
Human Rights Council
Fifty-second session

**Conference room paper of the Independent International
Commission of Inquiry on Ukraine**

Summary

In resolution 49/1, dated 4 March 2022, the Human Rights Council condemned the human rights violations and abuses and violations of international humanitarian law resulting from the aggression against Ukraine by the Russian Federation and decided to establish an Independent International Commission of Inquiry to investigate all alleged violations and abuses of human rights and violations of international humanitarian law, and related crimes. The Commission has determined that the use of armed force by the Russian Federation against Ukraine was an act of aggression as defined in General Assembly resolution 3314 (XXIX).

The present report is a detailed account of all the evidence gathered and analysed by the Commission since its creation, which was presented in its March 2023 report to the Human Rights Council (A/HRC/52/62), and it includes a description of a select number of cases underpinning those findings. Furthermore, the present report also contains more extensive discussions of some general topics, including accountability.

As at the end of the first year of its mandate, the Commission of Inquiry on Ukraine has concluded that a wide range of grave human rights and humanitarian law violations and corresponding crimes, many amounting to war crimes, and some of them possibly to crimes against humanity, have been committed in many regions of Ukraine and in the Russian Federation.

Based on a substantial body of evidence, the Commission has found that in areas which came under their control, Russian authorities committed wilful killings, attacks on civilians, unlawful confinement, torture, rape, and unlawful transfers and deportations of protected persons, which are war crimes.

The Commission has concluded that torture used by Russian authorities has been widespread and systematic and may amount to crimes against humanity, if confirmed by further investigations. They have targeted specific groups of people and used similar methods of torture across various detention facilities they held in Ukraine and in the Russian Federation. Torture was frequently perpetrated in combination with interrogation sessions, to extract information or confessions, or to intimidate or punish the victims. The Commission has examined closely a number of detention facilities where torture was routinely perpetrated.

It has also found a pattern of summary executions in towns and villages that were close to the frontlines, where Russian armed forces came into frequent contact with local residents. It documented cases of rape and sexual violence committed by Russian authorities during forced visits to victims' houses and during detention.

In two instances investigated, Ukrainian authorities shot, wounded, and ill-treated detainees.

Attacks carried out with explosive weapons in populated areas caused large-scale devastation and suffering. Many such attacks were carried out by Russian armed forces with an apparent disregard for possible harm to civilians and impacted civilian objects or areas with visible large civilian concentrations. The Commission has concluded that Russian armed forces committed indiscriminate and disproportionate attacks, in violation of international humanitarian law, some of which amounted to the war crime of excessive incidental death, injury, or damage.

The large-scale attacks launched by Russian armed forces against Ukrainian critical infrastructure starting 10 October 2022, including energy-related installations caused electricity outages, sometimes affecting millions of people across the country. The Commission has found that the attacks were widespread and systematic and may amount to crimes against humanity, if confirmed by further investigations.

In a small number of indiscriminate attacks committed with explosive weapons in Iziium city, Ukrainian armed forces were likely responsible, in violation of international humanitarian law.

The Commission has assessed that the holding of the so-called referendums regarding the incorporation of occupied territories in the Donetsk, Kherson, Luhansk, and Zaporizhzhia regions into the Russian Federation was in violation of international humanitarian law. It received reports regarding a climate of fear and coercion prevailing at that time. The Commission also documented instances of coercion, threats, unlawful confinement and forcible transfers of local officials and public service employees, including school personnel, to force them to cooperate.

The Commission's investigations have shown that Ukrainian children have been transferred or deported to Russian-occupied areas or to the Russian Federation. In some of the cases the Commission has investigated, this amounted to war crimes. Where this led to prolonged family separations, Russian authorities in addition violated their obligation under international humanitarian law to facilitate the reunion of families dispersed as a result of the armed conflict. The Commission also examined measures which Russian authorities took with the apparent aim of facilitating long-term placement of Ukrainian children in the Russian Federation and underscores, in this connection, the child's right to preserve his or her identity and family relations.

Finally, in virtue of its mandate, the Commission has looked at possible root causes, as well as at patterns of past violations and crimes committed in Ukraine, which are related to the current context. It has provided an account of the devastating impact of the armed conflict on civilian lives and on the enjoyment of a wide range of human rights.

The Commission calls for an immediate end to all grave violations and crimes. It recommends investigation and prosecution of all allegations of international crimes, violations of human rights and international humanitarian law and describes various ways to achieve criminal accountability. The Commission is of the view that accountability includes both judicial and non-judicial measures, such as recognition, reparation, rehabilitation and reconstruction, which take into account the needs of the victims and survivors. Comprehensive accountability is paramount.

Disclaimer: In conformity with its report 23 March 2023 to the Human Rights Council (A/HRC/52/62), the Commission has considered in this conference room paper events which occurred until 31 January 2023. In a few situations, and where relevant for its analysis, it has included some important developments and updates which have occurred after this date.

Table of Contents

- I. Introduction, mandate, and reporting
- II. Methods of work
 - A. Scope
 - B. Methodology
 - C. Standard of proof and fact-finding methods
 - D. Victims-centred approach
 - E. Cooperation with Governments
 - F. Cooperation and coordination with entities and accountability initiatives
 - G. Outreach and communication
 - H. Secretariat
 - I. Challenges
- III. Legal Framework
- IV. Factual background
 - A. Root causes of violations, abuses, and crimes
 - 1. Narratives to justify interventions
 - 2. Centralisation of powers in the Russian Federation and erosion of the civic space
 - 3. A cycle of military interventions
 - 4. Russian armed forces and a culture of impunity and violence
 - B. Brief overview of significant events and patterns of reported violations and abuses before 24 February 2022
 - 1. Maidan events and other protests
 - 2. Occupation of the Autonomous Republic of Crimea and the city of Sevastopol
 - 3. Situation in the occupied areas of Donetsk and Luhansk regions
 - 4. Incidents in territory under Ukrainian Government control
 - C. Events since 24 February 2022
 - 1. Military and security developments
 - 2. Political context
 - 3. Consequences for civilian population
 - D. Act of aggression
- V. Violations of international law
 - A. Violations committed during the conduct of hostilities
 - 1. Overview
 - 2. Impact of hostilities and attacks with explosive weapons
 - 3. Unlawful attacks with the use of explosive weapons
 - 4. Large-scale attacks against the Ukrainian energy-related infrastructure [Discuss]
 - 5. Endangering civilians
 - B. Personal integrity violations
 - 1. Personal integrity violations committed by Russian authorities
 - 2. Personal integrity violations committed by Ukrainian authorities
 - C. Violations of the Law of Occupation

1. Overview
 2. Unlawful annexation following unlawful so-called referendums
 3. Imposition of Russian Federation citizenship in the newly Russian-occupied areas
 4. Coercion and threats towards education personnel
 5. Coercion of parents to force them to send their children to schools
 6. Unlawful confinement of local officials and other public service employees
 7. Unlawful and forced conscription
- D. Transfers of children to territories occupied by the Russian Federation in Ukraine and to the Russian Federation
1. Overview
 2. Situations in which child transfers took place
 3. Prolonged duration of transfers of children and difficulties in establishing contact and recovering children
 4. Measures put in place by the Russian Federation regarding certain categories of transferred children
- E. Genocide
- VI. Impact of the armed conflict
- VII. Accountability measures
- A. Criminal accountability measures
 - B. Non-judicial accountability measures
- VIII. Conclusions and recommendations

I. Introduction, mandate and reporting

1. In its resolution 49/1¹ adopted on 4 March 2022, the Human Rights Council expressed grave concern at the ongoing human rights crisis in Ukraine, the increasing reports of civilian casualties, and the damage to and destruction of residential areas and civilian infrastructure. It decided to urgently establish an Independent International Commission of Inquiry to investigate all alleged violations and abuses of human rights and violations of international humanitarian law, and related crimes in the context of the Russian Federation's aggression against Ukraine.
2. The Council mandated the Commission to ascertain the facts, circumstances, and root causes of such violations, and, where possible, to identify those responsible, as well as to make recommendations, in particular on accountability measures. It called upon the Commission to collect, preserve, and analyse evidence, including through field engagement and in cooperation with judicial and other entities.
3. On 30 March 2022, the President of the Human Rights Council announced the appointment of Erik Møse (Norway), Jasminka Džumhur (Bosnia and Herzegovina)² and Pablo de Greiff (Colombia) as the three independent members of the Commission, with Mr. Møse serving as chair.
4. In resolution S-34/1³ on the deteriorating human rights situation in Ukraine, adopted on 12 May 2022, the Council further requested the Commission to conduct an inquiry to address the events in Chernihiv, Kharkiv, Kyiv, and Sumy regions in late February and in March 2022, including their gender dimension, with a view to holding those responsible to account.
5. As requested by the Human Rights Council, on 23 September 2022, the Commission presented an oral update⁴ and on 18 October 2022, submitted a report⁵ to the General Assembly covering events that took place in February and March 2022 in the four regions mentioned above. The present detailed report and the report⁶ submitted to the Human Rights Council during its fifty-second session, in March 2023, are based on all the evidence gathered and analysed by the Commission since its creation until 31 January 2023.
6. To conduct its investigations, the Commission has travelled eight times to Ukraine and visited 56 cities, towns, and settlements. It also travelled to Estonia and Georgia to meet with people who fled from areas affected by the armed conflict. The Commission conducted 610 interviews with 595 persons (348 women and 247 men) in person and remotely; inspected sites of destruction, graves, places of detention and torture, as well as weapon remnants, and consulted a large number of documents and other sources. It met with victims and witnesses, Government authorities, international organizations, civil society organizations, and other relevant stakeholders, and received and reviewed written submissions, including 38 letters from teenage children.
7. In its work, the Commission is guided by the principles of independence, impartiality, objectivity, and integrity. It adopts a victim-centred approach and a strict respect of the "do no harm" principle, in particular regarding guarantees of confidentiality of the information received and the safety and the protection of victims and witnesses, and other interlocutors.
8. The Commission expresses its gratitude to all those who shared their experiences, testimonies and other valuable information. It appreciates the assistance provided by Governments, United Nations agencies, funds and programmes, other international organizations, non-governmental entities, and experts, and is grateful for the answers to its call for submissions.⁷

¹ A/HRC/RES/49/1.

² The mandate of Jasminka Džumhur ended on 31 March 2023.

³ A/HRC/RES/S-34/1.

⁴ Update by the Chair of the Independent International Commission of Inquiry on Ukraine, at the 51st session of the Human Rights Council, 23 September 2022.

⁵ A/77/533.

⁶ A/HRC/52/62.

⁷ See <https://www.ohchr.org/en/hr-bodies/hrc/iic/hr-ukraine/call-for-submission>.

II. Methods of work

A. Scope

9. The Commission has considered all violations and abuses of human rights and violations of international humanitarian law and related crimes committed in Ukraine within its internationally recognized borders, as well as outside of Ukraine's territory, as long as such events occurred in the context of the aggression against Ukraine by the Russian Federation.

10. As outlined above, the Commission prioritized events in the Chernihiv, Kharkiv, Kyiv, and Sumy regions in late February and March 2022, in conformity with resolution S-34/1. Apart from specific references in this resolution, the Commission's general mandate does not contain geographic or temporal boundaries for its investigations. It has, to the extent possible (see paras. 32-34), focused on violations committed in all territories affected by the armed conflict. It has taken into account events and patterns of violations which also go back in time, provided that they contribute to identifying root causes of violations committed in the present context.

11. As requested by resolution 49/1, the Commission has formulated recommendations on accountability issues. In doing so, it has, in accordance with established United Nations practice, based its efforts on a conception of accountability which includes criminal justice and other forms of accountability, such as truth-telling, reparations, and guarantees of non-recurrence.

B. Methodology

12. The Commission has examined a large number of alleged violations of human rights and violations of international humanitarian law, and related crimes falling under its mandate. It has investigated incidents regardless of the identity or nationality, citizenship, or place of origin of the alleged responsible individual or entity. The Commission has aimed at identifying the party, and where possible, the individuals responsible for the alleged violations and related crimes which it documents, and their units.

13. Given the vast number of allegations, the limited resources and time available, the challenges to access certain victims, witnesses, and areas affected by the hostilities, the particular challenges related to the investigations of certain issues, as well as logistical constraints, the Commission could not possibly examine all reported incidents. It has focused on incidents based on their gravity, their significance in demonstrating patterns of alleged violations, the access to victims, witnesses and supporting documentation, and the geographic location of the incidents.

14. In its investigations, the Commission has paid particular attention to the gender dimension of crimes and violations and has found that some of them were committed against men, women, boys, and girls because of their gender roles. Such violence refers to any type of harm that is perpetrated against an individual or a group of people based on gender considerations.⁸ In addition, the Commission has given particular consideration to the impact of violations on children, older persons, and individuals affected by intersectional inequalities.

15. The examples and incidents outlined in this report are therefore only a small sample of the allegations which the Commission has examined. No conclusions or inferences can be made where this report does not cover certain thematic or geographic areas. Nevertheless, the Commission considers that the report illustrates some of the main patterns of violations observed in the context of the armed conflict in Ukraine.

⁸ See United Nations Office of the High Commissioner for Human Rights. *Integrating a gender perspective into human rights investigations - Guidance and Practice* (New York and Geneva, 2018); UNHCR, "Gender-based violence"; UN Women, "Frequently Asked Questions: Types of violence against women and girls".

C. Standard of proof and fact-finding methods

16. The Commission has followed the best practices and methodologies for human rights fact-finding.⁹ Consistent with the standard of proof followed by most international commissions of inquiry, the Commission has included findings in its report when, based on a body of verified information, an objective and ordinary prudent observer would have “reasonable grounds to conclude” that the facts took place as described. It has drawn legal conclusions when there are reasonable grounds to conclude that the facts meet all the elements of a violation or abuse, and, where possible, that an individual or entity is responsible for the violation or abuse. The established methodology for this standard of proof requires at least one credible direct source of information, independently corroborated by at least one or more additional credible sources of information.

17. Findings of the Commission rely primarily on first-hand information, including information collected through interviews with victims and witnesses of alleged violations and abuses. It has prioritized field-visits to examine sites of violations and abuses and physical evidence and in-person interviews. The Commission has also relied on remote interviews, photographs, video-recordings, statements by parties to the conflict, satellite imagery, documents, reports, statistics, and other similar information from reliable sources. It has compared the information collected with information generated by States, United Nations agencies, funds and programmes, civil society organizations, media, and other relevant actors. On 29 June 2022, the Commission issued a call for submissions of information and documentation relevant to its mandate.

