵⁰ Three interviewed POWs referred to a procedure known as the “*the corridor*”, which referred to POWs being admitted to a new facility following transfer and being severely beaten by officials with batons on each side of the corridor as they walked through.⁵¹
31. In Taganrog [pre-trial] detention facility [number two], one former Ukrainian POW recalled how he had been tortured by a device known as a “shocker”, which was described as resembling a stun baton with which the voltage could be regulated.⁵² Other torture methods mentioned by interviewees included having needles placed under the nails and in the head, electrocution (sometimes referred to as “*calling your mother*”), suffocation, and having to sustain strenuous body positions for long periods of time.⁵³ Testimonies also captured how, during their detention, POWs were made to endure humiliating and degrading treatment. One interviewee detailed that in the pre-trial detention facility in Taganrog, one guard “*treated us like dogs*” and forced the interviewee and others to bark before entering their cell and declaring “*whose turn is it to beat the f**k out of?*”.⁵⁴ Likewise, in Kamensk-Shakhtinsky (Russian Federation) the same POW explained that he and others were forced to “*eat from garbage, or were set upon by dogs, [and] they sent us out [in]to the frost*”.⁵⁵ It was also reported that, due to the sustained torture and

⁴⁷ ODIHR Witness Interview UKR.WS.157 at para. 23.

⁴⁸ ODIHR Witness Interviews UKR.WS.157 at paras 13, 20-22, 25, 29, 31-33; UKR.WS.158 at paras 18-19, 24-27, 40, 52; UKR.WS.172 at paras 88-89, 126-131; UKR.WS.213 at paras 41, 72. *See further* “Report on the Treatment of POWs”, OHCHR, 24 March 2023, at pp 17-20.

⁴⁹ ODIHR Witness Interview UKR.WS.157 at paras 21-22.

⁵⁰ ODIHR Witness Interviews UKR.WS.157 at paras 24, 29-31; UKR.WS.158 at paras 24-25, 31.

⁵¹ ODIHR Witness Interviews UKR.WS.157 at para. 32; UKR.WS.158 at paras 18, 46; UKR.WS.172 at paras 124-125. In a recent OHCHR report, POWs also discussed this treatment and it was referred to as ‘admission’ or ‘welcome beatings’, *see* “Report on the Treatment of POWs”, OHCHR, 24 March 2023, at p. 17.

⁵² ODIHR Witness Interview UKR.WS.158 at paras 27-28. *See also* UKR.WS.172 at para. 126.

⁵³ ODIHR Witness interviews UKR.WS.157 at para. 13; UKR.WS.158 at paras 29-30; UKR.WS.172 at paras 120, 126; UKR.WS.183 at para. 100.

⁵⁴ ODIHR Witness Interview UKR.WS.158 at para. 38.

⁵⁵ *Ibid* at para. 48. *See also* ODIHR Witness Interview UKR.WS.221 at paras 61, 66.

inhuman treatment, some POWs resorted to suicide, which was reportedly the case in both the Olenivka and Kamensk-Shakhtinsky detention facilities.⁵⁶

32. Despite these poor conditions, ODIHR interviewees did also reflect that, upon transfer to different detention sites, their conditions did improve, with former POWs noting that they received adequate food, access to toilets and medical treatment.⁵⁷ In some cases, ODIHR received information that the prison authorities attempted to curtail mistreatment of Ukrainian POWs. For instance, two ODIHR witnesses stated that, following the death of five Ukrainian POWs as a result of beatings in a detention facility in Taganrog, Russian officials replaced the head of the prison, who then reportedly forbade beatings and increased the portions of food.⁵⁸ Likewise, there were instances where beatings were prevented by prison staff, as was the case in Kamensk-Shakhtinsky during the rotation of guards/forces, but this was not always successful.⁵⁹
33. Two ODIHR witnesses also reported that the Russian armed forces stored military equipment and fired weaponry, sometimes mortars or machine guns, near to their detention sites.⁶⁰ This contributed to their sleep deprivation but also potentially violated the IHL rule that POWs may not, at any time, be detained in areas where they may be exposed to the fire of the combat zone.⁶¹ Interviews conducted by ODIHR monitors also reported instances where civilians were arrested, transferred, and then detained with POWs in detention centres in both Olenivka and in Kamensk-Shakhtinsky,⁶² following a trend that has been reported on by other organizations and media.⁶³ Interviewees reported

⁵⁶ ODIHR Witness Interviews UKR.WS.158 at para. 52; UKR.WS.172 at para. 88. *See also* UKR.WS.215 at para. 44.

⁵⁷ ODIHR Witness Interviews UKR.WS.157 at paras 10, 14, 26; UKR.WS.158 at paras 41, 46, 53-54; UKR.WS.213 at para. 38; UKR.WS.221 at para. 88.

⁵⁸ ODIHR Witness Interviews UKR.WS.157 at para. 29; UKR.WS.158 at para. 33.

⁵⁹ ODIHR Witness Interview UKR.WS.158 at paras 48-50.

⁶⁰ ODIHR Witness Interviews UKR.WS.172 at paras 96-98, 121-122; UKR.WS.211 at paras 73-79.

⁶¹ GCIII, art. 23.

⁶² ODIHR Witness Interviews UKR.WS.157 at para. 34; UKR.WS.158 at para. 55; UKR.WS.172 at paras 88, 110; UKR.WS.213 at paras 27-34; UKR.WS.221 at para. 56. *See also* UKR.WS.214 at paras 15-17; UKR.WS.215 at paras 26, 40-47; UKR.WS.231 at paras 18-19, 22-23, 25; UKR.WS.083; "A Ukrainian Prisoner of War's Long Journey Home", New Yorker, 27 October 2022, <<https://www.newyorker.com/news/dispatch/a-ukrainian-prisoner-of-wars-long-journey-home>>; "Absolute evil': inside the Russian prison camp where dozens of Ukrainians burned to death", Guardian, 6 August 2022, <<https://www.theguardian.com/world/2022/aug/06/russian-prison-camp-ukrainians-deaths-donetsk>>.

⁶³ "Освобожденный из плена подтвердил, что РФ держит в СИЗО мирных украинцев: "Соседняя с нами камера, 12 человек, все 100% гражданские" (Released from captivity, confirms that Russia is holding peaceful Ukrainians in pre-trial detention centre: "The cell next to us, 12 people, all 100% civilians"), Настоящее Время, 17 February 2023, <<https://www.currenttime.tv/a/osvobozhdenyy-plen-rf-derzhit-mirnyh-ukraintsev/32275652.html>>; "Russia accused of holding 20,000 Ukrainian civilians captive", Deutsche Welle, 2 June 2023, <<https://www.dw.com/en/russia-accused-of-holding-20000-ukrainian-civilians-captive/a-65798670>>; "Report on the Treatment of POWs", OHCHR, 24 March 2023, at p. 19; "Russia's secret prison. Some 650 Ukrainians are being held in Pretrial Detention Facility No. 2 in Bryansk Region", Media Initiative, 23 February 2023, <<https://mipl.org.ua/en/russias-secret-prison-some-650-ukrainians-are-being-held-in-pretrial-detention-facility-no-2-in-bryansk-region/>>.

that civilians who were detained among POWs faced similar conditions during detention and were specifically restricted in contact with their families and subjected to beatings.⁶⁴

34. One interviewee in particular stated to ODIHR that Russian soldiers referred to some civilians as “red informers”, a name given to so-called “traitors”, who are purported to have provided the coordinates of Russian forces to Ukrainian forces.⁶⁵ In one specific case, the Russian authorities acknowledged that they had arrested and detained the civilian, with the Russian Ministry of Defence writing a letter to the family, confirming their arrest on the basis that “they had been detained for disrupting the Special Military Operation”, adding that “their health condition was satisfactory” and that “those who disrupt the special military operation, their location cannot be revealed or shared”.⁶⁶ The whereabouts and status of civilian detainees has proven difficult to ascertain, with information about their circumstances being vague or outright refused.⁶⁷ The main source of information was through former POWs who had been exchanged.⁶⁸ In addition, some families learnt of their relatives’ detention via prisoner lists published on Telegram or websites, through writing letters to the Russian authorities and agencies, or following inquiries by the Ukrainian authorities and NGOs.
35. Allegations of torture or other forms of ill-treatment by the Ukrainian armed forces towards Russian POWs were recorded by other actors,⁶⁹ with allegations also made by the Russian authorities and pro-Russian channels.⁷⁰ A recent UN OHCHR report observed several forms of torture and ill-treatment that befell Russian POWs, notably that of physical violence and threats of violence, which occurred mostly upon their capture but also during internment.⁷¹ Following the findings of the OHCHR report, the Ukrainian

⁶⁴ ODIHR Witness Interviews UKR.WS.157 at para. 34; UKR.WS.213 at paras 40, 44-48. *See also* UKR.WS.215 at paras 26-27, 45-46, 86, 89; UKR.WS.231 at paras 19, 22-23.

⁶⁵ ODIHR Witness Interviews UKR.WS.213 at para. 39. *See also* UKR.WS.215 at paras 40-41; UKR.WS.231 at paras 18, 23.

⁶⁶ *Ibid* at para. 43. *See also* ODIHR Witness Interview UKR.WS.231 at paras 18-19.

⁶⁷ *See e.g.*, Координаційний штаб з питань поводження з військовополоненими, (Coordination Headquarters for the Treatment of Prisoners of War), Telegram, 20 January 2023, <https://t.me/Koord_shtab/469>.

⁶⁸ ODIHR Witness Interviews UKR.WS.213 at paras 35, 37-45; UKR.WS.231 at paras 18-19, 22-23, 25; “Russia accused of holding 20,000 Ukrainian civilians captive”, Deutsche Welle, 2 June 2023, <<https://www.dw.com/en/russia-accused-of-holding-20000-ukrainian-civilians-captive/a-65798670>>.

⁶⁹ “Report on the Treatment of POWs”, OHCHR, 24 March 2023, at pp 26-28. *See also* “Report of the Independent International Commission of Inquiry on Ukraine”, UN Independent International Commission of Inquiry on Ukraine, 15 March 2023, at para. 86, <https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/coiukraine/A_HRC_52_62_AUV_EN.pdf>.

⁷⁰ *See e.g.*, “Киев применяет новые виды пыток к пленным, заявила омбудсмен ДНР”, (Kiev uses new types of torture on prisoners, says DNR ombudsman), RIA Novosti, 20 March 2023, <<https://ria.ru/20230320/pytki-1859105656.html>>; Juan Sinniedo, Telegram, 11 January 2023, <<https://t.me/UkraineHumanRightsAbuses/18786>>.

⁷¹ “Report on the Treatment of POWs”, OHCHR, 24 March 2023, at p. 28.

authorities reportedly sought to inspect the conditions of Ukrainian detention centres, finding them to meet the requirements of the Geneva Convention.⁷²

36. ODIHR's monitoring has also included analysis of open sources which purport to detail and depict the treatment, abuse, execution and mutilation of POWs from both parties to the conflict who have been exposed to public curiosity. ODIHR conducted in-depth open-source analysis and verification of two videos which emerged online in March and April 2023 respectively, apparently depicting summary executions and torture of Ukrainian soldiers at the hands of Russian soldiers or affiliated armed groups. The first video, which is 12 seconds long, purports to show the killing of a Ukrainian soldier who is *hors de combat* in a wooded area.⁷³ In the video, the Ukrainian soldier is seen standing in a shallow trench smoking a cigarette. The soldier, wearing a uniform with a Ukrainian flag insignia on his arm, says “*Glory to Ukraine*” before he is seen being shot using automatic weapons. The video does not show those who fired the weapons — they appear to be behind the camera — however, voices can be heard cursing the victim in Russian. In the second video, people in military uniforms with white armbands (usually used by the Russian military for identification) are seen using a knife to cut the head off a living person wearing a uniform with the Ukrainian insignia. They then hold the severed head up towards the camera while stating, in Russian, that it should be sent to the tortured man's commander.
37. ODIHR analysed material in a series of videos published in November 2022 purporting to depict the execution of Russian soldiers, which ODIHR confirmed as authentic. One video showed numerous Russian soldiers exiting a basement and appearing to surrender to the Ukrainian soldiers by lying on the ground, face down. During the surrender, the last Russian soldier exiting the basement, appears to open fire, and then gun shots are heard before the video ends. A subsequent video which surfaced online appeared to depict the aftermath of the scene, showing what appears to be the surrendering Russian soldiers now lying dead in similar positions to how they had been instructed to lie down by the Ukrainian soldiers.
38. Under IHL, the wilful killing of POWs is a grave breach and a war crime.⁷⁴ There is no evidence available concerning the direct circumstances under which these soldiers were killed, with the sounds of gunshots indicating that there could have been an exchange of fire. However, the identical positions of the Russian soldiers' bodies in both videos before and after their killing, raises serious concerns that the majority of these Russian soldiers should have been considered *hors de combat* and therefore protected against any acts of violence.⁷⁵

⁷² Dmytro Lubinets, Telegram, 28 March 2023, <https://t.me/dmytro_lubinetzs/1999>.

⁷³ Under IHL, a person is to be considered *hors de combat* if he/she is in the power of an adverse party or if he/she clearly expresses an intention to surrender. See AP I, art.41.

⁷⁴ GCIII, art. 130; ICC Statute, art. 8(2)(a)(i).

⁷⁵ GC III, art. 13.

39. Since 24 February 2022, numerous POW exchanges have taken place between both parties to the conflict to repatriate their servicemen. At present, more than 2,000 Ukrainian POWs have been returned to Ukraine according to President Zelenskyy.⁷⁶ ODIHR was unable to confirm the total number of Russian POWs who have been exchanged, as the Russian authorities do not always release the number of those who were part of an exchange.
40. Since 24 February 2022, 140 Ukrainian civilians have been recorded as being released through exchanges, with the Ukrainian authorities claiming that Russia is holding more than 20,000 Ukrainian civilians.⁷⁷ As of 31 May 2023, both parties to the conflict seem committed to ongoing POW exchanges and are looking into other means to facilitate such exchanges, as exemplified by the POW exchange in early June 2023 of 95 Ukrainian and 94 Russian POWs respectively.⁷⁸

b. Arbitrary deprivation of liberty and enforced disappearances

41. ODIHR has continued to receive witness accounts of civilians being arbitrarily deprived of their liberty as well as tortured and ill-treated while detained by Russian authorities during their occupation of Chernihiv, Donetsk, Kherson, Kyiv, Luhansk and Zaporizhzhia regions, in violation of IHL.⁷⁹ Under IHL all persons deprived of their liberty for reasons related to an armed conflict must be treated humanely, afforded appropriate conditions of detention, including the medical care they require and the judicial or procedural guarantees corresponding to their status.⁸⁰ If deprivation of liberty is not in line with

⁷⁶ Щоразу, коли повертаємо наших людей з російського полону, пам'ятаємо про фундаментальну мету: нікого свого, нічого українського ворогу не залишимо. Про всіх пам'ятаємо, кожного і кожну шукаємо, всіх маємо повернути. І повернемо!" (Every time we bring our people back from Russian captivity, we remember our fundamental goal: we will not leave anyone of ours, nothing of Ukraine to the enemy. We remember everyone, we are looking for everyone, we must bring everyone back. And we will!) Twitter, @ZelenskyyUA, 12 June 2023, <<https://twitter.com/ZelenskyyUa/status/1668239309818716162?s=20>> (tweet stating that as of 12 June 2023, a total of 2,526 Ukrainian POWs were returned).

⁷⁷ "Russia accused of holding 20,000 Ukrainian civilians captive", Deutsche Welle, 2 June 2023, <<https://www.dw.com/en/russia-accused-of-holding-20000-ukrainian-civilians-captive/a-65798670>>.

⁷⁸ See Andrii Yermak, Telegram 11 June 2023, <<https://t.me/ermaka2022/2918>>; Tatyana Mosalkova, Telegram, 11 June 2023, <<https://t.me/ombudsmanrf/2548>>.

⁷⁹ ODIHR Witness Interviews UKR.WS.122; UKR.WS.123; UKR.WS.126; UKR.WS.127; UKR.WS.128 (refers to detention and torture of UKR.WS.130); UKR.WS.130; UKR.WS.132; UKR.WS.134; UKR.WS.136; UKR.WS.137; UKR.WS.138; UKR.WS.139; UKR.WS.141; UKR.WS.142; UKR.WS.146; UKR.WS.147; UKR.WS.149; UKR.WS.150; UKR.WS.152; UKR.WS.153; UKR.WS.154; UKR.WS.155; UKR.WS.173; UKR.WS.175; UKR.WS.176; UKR.WS.177; UKR.WS.182; UKR.WS.183; UKR.WS.185; UKR.WS.186 (refers to detention of UKR.WS.213); UKR.WS.187; UKR.WS.188; UKR.WS.189; UKR.WS.190; UKR.WS.192; UKR.WS.198; UKR.WS.200; UKR.WS.202; UKR.WS.204; UKR.WS.205; UKR.WS.207; UKR.WS.208; UKR.WS.210; UKR.WS.213; UKR.WS.214; UKR.WS.215; UKR.WS.217; UKR.WS.219; UKR.WS.220; UKR.WS.221; UKR.WS.223; UKR.WS.229; UKR.WS.230; UKR.WS.231; UKR.WS.233.

⁸⁰ GC IV, arts. 68-78 and 79-141; Customary IHL Rules 90 and 100-102.

applicable law, it amounts to unlawful confinement which is a grave breach of IHL and a war crime.⁸¹

42. According to ODIHR interviewees,⁸² the profiles of the victims vary and include both men and women of different ages and occupations. Victims appear to have been targeted by the Russian authorities on the basis of their real or perceived support for the Ukrainian armed forces,⁸³ for being formerly associated with or having relatives or friends who served in the Ukrainian armed forces,⁸⁴ for refusing to co-operate with the occupation authorities,⁸⁵ or for merely holding pro-Ukrainian views, which was interpreted both in cases of openly speaking out against Russia and the occupation, and in some cases of not explicitly supporting the occupation⁸⁶.
43. Accounts of arbitrary detentions and alleged enforced disappearances include abductions of local authority and state personnel, current and former law enforcement officials, civic activists and journalists, education staff, employees of the Zaporizhzhia Nuclear Power Plant (ZNPP), as well as a religious leader.⁸⁷ A witness from Kherson region told ODIHR: *“From the very beginning, the occupying authorities opted to terrorize the most active citizens... They knew their names, their addresses and so on. They eliminated or intimidated these people. So, the purpose was clearly to intimidate the population and eliminate activists”*.⁸⁸
44. According to testimonies received by ODIHR, individuals were detained from their homes either on a tip-off⁸⁹ or in the context of house-to-house searches aimed at finding weapons, old military uniforms and awards, Ukrainian flags and other state symbols, or any other “compromising material” such as books on Ukrainian history and maps of

⁸¹ GC IV, art. 147. See also Customary IHL Rule 99; ICC Statute, art. 8(2)(a)(vii). Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law, if committed as part of a widespread or systematic attack directed against a civilian population, may also constitute a crime against humanity ICC Statute art. 7(1)(e)

⁸² Between 1 November 2022 and 31 May 2023, ODIHR interviewed 19 victims of arbitrary detention and enforced disappearance, including 13 men and six women. In addition, ODIHR received information from relatives of four persons who remain arbitrarily detained in occupied territories of Ukraine and in the Russian Federation.

⁸³ ODIHR Witness Interviews UKR.WS.127; UKR.WS.130; UKR.WS.155; UKR.WS.188; UKR.WS.214; UKR.WS.215; UKR.WS.217; UKR.WS.223; UKR.WS.182 at para. 39.

⁸⁴ ODIHR Witness Interviews UKR.WS.142; UKR.WS.221; UKR.WS.137 at para. 58; UKR.WS.183 at paras 15-16; UKR.WS.213.

⁸⁵ ODIHR Witness Interviews UKR.WS.229; UKR.WS.230; UKR.WS.122 at para. 7

⁸⁶ ODIHR Witness Interviews UKR.WS.139; UKR.WS.147; UKR.WS.153; UKR.WS.159; UKR.WS.200; UKR.WS.207; UKR.WS.219.

⁸⁷ ODIHR Witness Interviews UKR.WS.134 at para.13; UKR.WS.147; UKR.WS.159; UKR.WS.175 at para. 15; UKR.WS.177; UKR.WS.182 at para. 19; UKR.WS.188 at paras 36-37; UKR.WS.189 at paras 19-20; UKR.WS.192 at para. 54; UKR.WS.202 at para. 8; UKR.WS.214; UKR.WS.215; UKR.WS.217; UKR.WS.219; UKR.WS.221; UKR.WS.229; UKR.WS.230; UKR.WS.233.

⁸⁸ ODIHR Witness Interview UKR.WS.192 at para. 54.

⁸⁹ ODIHR Witness Interviews UKR.WS.126 at para. 13; UKR.WS.130 at para. 6; UKR.WS.139 at para. 6; UKR.WS.155 at para. 11; UKR.WS.200 at para. 21.

Ukraine.⁹⁰ Civilians were also detained on the streets, as well as at checkpoints and border crossing points.⁹¹ Witnesses also reported to ODIHR cases of arbitrary detentions during peaceful protests against the occupation.⁹² Several survivors reported to ODIHR that their relatives were detained along with them.⁹³

45. According to testimonies provided to ODIHR, victims were not properly informed of the reason for their detention and their relatives were often not aware of their fate or whereabouts during part or, at times, the entire time of their detention. *“The first two weeks after they took my husband away were the hardest. I went to the commandant’s office to find him but they told us to go to the police. The police told us they didn’t have him and to go back to the commandant’s office. I also visited the morgue to see if he was there”* — the wife of a victim of enforced disappearance from Zaporizhzhia region described her despair before she finally received news, from a person who had been detained with her husband, that he was alive and was being kept in a “basement”⁹⁴ in an unknown location. One year after his arrest, she was officially informed by the Red Cross that her husband was being held in “Russian captivity” without any further details such as the location of his detention.⁹⁵
46. In several reported cases, members of the Russian armed forces seized money and property from the victims during house searches or after their release,⁹⁶ or extorted money from them or their relatives in exchange for their release.⁹⁷
47. The duration of arbitrary deprivation of liberty documented by ODIHR lasted from several hours to eight months.⁹⁸ One of the survivors recounted that he was arbitrarily detained twice in the course of several weeks.⁹⁹ Several instances were also reported to ODIHR where people remain arbitrarily detained in the occupied territory of Ukraine and

⁹⁰ ODIHR Witness Interviews UKR.WS.122 at para. 7; UKR.WS.147 at paras 12, 23; UKR.WS.183 at para. 15; UKR.WS.190 at paras 64-66; UKR.WS.217 at paras 12-13; UKR.WS.219 at para. 16.

⁹¹ ODIHR Witness Interviews UKR.WS.127 at para. 21; UKR.WS.136 at paras 6-7; UKR.WS.142 at para. 23; UKR.WS.159 at para. 12; UKR.WS.183 at paras 20, 43 (allegation); UKR.WS.185 at paras 20, 42-43 (allegation); UKR.WS.204 at para. 7; UKR.WS.213; UKR.WS.231; UKR.WS.233.

⁹² ODIHR Witness Interviews UKR.WS.123 at paras 18-19; UKR.WS.153 at paras 7-8.

⁹³ ODIHR Witness Interviews UKR.WS.139 at para. 18; UKR.WS.155 at paras 13-14; UKR.WS.177; UKR.WS.190; UKR.WS.230 at para. 36.

⁹⁴ “Basement” is a colloquial term for detention and potential torture as explained by several witnesses interviewed by ODIHR.

⁹⁵ ODIHR Witness Interview UKR.WS.207 at paras 12-13, 22.

⁹⁶ ODIHR Witness Interviews UKR.WS.130 at para. 18; UKR.WS.155 at para. 12.