18. All the incidents and patterns included in the Commission’s reports are those for which it considered that there are reasonable grounds to conclude that they occurred as described. Additionally, the Commission has indicated in the text when there are allegations or credible reports relevant to understanding the patterns of violations and related crimes under its purview, but which it has so far not been able to verify due to a series of constraints.

D. Victim-centred approach

19. At all times during its fact-finding, the Commission has aimed at ensuring respect for the safety, security, and well-being of the victims. In-person interviews were conducted in safe and private settings. Remote interviews were carried out through secure channels of communication. Reports contain information provided by interlocutors only when they granted informed consent and where disclosure would not lead to any identification or result in harm. All the information provided by victims and witnesses, as well as other sensitive interlocutors, has been stored securely and in accordance with the United Nations policies on information sensitivity, classification, and handling.

20. To avoid retraumatizing victims and witnesses, a strict respect for their well-being, privacy and security is key. In this regard, the Commission is of the view that entities engaged in the documentation of the violations and crimes should coordinate their efforts to avoid unnecessarily reinterviewing victims and ensure that an appropriate referral to support services is available.

21. In its work and during the formulation of its recommendations, the Commission has paid particular attention to factors relevant to the situation of victims and witnesses. It has considered the needs of the victims, the importance of accountability, as well as of measures of recognition, reparation, rehabilitation, reconstruction, and guarantees of non-repetition.

E. Cooperation with Governments

22. Since the outset, the Commission has sought cooperation and dialogue with the Governments of Ukraine and the Russian Federation. It has shared advance copies of its written reports with both States and invited them to provide comments.

⁹ United Nations Office of the High Commissioner for Human Rights, *International Commissions of Inquiry and Fact-Finding Missions on International Human Rights Law and International Humanitarian Law - Guidance and Practice*, (New York and Geneva, 2015).

23. The Commission is grateful for the access during its travels to Ukraine, where it met with members of the Government and local authorities, and for the written responses to its queries.

24. It regrets that its attempts to establish meaningful communication with the Russian Federation have been unsuccessful, as its notes verbales and letters have remained unanswered. A Russian governmental institution has referred material to the Commission, which it has examined.

25. The Commission has also received collaboration from other Governments which had information relevant to its mandate or that hosted persons from Ukraine. This included visits to Estonia and Georgia.

F. Cooperation and coordination with entities and accountability initiatives

26. Sound coordination between entities engaged in the documentation of violations, abuses, and related crimes in Ukraine is key to ensure efficiency, avoid the duplication of efforts, and the retraumatizing of victims and witnesses (see para. 20). The Commission has therefore engaged with relevant international and national entities. To ensure its independence and impartiality, it follows well-established processes for such cooperation and conducts its own investigations independently and separately from any United Nations or other entities.

27. Consistent with its mandate, the Commission has built on the work of OHCHR and of the United Nations Human Rights Monitoring Mission in Ukraine. It has also held regular meetings with the Office of the Prosecutor of the International Criminal Court and has engaged with the Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe, the European Union Agency for Criminal Justice Cooperation and the Atrocity Crimes Advisory Group.

28. The Commission intends its work to contribute to current and future accountability efforts regarding crimes committed in Ukraine. Where relevant, information and documentation it has collected will be shared with competent investigative, prosecutorial, and judicial authorities to facilitate and expedite criminal proceedings. The sharing will occur under conditions of fairness, due process, non-applicability of the death penalty, and compliance with other relevant human rights standards. The consent of witnesses and other interlocutors for external uses of the information is fundamental in handling such requests.

G. Outreach and communication

29. Throughout its mandate, the Commission has considered it important to engage with all relevant stakeholders to enhance awareness regarding its mandate and increase the visibility of its work. It has participated in relevant high-level events, such as the United Nations Security Council Arrria-formula meeting on “Ensuring accountability for atrocities committed in Ukraine” on 26 April 2022, the Meeting of the Organization for Security and Cooperation in Europe Human Dimension Committee on 5 July 2022, and the side event on “Examining options of accountability for Ukraine” held by the Public International Law & Policy Group on the margins of the 51st session of the Human Rights Council on 27 September 2022. In connection with the submission of its report to the Human Rights Council in March 2023, the Commission also participated in the side event “Ukraine: Accountability for war crimes and serious human rights violations”, on 21 March 2023. It has established ongoing communication with the diplomatic community, civil society organizations, initiatives, and academia.

30. The Commission has developed a media and communication strategy. It has held five press conferences in Kyiv, Geneva, and Vienna, handled more than 150 queries from journalists, researchers, and individuals, and conducted 55 media interviews that resulted in more than 480 press clippings. The webpage of the Commission is updated with background information, as well as reports, statements, and activities.

H. Secretariat

31. The Commission has received the support of a secretariat of 24 professional staff, based in Vienna. Most of the staff was in place in July 2022. The Secretariat has maintained a repository governed by United Nations rules on information sensitivity, classification and

handling to allow safe and secure storage, as well as efficient processing and analysis of the documentation and information collected by the Commission.

I. Challenges

32. During its mandate, the Commission has faced a series of challenges in its ability to conduct investigations in some of the areas affected by the armed conflict. It has not obtained access to the Russian Federation and to areas under the control of Russian authorities.¹⁰ At the time of writing the present report, written requests sent to this effect remained unanswered (see para. 23).

33. Other difficulties were due to dire security conditions, which impeded the Commission's travel to certain areas. Some areas could only be visited during daytime and involved long-distance travel. The Commission also faced considerable logistical difficulties, in particular with regards to the availability of vehicles and drivers during its visits to Ukraine.

34. Specific aspects of the investigations were also challenging. Owing to a fluid security situation, it was often not possible to examine sites of events immediately after their occurrence. Later visits posed challenges related to the availability, preservation, independence, and accuracy of evidence. Forensic reports were not always comprehensive. Trauma, social stigma, and risks of marginalisation of certain categories of victims, in particular in cases of sexual violence, are a source of additional constraints.

III. Legal framework

35. Pursuant to resolution 49/1, international human rights law, international humanitarian law, and international criminal law constitute the law applicable to the mandate of the Commission.

36. As for international human rights law, both Ukraine and the Russian Federation are party to the same seven United Nations core human rights instruments.¹¹ Ukraine is additionally party to another core human rights treaty, namely the International Convention for the Protection of All Persons from Enforced Disappearance. Both States have ratified the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict.

37. Regarding international humanitarian law, both Ukraine and the Russian Federation are party to, among others, the four Geneva Conventions of 1949.¹² Ukraine acceded to Additional Protocols I, II and III of the Geneva Conventions, while the Russian Federation acceded to Additional Protocols I, II and signed Additional Protocol III. Along with treaty law, the Commission is also applying customary international humanitarian law. Relevant provisions and rules of international humanitarian law are also binding upon non-State actors that may be involved in the conflict.

¹⁰ For the purposes of the present report, "Russian authorities" will refer to Russian military and civilian authorities, as well as all associated de facto authorities, armed groups, and private military and security companies.

¹¹ The seven United Nations human rights instruments are: (1) International Convention on the Elimination of All Forms of Racial Discrimination; (2) International Covenant on Civil and Political Rights; (3) International Covenant on Economic, Social and Cultural Rights; (4) Convention on the Elimination of All Forms of Discrimination against Women; (5) Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; (6) Convention on the Rights of the Child, and (7) Convention on the Rights of Persons with Disabilities. On 1 March 2022, Ukraine notified the United Nations Secretary General of its waiver of obligations under arts. 3, 8(3), 9, 12, 13, 17, 19, 20, 21, 22, 24, 25, 26 and 27 of the International Covenant on Civil and Political Rights. For the extension until 15 February 2023, see: <https://treaties.un.org/doc/Publication/CN/2022/CN.441.2022-Eng.pdf>.

¹² For a full list of international humanitarian law treaties and protocols signed or ratified/acceded to by Ukraine and the Russian Federation, see <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/vwTreatiesByCountry.xsp>.

38. The situation in Ukraine is an international armed conflict, pursuant to common article 2 of the four Geneva Conventions, due to armed hostilities existing between two States, through their respective armed forces or other actors acting on their behalf.

39. In terms of international criminal law, the Commission will apply relevant international treaties and customary international law. Neither Ukraine nor the Russian Federation are State Parties to the Rome Statute of the International Criminal Court (ICC). However, the ICC has jurisdiction in Ukraine, pursuant to two declarations lodged by Ukraine and referrals by ICC State Parties.¹³ The Rome Statute and its Elements of Crimes provide detailed elements for some of the alleged crimes. The Statute's ratification by a majority of the Member States of the United Nations reflects, on the whole, the definition of these crimes under customary international law.¹⁴ Where the ICC is found to lack jurisdiction, the Commission will apply the elements of crimes within the Rome Statute so long as they reflect customary international law.

IV. Factual background

A. Root causes of violations, abuses, and crimes

40. Human Rights Council's resolution 49/1, in paragraph 11(a), has requested the Commission to examine root causes of violations and abuses of human rights and violations of international humanitarian law which are under its investigations. The Commission has reviewed possible factors that may have enabled or facilitated the present developments, and which are part of the context in which they arose.

1. Narratives to justify interventions

41. To justify the launch of an armed attack on Ukraine on 24 February 2022, President Putin referred, among other issues, to historical reasons and protection imperatives of Russian citizens and speakers abroad. On 21 February 2022, in a declaration explaining the motives behind the Russian Federation's actions, President Putin stated: "I would like to emphasise again that Ukraine is not just a neighbouring country for us. It is an inalienable part of our own history, culture and spiritual space." He added: "Since time immemorial, the people living in the south-west of what has historically been Russian land have called themselves Russians and Orthodox Christians."¹⁵ In his 24 February 2022 statement regarding the launch of a "special military operation" in Ukraine, President Putin noted that "[i]ts purpose is to protect people who have been subjected to abuse and genocide by the Kiev regime for eight years."¹⁶

42. The narrative based on historical politics and protection imperatives has been crafted and strengthened by President Putin over two decades to attempt to validate, both domestically and in his foreign policy, military interventions, not only in Ukraine, but also in Chechnya and in Georgia.¹⁷ It is based on an instrumentalization of the view that the Russian Federation has a perceived obligation to protect Russians and Russian speakers abroad.

43. This was, for example, the case during the Russian Federation's annexation of Autonomous Republic of Crimea (Crimea) in March 2014. President Putin then declared "Crimea has always been an inseparable part of Russia" and underscored that "the residents of Crimea and Sevastopol turned to Russia for help in defending their rights and lives".¹⁸

¹³ For more information regarding the International Criminal Court's jurisdiction including Ukraine's two declarations, see <https://www.icc-cpi.int/ukraine>.

¹⁴ This follows from the practices of other Human Rights Council's mechanisms, such as the Commission of Inquiry on human rights in the Democratic People's Republic of Korea, A/HRC/25/CRP.1, 7 February 2014, fn.1451.

¹⁵ Official website of the President of the Russian Federation, "Address by the President of the Russian Federation", 21 February 2022.

¹⁶ S/2022/154, Annex.

¹⁷ Official website of the President of the Russian Federation, "Article by Vladimir Putin "On the Historical Unity of Russians and Ukrainians", 12 July 2021; confidential source on file.

¹⁸ Official website of the President of the Russian Federation, "Address by President of the Russian Federation", 18 March 2014.

Shortly after the annexation, he reiterated his stance on interventions on behalf of Russian individuals: “I would like to make it clear to all: our country will continue to actively defend the rights of Russians, our compatriots abroad, using the entire range of available means – from political and economic to operations under international humanitarian law and the right of self-defence.”¹⁹ In April 2014, in a dedicated television programme called “Direct Line with Vladimir Putin”, President Putin made reference to a controversial account of history, pointing to “the legitimate rights and interests of ethnic Russians and Russian-speakers in the southeast of Ukraine” and stressed “I would like to remind you that what was called Novorossiia (New Russia) back in the tsarist days – Kharkov, Lugansk, Donetsk, Kherson, Nikolayev and Odessa – were not part of Ukraine back then. These territories were given to Ukraine in the 1920s by the Soviet government.”²⁰

2. Centralisation of powers in the Russian Federation and erosion of the civic space

44. In the Russian Federation, the concentration of numerous state prerogatives in the hands of the presidency has eroded a possible checks and balances system and has insulated the presidency from accountability.²¹ Political dissent and freedom of speech have often been systematically and brutally quashed; members of the opposition and protestors have been arrested.²² The government runs and controls media and television channels, and thereby largely shapes the public understanding of domestic and world events.²³ These factors have been detrimental for independent civil society development inside the country and have resulted in a shrinking civic space.²⁴

45. The control of the political sphere by the executive has suppressed genuine dissemination of information, understanding, criticism, and domestic opposition to the armed conflicts waged by the Russian Federation – and presently to the conflict in Ukraine. Since the outset of the February 2022 armed conflict in Ukraine, further restrictions have been enacted to curb protests and other manifestations of the civil society, thereby limiting rights of association, expression, freedom of the press, and even access to justice and to education. Thousands of cases of harassment and persecution of journalists have been reported, and hundreds of Russian journalists and activists have been detained for reporting on the armed conflict in Ukraine or protesting against the conscription.²⁵

3. A cycle of military interventions

46. The 24 February 2022 armed attack on Ukraine has been launched against a background of past military interventions of the Russian Federation in Chechnya, Georgia, Syria, and earlier in Ukraine (starting in 2014), with disregard for international law and international condemnations. Grave violations of international humanitarian law and international human rights law committed during these armed conflicts have been widely

¹⁹ Official website of the President of the Russian Federation, “Conference of Russian ambassadors and permanent representatives”, 1 July 2014.

²⁰ Official website of the President of the Russian Federation, “Direct Line with Vladimir Putin”, 17 April 2014.

²¹ See CCPR/C/RUS/CO/7, 28 April 2015; United Nations, “UN Rights expert urges Russia to ensure independence of judiciary”, press release, 26 April 2013; confidential source on file.

²² United Nations, “Russia: UN rights office ‘deeply dismayed’ by Navalny sentencing”, press release, 3 February 2021.

²³ European Court of Human Rights, *Ecodefence and others v. Russia*, Application Nos. 9988/13 and 60 others, Judgement, 14 June 2022 (Final on 10 October 2022).