⁹⁷ ODIHR Witness Interviews UKR.WS.139 at para. 43; UKR.WS.147 at paras 18, 43; UKR.WS.190 at para. 100; UKR.WS.230 at para. 65

⁹⁸ ODIHR Witness Interviews UKR.WS.127; UKR.WS.215.

⁹⁹ ODIHR Witness Interview UKR.WS.139 at para. 17.

in the Russian Federation,¹⁰⁰ or are missing following their detention in areas that were, or remain, under Russian Federation control.¹⁰¹

48. According to the testimonies received by ODIHR, victims were held in improvised detention facilities, often referred to as “*basements*”,¹⁰² at police stations and pre-trial detention and prison facilities.¹⁰³ The detention conditions were often deplorable, amounting to inhuman and degrading treatment, with overcrowded cells, lack of fresh air, freezing temperatures, inadequate sanitary conditions and lack of food and water.¹⁰⁴ One survivor from Kherson region reported to ODIHR that the cell where he was held for ten days with 18 other men was so small that they were forced to stand pressed up against one another and to urinate in a bottle as there was no toilet.¹⁰⁵ Victims were also denied or given inadequate medical help, and were not allowed to walk or do other forms of exercise.¹⁰⁶ Some of the victims reported being forced to work while detained.¹⁰⁷
49. ODIHR documented several cases of civilian detainees transferred within areas of Ukraine under the control of the Russian Federation and to the Russian Federation.¹⁰⁸ For instance, a woman recounted to ODIHR that she was first detained in an improvised detention facility in Kyiv region in early March 2022, then transferred through Belarus to two detention locations — a makeshift detention facility and a pre-trial detention facility in Kursk region in Russia — where she spent seven months. There, she was interrogated and tortured alongside other female civilians from Ukraine.¹⁰⁹
50. Survivors identified the perpetrators of detention and torture to be members of the Russian armed forces, including members of Russian Federation-affiliated armed groups,¹¹⁰ the

¹⁰⁰ ODIHR Witness Interviews UKR.WS.207; UKR.WS.213; UKR.WS.214; UKR.WS.231.

¹⁰¹ ODIHR Witness Interviews UKR.WS.138 at para. 24; UKR.WS.146 at para. 10; UKR.WS.153 at para. 17; UKR.WS.186 at paras 93-94 (allegations).

¹⁰² ODIHR Witness Interviews UKR.WS.139 at para. 7; UKR.WS.190 at paras 84,130; UKR.WS.204 at para. 8; UKR.WS.207 at paras 13-14; UKR.WS.217 at paras 15, 19; UKR.WS.219 at para. 20; UKR.WS.233 at para. 15.

¹⁰³ ODIHR Witness Interviews UKR.WS.130 at para. 7; UKR.WS.139 at para. 20; UKR.WS.155 at para. 13; UKR.WS.159 at para. 12; UKR.WS.207 at paras 36-38; UKR.WS.214 at paras 6, 11; UKR.WS.217 at para. 24; UKR.WS.223 at paras 12-13, 17; UKR.WS.231 at paras 21, 15.

¹⁰⁴ ODIHR Witness Interviews UKR.WS.130 at paras 7, 12; UKR.WS.139 at paras 15, 53; UKR.WS.147 at paras 33, 38-39; UKR.WS.155 at para. 18; UKR.WS.190 at paras 82, 84, 142, 150; UKR.WS.204 at paras 17-18; UKR.WS.219 at paras 20, 33; UKR.WS.221 at paras 49, 55-56, 58, 64, 66, 96; UKR.WS.223 at paras 12, 14, 18, 42.

¹⁰⁵ ODIHR Witness Interview UKR.WS.130 at paras 7, 12.

¹⁰⁶ ODIHR Witness Interviews UKR.WS.130 at para. 12; UKR.WS.130 at para. 23; UKR.WS.177 at para. 58; UKR.WS.204 at para. 18; UKR.WS.215 at paras 83-84.

¹⁰⁷ ODIHR Witness Interviews UKR.WS.139 at paras 25, 36; UKR.WS.159 at paras 15, 19-20, 22; UKR.WS.204 at para. 18.

¹⁰⁸ ODIHR Witness Interviews UKR.WS.207; UKR.WS.213; UKR.WS.214; UKR.WS.215; UKR.WS.221.

¹⁰⁹ ODIHR Witness Interview UKR.WS.215

¹¹⁰ ODIHR Witness Interviews UKR.WS.130 at para. 6.; UKR.WS.139 at paras 13, 28; UKR.WS.142 at para. 46; UKR.WS.177 at paras 38, 52, 73; UKR.WS.190 at paras 71, 145; UKR.WS.204 at para. 16; UKR.WS.207 at paras 10, 16; UKR.WS.229 at paras 12, 22; UKR.WS.230 at para. 30; UKR.WS.233 at para. 15.

Federal Security Service of the Russian Federation¹¹¹ and the National Guard of the Russian Federation.¹¹²

51. These additional testimonies collected by ODIHR further substantiate previous findings by ODIHR and other actors,¹¹³ namely that Russian military and affiliated forces have been routinely subjecting civilians to arbitrary detention and enforced disappearances.
52. As noted in previous ODIHR reports, citizenship or alignment with an enemy party is not a sufficient reason for detention, nor is the deprivation of liberty for the sole purpose of gathering intelligence.¹¹⁴
53. ODIHR received information from the Russian Federation regarding arrests and detention by the Security Service of Ukraine of local authorities and other civilians accused of co-operating with occupying authorities, as well as of pro-Russian political and civil activists and journalists.¹¹⁵ However, due to the lack of sufficient information, ODIHR is currently unable to establish the necessary facts and circumstances surrounding the arrests and detention of these individuals, and therefore cannot assess their lawfulness.
54. Other actors have recorded similar allegations. For instance, between 24 February 2022 and 23 May 2023, OHCHR has documented 75 cases (57 men, 17 women and one boy) of arbitrary detention and enforced disappearances committed by Ukrainian law enforcement authorities or the Armed Forces of Ukraine.¹¹⁶

¹¹¹ ODIHR Witness Interviews UKR.WS.130 at para. 14; UKR.WS.142 at para. 26; UKR.WS.182 at paras 19-20; UKR.WS.204 at para. 10; UKR.WS.214 at paras 5-8; UKR.WS.223 at para. 41; UKR.WS.233 at para. 36.

¹¹² ODIHR Witness Interviews UKR.WS.130 at para. 19; UKR.WS.155 at para. 16; UKR.WS.159 at para. 11; UKR.WS.214 at para. 5.

¹¹³ Between 24 February 2022 and 23 May 2023, OHCHR have documented 864 cases (763 men, 94 women and 7 boys) of arbitrary detention and enforced disappearance attributable to the Russian armed forces. See “Detention of civilians in the context of the armed attack by the Russian Federation against Ukraine. 24 February 2022 – 23 May 2023”, UN Office of the High Commissioner for Human Rights, 27 June 2023, at para. 5, <<https://www.ohchr.org/sites/default/files/2023-06/2023-06-27-Ukraine-thematic-report-detention-ENG.pdf>>. See also “Report of the IICOI on Ukraine”, IICOI, 15 March 2023, at paras 60-67; “Nine circles of hell: places of detention in Ukraine under the Russian occupation: March-December 2022”, Dignity, 12 April 2023, <<https://www.dignity.dk/wp-content/uploads/42-Nine-circles-of-hell.pdf>>; “Ukraine: Russian Torture center in Kherson. Unlawful Detention, Torture of Civilians During 8-Month Occupation”, Human Rights Watch, 13 April 2023, <<https://www.hrw.org/news/2023/04/13/ukraine-russian-torture-center-kherson>>.

¹¹⁴ International Criminal Tribunal for the former Yugoslavia, *Prosecutor v Delalic and others*, case No. IT-96-21-T, Trial Chamber, Judgment of 16 November 1998 paras. 576-577; see also ICRC Guidelines, ‘International Humanitarian Law and the Challenges of Contemporary Armed Conflicts’ 11, 30IC/07/8.4 (October 2007), Annex 1, para. 380.

¹¹⁵ Information provided by the Permanent Mission of the Russian Federation to the International Organizations in Vienna, in which the Report of the Ministry of Foreign Affairs of the Russian Federation on the Human Rights Situation in Ukraine was shared. (pp.100-101).

¹¹⁶ Most of the victims were arrested for having allegedly committed conflict-related criminal offences. Several others were detained under suspicion of having participated in fighting on the side of the Russian Federation affiliated armed groups in 2014-2020. See “Detention of civilians” OHCHR, 27 June 2023, at paras 10-11.

C. Torture and other forms of ill-treatment

55. In the majority of cases of deprivation of liberty recounted to ODIHR, survivors described being subjected to torture and other forms of ill-treatment or punishment while in detention.¹¹⁷ Sometimes, victims were first abused or tortured during the search of their home.¹¹⁸ Torture and inhuman treatment, including wilfully causing great suffering or serious injury to body and health, are strictly prohibited by IHL and constitute war crimes.¹¹⁹ Under IHRL, the prohibition of torture and other inhuman and degrading treatment is absolute and does not allow for derogation, even in times of armed conflict.¹²⁰ According to testimonies received by ODIHR, torture and ill-treatment were widespread in detention in all parts of Ukraine under the occupation of the Russian Federation.
56. According to the testimonies of survivors, torture was used to extract confessions or information, or to otherwise force detainees to co-operate, as well as to humiliate, intimidate or punish them. For instance, ODIHR documented a case where a religious leader from Kherson region was detained and tortured with the aim of compelling him to co-operate with the occupation authorities and report on members of his community.¹²¹ In another case, a male principal of a school in Zaporizhzhia region was detained for several hours and severely beaten for signing a resignation letter. He was also accused of instigating the resignation of other teachers who refused to follow the Russian curriculum.¹²²

¹¹⁷ ODIHR Witness Interviews UKR.WS.127; UKR.WS.130; UKR.WS.139; UKR.WS.142; UKR.WS.147; UKR.WS.155; UKR.WS.159; UKR.WS.177; UKR.WS.190; UKR.WS.200; UKR.WS.204; UKR.WS.215; UKR.WS.217; UKR.WS.219; UKR.WS.221; UKR.WS.223; UKR.WS.229; UKR.WS.230; UKR.WS.233.

¹¹⁸ ODIHR Witness Interviews UKR.WS.147 at para. 30; UKR.WS.155 at paras 11-12; UKR.WS.177 at paras 25-28; UKR.WS.190 at paras 68-76; UKR.WS.200 at paras 21-28; UKR.WS.230 at para. 31.

¹¹⁹ GC IV art. 32; AP I arts. 75(1)-(2) and 11; see Customary IHL, Rules 90, 92. *See also* ICC Statute, art. 8(2)(a)(ii). If carried out as part of a widespread or systematic attack directed against any civilian population, torture and inhumane treatment may also qualify as crimes against humanity. *See* ICC Statute, arts. 7(1)(f) and (k).

¹²⁰ Under IHRL, the prohibition of torture and other inhuman and degrading treatment is enshrined in Article 7 of the ICCPR and Article 2 of the UN Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (CAT).

¹²¹ ODIHR Witness Interview UKR.WS.233 at paras 26-27.

¹²² ODIHR Witness Interview UKR.WS.229 at paras 14, 19-20, 22-24.