²⁴ CCPR/C/RUS/CO/8, 1 December 2022; Organization for Security and Co-operation in Europe (OSCE), Office for Democratic Institutions and Human Rights (ODIHR), Report on Russia’s Legal and Administrative Practice in light of its OSCE human Dimension Commitments, 22 September 2022; Council of Europe, Commissioner for Human Rights, “The Russian authorities should remedy the long-standing problem of undue restrictions to freedom of assembly, freedom of expression and press freedom”, 6 July 2020; Confidential source on file.

²⁵ United Nations, “*Human Rights Committee Considers Report of the Russian Federation in the Absence of a Delegation, Experts Raise Issues on the Persecution of Journalists and the Arrests of Protesters*”, meeting summaries, 20 October 2022; confidential source on file; see also, for example, Center for Information and Analysis (SOVA), *Misuse of Anti-Extremism in March 2022*, 29 April 2022.

documented. Accountability for these violations and crimes has been largely lacking, which has paved the way for further military interventions and atrocities.

47. Relating to the 1999 armed conflict in Chechnya, the then United Nations Commission of Human Rights expressed its grave concern, in particular at reports indicating “disproportionate and indiscriminate use of Russian military force, including attacks against civilians”, and underlined the “need to respect the principle of proportionality and to observe international human rights and humanitarian law in situations of conflict and in activities undertaken against terrorism”.²⁶ With regards to the 2008 armed conflict in Georgia, the European Court for Human Rights concluded that grave human rights violations had been committed in areas that fell under the jurisdiction of the Russian Federation.²⁷ States and regional organizations condemned the Russian Federation’s military intervention in Syria, in support of the Syrian Government, and notably the aerial bombardments in which scores of civilians were killed.²⁸ The Independent International Commission of Inquiry on the Syrian Arab Republic found that the Russian Federation’s aircrafts participated in indiscriminate attacks in civilian areas.²⁹

4. Russian armed forces and a culture of impunity and violence

48. As mentioned above, Russian armed forces and associated groups operate against a legacy of gross violations of human rights and related crimes, which were widespread³⁰, reproduced in all armed conflicts, tolerated – and at times even rewarded – by the hierarchy.³¹ In its resolution relating to the military intervention in Chechnya, the Commission on Human Rights requested the Russian Federation “to disseminate, and ensure that the military at all levels has a knowledge of, basic principles of human rights and international humanitarian law”.³² In 2022, the Human Rights Committee expressed concern about the “lack of investigation of alleged violations of the Covenant committed during the armed conflicts in which the State party has been involved” referring to past situations in Georgia and Ukraine.³³ Similarly, in 2015, the Committee had also expressed concern regarding the “limited progress in investigating serious past and ongoing human rights violations” referring to situations in Chechnya and Georgia.³⁴ In its 2021 ruling on a case pitting Georgia versus the Russian Federation, the European Court for Human Rights has concluded that “the investigations carried out by the Russian authorities were neither prompt nor effective nor independent”.³⁵ Regarding crimes committed in Georgia, the Prosecutor of the ICC had determined in 2015 that “no concrete and progressive steps have been taken in Russia to ascertain the criminal responsibility of those involved in the alleged crimes” related to particular potential cases.³⁶

49. In the absence of checks and balances at state level, these are also lacking among Russian military ranks. Many of the practices, which are legacies of the Soviet army, such as the perception of human losses as inevitable costs of the war and the attitude towards populations in occupied territories, have generally not been condemned within the armed forces.³⁷ Violence is also a reflection of the inner functioning of the army, where senior

²⁶ E/2000/23-E/CN.4/2000/167, p. 251.

²⁷ European Court of Human Rights, *Georgia v. Russia (II)*, Application No. 38263/08, Judgement, 21 January 2021.

²⁸ European Council, *Council conclusions on Syria*, 17 October 2016.

²⁹ A/HRC/43/57.

³⁰ As of August 2022, the European Court of Human Rights has delivered more than 290 judgments finding violations of the Convention in connection with the armed conflict in the Chechen Republic of the Russian Federation, see European Court of Human Rights, *Factsheet-Armed Conflicts*, August 2022.

³¹ “Putin awarded the brigade stationed in Bucha for “heroism,” *The Moscow Times*, 18 April 2022. (available only in Russian)

³² E/2000/23-E/CN.4/2000/167, p. 253, para 5.

³³ CCPR/C/RUS/CO/8, para. 6.

³⁴ CCPR/C/RUS/CO/7, para. 7.

³⁵ European Court of Human Rights, *Georgia v. Russia (II)*, Application No. 38263/08, Judgement, 21 January 2021.

³⁶ International Criminal Court, *Situation in Georgia*, “Request for authorisation of an investigation pursuant to article 15”, 16 October 2015, para. 312.

³⁷ Confidential source on file; also see: Denys Davydenko, Margaryta Khvostova, Dmytro Kryvosheiev, Olga Lymar, “Lessons for the West: Russia’s military failures in Ukraine”, European Council on Foreign Relations, 11 August 2022.

commanders routinely neglect or abuse junior ranks.³⁸ Further challenges are posed by the differential treatment and training of groups from different nationalities or ethnicities,³⁹ the hurried mobilisation of large numbers of ill-trained and ill-prepared troops, and the outsourcing of the war to additional groups and units, such as the military and security contractors of the Wagner Group, with its own history of crimes and violations, and affiliated armed groups of the former self-proclaimed ‘republics’ in the Donetsk and Luhansk regions.⁴⁰ These underlying factors are to be seen in conjunction with the propagation of a narrative regarding the presence and the role of neo-Nazis in various facets of Ukrainian society.⁴¹ Years of dehumanizing propaganda revolving around “cleansing Ukraine from Nazi elements” taught to Russian soldiers, have further contributed to aggressive behaviour and violence.⁴²

B. Brief overview of significant events and patterns of reported violations and abuses before 24 February 2022

50. The present armed conflict in Ukraine unfolds against a legacy of significant past events and reports of serious human rights violations and abuses, and violations of international humanitarian law. The Commission has reviewed such events and patterns of grave violations documented by the United Nations and other entities since 2013, to garner a better understanding of the current developments.

1. Maidan events and other protests

51. From 21 November 2013 to 22 February 2014, large-scale protests took place on the Independence Square (Maidan) square, in Kyiv; subsequently, riots and violent clashes occurred in other cities of Ukraine. Protests were initially triggered by the refusal of the then President of Ukraine Victor Yanukovich to sign a negotiated association agreement with the European Union, as he had opted instead for a further rapprochement with the Russian Federation. This was perceived as a major setback by pro-Europe Ukrainians, who favoured closer political and economic ties with the European Union.⁴³ The protests augmented in intensity and turned violent following the adoption by the parliament of a series of laws that limited freedom of peaceful assembly and expression, as well as the excessive use of force by security forces and the associated impunity.⁴⁴ Protesters called for the resignation of Mr. Yanukovich and his government, and for overall change.⁴⁵

52. In January and February 2014, at the height of the protests in Kyiv, violence and excessive use of force by the police and other law enforcement agencies resulted in the death of 108 protestors and other individuals and 13 law enforcement officers. On 2 May 2014 in Odesa, it was reported that deliberate inaction in the face of the violence, ill-preparedness or negligence on the part of various authorities contributed to the death of 48 people. There have

³⁸ See Dr. Jack Watling, “Just How Tall Are Russian Soldiers?”, Royal United Services Institute, 11 March 2022 and Steven Pifer, “The Russia-Ukraine war and its ramifications for Russia”, Brookings, 8 December 2022.

³⁹ See Paul Goble, “Potential Wildcard in Ukrainian Conflict: Russian Army Not Ethnically Homogeneous”, Eurasia Daily Monitor, Vol. 19, Issue 27, (Washington, D.C., The Jamestown Foundation, 1 March 2022).

⁴⁰ See The North Atlantic Treaty Organization (NATO) Parliamentary Assembly, Defence and Security Committee, General Report – Russian Military Modernisation: challenges ahead for NATO allies, 030 DSC 20 E rev. 2 fin, p.20; see also Margarete Klein, Nils Holger Schreiber, “The Attack on Ukraine and the Militarisation of Russian Foreign and Domestic Policy”, Stiftung Wissenschaft und Politik, 22 December 2022.

⁴¹ Official website of the President of the Russian Federation, “Article by Vladimir Putin “On the Historical Unity of Russians and Ukrainians”, 12 July 2021.

⁴² See Julia Friedrich, Niklas Masuhr, “Why Is Russia Being So Brutal in Ukraine?”, Global Public Policy Institute, 23 May 2022.

⁴³ OHCHR, Report on the human rights situation in Ukraine, 15 April 2014, para 2; ICC, The Office of the Prosecutor, Report on Preliminary Examination Activities (2015), 12 November 2015.

⁴⁴ OHCHR, Briefing note Accountability for Killings and Violent Deaths during the Maidan protests, 20 February 2019, para. 3.

⁴⁵ OHCHR, Report on the Human Rights Situation in Ukraine, 15 April 2014, para 15.

been reports of additional deaths, a large number of injuries, torture, ill-treatment, and enforced disappearances in the context of these events.⁴⁶

53. National investigations found that Mr. Yanukovich and nine senior officials “organized terrorist acts and attacks against protestors”.⁴⁷ In the majority of cases, violence had reportedly been instigated or perpetrated by law enforcement officials⁴⁸ and the so-called “titushky”, who worked closely with law enforcement agencies.⁴⁹ In a preliminary examination of the situation, the Office of the Prosecutor of the International Criminal Court stated that “the information available tends to indicate that ... the excessive use of force ... was actively promoted or encouraged by the Ukrainian authorities” and that perpetrators “targeted individuals on the basis of their actual or perceived political affiliation (namely their opposition to the Yanukovich Government)”.⁵⁰

54. Reports indicate that progress in prosecution and trial efforts regarding the Maidan events had been slow and limited.⁵¹ One particular obstacle was the fleeing of many of the suspects to the Russian Federation, or territories it has been occupying since 2014, where some of them reportedly obtained Russian citizenship and became unreachable for the Ukrainian justice authorities. Other challenges relate to the loss of essential evidence due to the failure of law enforcement authorities to collect or preserve it immediately after the events, the overall complexity of the cases, and the release of some of the alleged perpetrators from custody.⁵²

2. Occupation of the Autonomous Republic of Crimea and the city of Sevastopol

55. Starting 23 February 2014, after rejecting the ousting by the Ukrainian Parliament of the then President Yanukovich in Kyiv, pro-Russian groups in Crimea⁵³ blocked key infrastructure, airports, military installations, and took control of official buildings and strategic facilities, with the support of Russian armed forces.⁵⁴ In a meeting with heads of security agencies during the night of 22 and 23 February 2014, President Putin stated that he took the decision to “start working on the return of Crimea to the Russian Federation”.⁵⁵ On 16 March 2014, Russian authorities held a so-called referendum on the incorporation of Crimea and the city of Sevastopol into the Russian Federation and subsequently announced that a large majority voted in favour. On 18 March 2014, the Russian Federation and the

⁴⁶ OHCHR, Accountability for killings in Ukraine from January 2014 to May 2016, executive summary; ICC, The Office of the Prosecutor, Report on Preliminary Examination Activities (2015), 12 November 2015.

⁴⁷ OHCHR, Report on the human rights situation in Ukraine, 1 August 2021-31 January 2022, para.69; OHCHR, Briefing note Accountability for Killings and Violent Deaths during the Maidan protests, 20 February 2019, para. 38.

⁴⁸ OHCHR, Briefing note Accountability for Killings and Violent Deaths during the Maidan protests, 20 February 2019, paras. 27, 50-51, 55-56.

⁴⁹ “Titushky”, also referred to as an “anti-Maidan group”, is a term used to refer to armed civilians, sometimes wearing camouflage and masks, often with criminal records, who were recruited and equipped by law enforcement agencies to attack protestors. OHCHR, Report on the human rights situation in Ukraine, 15 May 2014, para 19; OHCHR, Briefing note Accountability for Killings and Violent Deaths during the Maidan protests, 20 February 2019, paras. 19 and 43; OSCE, Human Rights Assessment Mission in Ukraine, Human Rights and Minority Rights Situation, 12 May 2014, para 5.

⁵⁰ ICC, The Office of the Prosecutor, Report on Preliminary Examination Activities (2015), 12 November 2015, paras. 90 and 93.

⁵¹ OHCHR, Report on the human rights situation in Ukraine, 1 August 2021-31 January 2022.

⁵² OHCHR, Briefing note Accountability for Killings and Violent Deaths during the Maidan protests, 20 February 2019, paras. 6,7, and 29; OHCHR, “7 years with no answers. What is lacking in the investigations of the events in Odesa on 2 May 2014?”, press release, 30 April 2021.

⁵³ OHCHR, Report on the human rights situation in Ukraine, 15 April 2014, para. 6.

⁵⁴ OHCHR, Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol, Ukraine, 2017; United Nations, “Backing Ukraine’s territorial integrity, UN Assembly declares Crimea referendum invalid”, press release, 27 March 2014.

⁵⁵ Documentary, “Crimea. The path to motherland”, 2015. (available only in Russian)

“Republic of Crimea” signed a “treaty” regarding the “accession” of Crimea and the city of Sevastopol to the Russian Federation.⁵⁶

56. Following these events, an array of restrictions and violations and abuses of human rights and international humanitarian law have been reportedly committed by Russian authorities in Crimea. The recognition of Russian citizenship for those who had documented permanent residence in Crimea resulted in regressive effects on the enjoyment of human rights for those residents who refused to or were unable to acquire this citizenship because they did not fulfil the legal criteria, with reports of harassment and intimidation.⁵⁷ Russian courts issued hundreds of deportation orders to Ukrainian citizens residing in Crimea without Russian Federation passports.⁵⁸

57. Occupation authorities reportedly imposed Russian laws, including criminal law designed to fight terrorism, extremism and separatism,⁵⁹ in violation of international humanitarian law. Conscripted thousands of male Crimean residents into the Russian armed forces, transfers of detainees from Crimea to remote areas in the Russian Federation,⁶⁰ and large-scale expropriations without compensation had been documented.⁶¹ Russian became the predominant language of instruction, and restrictions in terms of the availability of Ukrainian language in schools in Crimea have been imposed.⁶²

58. In numerous cases, Russian authorities in Crimea reportedly persecuted, arrested, tortured, ill-treated, and detained individuals and charged them with terrorism, extremism, espionage, affiliation with groups banned in the Russian Federation, sabotage or “anti-Russian” activities, or involvement in the Crimean self-defense.⁶³ Courts penalized political dissent, which also appeared to be designed to serve as warnings to others. Victims of such violations were principally pro-Ukrainian activists and journalists and individuals belonging to minority groups, in particular Crimean Tatars. There were reports of violations of the freedom of expression and information, including harassment of media and blockage of Ukrainian internet sites, and violations of freedom of religion and belief, such as intimidation and harassment of religious communities.⁶⁴

3. Situation in Donetsk and Luhansk regions

59. In April 2014, pro-Russian armed groups started seizing and occupying public and administrative buildings in parts of the Donetsk and Luhansk regions, in eastern Ukraine. On 7 and 27 April 2014, respectively, these groups announced the establishment of the so-called “Donetsk People’s Republic” and “Luhansk People’s Republic”. This went along with a reported inflow of foreign fighters and heavy weaponry from the Russian Federation.⁶⁵

⁵⁶ A/RES/68/262; OHCHR, Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol (Ukraine), 2017, paras. 3-5 and 20-26; see also Official website of the President of the Russian Federation, “Agreement on the accession of the Republic of Crimea to the Russian Federation signed”, 18 March 2014.