57. Methods of torture and ill-treatment recounted to ODIHR by survivors include beatings,¹²³ electrocution¹²⁴, cigarette burns,¹²⁵ forced nudity,¹²⁶ positional torture,¹²⁷ sleep deprivation¹²⁸, mock executions,¹²⁹ prolonged use of handcuffs,¹³⁰ hooding,¹³¹ threats of death, mutilation, physical or sexual violence,¹³² and threats of harm to family members¹³³. A survivor told ODIHR that he was tortured while unlawfully detained together with his adult son for 10 days in Kherson region.¹³⁴ *“They hit me a lot. They also used electricity on me six times. They tied my hands and feet together and connected wires to my legs and hands. I was lying on the floor face down. I screamed when they did this... They also used electricity against my son. I felt I was about to die.”* Survivors also recounted that they were verbally abused and mocked while being tortured. For example, two survivors held in different locations told ODIHR that perpetrators referred to electrocution as *“calling Zelenskyy”*.¹³⁵
58. According to testimonies received by ODIHR, torture was almost always combined with prolonged interrogation sessions. A female representative of the local authorities from Luhansk region described to ODIHR how she was tortured while being interrogated for several hours by members of the Russian armed forces in order to force her to report on the residents of her village: *“They stopped applying electricity but beat me on my legs and arms. They said that if anyone confirmed I had co-operated with the Ukrainian military they would kill me and called me a bitch. They said, “We know you collected Ukrainian flags from different places in the village. Where are they? Does your husband know where*

¹²³ ODIHR Witness Interviews UKR.WS.127 at para. 24; UKR.WS.130 at para. 7; UKR.WS.139 at para. 21; UKR.WS.142 at para. 45; UKR.WS.153 at paras 7-8; UKR.WS.155 at para. 14; UKR.WS.177 at para. 59; UKR.WS.190 at paras 109, 122; UKR.WS.204 at paras 9, 11-12; UKR.WS.213 at para. 40; UKR.WS.214 at para. 4; UKR.WS.215 at para. 20; UKR.WS.217 at paras 14-15, 19; UKR.WS.223 at para. 29; UKR.WS.229 at paras 24, 26; UKR.WS.230 at paras 31, 33, 35-37.

¹²⁴ ODIHR Witness Interviews UKR.WS.130 at para. 7; UKR.WS.139 at para. 21; UKR.WS.155 at para. 14; UKR.WS.177 at paras 42, 44; UKR.WS.204 at para. 9; UKR.WS.214 at paras 7, 10; UKR.WS.215 at paras 27, 60; UKR.WS.223 at para. 20; UKR.WS.230 at paras 33, 35.

¹²⁵ ODIHR Witness Interview UKR.WS.230 at para.65

¹²⁶ ODIHR Witness Interviews UKR.WS.190 at para. 107; UKR.WS.215 at paras 18, 29, 35; UKR.WS.230 at paras 39, 41.

¹²⁷ ODIHR Witness Interviews UKR.WS.130 at para. 16; UKR.WS.190 at para. 108.

¹²⁸ ODIHR Witness Interview UKR.WS.130 at para. 12.

¹²⁹ ODIHR Witness Interviews UKR.WS.190 at para. 128; UKR.WS.233 at para. 20.

¹³⁰ ODIHR Witness Interviews UKR.WS.130 at para.7; UKR.WS.204 at paras 17; UKR.WS.217 at para. 24; UKR.WS.223 at para. 14; UKR.WS.230 at para. 37; UKR.WS.233 para. 25

¹³¹ ODIHR Witness Interviews UKR.WS.190 at paras 75, 82, 108; UKR.WS.230 at para. 38.

¹³² ODIHR Witness Interviews UKR.WS.147 at paras 26, 30, 57; UKR.WS.177 at para. 90; UKR.WS.155 at para. 15; UKR.WS.177 at para. 47; UKR.WS.190 at paras 74, 115; UKR.WS.219 at paras 18, 43-44; UKR.WS.217 at para. 16; UKR.WS.223 at para. 17; UKR.WS.230 at paras 35-36.

¹³³ ODIHR Witness Interviews UKR.WS.130 at para. 11; UKR.WS.177 at para. 60; UKR.WS.190 at paras 101, 103; UKR.WS.200 at paras 25-28; UKR.WS.217 at para. 19.

¹³⁴ ODIHR Witness Interview UKR.WS.155 at para. 14.

¹³⁵ ODIHR Witness Interviews UKR.WS.159 at para. 19; UKR.WS.223 at para. 20

*they are?” I said no and they brought in my husband. They made my husband kneel and told him to say goodbye to me because they would kill me.”*¹³⁶

59. Several survivors interviewed by ODIHR explained that they were not subjected to physical violence while in detention but experienced a high level of mental suffering, possibly amounting to torture.¹³⁷ For instance, one victim of enforced disappearance in Luhansk region continuously heard other detainees, including his cell mates, being tortured throughout his 19-day detention.¹³⁸ A female teacher from Kherson (Kherson region) recounted that she was held in detention for 11 days, was threatened, intimidated and pressured to inform on her friends and apologize to Russian soldiers on camera.¹³⁹ In addition, poor detention conditions — such as those described in the section on arbitrary detention and enforced disappearances above involving deprivation of light, fresh air, food, water, space to move around, together with insanitary facilities and deliberate sleep deprivation — can also amount to ill-treatment or torture.¹⁴⁰
60. Some of the survivors reported that they sustained severe injuries¹⁴¹, and some reported significant weight loss¹⁴² as a result of ill-treatment or torture while in detention. Two survivors of lengthy detention and torture reported to ODIHR that they attempted suicide during detention.¹⁴³
61. Furthermore, several instances were reported to ODIHR where victims were killed after being subjected to torture¹⁴⁴ or allegedly died from torture.¹⁴⁵ Two witnesses from Kyiv region told ODIHR that their son had most likely been tortured prior to being killed: *“[Ukrainian] Police established that he died from two bullets to the mouth from a Kalashnikov. He was definitely tortured because some of the bones in his shoulder were broken, ribs were in an unnatural position. Fingers were broken, and the spine was messed up as well.”*¹⁴⁶
62. One of the survivors told ODIHR that several days after his release, the Russian authorities returned to his home, where they once again subjected him to torture, *“They beat me everywhere with rifle butts. They rolled up my trousers to my knees and poured*

¹³⁶ ODIHR Witness Interview UKR.WS.230 at paras 36, 44.

¹³⁷ ODIHR Witness Interviews UKR.WS.147; UKR.WS.200; UKR.WS. 219.

¹³⁸ ODIHR Witness Interview UKR.WS.219 at paras 29; 32; 41-42.

¹³⁹ ODIHR Witness Interview UKR.WS.147 paras 39, 41-42.

¹⁴⁰ There is extensive jurisprudence of European Court of Human Rights on this issue. See for instance: *Kalashnikov v. Russia*, Chamber Judgement, 15 July 2002; *Modârcă v. Moldova*, Chamber Judgment, 10 May 2007; *Ananyev and Others v. Russia*, 10 January 2012; *Vasilescu v. Belgium*, 18 March 2014.

¹⁴¹ ODIHR Witness Interviews UKR.WS.130 at para. 16; UKR.WS.139 at para. 6; UKR.WS.155 at para. 17; UKR.WS.217 at para. 23; UKR.WS.221 at para. 85; UKR.WS.223 at para. 22.

¹⁴² ODIHR Witness Interviews UKR.WS.130 at para. 12; UKR.WS.147 at para. 44.

¹⁴³ ODIHR Witness Interviews UKR.WS.215 at para. 44; UKR.WS.217 at para. 21.

¹⁴⁴ ODIHR Witness Interviews UKR.WS.150 at paras 19, 21; UKR.WS.152 at para. 69; UKR.WS.154 at para. 38.

¹⁴⁵ ODIHR Witness Interview UKR.WS.130 at para. 12.

¹⁴⁶ ODIHR Witness Interview UKR.WS.154 at para. 38. ODIHR reviewed the autopsy report that recorded the injuries as described by the witness.

*gasoline on my legs and on my back. I was forced to the ground (...). Hands tied behind my back, face down but legs lifted. They beat me on the head and I lost teeth and my ears started to bleed. I still have severe headaches now. A neighbour came into my yard. I heard him through the open window. He asked whether they were going to kill me and he was told to go away.”*¹⁴⁷

63. The information collected on the issue further substantiates previous findings by ODIHR and other actors,¹⁴⁸ namely that there is a pattern of the Russian military and affiliated forces using torture and ill-treatment against civilians.
64. During the reporting period, ODIHR has not received allegations of torture and ill-treatment of civilians committed by the Ukrainian authorities. However, ODIHR notes the findings of the OHCHR, according to which 57 per cent of the victims of arbitrary detention and enforced disappearance committed in Government-controlled territory had been tortured or ill-treated by members of the Ukrainian armed forces and law enforcement agencies.¹⁴⁹

d. Conflict-related sexual violence (CRSV)

65. ODIHR has continued to receive testimonies from witnesses and survivors regarding allegations of conflict-related sexual violence. Sexual violence committed in the context of an armed conflict is a serious violation of IHL and IHRL and amounts to a war crime.¹⁵⁰
66. Many of the witness testimonies collected by ODIHR between February and May 2023 relate to incidents that occurred earlier in the conflict. Many factors may contribute to the under-reporting of cases of such abuses, including active hostilities, ongoing occupation

¹⁴⁷ ODIHR Witness Interview UKR.WS.130 at paras 16-17.

¹⁴⁸ Among 178 accounts regarding the treatment of civilian detainees held by the Russian Federation received by OHCHR, 91 per cent reported that they had been tortured and ill-treated, and in some cases sexually violated, while in detention. In addition, 77 civilians were summarily executed by members of the Russian armed forces while unlawfully detained. See “Detention of civilians”, OHCHR, 27 June 2023, at paras 87-89; 91. See also “Report of the IICOI on Ukraine”, IICOI, 15 March 2023, at paras 71-77; “Nine circles of hell”, Dignity, 12 April 2023; “Russian Torture center in Kherson”, HRW, 13 April 2023.

¹⁴⁹ As mentioned above in the section on Arbitrary deprivation of liberty and enforced disappearances, the majority of victims were arrested for having allegedly committed conflict-related criminal offences, often for reason of “collaboration”. Methods of torture reportedly included punching, beatings with batons, electrocution, threats of mutilation or execution, and threats to inflict harm or sexual violence to their loved ones. The torture or ill-treatment was used to extract information or compel victims to confess or incriminate themselves. See: “Detention of civilians”, OHCHR, 27 June 2023, at paras 14, 126.

¹⁵⁰ GC IV, art. 27; AP I, arts. 75-77; and Customary IHL Rule 93. ICC Statute, art. 8(2)(b)(xxii). Rape and other forms of sexual violence may also constitute a crime against humanity if committed as part of a widespread or systematic attack directed against a civilian population. See ICC Statute, art. 7(1)(g). CRSV also infringes upon the fundamental rights of victims, such as the right to liberty and security of person (ICCPR, art. 9), the right to be protected from torture or other cruel, inhuman and degrading treatment and punishment (ICCPR art. 7; CAT arts. 1, 16; CRC arts. 19, 37(a) and ICERD, art. 5(b)), and the right to the highest attainable standard of physical and mental health (ICESCR art. 12, see also CESCR, general comment n. 14, para. 8.)

of parts of Ukrainian territory by the Russian Federation, displacement, difficulties in accessing support services and stigma,¹⁵¹ but these additional testimonies collected by ODIHR help to provide a fuller picture regarding these violations.

67. Between February and May 2023, 27 witnesses told ODIHR¹⁵² of alleged conflict-related sexual violence, including rape,¹⁵³ threats of rape and sexual violence,¹⁵⁴ sexual harassment (including five cases of verbal harassment through the use of derogatory name calling),¹⁵⁵ electrocution of genitals¹⁵⁶ and forced nudity.¹⁵⁷ In total, ODIHR identified 41 alleged instances within these 27 interviews.¹⁵⁸ Most of these alleged abuses occurred in territories under occupation by the Russian Federation or in places of deprivation of liberty controlled by the Russian Federation or affiliated armed groups. These alleged incidents reflect the same trends previously reported by ODIHR,¹⁵⁹ as well as other actors.¹⁶⁰ While none of the witnesses and survivors interviewed by ODIHR have recounted incidents of conflict-related sexual violence allegedly perpetrated by Ukrainian forces, OHCHR documented a number of cases that were attributable to Ukrainian law enforcement officers, civilians or members of the territorial defence forces.¹⁶¹

¹⁵¹ See “Second Interim Report”, ODIHR, 14 December 2022, at para. 121. See also Briefing of Ms. Pramila Patten, Special Representative on Sexual Violence in Conflict to the Security Council, 6 June 2022, <<https://www.passblue.com/wp-content/uploads/2022/06/Embargoed-SRSG-SVC-Pramila-Patten-6-June-2022.pdf>>.