⁵⁷ OHCHR, Report on the human rights situation in Ukraine, 15 May 2014, para. 129; A/HRC/47/58, para. 41.

⁵⁸ A/74/276, para. 61; A/HRC/39/CRP.4, paras 76 and 77; A/HRC/44/21, paras. 42 and 43.

⁵⁹ OHCHR, Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol, Ukraine, 2017, para. 6-8; A/74/276, para 8.

⁶⁰ A/75/334; A/76/260.

⁶¹ OHCHR, Situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol, Ukraine, 2017, para.16.

⁶² A/74/276, para. 50; International Court of Justice (ICJ), “The Court finds that Russia must refrain from imposing limitations on the ability of the Crimean Tatar community to conserve its representative institutions, including the Mejlis, and ensure the availability of education in the Ukrainian language”, press release, 19 April 2017.

⁶³ A/74/276, paras. 19-22.

⁶⁴ OHCHR, Report on the human rights situation in Ukraine, 15 May 2014, par. 146; OHCHR, Report on the situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol, Ukraine 13 September 2017 to 30 June 2018; OHCHR, Civic space and fundamental freedoms in Ukraine, 1 November 2019-31 October 2021; OHCHR, Report on the human rights situation in Ukraine, 1 August 2021-31 January 2022.

⁶⁵ OHCHR, Report on the human rights situation in Ukraine, 15 May 2014, paras. 90-91; OHCHR, Report on the human rights situation in Ukraine, 16 February-15 May 2017.

Starting April 2014, the Government of Ukraine launched an anti-terrorist operation in the affected regions.⁶⁶

60. Consequent to these developments, large-scale violations and abuses of human rights and of international humanitarian law were documented in the eastern regions of Ukraine, both in areas controlled by Russian authorities and in territories under Ukrainian Government control. Many of those occurred in the context of armed hostilities. The majority of civilian casualties were reportedly caused by the indiscriminate shelling of populated areas. Other violations included killings of civilians who were not taking part in hostilities, enforced disappearances, dozens of executions of individuals *hors de combat*, and thousands of cases of arbitrary deprivation of liberty coupled with inhuman conditions of detention, torture and ill-treatment, sometimes leading to death.⁶⁷

61. Concerns regarding accountability for violations and crimes in the context of the armed conflict in the east of the country have been reported, both in relation to human rights violations perpetrated by Government forces and human rights abuses perpetrated by armed groups.⁶⁸ According to reports, accountability was particularly lacking for cases of killings and alleged summary executions committed in the conflict zone in eastern Ukraine, and each party to the armed conflict mainly focused on documenting violations committed by the other party. This was compounded with difficulties related to the lack of evidence in specific cases and the identification of the alleged perpetrators.⁶⁹

62. In the former so-called Donetsk and Luhansk People's Republics, parallel law enforcement entities and structures have reportedly considered some cases and held 'trials' in conflict-related cases. However, detailed information on this matter is not available.⁷⁰ Among concerns expressed regarding these trials were the inherent lack of independence and impartiality of 'tribunals', the bias of the judges,⁷¹ the reliance on confessions obtained through torture and coercion, as well as a series of other violations of fair trial rights.⁷² Some of the investigations mainly focused on acts committed by armed groups which had been disbanded or otherwise re-organized.⁷³

63. Ukrainian institutions have reportedly carried out some investigations and trials regarding crimes allegedly perpetrated by Ukrainian military forces and security services in conflict-related cases. However, progress has been reportedly slow. Challenges have included protracted investigations and trials, an insufficient number of judges, alleged interference with the independence of judges, including pressuring and harassing judges handling such cases, forced confessions, and the pronouncing of verdicts in absentia.⁷⁴

⁶⁶ The Anti-Terrorist Operation was launched by the Government of Ukraine in 2014, to operate in the eastern part of the country, and was run till 2018. In 2018, the Anti-Terrorist Operation was ended and operation the Joint Forces Operation was launched in its place.

⁶⁷ OHCHR, Report on the human rights situation in Ukraine, 15 May 2014, paras. 94, 101, and 103; OHCHR, Accountability for killings in Ukraine, January 2014-May 2016; OHCHR, Report on the human rights situation in Ukraine, 16 February-15 May 2017; OHCHR, Report on the human rights situation in Ukraine, 1 August 2021-31 January 2022.

⁶⁸ OHCHR, Report on the Human Rights Situation in Ukraine, 16 August – 15 November 2017, para. 67; OHCHR, Report on the Human Rights Situation in Ukraine, 1 August 2020 – 31 January 2021, para. 59.

⁶⁹ OHCHR, Accountability for killings in Ukraine, January 2014-May 2016, executive summary and para. 40; OHCHR, Report on the human rights situation in Ukraine, 16 February-15 May 2017; OHCHR, Report on the human rights situation in Ukraine, 1 August 2021-31 January 2022; A/HRC/32/39/Add.1, paras. 21 and 61.

⁷⁰ OHCHR, Report on the human rights situation in Ukraine 16 November 2017 to 15 February 2018, para. 82; OHCHR, Report on the human rights situation in Ukraine 16 May to 15 August 2018, para. 78; OHCHR, Accountability for killings in Ukraine, January 2014-May 2016, para. 46.

⁷¹ OHCHR, Report on the human rights situation in Ukraine 16 August to 15 November 2017, para. 81.

⁷² OHCHR, Report on the Human Rights Situation in Ukraine, 16 November 2019 – 15 February 2020, paras. 88-89.

⁷³ OHCHR, Accountability for killings in Ukraine, January 2014-May 2016, para. 65.

⁷⁴ OHCHR, Accountability for killings in Ukraine, January 2014-May 2016, para. 46; OHCHR, Human Rights in the Administration of Justice in conflict-related criminal cases in Ukraine April 2014 – April 2020, paras. 8, 49, 72, and 97; OHCHR, Report on the Human Rights Situation in Ukraine, 16 February – 15 May 2019, paras. 61 and 63; OHCHR, Report on the Human Rights Situation in

64. Civic space has been highly restricted in the areas controlled by Russian authorities in eastern Ukraine.⁷⁵ This was coupled with misinformation and hate propaganda against Ukrainian Government institutions.⁷⁶ Reports documented media channels broadcasting in Ukrainian being shut-off by the self-proclaimed authorities and attacks by armed groups on local media offices.⁷⁷ Armed groups reportedly instilled a climate of fear, with abductions, attacks, persecutions, and unlawful detentions, targeting journalists, bloggers and other media personnel expressing pro-Ukrainian views, with an overall lack of accountability.⁷⁸ Ill-treatment and sexual harassment in detention were also recorded.⁷⁹

4. Incidents in territory under Ukrainian Government control

65. In this context, in other regions of Ukraine, some violations of the rights to freedom of opinion and freedom of expression, freedom of peaceful assembly and association, freedom of religion or belief and the right to non-discrimination were also documented concerning the Ukrainian authorities.⁸⁰ Attacks against journalists, media professionals, civil society activists, or those representing alternative social or political opinion have become increasingly visible, particularly in 2018 - 2019.⁸¹ Some journalists or media broadcasters were attacked due to their alleged 'separatist' views, for criticising local authorities or law enforcement officials, or for being "pro-Russian".⁸² In 2021, it was reported that several decisions of the National Security and Defense Council of Ukraine led to the closure of some media outlets and television channels, which possibly amounted to undue restrictions on the right to freedom of expression.⁸³ An increase in incidents targeting political parties belonging to the opposition was also documented.⁸⁴

C. Events since 24 February 2022

1. Military and security developments

66. On 24 February 2022, Russian Federation President Vladimir Putin declared that he had decided to conduct a "special military operation" in Ukraine to seek its "demilitarization and de-Nazification". President Putin referred to the operation as an act of "self-defence", which, he stated, is directed against "those who have taken Ukraine hostage and are trying to

Ukraine, 16 February – 31 July 2020, paras. 69 and 72; OHCHR, Report on the Human Rights Situation in Ukraine, 1 August 2020 – 31 January 2021, paras. 58-59; OHCHR, Report on the Human Rights Situation in Ukraine, 1 August 2021 – 31 January 2022, para. 60.

⁷⁵ OHCHR, Report on the human rights situation in Ukraine, 16 August to 15 November 2018, para. 78, para. 79.

⁷⁶ OHCHR, Report on the human rights situation in Ukraine, 15 June 2014, paras. 233-235; OHCHR, Report on the human rights situation in Ukraine, 15 July 2014, para. 183; OHCHR, Report on the human rights situation in Ukraine, 1 December 2014 to 15 February 2015, para. 58.

⁷⁷ OHCHR, Report on the human rights situation in Ukraine 15 June 2014, paras. 231 and 232.

⁷⁸ OHCHR, Report on the human rights situation in Ukraine, 15 May 2014; OHCHR, Civic space and fundamental freedoms in Ukraine, 1 November 2019-31 October 2021; OHCHR, Report on the human rights situation in Ukraine, 1 August 2021-31 January 2022; Human Rights Committee, Concluding observations on the seventh periodic report of the Russian Federation, 28 April 2015.

⁷⁹ OHCHR, Report on the human rights situation in Ukraine, 15 May 2014, para. 106; OHCHR, Report on the human rights situation in Ukraine, 15 June 2014, para. 225; OHCHR, Report on the human rights situation in Ukraine 1 December 2014 to 15 February 2015, para. 58.

⁸⁰ For the purposes of the present report "Ukrainian authorities" will refer to Ukrainian civilian and military authorities, as well as all associated persons and groups. See OHCHR, Report on the human rights situation in Ukraine, 16 November 2018 to 15 February 2019, para.79.

⁸¹ OHCHR, Report on the human rights situation in Ukraine 16 August to 15 November 2018, para. 72 and 76; OHCHR, Report on the human rights situation in Ukraine, 16 November 2018 to 15 February 2019, para.79.

⁸² OHCHR, Report on the human rights situation in Ukraine 1 December 2014 to 15 February 2015, paras. 59 and 60; OHCHR, Report on the human rights situation in Ukraine 16 August to 15 November 2018, paras. 73 and 74.

⁸³ OHCHR, Report on the human rights situation in Ukraine, 1 August 2021-31 January 2022, paras. 75-78.

⁸⁴ OHCHR, Civic space and fundamental freedoms in Ukraine, 1 November 2019-31 October 2021, para 14.

use it against our country and its people”.⁸⁵ On the same day, Russian armed forces crossed various border points into Ukraine, and launched attacks by land, air, and sea. During the preceding months, the Russian Federation had amassed tens of thousands of troops and heavy weaponry at Ukraine’s borders, including in Belarus.⁸⁶

67. Consequently, Ukrainian President Volodymyr Zelenskyy introduced martial law, in virtue of which authorities can impose a number of restrictions, including curfews, expropriations, verification measures, restrict the freedom of movement, prohibit rallies, and ban activities of political parties.⁸⁷ Among other measures, a travel ban for most men of fighting age⁸⁸ and a general mobilisation have been announced.⁸⁹ The Ukrainian Parliament regularly extended the bills on martial law and general mobilisation.

68. Since the outset and throughout the armed conflict, military strikes using explosive weapons with wide area effects have been carried out in major Ukrainian cities with significant populations, including in areas situated far from frontlines. They have caused scores of civilian deaths and casualties, and large-scale destruction.⁹⁰ Humanitarian relief could hardly reach affected areas during intense periods of fighting or occupation, while civilians could not satisfy basic needs.⁹¹

a) Offensive towards Kyiv, sieges and fighting in and around major cities

69. In a first phase of the armed conflict, on the northern front, Russian armed forces advanced towards Kyiv from several directions, including from within Belarus, conducted strikes on the capital, but fell short of capturing it.⁹² Russian troops took the Hostomel airport and set up positions in towns and settlements to the north and west of the city. On the way to Kyiv, the Russian armed forces surrounded Chernihiv, which became the scene of heavy airstrikes and artillery fire.⁹³ On 25 February 2022, a representative of the Russian Federation’ Ministry of Defence declared that its armed forces had “blocked” the city.⁹⁴

70. By the end of March 2022, the offensive towards Kyiv had stalled. After Ukrainian armed forces regained control of areas north of Kyiv and Russian troops withdrew from localities they had temporarily occupied, allegations of grave human rights and international humanitarian law violations and large-scale destruction arose. Dozens of bodies of dead civilians were found in Bucha, in the Kyiv region, and other settlements.⁹⁵

71. In north-eastern Ukraine, Kharkiv and Sumy cities quickly became the scenes of heavy urban warfare. Shelling pounded residential and other key buildings and led to large-

⁸⁵ S/2022/154, Annex.

⁸⁶ United Nations, Situation along Russian Federation-Ukraine Border Can Only Be Resolved through Diplomacy, Political Affairs Chief Tells Security Council, SC/14783, 31 January 2022; OHCHR, “High Commissioner for Human Rights Calls on the Russian Federation to Immediately Withdraw All Troops from Ukraine as the Human Rights Council Hears an Update on the Situation in Ukraine”, press release, 30 March 2022.