¹⁵² ODIHR Witness Interviews UKR.WS.123 at para. 61; UKR.WS.131 at para. 37; UKR.WS.132 at para. 44; UKR.WS.147 at paras 26 and 57; UKR.WS.155 at para. 15; UKR.WS.157 at paras 7, 17, 21, 40; UKR.WS.158 at paras 45, 58; UKR.WS.159 at para. 17; UKR.WS.161 at para. 19; UKR.WS.172 at para. 78, 119, 127, 134; UKR.WS.177 at para. 90; UKR.WS.179 at para. 48; UKR.WS.189 at para. 29; UKR.WS.190 at paras 74, 88, 107, 117; UKR.WS.194 at para. 9; UKR.WS.203 at para. 30; UKR.WS.204 at para. 14; UKR.WS.212 at para. 15; UKR.WS.215 at paras 18, 29, 35, 79, 84; UKR.WS.216 at para. 34; UKR.WS.217 at para. 19; UKR.WS.220 at para. 27; UKR.WS.221 at paras 63, 85; UKR.WS.223 at paras 19 and 21; UKR.WS.224 at para. 26; UKR.WS.227 at para. 58; UKR.WS.230 at para. 35.

¹⁵³ ODIHR Witness Interviews UKR.WS.161 at para. 19; UKR.WS.172 at para. 119; UKR.WS.216 at para. 34.

¹⁵⁴ ODIHR Witness Interviews UKR.WS.131 at para. 37; UKR.WS.132 at para. 44; UKR.WS.157 at para. 40.

¹⁵⁵ ODIHR Witness Interviews UKR.WS.159 at para. 17; UKR.WS.190 at paras 74, 117; UKR.WS.221 at para. 63.

¹⁵⁶ ODIHR Witness Interview UKR.WS.223 at para. 21.

¹⁵⁷ ODIHR Witness Interviews UKR.WS.157 at paras 7, 17, 21; UKR.WS.194 at para. 9; UKR.WS.204 at para. 14.

¹⁵⁸ In total, during the reporting period, 41 allegations were recorded, spanning from spring 2022 until February 2023. Often, the date of the alleged incident was not possible to determine. None of the allegations were verified by ODIHR.

¹⁵⁹ “Second Interim Report”, ODIHR, 14 December 2022, at paras 116-122.

¹⁶⁰ In their report published on 24 March 2023, the OHCHR noted that they had documented 133 cases of sexual violence related to the fighting (85 towards men, 45 towards women, 3 towards girls) in the period between 24 February 2022 and 31 January 2023. The majority of the documented cases were perpetrated by Russian forces or authorities in areas occupied by the Russian Federation, or in the Russian Federation itself. The cases mostly occurred in places of deprivation of liberty or in villages and communities controlled by the Russian Federation. See “Report: Human Rights Situation in Ukraine”, OHCHR, 24 March 2023, at pp 16-17.

¹⁶¹ OHCHR found that 24 out of 133 of the cases they reported (18 towards men and 6 towards women) took place in the government-controlled territory of Ukraine between March and July 2022. See “Report: Human Rights Situation in Ukraine”, OHCHR, 24 March 2023, at pp 27-28.

68. In 19 of the 41 alleged cases recorded in ODIHR testimonies, the violence was directed towards women or girls, and in 22 cases towards men. Of these, 32 allegations took place in places of deprivation of liberty (20 against men and 11 against women, in one case the gender is not specified) and 12 involved POWs.¹⁶²
69. In total, 16 (11 men and five women) of the 27 witnesses interviewed by ODIHR were themselves survivors of conflict-related sexual violence.¹⁶³
70. In addition, ODIHR collected several reports concerning Ukrainian men (and in at least one case involving a woman and children) having to undress (at times to their waist, others to their underwear) at Russian armed forces checkpoints, border crossing points, or during house searches, so that soldiers could check them for tattoos. In several instances, witnesses reported seeing individuals being asked to undress in public. For instance, a man reported seeing a family (a man, woman and two children) being ordered to exit their bus and to strip to their underwear and socks at a border crossing point with Crimea.¹⁶⁴ Another female witness recounted seeing a man “*stripped nearly naked looking for tattoos or scars.*”¹⁶⁵ Depending on the context of such incidents, some of them could constitute examples of sexual violence, particularly when taking place in public or in the presence of officers of a different gender.¹⁶⁶
71. According to the press service of the Prosecutor General’s Office, 208 cases of conflict-related sexual violence had been recorded in Ukraine by 19 June 2023.¹⁶⁷ In most cases, the alleged victims were women (140), while 13 cases were reportedly against minors.¹⁶⁸

e. Evacuations, forcible transfers and deportations of civilians, including children, from the occupied territories and the ‘filtration process’

72. The military attack and subsequent occupation of regions of Ukraine has contributed to the significant displacement of civilians.¹⁶⁹ Some of this displacement, taking place

¹⁶² Witnesses interviewed by ODIHR during the reporting period also highlighted poor hygienic conditions in contexts of detention, with detainees often having to use plastic bottles, plastic bags, or buckets as toilets. Depending on the conditions of detention, this can result in a lack of privacy and places detainees at risk of sexual violence.

¹⁶³ Allegations included threats of sexual violence (for instance UKR.WS.157 at para. 40; UKR.WS.177 at para. 90) and enforced nudity (for instance UKR.WS.157 at paras 7, 17, 21; UKR.WS.204 at para. 14) in the context of detention, sexual harassment (for instance UKR.WS.227 at para. 58), and one case of electrocution of genitals (UKR.WS.223 at para. 21), also in the context of detention. Some of these survivors reported multiple instances/forms of CRSV. In three cases, the allegation concerned verbal harassment through the use of derogatory name calling.

¹⁶⁴ ODIHR Witness Interview UKR.WS.124 at para. 19.

¹⁶⁵ ODIHR Witness Interview UKR.WS.122 at para. 18.

¹⁶⁶ See for instance European Court of Human Rights, *Valasinas v. Lithuania*, where the Court found that obliging a male-detainee to strip naked in front of a female officer constituted degrading treatment.

¹⁶⁷ Compared to 43 cases reported as open on the 28 October 2022. See “Second Interim Report” ODIHR, 14 December 2022, at para. 120.

¹⁶⁸ Office of Prosecutor General of Ukraine, Telegram, 19 June 2023, <https://t.me/pgov_gov_ua/13579>.

¹⁶⁹ See “Interim Report”, ODIHR, 20 July 2022, at paras 66-72; “Second Interim Report”, ODIHR, 14 December 2022, at paras 123-139.

within territories occupied by the Russian Federation as well as towards the Russian Federation and Belarus, may qualify under IHL as the forcible transfer and deportations of civilians from occupied territories, which are unlawful regardless of the motive.¹⁷⁰ As an exception to the prohibition of deportations, the occupying power may order the temporary evacuation of a given area, but only for reasons of security of the population or imperative military reasons.¹⁷¹

73. Many of the testimonies collected by ODIHR refer to the difficult circumstances under which civilians fled.¹⁷² Witnesses interviewed by ODIHR continue to describe being subjected to violations of their right of freedom of movement and right to privacy,¹⁷³ as well as mistreatment and invasive procedures at border crossing points after having fled their homes seeking safety and protection.

Evacuations and unlawful displacement of civilians

74. UNHCR reported that, up until 31 December 2022, an estimated 2,869,100 Ukrainians citizens had crossed the border to the Russian Federation while 16,705 had crossed into Belarus by 1 May 2023.¹⁷⁴ Russian media reported that over 5.3 million people had arrived in the territory of Russia between February 2022 and February 2023.¹⁷⁵ These numbers do not account for civilian displacement that has occurred within occupied territories.

¹⁷⁰ GC IV, art. 49(1). Unlawful deportation of civilians or transfers are considered a grave breach of IHL and constitute a war crime, see GC IV, art. 147; ICC Statute, art. 8(2)(a)(vii); see also art. 8(2)(b)(viii) which specifically criminalize the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory. If committed as part of a “widespread or systematic attack against any civilian population” it also amounts to a crime against humanity, ICC Statute, art. 7(2)(d).

¹⁷¹ GC IV, art. 49(2). Such evacuations exceptionally allowed under IHL must be temporary in that the persons evacuated “shall be transferred back to their homes as soon as hostilities in the area in question have ceased”. In addition, they must not involve the displacement of protected persons outside occupied territory except when for material reasons it is impossible to do otherwise. It is important to note that forced evacuations of civilians from occupied territories cannot be justified and considered as lawful if the reasons causing the displacement in the first-place result from the occupying power’s own unlawful conduct. ICTY, Prosecutor v. Milomir Stakic (Appeal Judgement), IT-97-24-A, 22 March 2006, paras. 284-287.

¹⁷² ODIHR Witness Interviews UKR.WS.122; UKR.WS.123; UKR.WS.124; UKR.WS.125; UKR.WS.126; UKR.WS.127; UKR.WS.128; UKR.WS.129; UKR.WS.132; UKR.WS.133; UKR.WS.134; UKR.WS.136; UKR.WS.137; UKR.WS.138; UKR.WS.139; UKR.WS.140; UKR.WS.141; UKR.WS.144; UKR.WS.145; UKR.WS.146; UKR.WS.147; UKR.WS.151; UKR.WS.162; UKR.WS.163; UKR.WS.166; UKR.WS.168; UKR.WS.171; UKR.WS.173; UKR.WS.175; UKR.WS.176; UKR.WS.180; UKR.WS.181; UKR.WS.182; UKR.WS.183; UKR.WS.184; UKR.WS.186; UKR.WS.188; UKR.WS.189; UKR.WS.190; UKR.WS.191; UKR.WS.192; UKR.WS.193; UKR.WS.194; UKR.WS.202; UKR.WS.203; UKR.WS.205; UKR.WS.206; UKR.WS.208 UKR.WS.210; UKR.WS.212; UKR.WS.213; UKR.WS.216; UKR.WS.217; UKR.WS.218; UKR.WS.220; UKR.WS.224; UKR.WS.226; UKR.WS.231.

¹⁷³ Enshrined in articles 12 and 17 of the ICCPR.

¹⁷⁴ UNHCHR, “Operational Data Portal: Ukraine Refugee Situation”, 31 May 2023, <<https://data2.unhcr.org/en/situations/ukraine>>. The figure for civilians entering border crossing into the Russian Federation was capped to 31 December 2022.

¹⁷⁵ “За год с Украины и из Донбасса на территорию РФ прибыло 5,3 млн беженцев”, (Over the year, 5.3 million refugees arrived in Russia from Ukraine and Donbas), TACC, 20 February 2023, <<https://tass.ru/obschestvo/17091725>>.

75. ODIHR interviewed witnesses who had left their homes due to circumstances they felt necessitated their flight. For many, the means of evacuation often referred to self-organized evacuation attempts or volunteer-organized convoys as there were no official evacuations available.¹⁷⁶ It is important to note that, while the individuals organized their own departures, such displacements can still be ‘forcible’ and thus unlawful under IHL.¹⁷⁷ In this respect, witnesses who underwent such evacuations listed a number of reasons for their departure, including the imposition of rules and regulations by the occupying authorities (notably the Russian-organized referendum and increasing pressure to obtain Russian passports),¹⁷⁸ oppression and the environment of fear created by the conduct of the occupying forces,¹⁷⁹ the encroaching hostilities and increased military activity and shelling by both armed forces in proximity to witnesses’ homes.¹⁸⁰ Others mentioned lack of access to critical infrastructure as a result of the occupation, including to medical care and functioning medical institutions,¹⁸¹ as well as access to necessary amenities, such as electricity and heating during the winter period.¹⁸²
76. In two instances, ODIHR testimonies recounted situations whereby civilians who attempted to flee their homes as part of a self-organized evacuation attempts were, reportedly, deliberately targeted by the occupying forces, both by shelling and/or heavy machine gun fire.¹⁸³ One witness, after having crossed into the Donetsk region, recounted how they were targeted whilst driving towards Olenivka, stating “[T]he main road was closed, so we moved towards Olenivka. We were on the road for about 1km in the direction

¹⁷⁶ ODIHR Witness Interviews UKR.WS.122 at para. 17; UKR.WS.126 at paras 18-19; UKR.WS.127 at para. 69; UKR.WS.128 at para. 18; UKR.WS.129 at paras 25, 27-28; UKR.WS.132 at paras 5-6, 11-15; UKR.WS.134 at paras. 29; UKR.WS.136 at paras 39-40, 43-44; UKR.WS.137 at paras 27, 31-35, 40-41; UKR.WS.139 at paras 68, 75; UKR.WS.140 at paras 43-44; UKR.WS.141 at para. 36; UKR.WS.188 at paras 44-46, 49-50, 54-55; UKR.WS.206 at paras 43-51; UKR.WS.208 at paras 27-29; UKR.WS.216 at paras 15, 18-19; UKR.WS.217 at para. 31; UKR.WS.220 at paras 19-20; UKR.WS.224 at paras 19-23. *See also* UKR.WS.151 at paras 54-55.