⁸⁷ Official website of the President of Ukraine, “President signed a decree on the imposition of martial law in Ukraine, the Verkhovna Rada approved it.”, 24 February 2022. See also OHCHR, Situation of Human Rights in Ukraine in the context of the armed attack by the Russian federation, 24 February – 15 May 2022, para. 17.

⁸⁸ Legislative and administrative provisions enumerate certain categories of persons who are exempt from military service during martial law and are allowed to cross state borders.

⁸⁹ Decree No. 69/2022, approved by the Parliament through Law No. 2105, on 3 March 2022.

⁹⁰ See United Nations, “Ukraine war now ‘apocalyptic’ humanitarians warn, in call for safe access”, press release, 8 March 2022; United Nations, “Ukraine: Cycle of death, destruction, dislocation, and disruption ‘must stop’”, press release, 28 June 2022.

⁹¹ See United Nations, “Aid relief reaches Ukraine towns and cities reclaimed from Russian control”, press release, 7 October 2022.

⁹² See United Nations, “Terrified families seek shelter underground in Ukraine capital”, press release, 25 February 2022.

⁹³ See United Nations, “Ukraine: Hundreds more reach safety after fleeing besieged Mariupol”, press release, 6 April 2022.

⁹⁴ See TASS, “Ministry of Defence of the Russian Federation announced that units of the Russian armed forces have ‘completed the blockade of Chernihiv’”, 25 February 2022. (available in Russian only)

⁹⁵ See United Nations, “Bucha killings raise ‘serious’ questions about possible war crimes: Bachelet”, press release, 4 April 2022.

scale destruction. While fighting in and around Kharkiv continued, by April 2022, Russian armed forces withdrew from the area around Sumy city.

72. Starting on 28 February 2022, Russian armed forces attempted to capture the city of Izyum, in the Kharkiv region. On 24 March 2022, the Russian Federation Ministry of Defence declared that Izyum was under the full control of its forces.⁹⁶ However, combat continued and on 1 April 2022, Ukrainian officials conceded that Russian armed forces had acquired control of the city.⁹⁷

73. In south-eastern Ukraine, as of 24 February 2022, Russian armed forces with Russian-affiliated armed groups from the former self-proclaimed Donetsk People's Republic, launched attacks on the city of Mariupol from within Russian-controlled areas in the Donetsk region and from occupied Crimea. They laid siege to the city and gradually gained control of swaths of territory, as attacks intensified, with unremitting air raids and artillery bombardments, leading to large-scale destruction. Heavy fighting hampered evacuation efforts and curtailed access to basic necessities for civilians.⁹⁸

74. In the south, the city of Kherson became the first major Ukrainian city to fall on 2 March 2022. Russian armed forces gradually occupied surrounding localities. In neighbouring Zaporizhzhia region, they seized Melitopol, Berdiansk, and Enerhodar, where the Zaporizhzhia Nuclear Power Plant is situated.⁹⁹

b) **Fighting in eastern Ukraine and seizure of Mariupol**

75. A second phase of the armed conflict was initiated on 18 April 2022, with the launch of the "Battle for Donbas", which, according to Sergei Lavrov, Minister of Foreign Affairs of the Russian Federation, was aimed at the "full liberation" of the then so-called Donetsk and Luhansk People's Republics.¹⁰⁰ The offensive of the Russian armed forces further concentrated on these regions and other eastern areas, with the support of affiliated armed groups. Weeks-long fighting revolved in and around Sievierodonetsk and Lysychansk cities, until their capture by Russian armed forces in June and July 2022 respectively, as well as around Sloviansk, in the Donetsk region.¹⁰¹

76. The siege of Mariupol continued until 20 May 2022, when the Russian Federation declared that it had gained full control of the city.¹⁰² Mariupol became one of the worst-hit areas. Ukrainian authorities estimated that thousands of civilians had been killed¹⁰³ and that a large number of the city's residential buildings, houses, and civilian facilities had been destroyed, while many other buildings had been damaged beyond repair.¹⁰⁴ The full extent of casualties and of the damage to civilian objects has been impossible to assess at this time.

⁹⁶ See RIA Novosti, "The Russian military took control of the city of Izyum in the Kharkiv region", 24 March 2022. (available only in Russian)

⁹⁷ See General Staff of the Armed Forces of Ukraine, "Russians control Izyum", 1 April 2022.

⁹⁸ See OHCHR, "High Commissioner updates the Human Rights Council on Mariupol, Ukraine", 16 June 2022; United Nations, "'Tomorrow could be too late': The UN calls for an immediate halt to fighting in Mariupol", press release, Ukraine, 24 April 2022.

⁹⁹ United Nations, "Bachelet leads calls for ceasefire in Ukraine during urgent debate at UN rights council", press release, 3 March 2022; United Nations, "Security Council debates Russian strike on Ukraine nuclear power plant", press release, 4 March 2022; Interfax, "The Ministry of Defence of the Russian Federation announced full control over Melitopol and Kherson", 14 March 2022. (available only in Russian),

¹⁰⁰ "Lavrov announced the beginning of the next phase of the special operation in Ukraine", *RBC TV*, 19 April 2022. (available only in Russian),

¹⁰¹ See, "Defence Minister Sergei Shoigu reported to the president on the liberation of the LPR", *Rossiyskaia Gazeta*, 3 July 2022. (available only in Russian)

¹⁰² Ministry of Defence of the Russian Federation, "Azovstal plant in Mariupol is fully liberated", 20 May 2022.

¹⁰³ "Operative and humanitarian situation in Mariupol", *Ukrinform TV*, June 2022.

¹⁰⁴ See OHCHR, "High Commissioner updates the Human Rights Council on Mariupol", Ukraine, 16 June 2022.

c) **Ukrainian armed forces counter-offensive, strikes on critical infrastructure**

77. During a third phase of the armed conflict, a change in the battlefield dynamics could be noted. Ukrainian forces led counter-offensive operations in Kharkiv, Donetsk, Luhansk, and Kherson regions, and retook hundreds of settlements in the northeast, east, and south.¹⁰⁵

78. On 21 September 2022, President Putin signed a decree announcing a partial military mobilization, with immediate effect.¹⁰⁶ Prior to this announcement, the Russian Parliament amended the law on military service to strengthen the punishment for avoidance of military service. The Parliament also adopted a law allowing for the mobilization of persons convicted of serious crimes.¹⁰⁷ On 28 October 2022, Russian Defence Minister Sergei Shoigu announced that the task to mobilize 300,000 men had been completed.¹⁰⁸

79. On 19 October 2022, President Putin adopted a decree imposing martial law in Russian occupied regions of Donetsk, Kherson, Luhansk, and Zaporizhzhia, in Ukraine. The decree foresaw the possibility of implementing a range of measures, such as curfews, property seizures, internment, and restrictions on freedom of movement, freedom of association, and activities of political parties and other public associations.¹⁰⁹

80. Regarding battlefield developments, in September 2022, Ukrainian armed forces continued the counter-offensive they had started in the Kharkiv region in May 2022. Populations from recovered cities and settlements, as well as Ukrainian authorities, reported large-scale atrocities, such as unlawful killings, summary executions, torture, sexual violence, and unlawful confinement, during occupation.¹¹⁰

81. Hostilities continued in the Donetsk and Luhansk regions. In October 2022, Ukrainian armed forces recovered the control of the city of Lyman and of other villages, in the Donetsk region.¹¹¹ Heavy fighting revolved near Bakhmut, Avdiivka, and Vuhledar. In Luhansk region, combat took place in the vicinity of Svatove and Kreminna.

82. On 10 October 2022, two days after an explosion caused damage to the Crimean Bridge connecting the Russian Federation with Crimea, the Russian Federation launched a wave of missile and uncrewed aerial vehicles attacks targeting Ukraine's critical infrastructure.¹¹² President Putin declared that the Russian Federation launched "a massive strike" on "energy, military command and communications facilities of Ukraine".¹¹³ During the subsequent weeks and months, further similarly intense and large-scale attacks with missiles and unmanned aerial vehicles were carried out.¹¹⁴ The attacks affected numerous regions of Ukraine, targeted energy-related infrastructure, and reportedly hit residential

¹⁰⁵ Official website of the President of Ukraine, "Address by the President of Ukraine - Since the beginning of October, more than half a thousand square kilometres have been liberated from the Russian occupiers in the Kherson region alone", 6 October 2022.

¹⁰⁶ Official Website of the President of the Russian Federation, "Executive Order on partial mobilisation in the Russian Federation", 21 September 2022.

¹⁰⁷ Interfax, "The Duma passed a law allowing the mobilization of those convicted of serious crimes", 27 October 2022. (available only in Russian),

¹⁰⁸ Ministry of Defence of the Russian Federation, "Minister of Defence reports on completion of partial mobilisation", 28 October 2022.

¹⁰⁹ Official Website of the President of the Russian Federation, "Decree on the introduction of martial law in the territories of the DPR, LPR, Zaporozhye and Kherson regions", 19 October 2022. (available only in Russian)

¹¹⁰ See United Nations, "Ukraine: UN rights office set to probe 'mass graves' in newly liberated east", press release, 16 September 2022; United Nations, "Ukraine's suffering must not become new normal, declares UN rights chief", press release, 7 December 2022.

¹¹¹ Official website of the President of Ukraine, "Address of President of Ukraine - During this week more Ukrainian flags appeared in Donbas, there will be even more", 1 October 2022; Ria News, "The Ministry of Defence announced the withdrawal of troops from Krasny Liman", 1 October 2022. (available only in Russian)

¹¹² OHCHR, "Ukraine: Attack on civilians and infrastructure", press release, 11 October 2022.

¹¹³ Interfax, "Putin commented on massive strikes on targets in Ukraine", 10 October 2022. (available only in Russian)

¹¹⁴ United Nations, "Ukraine war: Risks of spillover 'remain all too real', Security Council hears", press release, 16 November 2022.

buildings, education and healthcare facilities,¹¹⁵ and killed and injured civilians.¹¹⁶ As a consequence, millions were left without heating, electricity, and water for certain periods of time, during cold months.¹¹⁷

83. In the south, missile strikes hit the cities of Mykolaiv and Zaporizhzhia.¹¹⁸ Military activities and shelling repeatedly occurred at the Zaporizhzhia Nuclear Power Plant.¹¹⁹ In November 2022, Ukrainian armed forces retook control of the Kherson city area, while Russian armed forces gradually withdrew. Ukrainian authorities have found evidence of alleged human rights violations and crimes committed while the area was under occupation, including summary executions, torture, sexual violence, and unlawful confinement.

d) Nuclear risks

84. The armed conflict has triggered serious concerns for the safety of two of Ukraine's nuclear plants. In March 2022, Russian armed forces took control of the Chernobyl Nuclear Power Plant, the surrounding exclusion zone, and of the Zaporizhzhia Nuclear Power Plant - Europe's largest such facility.¹²⁰ The deployment of military personnel and assets at those facilities sparked fears of a major nuclear accident.¹²¹ At the end of March 2022, Russian armed forces returned the Chernobyl Nuclear Power Plant to Ukrainian personnel,¹²² but remained in control of the Zaporizhzhia Nuclear Power Plant. The International Atomic Energy Agency (IAEA) highlighted the risks of a nuclear disaster, after repeated incidents of shelling and explosions at the site of the plant.¹²³ The IAEA, other United Nations bodies, and States repeatedly called for the establishment of a nuclear security protection zone around the facility and for the complete halt of all military activity in the area.¹²⁴

85. In October 2022, President Putin signed a decree instructing to take Zaporizhzhia Nuclear Power Plant facilities into Russian state property.¹²⁵ The Russian Federation established a state organization for the operation of the plant and demanded that Ukrainian staff running the facility sign new contracts with this new entity. The IAEA has emphasised that the plant is Ukrainian and has highlighted the stressful and difficult working conditions for the Ukrainian staff operating it, with the potential of a negative impact on nuclear safety.¹²⁶

¹¹⁵ See Ukrinform, "Missile strike on Kyiv: 45 houses, cultural and educational institutions damaged", 10 October 2022 (available only in Ukrainian); Ukrinform, "Due to Russian shelling, power supply was partially disrupted in 15 regions", 10 October 2022. (available only in Ukrainian)

¹¹⁶ OHCHR, Report on the Human Rights Situation in Ukraine, 1 August 2022 – 31 January 2023; S/PV.9202, p. 2.

¹¹⁷ S/PV.9202; United Nations, "Ukraine: Russian large-scale strikes are 'unacceptable escalation', says Guterres", press release, 10 October 2022.

¹¹⁸ United Nations, "Ukraine: Heading into winter without heat or water, needs in Mykolaiv are 'critical'", press release, 28 November 2022.

¹¹⁹ S/PV.9202.

¹²⁰ United Nations, "Russian military control of Ukraine nuclear plants cause for grave concern, nuclear energy agency warns" press release, 6 March 2022.

¹²¹ United Nations, "Overnight blasts near Ukraine nuclear plant are 'playing with fire!' – UN nuclear chief", press release, 20 November 2022.

¹²² International Atomic Energy Agency, *Update 38 – IAEA Director General Statement on Situation in Ukraine*, 31 March 2022.

¹²³ United Nations, "Ukraine: Renewed shelling at Zaporizhzhia plant underlines nuclear accident risk", press release, 28 August 2022.

¹²⁴ See Statement of the G7 Foreign Ministers in support of the IAEA's efforts to promote Nuclear Safety and Security at the Zaporizhzhia Nuclear Power Plant in Ukraine, 10 August 2022; Delegation of the European Union to the International Organizations in Vienna, Ukraine-joint statement on the situation at the Zaporizhzhia Nuclear Power Plant, 12 August 2022.

¹²⁵ TASS, "Putin instructed to take the facilities of the Zaporizhzhia nuclear power plant into federal ownership", 5 October 2022 (available in Russian only); see also Russian Federation, Decree No. 711 of the President of the Russian Federation On the peculiarities of legal regulation in the field of the use of nuclear energy in the territory of the Zaporozhye region, 5 October 2022.