¹⁷⁷ A displacement can be considered ‘forcible’, even in the absence of physical force, through the creation by the occupying power of a coercive environment, such as the one caused by conflict-related violence, leaving residents with no other choice but to leave. *See, among others, International Tribunal for the Former Yugoslavia (ICTY), Prosecutor v. Krajisnik*, Case number IT-00-39-T, ICTY Trial Chamber, Judgment, 27 Sep 2006, paras. 724, 729; *Prosecutor v. Popović*, Case No. IT-05-88-T, ICTY Trial Chamber, Judgment, 10 June 2010, paras. 896-97 and 900; *Prosecutor v. Krnojelac et al.*, Case No. IT-97-25, ICTY Appeal Chamber, Judgement, 17 September 2003, para. 229.

¹⁷⁸ ODIHR Witness Interviews UKR.WS.132 at paras 14, 49; UKR.WS.188 at paras 41-46; UKR.WS.216 at paras 14-15. *See also* UKR.WS.127 at para. 40; UKR.WS.137 at paras 27, 30; UKR.WS.138 at paras 46-50; UKR.WS.208 at para. 17; UKR.WS.226 at para. 26.

¹⁷⁹ ODIHR Witness Interviews UKR.WS.122 at para. 17; UKR.WS.126 at paras 17-18; UKR.WS.127 at para. 50; UKR.WS.137 at paras 27-29; UKR.WS.134 at para. 29; UKR.WS.188 at paras 41-46; UKR.WS.192 at paras 63-65; UKR.WS.217 at paras 28-31.

¹⁸⁰ ODIHR Witness Interviews UKR.WS.122 at para. 17; UKR.WS.123 at paras 33-35, 45-48, 50, 53, 59-67; UKR.WS.124 at paras 18-19; UKR.WS.125 at para. 71; UKR.WS.126 at paras 17-18; UKR.WS.133 at paras 39-41; UKR.WS.137 at paras 27-29; UKR.WS.141 at paras 29-32; UKR.WS.192 at paras 63-65.

¹⁸¹ ODIHR Witness Interviews UKR.WS.134 at para. 29; UKR.WS.208 at paras 27-29

¹⁸² ODIHR Witness Interviews UKR.WS.122 at para. 17; UKR.WS.139 at para. 74

¹⁸³ ODIHR Witness Interviews UKR.WS.180 at paras 121-126; UKR.WS.188 at paras 60-66. *See also* UKR.WS.124 at para. 14; UKR.WS.138 at para. 51; UKR.WS.140 at paras 20, 59.

*of Olenivka. If we had been slower, we would have been killed because the shelling started...we were the only car. There were projectiles from [a] GRAD landing in front of the car and behind the car. We were being targeted.”*¹⁸⁴ The witness clarified that they had clearly identified their car as being civilian, stating “[W]e put bed sheets as white ribbons all over the car as a sign of evacuation”.¹⁸⁵

77. Likewise, during a separate evacuation attempt from Starobilsk in Luhansk region, one witness described his family’s experience when their evacuation convoy was targeted, stating “[T]he bus shook a lot... We understood that our bus was under heavy machinegun fire. Two people on the third bus were killed. They aimed at the head, not the tires of the buses. The machine gun fire continued even when the bus was just stood there.”¹⁸⁶ The witness did clarify that the convoy of buses had no markings on them that signified that they were civilians, but noted that they were a convoy leaving an occupied town and had been stopped at, and crossed through, numerous checkpoints installed by the occupying forces along the way.¹⁸⁷
78. Many witnesses reported how they were treated during their journey, particularly when crossing checkpoints controlled by the Russian armed forces and representatives of the de facto authorities of the occupied Donetsk and Luhansk regions.¹⁸⁸ Several witnesses described lengthy wait times in poor conditions and being subjected to harsh and invasive interrogations.¹⁸⁹ Other witnesses attest that, in addition to interrogations, civilians were strip searched,¹⁹⁰ threatened,¹⁹¹ had personal property stolen or were forced to pay bribes,¹⁹² and were even separated from family members with their relatives being detained and transferred to detention facilities.¹⁹³ For others, witnesses described intimidation and lengthy waiting times in poor conditions.¹⁹⁴ People were interrogated with invasive questions by the authorities, notably on their allegiances to Ukraine and Russia, their opinion on the conflict, whether territory is now considered Russian, if they have connections to the Ukrainian military and what their final destination would be and

¹⁸⁴ ODIHR Witness Interview UKR.WS.180 at para. 126.

¹⁸⁵ Ibid at para. 121.

¹⁸⁶ ODIHR Witness Interview UKR.WS.188 at paras 63-65

¹⁸⁷ Ibid at paras 60-66.

¹⁸⁸ ODIHR Witness Interviews UKR.WS.122 at paras 17-18; UKR.WS.126 at para. 19; UKR.WS.216 at paras 19-28.

¹⁸⁹ ODIHR Witness Interviews UKR.WS.132 at paras 6-7, 12-13; UKR.WS.137 at paras 33-34; UKR.WS.180 at paras 184-188; UKR.WS.210 at paras 5, 9, 24-25; UKR.WS.213 at paras. 27-29; UKR.WS.216 at paras 19-28. See also UKR.WS.134 at para. 30.

¹⁹⁰ ODIHR Witness Interviews UKR.WS.122 at para. 18; UKR.WS.123 at paras 64, 66; UKR.WS.124 at paras 18-19; UKR.WS.220 at para. 27. See also UKR.WS.136 at para. 46.

¹⁹¹ ODIHR Witness Interview UKR.WS.123 at para. 64

¹⁹² ODIHR Witness Interview UKR.WS.184 at paras 31-32; UKR.WS.216 at paras 21-22; UKR.WS.220 at para. 27.

¹⁹³ ODIHR Witness Interviews UKR.WS.213 at paras 27-33; UKR.WS.231 at paras 18-20.

¹⁹⁴ ODIHR Witness Interviews UKR.WS.122 at para. 17; UKR.WS.123 at para. 61.

why.¹⁹⁵ The poor treatment continued even after crossing into the Russian Federation, with some authorities intimidating witnesses, demanding bribes and enquiring about their status in Russia and what their activities are.¹⁹⁶

79. In one instance, a witness interviewed by ODIHR described their experience in being forcibly ‘deported’ from their home by the occupying forces to the government-controlled area of Ukraine.¹⁹⁷ The victim, a teacher who continued to teach the Ukrainian curriculum, recalled being visited at her home by armed Russian soldiers and an investigator from the Russian authorities who refused to identify himself and handed out an indictment which included an ultimatum: *“I could choose between going to jail for several years or I could agree to be deported. I didn’t understand the notion of deportation. I didn’t know that some people who were deported went missing. I said OK, deportation seems better.”*¹⁹⁸ Later, representatives of the occupying authorities returned with an order signed by the Russian Federation-appointed official ordering the witness’s ‘deportation’. The survivor never appeared in front of a regularly constituted court, yet was presented with an ‘indictment’ and punished with ‘deportation’, whereby she was forced to leave, alone, leaving behind her home and family. She was ultimately ‘deported’ a few days later in December 2022.¹⁹⁹ The witness recounted having her passport and travel documents taken, her bio data recorded and being filmed by the authorities whilst they read a statement to her, before being made to walk, alone, several kilometres into the “grey zone” that separates Ukrainian government-controlled territory and areas under the control of the Russian Federation. There, the witness was met by Ukrainian security service officers (SBU) who later took the witness to Ukrainian government-controlled territory.²⁰⁰

The situation of children

80. ODIHR has continued to monitor the situation surrounding the alleged deportation and/or forcible transfer of Ukrainian children within Russian Federation-occupied territories and from occupied territories to the Russian Federation possibly through Belarus.²⁰¹ The

¹⁹⁵ ODIHR Witness Interviews UKR.WS.122 at para. 18; UKR.WS.124 at para. 24; UKR.WS.125 at para. 77; UKR.WS.126 at para. 19; UKR.WS.132 at paras 6-7, 11; UKR.WS.133 at para. 35; UKR.WS.134 at para. 31.

¹⁹⁶ ODIHR Witness Interviews UKR.WS.126 at para. 19; UKR.WS.134 at para. 31; UKR.WS.138 at paras 57-59; UKR.WS.180 at paras 106, 131-136.

¹⁹⁷ ODIHR Witness Interviews UKR.WS.208 at paras 37-38; UKR.WS.206 at paras 33-37. *See also* UKR.WS.127 at para. 69.

¹⁹⁸ ODIHR Witness Interview UKR.WS.226 at paras 15-18.

¹⁹⁹ *Ibid* at paras 19-22.

²⁰⁰ *Ibid* at paras 20-22.

²⁰¹ Information provided by the Commissioner for Human Rights in Ukraine; “Second Interim Report”, ODIHR, 14 December 2022, at paras 123-139; “Ombudsman: Ukrainian POWs, abducted children transferred through Belarus”, Kyiv Independent, 31 May 2023, <<https://kyivindependent.com/ombudsman-ukrainian-pows-and-abducted-children-transferred-through-belarus/>>; “Deportation and forcible transfers of Ukrainian children and other civilians to Russian Federation or to Ukrainian territories temporarily occupied: create conditions for their safe return, stop these crimes and punish perpetrators”, Parliamentary Assembly of the Council of Europe (PACE), 27 April 2023, articles 7.1, 17.1, <<https://pace.coe.int/en/files/31776/html>>; “Табори відпочинку як ще один засіб викорінення української національної ідентичності дітей з окупованих територій”.

available information clearly suggests that thousands of Ukrainian children have been displaced from the occupied territories since 24 February 2022.²⁰² As noted above, the deportation or forcible transfer of the civilian population of an occupied territory, including children constitutes a grave breach of IHL and a war crime.²⁰³ Under IHL, children are further entitled to special respect and protection and shall not be subjected to evacuations to a foreign country.²⁰⁴

81. ODIHR received allegations of the forcible transfer of children from ten witnesses.²⁰⁵ Seven witnesses referred to children having been taken, with the permission of their parents, by the occupying authorities to camps in Crimea for safety reasons and to enjoy recreational activities, but were then never returned to their home or parents' care as promised.²⁰⁶ Witnesses described the children who were transferred as being particularly

(Holiday camps as another means of eradicating the Ukrainian national identity of children from the occupied territories), Regional Center for Human Rights, 22 February 2023, <https://krymbezpravil.org.ua/analytics/tabory-vidpochynku-iak-shche-odyn-zasib-vykorinnennia-ukrainskoi-natsionalnoi-identychnosti-ditey-z-okupovanykh-terytoriy-2/>; "Were Ukrainian children forcibly transferred to Belarus? Ukraine's top prosecutor is investigating", AP News, 24 May 2023,

<https://apnews.com/article/belarus-deportations-children-ukraine-war-d57bbd27a09a6d985c596860b6ce2c2e>.