¹²⁶ International Atomic Energy Agency, *Update 122 – IAEA Director General Statement on Situation in Ukraine*, 31 October 2022.

e) **Threats and allegations of use of weapons of mass destruction**

86. Since the outset of the armed conflict, fears loomed regarding the potential of a spread or escalation.¹²⁷ On 27 February 2022, referring to sanctions targeting the Russian Federation, President Putin ordered the deterrent forces to be on high combat alert.¹²⁸ On 22 September 2022, referring to a threat coming from “the West”, he warned that the Russian Federation would “use all means at its disposal to defend Russia”, including nuclear weapons.¹²⁹ The United Nations, intergovernmental and regional organizations, and States denounced the “unacceptable nuclear rhetoric”.¹³⁰

87. Russian Federation representatives accused Ukraine of developing nuclear or biological weapons. During Security Council meetings in March, May, and October 2022, the Russian Federation claimed that biological weapons programmes existed in Ukraine. In October 2022, the Russian Federation also alleged that Ukraine was preparing to detonate a “dirty bomb” on its territory. Member States rejected these claims as unsubstantiated.¹³¹

f) **Support from Belarus**

88. During the months prior to 24 February 2022, the Russian Federation amassed troops and military assets in Belarus. Russian armed forces launched hostilities on the “northern front” in Ukraine from within Belarus.¹³² In late February 2022, the Government of Belarus warned that sanctions against the Russian Federation would “instigate the third world war”.¹³³ It has been reported that Belarus, among other things, allowed the Russian Federation to fire missiles from its territory, enabled transportation of Russian military personnel, heavy weapons, and military transporters, allowed Russian military aircraft to fly over its airspace into Ukraine, providing refuelling points, and allowed it to use its infrastructure, such as airfields, fueling stations, and storage facilities.¹³⁴ States and intergovernmental organizations condemned this support and imposed sanctions against the Belarusian regime.¹³⁵ In October 2022, Belarusian President Lukashenko claimed that following an “aggravation of tensions” on the Belarus-Ukraine border, Belarus and the Russian Federation would deploy a joint military group.¹³⁶

2. **Political context**

a) **Initial international and regional responses**

89. International organizations and forums, regional bodies, and States condemned in the strongest terms the military invasion, called for its cessation, and imposed far-reaching economic sanctions and other measures.

90. On 25 February 2022, a draft resolution demanding that the Russian Federation cease its use of force against Ukraine was vetoed by the Russian Federation at the United Nations Security Council.¹³⁷ Consequently, on 27 February 2022, “[t]aking into account that the lack

¹²⁷ United Nations, “Ukraine war: Risks of spillover ‘remain all too real’, Security Council hears”, press release, 16 November 2022.

¹²⁸ Official website of the President of the Russian Federation, “Meeting with Sergei Shoigu and Valery Gerasimov”, 27 February 2022.

¹²⁹ Official website of the President of the Russian Federation, “Address by the President of the Russian Federation”, 21 September 2022.

¹³⁰ S/PV.9135; The North Atlantic Treaty Organization, Press conference by NATO Secretary General Jens Stoltenberg following the meetings of NATO Defence Ministers, 13 October 2022.

¹³¹ See S/PV.8999, S/PV.9033, S/PV.9171.

¹³² European Council, Council of the European Union (EU), Belarus' role in the Russian military aggression of Ukraine: Council imposes sanctions on additional 22 individuals and further restrictions on trade, 2 March 2022.

¹³³ BELTA News, “Lukashenka on sanctions pressure on Russia: pushing for a third world war”, 27 February 2022. (available only in Russian)

¹³⁴ European Council, Belarus' role in the Russian military aggression of Ukraine. Council imposes sanctions on additional 22 individuals and further restrictions on trade, 2 March 2022.

¹³⁵ European Council, EU restrictive measures against Belarus; EU Sanctions Map, Belarus.

¹³⁶ BELTA News, “Lukashenka warned Ukraine against a possible strike on Belarus”, 10 October 2022. (available only in Russian)

¹³⁷ S/2022/155, S/PV.8979.

of unanimity of its permanent members”, the Security Council referred the matter to the United Nations General Assembly.¹³⁸ On 2 March 2022, during an emergency special session, the General Assembly adopted the resolution “aggression against Ukraine”, which demanded “that the Russian Federation immediately cease its use of force against Ukraine” and “immediately, completely and unconditionally withdraw all of its military forces from the territory of Ukraine”.¹³⁹ On 4 March 2022, in its resolution on the “Situation of human rights in Ukraine stemming from the Russian aggression”, the United Nations Human Rights Council stressed “the urgent need for the Russian Federation to immediately cease its military hostilities against Ukraine”.¹⁴⁰ On 16 March 2022, in proceedings instituted by Ukraine, the International Court of Justice ordered the Russian Federation to “suspend the military operations”.¹⁴¹ Amid widespread condemnation following atrocities uncovered in Bucha, the General Assembly adopted a resolution calling for the Russian Federation to be suspended from the Human Rights Council.¹⁴²

91. On a regional level, on 24 February 2022, the European Council of the European Union condemned in the strongest possible terms the Russian Federation’s unprecedented military aggression against Ukraine. The European Union has adopted successive packages of sanctions targeting the Russian Federation and Belarus.¹⁴³ Also on 24 February 2022, Organization for Security and Co-operation in Europe parliamentarians referred to “the Russian Federation’s military operation in Ukraine” as “indefensible” and a “gross violation of international law”, and urged an immediate end to the hostilities.¹⁴⁴ On 3 March 2022, 45 States of the Organization for Security and Co-operation in Europe invoked the Moscow Mechanism to “*address the human rights and humanitarian impacts of the Russian Federation’s invasion and acts of war, supported by Belarus, on the people of Ukraine*”.¹⁴⁵ On 16 March 2022, the Committee of Ministers of the Council of Europe adopted a decision by which the Russian Federation ceased to be a member of the Council of Europe.¹⁴⁶

b) Negotiation attempts

92. Attempts to engage the Russian Federation and Ukraine in meaningful negotiations have not yielded success.¹⁴⁷ Both State’s preconditions for negotiations have evolved over time. They have refused to negotiate as long as the current presidents are in power.¹⁴⁸ Russian officials have declared that the “special military operation” will continue until initial goals are met¹⁴⁹, one of them being “to remove” the Kyiv regime.¹⁵⁰ Ukrainian officials have expressed no confidence that the Russian regime will keep its promises, emphasizing that

¹³⁸ S/RES/2623(2022).

¹³⁹ A/RES/ES-11/1.

¹⁴⁰ A/HRC/RES/49/1.

¹⁴¹ *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation), Provisional Measures, Order of 16 March 2022, I.C.J. Reports 2022*, p. 211.

¹⁴² A/RES/ES-11/3.

¹⁴³ European Council, Special meeting of the European Council, 24 February 2022.

¹⁴⁴ Organization for Security and Co-operation in Europe, “OSCE parliamentarians condemn Russian military action in Ukraine, call for de-escalation at Vienna Winter Meeting”, press release, 24 February 2022.

¹⁴⁵ Organization for Security and Co-operation in Europe, “Ukraine appoints mission of experts following invocation of the OSCE’s Moscow Mechanism”, press release, 15 March 2022.

¹⁴⁶ Council of Europe, Committee of Ministers, Decision, Consequences of the aggression of the Russian Federation against Ukraine (Procedure under Article 8 of the Statute), CM/Del/Dec(2022)1428ter/2.3, 16 March 2022.

¹⁴⁷ United Nations, “Ukraine invasion: Guterres appeals for ‘immediate humanitarian ceasefire’”, press release, 28 March 2022.

¹⁴⁸ See official website of the President of Ukraine, “Address by President Zelenskyy - We are taking our decisive step by signing Ukraine’s application for accelerated accession to NATO”, 30 September 2022; RIA Novosti, “The Kremlin commented on Kyiv’s refusal to dialogue with Moscow”, 4 October 2022. (available only in Russian)

¹⁴⁹ See Interfax, “Peskov said that negotiations with Zelensky can only go on about Kyiv’s fulfilment of Moscow’s conditions”, 4 September 2022 (available only in Russian); Interfax, “Peskov, when asked about Putin’s confidence in the military command, said that the NWO would continue”, 12 September 2022. (available only in Russian).

¹⁵⁰ Euronews, “Moscow’s goal is to remove ‘unacceptable’ Kyiv regime, says Russia’s top diplomat”, 26 July 2022.

one key prerequisite for negotiations is the withdrawal of the Russian Federation from Ukrainian territories.¹⁵¹ After the Russian Federation's "annexation" of four partially occupied Ukrainian regions, President Zelenskyy signed a decree on the "impossibility of negotiations with Russian President Putin".¹⁵² President Putin called for negotiations but underscored that the "annexation" decision will not be revised, as it reflects "the choice of the people."¹⁵³ On 15 November 2022, President Zelenskyy outlined ten pre-conditions to end the armed conflict, which included the full withdrawal of Russian troops from Ukraine's territory, the restoration of Ukraine's territorial integrity, and justice.¹⁵⁴

c) Annexation of territories

93. On 21 February 2022, President Putin "recognized the independence of the Donbass People's Republics", in eastern Ukraine, and stated that this had been done to "stop this nightmare – a genocide against the millions of people living there who are pinning their hopes only on Russia".¹⁵⁵ At the outset of the armed conflict, Russian armed forces took control of parts of Kherson and Zaporizhzhia regions. From the early days of Russia's occupation, reports began to emerge that Russian armed forces were abducting, torturing, and even executing local government officials. Local sources claimed that a large number of local government officials, including mayors had been abducted.¹⁵⁶ It is reported that Russian authorities installed military-civilian authorities which created previously non-existent "regional governments" in Kherson and Zaporizhzhia regions, with personnel including both residents of the regions and Russian authorities.¹⁵⁷ Between 23 and 27 September 2022, the Russian Federation¹⁵⁸ organized so-called referendums in the occupied areas of Donetsk, Kherson, Luhansk, and Zaporizhzhia, on their incorporation into the Russian Federation. On 30 September 2022, President Putin and the de facto authorities of the four regions signed "treaties" on their "accession" to the Russian Federation.¹⁵⁹ International organizations have widely condemned the so-called referendums and the illegal annexation (see paras. 675 - 678).¹⁶⁰

3. Consequences for the civilian population

94. Over a year the armed conflict has had a devastating toll on the civilian population. The lives of millions of Ukrainians have been upended by the loss, disappearance, the displacement of their relatives, the destruction of cities and villages, and the lack of access to basic necessities. As of 15 February 2023, OHCHR had recorded 8,006 civilians killed and 13,287 injured in Ukraine since 24 February 2022. Of adult civilian casualties whose sex

¹⁵¹ Official website of the President of Ukraine, "Negotiations with the Russian Federation are still impossible because it cannot formulate adequate positions", 10 September 2022.

¹⁵² Official website of the President of Ukraine, "Decree of the President of Ukraine No. 679/2022 on the decision of the National Security and Defense Council of Ukraine", 30 September 2022. (available in Ukrainian only)

¹⁵³ ERR News, "Putin announced the annexation of four regions of Ukraine", 30 September 2022. (available only in Russian)

¹⁵⁴ Official website of the President of Ukraine, Speech by the President of Ukraine at the G20 Summit, 15 November 2022.

¹⁵⁵ S/2022/154, Annex.

¹⁵⁶ Association of Ukrainian Cities, "#FreeOurPeople - The Association of Ukrainian Cities calls on everyone to join the liberation of mayors captured by the Russian aggressor!", 28 June 2022 (available only in Ukrainian); see also Council of Europe, Congress of Local and Regional Authorities, "Congress President condemns the continuing abduction of Ukrainian local elected representatives", 5 September 2022.

¹⁵⁷ See TASS, "Kherson region forms new government", 4 July 2022; TASS, "The government of the Zaporozhye region was headed by the former vice-governor of the Vologda region", 18 July 2022 (available in Russian only); The Jamestown Foundation, *Ukraine Evicts Russian Occupation Administration from Kharkiv Region*, 15 September 2022.

¹⁵⁸ A/RES/ES-11/4.

¹⁵⁹ Official website of the President of the Russian Federation, "Signing of treaties on accession of Donetsk and Lugansk people's republics and Zaporozhye and Kherson regions to Russia", (in Russian), 30 September 2022.

¹⁶⁰ See A/RES/ES-11/4.

was known, 61.1 per cent were men and 39.9 per cent were women. OHCHR believes that the actual figures are considerably higher.¹⁶¹

95. In addition to the human losses, the armed conflict in Ukraine has caused a population displacement not seen in Europe since the Second World War. As of 21 February 2023, UNHCR reported about eight million refugees from Ukraine across Europe, of which around 90 per cent were women and children.¹⁶² In addition, about 5.4 million people are currently displaced across Ukraine.¹⁶³

96. Large-scale attacks have destroyed residential buildings, hospitals, schools, and curtailed people's access to heat, electricity, food, and water. While the effect of the hostilities is particularly visible along frontlines, the whole country is deeply affected.¹⁶⁴ People face harsh living conditions, particularly during the cold months. Nearly 18 million people in Ukraine are in need of humanitarian assistance.¹⁶⁵

97. The armed hostilities have also posed considerable challenges to food transport, exports, and supplies within and beyond Ukraine, raising concern for food security worldwide. The 'Black Sea Grain Initiative' agreement reached by Ukraine and the Russian Federation on 22 July 2022, following facilitation by the United Nations and Türkiye, has allowed some maritime exports through three Ukrainian Black Sea ports to resume.¹⁶⁶

98. The impact of the armed conflict is severe and differs for various categories of persons. Some vulnerable groups, such as older persons, children, persons with disabilities, and persons belonging to minorities, have been particularly affected (see paras. 823-834). People live in a climate of uncertainty and fear. Survivors are coping with the physical, psychological, and socio-economic consequences of violent events and large-scale damage. The armed conflict has undermined access to the most basic human rights, such as the right to health, education, adequate housing, food, and water.

99. Countless allegations of violations and abuses of human rights and international humanitarian law, and related international crimes, have been reported. Numerous international and national entities have initiated investigations (see section VII). For instance, the Office of the Ukrainian Prosecutor General has opened investigations into thousands of alleged war crimes and on 2 March 2022, the Prosecutor of the International Criminal Court opened an investigation into allegations of war crimes, crimes against humanity, and genocide.¹⁶⁷ The high number and the complexity of the cases, as well as the lack of cooperation by Russian Federation authorities, are among the challenges faced during the investigations and prosecutions of these violations and crimes.

D. Act of aggression

100. Human Rights Council resolution 49/1 – establishing the Commission's mandate – is based on the premise of "the aggression against Ukraine by the Russian Federation".¹⁶⁸ This is also stated in Human Rights Council resolution S-34/1, which supplements the Commission's initial mandate.¹⁶⁹ Both resolutions refer to General Assembly resolution ES-11/1, which "deplores in the strongest terms the aggression by the Russian Federation against

¹⁶¹ OHCHR, "Türk deploras human cost of Russia's war against Ukraine as verified civilian casualties for last year pass 21,000", press release, 21 February 2023.

¹⁶² UNHCR, Ukraine [refugee situation](#).

¹⁶³ International Organization for Migration, Displacement [Tracking Matrix](#).

¹⁶⁴ United Nations, "Ukraine: Winter's downward spiral documented by UN agencies", press release, 14 December 2022.

¹⁶⁵ United Nations, Office for the Coordination of Humanitarian Affairs, "Ukraine Humanitarian Response 2023: [Situation Report](#)", 10 February 2023.

¹⁶⁶ United Nations, "Black Sea grain exports deal 'a beacon of hope' amid Ukraine war – Guterres", press release, 22 July 2022; European Union, European Council, Infographic - Ukrainian grain exports explained; European Commission, Keeping Ukrainian goods moving, EU-Ukraine solidarity lanes.

¹⁶⁷ International Criminal Court, "Statement of ICC Prosecutor, Karim A.A. Khan QC, on the Situation in Ukraine: Receipt of Referrals from 39 States Parties and the Opening of an Investigation", 2 March 2022.

¹⁶⁸ A/HRC/RES/49/1, preambular para. 10, operative paras. 1, 11(a), see also preambular paras. 5-6.

¹⁶⁹ A/HRC/RES/S-34/1, preambular paras. 6-7, operative para. 6, see also preambular para. 4.

Ukraine in violation of Article 2(4) of the Charter”.¹⁷⁰ The Commission’s mandate is to, among other things, “investigate all alleged violations and abuses of human rights and violations of international humanitarian law, and related crimes in the context of the aggression against Ukraine by the Russian Federation”.

101. Independence and impartiality are two of the principles underpinning the Commission’s mandate.¹⁷¹ In line with these principles, a commission of inquiry has inherent authority to interpret its mandate. Precedent exists for a mechanism to reach its own conclusions about the characterization of the situation as stated in its mandating resolution.¹⁷² Consequently, the Commission has independently assessed whether the situation in Ukraine is an act of “aggression against Ukraine by the Russian Federation” as stated in resolution 49/1.

102. In General Assembly resolution 3314 (XXIX),¹⁷³ adopted by consensus, aggression is defined as “the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations”.¹⁷⁴ The resolution provides a non-exhaustive list of acts that qualify as an act of aggression.¹⁷⁵

103. If an act of aggression occurs, the resolution holds that a “war of aggression is a crime against international peace”, and it “gives rise to international responsibility”.¹⁷⁶ Further, “[n]o territorial acquisition or special advantage resulting from aggression is or shall be recognized as lawful”.¹⁷⁷ Aggression is considered as the “most serious and dangerous form of the illegal use of force, being fraught, in the conditions created by the existence of all types of weapons of mass destruction, with the possible threat of a world conflict and all its catastrophic consequences”.¹⁷⁸

104. The Commission has concluded that the use of armed force by the Russian Federation against Ukraine was an act of aggression as defined in General Assembly resolution 3314 (XXIX). It has found reasonable grounds to conclude that the following non-exhaustive list of acts each qualify as an act of aggression against Ukraine: the invasion or attack by the armed forces of the Russian Federation against the territory of Ukraine;¹⁷⁹ the attack by the armed forces of the Russian Federation on the land, sea and air forces of Ukraine;¹⁸⁰ the bombardment and use of weapons by the armed forces of the Russian Federation against the territory of Ukraine;¹⁸¹ and the military occupation by the Russian Federation of Ukrainian territory, however temporary, resulting from the abovementioned invasion or attack.¹⁸² In this report, the Commission’s main focus remains on the Russian Federation’s conduct on and

¹⁷⁰ A/RES/ES-11/1, para. 2.

¹⁷¹ A/HRC/RES/49/1, para. 10 (“[...] underscores the urgency of initiating a prompt, independent and impartial investigation into all alleged abuses and violations to end impunity and ensure accountability for those responsible;”).

¹⁷² See, for instance, A/HRC/15/21, paras. 5-7, 272.

¹⁷³ A/RES/3314(XXIX). During the drafting of the resolution, the Soviet delegation recalled that the Soviet Government had proposed a definition of aggression in 1933, the “definition of aggression was the culmination of unceasing efforts by the Government of the USSR” and, in terms of the 1974 definition, “[d]uring the seven years of work by the Special Committee, the Soviet delegation, actively participat[ed] in the formulation of a definition of aggression” (A/9619(SUPP), p. 36-37). In terms of the definition from 1933, the Soviet delegation was referring to the Convention for the Definition of Aggression, which was ratified by Afghanistan, Estonia, Latvia, Persia, Poland, Roumania, Turkey, and the Union of Soviet Socialist Republics, with accession by Finland (League of Nations, *Treaty Series*, vol. CXLVII, No. 3391, pp. 69-77). The General Assembly resolution 3314 (XXIX) contains similarities to the Convention, including the acts that qualify as aggression (for example, articles 2-3 of the Convention compared with articles 3 and 5 of A/RES/3314 (XXIX)).

¹⁷⁴ Resolution 3314(XXIX), Annex, art. 1.

¹⁷⁵ *Ibid.*, art. 3-4.

¹⁷⁶ *Ibid.*, art. 5(2).

¹⁷⁷ *Ibid.*, art. 5(3).

¹⁷⁸ *Ibid.*, preambular para. 5.

¹⁷⁹ See para. 66.

¹⁸⁰ *Ibid.*

¹⁸¹ See paras. 126-127.

¹⁸² See paras. 669-672.

after 24 February 2022, but this does not preclude the potential existence of previous acts of aggression.

105. The Russian Federation acknowledged that it launched a “special military operation” against Ukraine on and after 24 February 2022, but it justifies this action with various submissions including that it was acting in accordance with article 51 of the United Nations Charter.¹⁸³ General Assembly resolution 3314 (XXIX) states that “[n]o consideration of whatever nature, whether political, economic, military or otherwise, may serve as a justification for aggression”.¹⁸⁴ Consequently, the Commission will only consider the Russian Federation’s claim that its conduct was consistent with article 51 of the United Nations Charter.

106. Article 51 of the United Nations Charter states that “[n]othing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security”.

107. The Russian Federation was not subject to an armed attack by Ukraine prior to 24 February 2022. Much of the Russian Federation’s claim is about perceived threats against it and, to an extent, alludes to a potential forthcoming attack.¹⁸⁵ Further, these assertions are not limited to Ukraine, but encompass other States and the North Atlantic Treaty Organization (NATO), of which Ukraine is not a member State.¹⁸⁶ Such assertions do not demonstrate an imminent armed attack against the Russian Federation, let alone such an attack by Ukraine. These assertions are unsubstantiated and do not fulfil the requirements of article 51. The Commission has therefore concluded that the Russian Federation’s claim of acting in accordance with article 51 is without merit and therefore the right of self-defence within article 51 is unavailable to the Russian Federation in these circumstances.¹⁸⁷

V. Violations of international law

108. The Commission aimed, in its operations, to ensure a broad thematic and geographic coverage in its investigations. It has focused on investigating behaviour during the conduct of hostilities and violations of personal integrity, including summary executions, torture and ill-treatment, detention, and sexual and gender-based violence. The Commission has also looked into violations of the laws of occupation and transfers of children. It has found that

¹⁸³ S/2022/154, Annex, p. 6; ICJ, “Document (with annexes) from the Russian Federation setting out its position regarding the alleged ‘lack of jurisdiction’ of the Court in the case”, 7 March 2022, para. 15 (*Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*, ICJ).

¹⁸⁴ Resolution 3314(XXIX), Annex, art. 5(1). See also art. 2: “The first use of armed force by a State in contravention of the Charter shall constitute *prima facie* evidence of an act of aggression although the Security Council may, in conformity with the Charter, conclude that a determination that an act of aggression has been committed would not be justified in the light of other relevant circumstances, including the fact that the acts concerned or their consequences are not of sufficient gravity.”

¹⁸⁵ S/2022/154, Annex, for example p. 5-6.

¹⁸⁶ S/2022/154, Annex, for example p. 2, 4-5.

¹⁸⁷ The Russian Federation stated that “[t]he legal basis for the military operation was communicated on 24 February 2022 to the Secretary-General of the United Nations and the United Nations Security Council by the Permanent Representative of the Russian Federation to the United Nations in the form of a notification under Article 51 of the United Nations Charter”: “Document (with annexes) from the Russian Federation setting out its position regarding the alleged ‘lack of jurisdiction’ of the Court in the case”, 7 March 2022, para. 15 (*Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*, ICJ). Consequently, the Commission’s analysis is based upon the Russian Federation’s “notification under Article 51”.

violations of human rights and international humanitarian law, as well as related crimes, have been committed across Ukraine, and in the Russian Federation.¹⁸⁸

109. In all the cases examined, the Commission has sought to identify individual perpetrators of violations and crimes, the units deployed in the concerned areas, and their chain of command. It has attempted to determine whether the crimes were committed in furtherance of orders or policies at a higher level. The Commission has developed a separate list of identified perpetrators and military units responsible for crimes and violations.

A. Violations committed during the conduct of hostilities

1. Overview

110. The use of explosive weapons in populated areas has been the main cause of civilian deaths in the war in Ukraine. OHCHR estimated that 90.3 per cent of civilian casualties have been caused by explosive weapons.¹⁸⁹ Such attacks have damaged or destroyed thousands of residential buildings, hospitals, schools, and critical infrastructure. In cities particularly affected by the fighting, entire neighbourhoods have been decimated. The Commission is struck by the level of destruction in Mariupol, where detailed accounts from survivors, satellite imagery, photographs and video footage show that large parts of the city have been erased.

111. Some of the explosive weapons' attacks were conducted in the context of Russian armed forces' attempts to capture towns or cities, while others struck areas far from frontlines. Russian armed forces' waves of attacks systematically targeting power plants and other energy-related installations in Ukraine, which intensified considerably since October 2022, have struck almost all the regions of Ukraine. These attacks have, during certain periods, deprived large portions of the civilian population of not only electricity, but also water, heating, telecommunications, means of preserving food and cooking, causing great harm and suffering, in particular during the cold months.

112. In its examination of the conduct of hostilities, the Commission has investigated the impact of hostilities and of individual attacks with explosive weapons in populated areas in territory under Ukrainian Government control and in areas controlled by Russian armed forces; the waves of strikes targeting Ukraine's critical infrastructure launched starting 10 October 2022; and conduct which has endangered the population through locating military personnel and equipment in civilian areas.

113. The Commission has investigated in more detail 25 individual attacks with explosive weapons in populated areas in nine regions of Ukraine. These attacks have impacted a variety of civilian objects and places where civilians were present, and have caused deaths, injuries, and considerable harm. The use of certain types of weapons has been particularly lethal in populated areas, as they could not be directed at a military objective, were inaccurate, or struck a wide area.

114. Under international humanitarian law, indiscriminate attacks are prohibited. They are attacks which are not directed at a specific military objective and those which employ a method or means of combat which cannot be directed at a specific military objective or the effects of which cannot be limited as required by international humanitarian law. Consequently, they are of a nature to strike military objectives and civilians or civilian objects without distinction.¹⁹⁰ Disproportionate attacks are also prohibited and are considered indiscriminate.¹⁹¹ Disproportionate attacks are ones which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage

¹⁸⁸ All information in this report contained in paras. 110 to 834 is based on confidential information on file, unless specific annotation.

¹⁸⁹ See footnote 163.

¹⁹⁰ Additional Protocol I to the Geneva Conventions, article 51(4). For objects, military objectives are limited to those objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage, pursuant to article 52(2).

¹⁹¹ Additional Protocol I, article 51(5)(b).

anticipated.¹⁹² Further, it is a war crime to intentionally launch such an attack in the knowledge that such attack will cause excessive loss of life, injury to civilians or damage to civilian objects.¹⁹³

115. The Commission has concluded that a majority of attacks it has investigated were indiscriminate, as they, among other things, used a method or means which could not be directed at a specific military objective or their effects could not be limited as required. Russian armed forces were responsible or likely responsible for most of the attacks. In some cases, it found that they failed to take feasible precautions to verify that objectives were neither civilians nor civilian objects.¹⁹⁴ Several attacks were also disproportionate, as they were initiated with an apparent disregard for the presence of large concentrations of civilians or objects with special protection, which caused excessive harm and suffering. Ukrainian armed forces were likely responsible for a few indiscriminate attacks.

116. Further, the Commission has investigated the large-scale attacks against Ukraine's critical infrastructure which Russian armed forces launched from 10 October 2022. The attacks took a hard toll on the civilian population, as they deprived millions of basic necessities and services, including during the cold months. The Commission found that they constitute the war crime of excessive incidental death, injury or damage.

117. Crimes against humanity are enumerated acts that are committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.¹⁹⁵ The attacks on Ukraine's critical infrastructure have been carried out in waves of hundreds of long-range missiles and drones, striking almost all of Ukraine's regions, and systematically targeting powerplants and other infrastructure critical for the transmission of electricity and the generation of heat across the country. The Commission has found that these attacks were widespread and systematic and has considered whether they may amount to a crime against humanity of other inhumane acts. Further time and resources are needed to investigate the attacks to clarify if the accumulated impact of the attacks becomes comparable to one of the enumerated acts of crimes against humanity, and to what extent the policy was directed against the civilian population.¹⁹⁶

118. The Commission has also found situations in which both parties to the armed conflict failed to protect civilians or civilian objects against the effects of attacks by locating military objects and forces within or near densely populated areas.

119. In this regard, international humanitarian law prescribes that parties to the armed conflict shall, to the maximum extent feasible, avoid locating military objectives within or near densely populated areas, and endeavour to remove civilians and civilian objects under their control from the vicinity of military objectives.¹⁹⁷

120. As part of its investigations into attacks conducted with the use of explosive weapons, the Commission inspected the sites of attacks, where possible; heard testimonies from witnesses and survivors; as well as authenticated and analysed relevant photographs, satellite imagery, and video footage. It submitted detailed questions to both parties to the conflict. Regrettably, lack of access to certain areas has hampered some aspects of its investigations. Due to the vast multitude of such attacks, in addition to particular challenges in investigating them, the situations outlined below are only a small sample.