²⁰² See Information provided by the Commissioner for Human Rights in Ukraine; "Children of War", Ukraine Ministry for Reintegration of the Temporary Occupied Territories of Ukraine, 31 May 2023,

<https://childrenofwar.gov.ua/en/>; "Report on Violations and Abuses of International Humanitarian and Human Rights Law, War Crimes and Crimes Against Humanity, Related to the Forcible Transfer and/or Deportation of Ukrainian Children to the Russian Federation", OSCE Moscow Mechanism, 4 May 2023, at p. 1, https://www.osce.org/files/f/documents/7/7/542751_0.pdf; "Deportation of Ukrainian citizens from the territory of active military operations or from the temporarily occupied territory of Ukraine to the territory of the Russian Federation and the Republic of Belarus", 5 A.M. Coalition, 16 January 2023, at pp 15-20,

https://zmina.ua/wp-content/uploads/sites/2/2023/01/deportation_eng.pdf; "Unbloomed: Violation of the Rights of Ukrainian Children in the Temporarily Occupied Territories of Ukraine and in Russia: Deportation, Militarization, Indoctrination", Ukrainian Parliament Commissioner for Human Rights Dmytro Lubinets, June 2023, <https://ombudsman.gov.ua/childrenofwar-2023/en/>; Gregory Karasin, Telegram, 2 July 2023, https://t.me/Grigory_Karasin/1092; Conflict Observatory Report, "Russia's systematic program for the re-education and adoption of Ukraine's children", Yale School of Public Health, 14 February 2023, at pp 4-5, <https://hub.conflictobservatory.org/portal/sharing/rest/content/items/97f919ccfe524d31a241b53ca44076b8/data>.

²⁰³ See GCIV, arts. 49 and 147; API, art. 85(4).

²⁰⁴ Customary IHL Rule 135, AP I arts. 77 and 78. Under IHL, "[n]o Party to the conflict shall arrange for the evacuation of children, other than its own nationals, to a foreign country" except for a temporary evacuation under strict conditions. Additional Protocol I provides for three strict reasons for evacuations of children during an armed conflict: health, medical treatment or safety. However, for occupied territories safety was not retained as a condition for evacuation. As explained in the 1987 ICRC Commentary of API: "the limitation to evacuation for compelling reasons of health or medical treatment where the evacuation is to be from occupied territory reflects a deep-seated concern among many representatives in the Committee that the dangers of Occupying Powers abusing their discretion are greater than the dangers of prohibiting evacuation for reasons of safety". When such evacuations occur, they require the consent of parents or guardians, as well as a system to register the whereabouts of any evacuated children.

²⁰⁵ ODIHR Witness Interviews UKR.WS.124 at para. 20; UKR.WS.126 at para. 21; UKR.WS.129 at paras 18, 43; UKR.WS.141 at paras 16, 68-69; UKR.WS.147 at para. 60; UKR.WS.180 at paras 114-115; UKR.WS.189 at paras 60-63; UKR.WS.190 at paras 46-48; UKR.WS.192 at paras 63-65, UKR.WS.220 at para. 26.

²⁰⁶ ODIHR Witness Interviews UKR.WS.124 at para. 20; UKR.WS.129 at para. 18; UKR.WS.147 at para. 60; UKR.WS.190 at para. 46; UKR.WS.192 at para. 64; UKR.WS.220 at para. 26. See also UKR.WS.189 at para. 60; "Report on Violations and Abuses Related to the Forcible Transfer and/or Deportation of Ukrainian

vulnerable, such as children who were in childcare institutions including orphanages,²⁰⁷ those from socially deprived families or from families who were misled or pressured by the Russian authorities,²⁰⁸ and children who had been recently orphaned due to their parents' death resulting from the hostilities.²⁰⁹ One interviewee stated that the threat of their children being taken to summer camps in Crimea and not returned was reason enough for them to leave their home and risk travelling through Russian territory, stating *"One of the main reasons we decided to leave was because of the children. We were concerned because we had heard that kids from our area had been invited to summer camps in Crimea. They went and were not seen again."*²¹⁰

82. The Russian authorities do not challenge the fact that large-scale displacements of Ukrainian children from occupied territories have occurred, often justifying them as voluntary displacement for the purpose of vacation or as lawful evacuations for purported safety reasons.²¹¹ The lawfulness of each potential displacement needs to be assessed on a case-by-case basis. While some individual instances may potentially qualify as lawful evacuations under IHL, the testimonies collected by ODIHR, as well as those in open sources, further reinforce the serious concerns related to the circumstances of such displacements that have occurred since the beginning of the conflict. Particularly relevant is the fact that some displacements that may initially have been lawful, such as in the case of children being sent to Crimea voluntarily to enjoy recreational activities or for reasons of safety, may become unlawful due to their prolonged and involuntary nature.
83. According to the Ukrainian authorities, as of 31 May 2023, 371 Ukrainian children have been returned to Ukraine, while more than 19,000 children were reportedly deported to

Children to the Russian Federation", OSCE Moscow Mechanism, 4 May 2023, at pp 14-16; "Parents who sent kids to Russia to escape fighting have a hard time getting them back", NPR, 16 April 2023, <<https://www.npr.org/2023/04/16/1170293885/parents-who-sent-kids-to-russia-to-escape-fighting-have-a-hard-time-getting-them>>.

²⁰⁷ ODIHR Witness Interviews UKR.WS.126 at para. 21; UKR.WS.127 at para. 60; UKR.WS.141 at paras 68-69; UKR.WS.147 at para. 60.

²⁰⁸ ODIHR Witness Interviews UKR.WS.129 at para. 43; UKR.WS.147 at para. 60; UKR.WS.192 at paras 63-65.

²⁰⁹ ODIHR Witness Interview UKR.WS.180 at paras 114-116. *See also* Information provided by the Commissioner for Human Rights in Ukraine.

²¹⁰ ODIHR Witness Interview UKR.WS.124 at para. 20.

²¹¹ "Report on Violations and Abuses Related to the Forcible Transfer and/or Deportation of Ukrainian Children to the Russian Federation", OSCE Moscow Mechanism, 4 May 2023, at pp 14-16; "Analytical report on coverage of deportation of Ukrainian children in Russian media", National Council of Ukraine on Television and Radio Broadcasting, 4 June 2023, at pp 30-31, <<https://www.nrada.gov.ua/wp-content/uploads/2023/06/Analiz-deportatsija-ditej-engl.pdf>>; "Russian diplomat claims Ukrainian children moved to Russia are being 'saved' from the war", Sky News, 21 April 2023, <<https://news.sky.com/story/russian-diplomat-claims-ukrainian-children-moved-to-russia-are-being-saved-from-the-war-12861839>>; Gregory Karasin, Telegram, 2 July 2023, <https://t.me/Grigory_Karasin/1092>.

several locations in the Russian Federation, Belarus, parts of the territories under occupation by the Russian Federation and other unknown locations.²¹²

f. Unlawful restrictions to the rights to freedom of assembly and expression

84. The rights to freedom of peaceful assembly and expression guaranteed by IHRL²¹³ continue to apply during armed conflict, including in occupied territories. Yet, witnesses interviewed by ODIHR have continued to mention unlawful restrictions of such rights in the context of occupation.
85. For instance, a parent from Donetsk region recalled a protest that young people had organized in the centre of the town on 3 March 2023 and the consequences for both the attendees and their parents. *“They were dispersed very quickly, the military came. All mentions of this [the protest] disappeared straight away. All parents then received a letter explaining the consequences of what would happen if they attended events like this.”* On 8 March 2023, through an application used by the Russian authorities to communicate with the local population, the witness stated to have received a *“huge text, quoting huge articles of the criminal code. Depending on how much someone was involved, it has the various punishments. If they are organizers, it would be 180 hours of social work. For parents it is seven years in prison. Fines ranged from 500,000 to 1,000,000 roubles”*.²¹⁴
86. In addition, multiple witnesses confirmed earlier accounts presented in the First and Second Interim Reports regarding the use of violent repression, detention of assembly participants and dispersal of all kinds of assemblies critical of the occupation authorities.²¹⁵
87. Several witnesses interviewed by ODIHR in 2023 recalled the use of force by the Russian authorities to disperse peaceful assemblies, such as by shooting in the air or near people’s feet,²¹⁶ beating of men,²¹⁷ and detention of assembly participants.²¹⁸ A witness from Melitopol in Zaporizhzhia region recalled, for instance, how Russian soldiers would shoot at the ground to disperse people.²¹⁹ Another witness from Novopskov in Luhansk region who participated in a protest in the early days of the occupation explained how Russian Federation soldiers violently dispersed protests *“They started shooting at people’s feet. If*

²¹² Information provided by the Commissioner for Human Rights in Ukraine; Ministry for Reintegration of the Temporary Occupied Territories of Ukraine, 31 May 2023, <<https://childrenofwar.gov.ua/en/>>; “До України наразі повернули 371 вивезену Росією дитину – Зеленський”, (Zelensky: 371 children taken by Russia have been returned to Ukraine so far), Radio Svoboda, 31 May 2023, <<https://www.radiosvoboda.org/a/news-zelenskyi-do-ukrainy-povernuy-371-dytynu/32436454.html>>.

²¹³ ICCPR, arts. 19 and 21.

²¹⁴ ODIHR Witness Interview UKR.WS.186 at paras 35-36.

²¹⁵ “First Interim Report”, ODIHR, 20 July 2022, at paras 106-111; “Second Interim Report”, ODIHR, 14 December 2022, at paras 146-150.

²¹⁶ ODIHR Witness Interviews UKR.WS.138 at paras 9, 11; UKR.WS.187 at para. 53; UKR.WS.207 at para. 7.

²¹⁷ ODIHR Witness Interview UKR.WS.153 at paras 10, 14.

²¹⁸ ODIHR Witness Interviews UKR.WS.138 at para. 11; UKR.WS.153 at para. 14; UKR.WS.233 at paras 16-22.

²¹⁹ ODIHR Witness Interview UKR.WS.207 at para. 7.

*someone was filming with their 'phones, they would use their weapons to hit people in the head. A few people had to be hospitalized. There was a married couple at the front of the protest, they were shot in their feet and legs.’*²²⁰ According to the same witness, the protests were later followed by mass detentions targeting people the occupying authorities believed to have participated in the protest.²²¹

88. ODIHR witnesses also linked participation in demonstrations to cases of abduction and potential enforced disappearances. A witness from Kupiansk in Kharkiv region recalled that *“there were several demonstrations. During the first one, they [the Russian Federation soldiers] took pictures of the people participating. Some even participated in the second one, but then they disappeared and we still don’t know what happened to them”. (...) “We all knew one activist (...) he participated (in the protest) and was very active in political life and was elected to the city council and he was taken by Russian soldiers during the second demonstration and we still don’t know what happened to him. There were other people who disappeared. Their bodies were found later”.*²²²
89. A witness from Kherson region recalled how he was apprehended at a checkpoint due to a video he had posted on social media from a protest he had attended a few days earlier in Henichesk.²²³ He was then taken to the basement of a vocational school and handcuffed to a radiator with a sack on his head, after which he was repeatedly beaten and interrogated.²²⁴
90. Two witnesses interviewed by ODIHR also reported instances of suppression of the right to freedom of expression, specifically related to their social media activities. A witness from Peremohne (Zaporizhzhia region) shared how members of the Russian armed forces, who they identified as Chechens, came to her house to intimidate her for supporting the Ukrainian education curriculum. They also threatened her son for his posts on social media. *“They said that if he posts any information against Russia that doesn’t coincide with their policies, or if his mother does anything silly, he will not survive”.*²²⁵ Additionally, a witness from Kherson city interviewed by ODIHR explained how she was detained for 11 days for her social media activities and her anti-Russian views. She recounted being interrogated, drugged, tortured, and requested to share the names of other civilians active on social media. She was also forced to record an apology to Russian soldiers and post it on her TikTok account.²²⁶

²²⁰ ODIHR Witness Interview UKR.WS.138 at para. 9.

²²¹ ODIHR Witness Interview UKR.WS.138 at para. 11.

²²² ODIHR Witness Interview UKR.WS.123 at paras 18-19.

²²³ ODIHR Witness Interview UKR.WS.233 at paras 11-25.

²²⁴ Ibid at paras 16-22.

²²⁵ ODIHR Witness Interview UKR.WS.228 at para. 36.

²²⁶ ODIHR Witness Interview UKR.WS.147 at paras 23-46.

g. Pressure to acquire Russian citizenship

91. ODIHR has continued to monitor, including through witness testimonies, reports of the pressure being applied to Ukrainian citizens in occupied territories to acquire Russian Federation passports. For instance, two witnesses, both from Zaporizhzhia region, explained to ODIHR that civilians were threatened with ‘deportation’ if they did not acquire Russian passports.²²⁷ One witness explained “*They came to my family and told them this was their last warning. I have two (adult) daughters. The authorities have intimidated them with deportation.*”²²⁸ The second witness recalled how her mother was threatened by the Russian military that she would be ‘deported’ if she did not get a Russian passport.²²⁹
92. Some witnesses interviewed by ODIHR stated that they were not necessarily forced to obtain a Russian passport, even though getting one was highly recommended by the Russian-appointed authorities.²³⁰ Most of the witnesses stated that they were openly pressured to do so, as it was necessary in order to get, or retain access to, employment in public institutions²³¹ (or retain the same level of salary),²³² social benefits,²³³ humanitarian aid,²³⁴ access to health,²³⁵ or education for children.²³⁶ One witness reported that “*They (the occupying authorities) offered incentives to get a Russian passport, like providing title certificates for property in Ukraine or 100,000 roubles*”.²³⁷ Making access to basic services dependent upon the acceptance of a Russian passport is discriminatory and prohibited under IHL.²³⁸
93. Two other witnesses, from Hola Prystan district in Kherson region, indicated to ODIHR that, as of 1 March 2023, everyone had to be in possession of a Russian passport in order to collect their pensions,²³⁹ which makes the elderly especially vulnerable to the ‘passportization’ process. The possession of a Russian passport also impacted civilians’ freedom of movement. For instance, another witness recounted the difficulties encountered by civilians trying to go through checkpoints without a Russian passport. “*Now, without a Russian passport, you would not be allowed to go to another village. Now you must obtain a special pass to move through the checkpoints in your own car. My*

²²⁷ ODIHR Witness Interviews UKR.WS.226 at para. 26; UKR.WS.228 at para. 44.

²²⁸ ODIHR Witness Interview UKR.WS.226 at para. 26.

²²⁹ ODIHR Witness Interview UKR.WS.228 at para. 44.

²³⁰ ODIHR Witness Interviews UKR.WS.123 at para. 54; UKR.WS.182 at para. 60.

²³¹ ODIHR Witness Interviews UKR.WS.123 at para. 54; UKR.WS.185 at para. 65; UKR.WS.186 at para. 86; UKR.WS.228 at para. 51.

²³² ODIHR Witness Interview UKR.WS.135 at para. 34.

²³³ ODIHR Witness Interviews UKR.WS.122 at para. 9; UKR.WS.133 at para. 32; UKR.WS.141 at para. 61; UKR.WS.185 at para. 65; UKR.WS.190 at para. 42; UKR.WS.208 at para. 32; UKR.WS.228 at para. 51; UKR.WS.232 at para. 37.

²³⁴ ODIHR Witness Interviews UKR.WS.185 at para. 65; UKR.WS.201 at para. 44.

²³⁵ ODIHR Witness Interview UKR.WS.208 at para. 25.

²³⁶ ODIHR Witness Interview UKR.WS.123 at para. 54.

²³⁷ ODIHR Witness Interview UKR.WS.128 at para. 16.

²³⁸ GCIV, art. 27(3) GC IV generally prohibits any discrimination in the treatment of protected persons; see also AP I, art. 69.

²³⁹ ODIHR Witness Interviews UKR.WS.126 at para. 12; UKR.WS. 128 at para. 16.

*family cannot move through checkpoints.”*²⁴⁰ The same was reported for traveling in and out of Crimea, as, without a Russian passport, “*they would either not let you out anymore, or not let you in.*”²⁴¹

94. Obtaining a Russian passport also appears to be linked to property rights, with one witness reporting to ODIHR that, in order to keep his private clinic open, he was instructed to re-register it under Russian law, which was impossible without also having a Russian passport.²⁴² A similar situation was reported by another witness,²⁴³ in relation to farmers who reportedly had to register their businesses under Russian law, for which a Russian passport is needed. Another witness explained: “*People are told to get Russian passports or they will lose their houses.*”²⁴⁴
95. Three witnesses interviewed by ODIHR confirmed that people were being mobilized after acquiring a Russian passport.²⁴⁵ While it remains the prerogative of States to conscript their own nationals, in light of the concerns raised by the potential forcible imposition of Russian citizenship on citizens of occupied territories, there is a strong likelihood that many of these cases may amount to forced conscription, which is explicitly prohibited by IHL.²⁴⁶
96. In addition, children born in occupied areas continued to receive Russian citizenship automatically, as stated by one of the interviewed witnesses from Mykolaivka in Donetsk region. Shortly after giving birth in March 2023, the witness tried to travel to Crimea but, because of the date of birth of her child, she was told she needed a Russian Federation birth certificate to cross the checkpoint. She later applied for the document and told ODIHR “*The certificate was Russian. So, my child is recognized as being Russian.*”²⁴⁷
97. The issuance of Russian passports to Ukrainian citizens in the newly occupied territories started as early as May 2022,²⁴⁸ and was followed by decrees of the President of the Russian Federation on simplifying the procedure for acquiring Russian citizenship for (i) residents of Kherson and Zaporizhzhia regions, in May 2022 (a procedure that has been in place for residents of Donetsk and Luhansk regions since July 2019),²⁴⁹ (ii) orphans

²⁴⁰ ODIHR Witness Interview UKR.WS.226 at para. 36.

²⁴¹ ODIHR Witness Interview UKR.WS.185 at para. 65.

²⁴² ODIHR Witness Interview UKR.WS.192 at paras 23, 25. This issue was also reported by another witness, see also UKR.WS.138 at para. 79.

²⁴³ ODIHR Witness Interview UKR.WS.232 at para. 37.

²⁴⁴ ODIHR Witness Interview UKR.WS.216 at para. 30.

²⁴⁵ ODIHR Witness Interviews UKR.WS.123 at para. 58; UKR.WS.125 at para. 64; UKR.WS.186 at para. 85.

²⁴⁶ IHL states that the civilian population of an occupied territory must not be compelled to show allegiance to the occupying power, and explicitly prohibits the Russian Federation as the occupying power from forcing people in occupied territories to serve in its own armed forces or auxiliary forces. See HR, art. 45; GC IV, art. 51. The conscription of citizens of an occupied territory to the armed forces of the occupying authority constitutes a war crime. See GC IV, art. 147 and ICC Statute, art. 8(2)(a)(v).

²⁴⁷ ODIHR Witness Interview UKR.WS.179 at paras 20-23.

²⁴⁸ “Interim Report” ODIHR, 20 July 2022, at para. 80.

²⁴⁹ “Second Interim Report”, ODIHR, 14 December 2022, at paras 57-58.

and children deprived of parental care, in July 2022,²⁵⁰ as well as for (iii) Ukrainian citizens who have reached the age of 14, in December 2022.²⁵¹ Additionally, in April 2023, the President of the Russian Federation signed a decree establishing a simplified procedure for issuing Russian passports to residents of Donetsk, Kherson, Luhansk and Zaporizhzhia regions.²⁵² According to the decree, Ukrainian citizens, or those holding passports issued by the so-called “Donetsk People’s Republic” and “Luhansk People’s Republic”, will be considered as “foreign citizens and stateless persons” if they fail to obtain Russian passports by 1 July 2024 and might be subjected to forced expulsion.

²⁵⁰ Указ Президента Российской Федерации от 11.07.2022 № 440 "О внесении изменений в Указ Президента Российской Федерации от 24 апреля 2019 г. № 183 "Об определении в гуманитарных целях категорий лиц, имеющих право обратиться с заявлениями о приеме в гражданство Российской Федерации в упрощенном порядке" и Указ Президента Российской Федерации от 29 апреля 2019 г. № 187 "Об отдельных категориях иностранных граждан и лиц без гражданства, имеющих право обратиться с заявлениями о приеме в гражданство Российской Федерации в упрощенном порядке" [Decree of the President of the Russian Federation as of 11.07.2022, № 440 “On amendments to the Decree of the President of the Russian Federation as of 24 April 2019 № 183 “On the definition for humanitarian purposes of the categories of persons entitled to apply for admission to the citizenship of the Russian Federation in a simplified manner” and the Decree of the President of the Russian Federation as of 29 April 2019 № 187 “On certain categories of foreign citizens and stateless persons who have the right to apply for admission to the citizenship of the Russian Federation in a simplified manner”], <http://publication.pravo.gov.ru/Document/View/0001202207110002>.

²⁵¹ Указ Президента Российской Федерации от 26.12.2022 № 951 «О некоторых вопросах приобретения гражданства Российской Федерации» [Decree of the President of the Russian Federation as of 26.12.2022 № 951 “On some issues of acquiring citizenship of the Russian Federation”], <http://publication.pravo.gov.ru/Document/View/0001202212260018>.

²⁵² Указ Президента Российской Федерации от 27.04.2023 № 307 «Об особенностях правового положения отдельных категорий иностранных граждан и лиц без гражданства в Российской Федерации» [Decree of the President of the Russian Federation as of 27.04.2023 № 307 “On the peculiarities of the legal status of certain categories of foreign citizens and stateless persons in the Russian Federation”], <http://publication.pravo.gov.ru/Document/View/0001202304270013>.

V. Updated interim recommendations

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

- respect and ensure respect for IHL and IHRL in territories under their control;
- ensure that all POWs are treated with full respect under the Geneva Convention (III) relative to the Treatment of Prisoners of War, of 12 August 1949;
- ensure that independent and impartial investigations are conducted into all allegations of serious violations of IHL and IHRL;
- provide international investigators, including investigators of the International Criminal Court, with unimpeded access to the territory under their effective control, in order to strengthen accountability for alleged international crimes;
- ratify the Rome Statute and formally become members of the International Criminal Court; and
- ensure freedom of movement and freedom of return to civilians evacuating or otherwise displaced.

ODIHR calls on the Russian Federation to:

- respect the main tenets of the law of occupation and refrain from introducing irreversible changes to the status of Ukrainian territories under military occupation;
- stop subjecting civilians in territories occupied by the Russian Federation to extrajudicial executions, torture and other forms of ill-treatment including sexual violence;
- halt the abduction, arbitrary detention and enforced disappearance of civilians in territories occupied by the Russian Federation and release those currently unlawfully detained;
- release all Ukrainian civilians who have been deported to the Russian Federation and are detained there as a consequence of the armed conflict;
- respect the rights to peaceful assembly and free expression of the local population living in Ukrainian territories under effective control of the Russian Federation, including by refraining from using excessive force in order to disperse peaceful protests;
- immediately cease pressuring or coercing the civilian population to change their nationality;
- stop the practice of so-called ‘deportation’ to the contact line with Ukraine of those individuals who reside in the territories of Ukraine which are under effective control of the

Russian Federation and repeal Decree 307 of 27 April 2023 providing that people residing in these territories would be considered “foreigners”, unless they had obtained Russian citizenship and could be subjected to ‘deportation’;

- eliminate the so-called ‘filtration’ process of civilians performed by the Russian Federation and other armed groups under its overall control in violation of civilians’ right to freedom of movement and right to privacy; and
- ensure that all allegations of serious violations of IHL and other abuses by members of the Russian armed forces or other authorities under the overall control of the Russian Federation are promptly and effectively investigated and that alleged perpetrators are brought to justice in fair trials in accordance with international law and standards.

ODIHR calls on Ukraine to:

- promptly and impartially investigate allegations of rights violations against individuals in territories under its effective control and to bring perpetrators of abuses to justice;
- sign the Draft Law on Amendments to Certain Legislative Acts of Ukraine on the Implementation of International Criminal and Humanitarian Law (No. 2689) adopted by Parliament in May 2021 designed to harmonize the Criminal Code of Ukraine with international criminal law and IHL, enabling the Ukrainian authorities to effectively investigate and prosecute breaches of IHL carried out on its territory; and
- amend its criminal legislation regarding “collaborative activity” to dispel any legal uncertainty and ensure that any judicial proceedings against alleged collaborators are in line with fair trial standards.