121. In addition, the Commission has not investigated in detail the 29 July 2022 incident that killed more than 50 Ukrainian prisoners of war at a detention facility in Olenivka, Donetsk region, because a dedicated fact-finding mission was established by the Secretary-General of the United Nations to do so shortly after the attack.¹⁹⁸ It notes with regret, however, that conditions were not met for the mission to deploy to the site, leading to the

¹⁹² Additional Protocol I to the Geneva Conventions, articles 51(5)(b) and 57(2)(a)(iii)-(b).

¹⁹³ Additional Protocol I to the Geneva Conventions, articles 51(5)(b), 57(2)(a)(iii)-(b), and 85(3)(b) and (5). See also Rome Statute, article 8(2)(b)(iv).

¹⁹⁴ See Additional Protocol I of the Geneva Conventions, article 57(2).

¹⁹⁵ Rome Statute, article 7(1).

¹⁹⁶ See Crime against humanity of other inhumane acts, Rome Statute, article 7(1)(k).

¹⁹⁷ Additional Protocol I to the Geneva Conventions, article 58.

¹⁹⁸ United Nations Secretary-General, "Members of Fact-finding Mission regarding Incident at Olenivka, Ukraine, on 29 July 2022", 22 August 2022.

disbanding of the mission in early January 2023.¹⁹⁹ The Commission is of the view that an investigation is required due to the gravity of the case.

2. Impact of hostilities and attacks with explosive weapons

122. Attacks with explosive weapons in populated areas have inflicted considerable civilian harm. The Commission has observed first-hand the damage to buildings and infrastructure in virtually all places it visited. It was particularly struck by the extent of the destruction that it saw in the cities of Chernihiv, Iziium, and Kharkiv. While it has not been able to visit the city of Mariupol, in Donetsk region, the Commission has reviewed hundreds of photos and videos from the city and satellite imagery analysis of destroyed buildings. It has interviewed over 30 civilians who were in the city during heavy fighting and the Russian armed forces' siege of the city, starting early March 2022. The witnesses reported frequent and intensive shelling and airstrikes, including on civilian buildings, and described explosive weapons use during these periods in the city as "constant", "non-stop", and "never-ending". Photos and videos from Mariupol and satellite imagery corroborate the widespread destruction of residential areas. As of 12 May 2022, 32 per cent of buildings in two of Mariupol's main districts, the Livoberezhnyi and Zhovtnevyi districts, had sustained damage that was visible on satellite imagery.

123. Many civilians are believed to have died during the siege of Mariupol;²⁰⁰ the actual number cannot be verified at present. Witnesses recounted attacks that struck the buildings where they lived or nearby residential buildings. They told the Commission that they saw people being killed in attacks with explosive weapons, dead bodies on the streets, and graves in residential areas. A woman recounted how she had to evacuate from Mariupol without being able to bury her nine-year-old daughter, who was killed by shelling on their home. One man reported that a neighbour killed during the siege, together with many other people, had been buried in the playground of a nearby kindergarten. One woman told the Commission that she had sheltered in three different places in Mariupol and that she had to leave all of them because of constant attacks. She shared the shock she had when she emerged from one of the shelters, as everything was in ruins and she could not recognize areas of the city.

124. During the siege, from the first days of March 2022, civilians were in addition left without basic services such as water, gas and electricity, in cold weather. Residents prepared food and gathered water outside, which also exposed them to risks of shelling. Extended periods of hardship have taken both a deep physical and psychological toll. Witnesses recounted the immense difficulties and fear during their attempts to evacuate under fire, which compounded their trauma. A witness described the passing of over 15 checkpoints in 15 hours to reach a safe area, as he fled with his family from Mariupol. The full effects of these compound factors will only manifest themselves over time.

125. Attacks carried out with explosive weapons in urban areas have affected educational institutions and hospitals throughout Ukraine. They have damaged or destroyed thousands of residential buildings, over 3000 educational institutions²⁰¹ and more than 600 medical facilities.²⁰² The Commission has collected witness accounts about the damage or destruction of more than 30 educational institutions in the regions of Chernihiv, Dnipropetrovsk, Donetsk, Kharkiv, Kherson, Kyiv, and Sumy. Fighting and attacks also affected a significant number of hospitals, which generally have protected status under international humanitarian law.²⁰³ The World Health Organization recorded 611 incidents of attacks by heavy weapons from 24 February 2022 to 1 February 2023 impacting medical facilities, patients, or personnel.²⁰⁴ The Commission has also documented that fighting and attacks led to the destruction or damage of five hospitals, including three in Chernihiv, one in Kharkiv, and one in Sumy regions.

¹⁹⁹ United Nations, "Daily press briefing by the Office of the Spokesperson for the Secretary-General", 5 January 2023.

²⁰⁰ OHCHR, "The High Commissioner updates the Human Rights Council on the situation in Mariupol, Ukraine", press release, 16 June 2022.

²⁰¹ UNICEF, "[War has hampered education for 5.3 Million children in Ukraine](#)", 24 January 2023.

²⁰² World Health Organization, Figures for the period 24 February 2022 to 1 February 2023.

²⁰³ Geneva Convention IV, articles 18-19.

²⁰⁴ World Health Organization, Figures for the period 24 February 2022 to 1 February 2023.

3. Unlawful attacks with the use of explosive weapons

a) Attacks in territory under Ukrainian Government control

126. The Commission has investigated attacks carried out with explosive weapons in territory controlled by the Government of Ukraine. These attacks have impacted civilians and civilian objects, causing large numbers of casualties and destruction. They have been carried out with explosive weapons with wide-area effects, which have the potential to cause considerable civilian harm when employed in populated areas. The Commission has determined many of the documented attacks to be indiscriminate, as they, among other things, used a method or means which were not directed at a specific military objective or their effects could not be limited as required. Several attacks were disproportionate, as they were initiated with an apparent disregard for the presence of large concentrations of civilians or of civilian objects with special protection, which caused excessive harm and damage.

127. Some widely reported examples of such attacks, which the Commission has also investigated, are the 16 March 2022 attack carried out during the siege of Mariupol on the city's Drama Theatre, that killed and injured a large number of people; the 8 April 2022 attack on the Kramatorsk train station, in the Donetsk region, in which 59 people were killed and 92 were injured; the 27 June 2022 attack on a shopping mall in Kremenchuk, Poltava region, that killed 21 and injured dozens; and the 14 January 2023 attack on a residential building in Dnipro, Dnipropetrovsk region, which killed 44 civilians and injured at least 81 (see case descriptions starting para. 145).²⁰⁵ The attacks documented are just a small sample of the multitude of attacks with explosive weapons since the beginning of the invasion. They are also distinct from the large-scale attacks on Ukraine's critical infrastructure installations which will be examined in a separate section below.

128. As regards their general context, some of these attacks have been carried out at the frontlines, when Russian armed forces attempted to capture localities and attacked, surrounded, or laid sieges to urban areas. This was the case, among other localities, in Chernihiv, Iziium and Mariupol cities, which became the scenes of heavy fighting and where a large number of attacks with explosive weapons were carried out. Other such attacks have impacted civilian objects in cities and towns far away from the frontlines. This is the case, for example, of attacks in Dnipro, Kremenchuk, and Serhiivka.

129. In each case, the Commission has sought to determine the party responsible for the attack. To this end, it has reviewed and analysed a combination of factors, including the context and circumstances of each of the attacks, accounts of witnesses and other stakeholders, the examination of the site of the attacks, weapons remnants, craters, the impact and damage produced, the direction of the attacks, the minimum and maximum range of the weapons systems employed, as well as other relevant information that it has obtained in the course of its investigations. The Commission has concluded that Russian armed forces perpetrated or likely perpetrated most of the attacks investigated, that struck areas which were under Ukrainian Government control.

i) Indiscriminate attacks

130. The majority of the attacks documented have been found to be indiscriminate. They have impacted civilians or civilian objects, including residential buildings, hospitals, schools, a hotel, shops, a theatre, a pharmacy, a kindergarten, and a train station. At times, a military target could not be identified in the area of the attack. Where a military target could be identified, the attacking party employed explosive weapons which are unguided, or inaccurate, or are designed to strike a wide area, such as bombs dropped during airstrikes, missiles, cluster munitions, and artillery rockets, in populated areas which were controlled by Ukrainian armed forces at the time of the attacks.

131. As described above, indiscriminate attacks are those which are not directed at a specific military objective and those which employ a method or means of combat which cannot be directed at a specific military objective or the effects of which cannot be limited as

²⁰⁵ When various credible sources reported different casualty figures, the Commission chose the reasonable minimum figures that were confirmed, but acknowledges that in many cases the figures are likely to be higher.

required by international humanitarian law. Consequently, they are of a nature to strike military objectives and civilians or civilian objects without distinction.²⁰⁶

132. In each case, the Commission has attempted to identify a potential military target in the vicinity of the impact sites of the attacks.²⁰⁷ Such targets included, for example, military bases or deployments of military personnel or equipment, or other objects of military value. While the Commission has found military objectives in some of the attacks it has examined, it did not identify possible military targets in all the situations.

133. For example, in the case of the 9 March 2022 attack that struck the Mariupol Primary and Sanitation Aid Centre No. 3, often referred to as Maternity Ward No. 3, the Commission found that the hospital was functioning at the time of the attack and did not find any military target in its vicinity. In the case of an attack carried out on 17 March 2022 that struck a residential area in Chernihiv city, which comprised the Chernihiv Regional Children's Hospital, and killed and injured several civilians, the Commission did not find evidence of military targets in the area. Regarding the abovementioned January 2023 missile attack on a residential building in Dnipro city, the Commission also did not identify a military target near the impact site of the attack.

134. In situations in which a military objective could be identified in the general area of the attacks, the Commission has nevertheless found that the attacking party used weapons that were too powerful to limit their effects, as required, or inaccurate or designed to cover a large area. When used in populated areas, such weapons are likely to strike military objectives and civilian objects without distinction, and therefore to inflict considerable damage. It has identified three types of weapons that were used in the attacks it has documented.

135. For some of the attacks with the highest civilian casualties, the Commission has concluded that the weapons employed had the characteristics of long-range anti-ship Kh-22 or Kh-32 missiles, which are launched from aircraft. Experience shows that, fired in pairs or more at the same target, these types of missiles appear as particularly inaccurate against targets on land. In some situations, missiles presumably intended to strike the same target landed several hundred meters apart. For example, the Commission has documented the 1 July 2022 attack in which two missiles struck the town of Serhiivka, in Odesa region, and destroyed both a hotel and a nine-story residential building, killing 22 civilians.

136. In several other attacks, the weapons used were air-dropped unguided high-explosive bombs. While in some cases they appear to have hit their targets, they often also appear to miss. In addition, they cause a large zone of blast and fragmentation that may inflict damage to civilian objects and military objectives without distinction. In one example, on 3 March 2022, an aircraft dropped multiple unguided high-explosive bombs on an intersection in Chernihiv city, possibly targeting a small checkpoint staffed by Ukrainian Territorial Defence Forces at that location. However, the bombs fell in an area of 130 m in diameter around the intersection, killing at least 15 people, and injuring dozens of civilians.

137. Finally, the Commission has also documented attacks carried out with cluster munitions and multiple launch rocket systems. These weapons are intended to attack an area and are therefore inherently indiscriminate when used in areas with a civilian population. For instance, in the case of the April 2022 attack on Kramatorsk train station, the Commission found that a train with Ukrainian military equipment, which could have been the likely target, was stationed there more than one hour before the attack. However, the attack perpetrated with cluster munitions impacted an area with a large concentration of civilians hoping to evacuate, reaching beyond a possible military target, and killed dozens.

138. The Commission has concluded that Russian armed forces have committed, and in some cases are likely to have committed, indiscriminate attacks, in violation of international humanitarian law.²⁰⁸ The many examples of attacks impacting civilians and civilian objects, with explosive weapons that cannot be directed at a specific military objective, or the effects

²⁰⁶ Additional Protocol I to the Geneva Conventions, article 51(4)-(5).

²⁰⁷ For objects, military objectives are limited to those objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage: Additional Protocol I to the Geneva Conventions, article 52(2).

²⁰⁸ Additional Protocol I to the Geneva Conventions, article 51(4)-(5).

of which cannot be limited, show a pattern of disregard for the requirement to maintain the distinction between military objectives and civilians.

ii) Disproportionate attacks and lack of feasible precautions

139. The Commission has assessed whether the attacking party took requisite feasible precautions to minimize civilian harm. However, some of the attacks were initiated regardless of the presence of large numbers of civilians or objects with special protection, which caused excessive harm and damage. In some cases, dozens or even hundreds of civilians were present at or near the presumed target at the time of the attack. In other cases, the attacks impacted well known civilian objects. The Commission found that some of the attacks were disproportionate in relation to a possible military advantage.

140. Under international humanitarian law, those who plan or decide upon an attack must, among other things, do everything feasible to verify that the objectives to be attacked are neither civilians nor civilian objects, but are military objectives. Further, they should take all feasible precautions in the choice of means and methods of attack with a view to avoiding or minimizing incidental loss of civilian life, injury to civilians and damage to civilian objects. They should refrain from launching any attack which may be expected to cause such harm to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated. Precautions also include effective advance warning of an attack which may affect a civilian population, unless circumstances do not permit it.²⁰⁹

141. In several cases, attacks struck places with large concentrations of civilians. For instance, in March 2022, several hundreds of civilians were sheltering in the Drama Theatre in Mariupol, at the time it came under attack, as the theatre had become one of the gathering points for attempts to evacuate civilians from Mariupol. Similarly, in April 2022, at the time of the attack on the Kramatorsk train station, a very large crowd of people had gathered there with the hope to evacuate. These attacks have caused an excessive harm to civilians in relation to a possible military advantage and the Commission has found them to be disproportionate. The party launching the attacks had the obligation to take feasible precautions and refrain from launching them.

142. There are also examples of attacks which struck functioning medical facilities. This was the case of the 9 March 2022 attack against Maternity Ward No. 3 in Mariupol, in which at least one pregnant woman and her unborn child were killed; and of the 1 March, 6 March, and 7 March 2022 strikes on the Iziium Central City Hospital. Hospitals have special protection under international humanitarian law.²¹⁰ The party conducting these attacks had the prior obligation to take feasible precautions and verify whether the objective of the attack was civilian and if it had a protected status.

143. The Commission has therefore concluded that in some cases, Russian armed forces have committed or likely committed attacks which were disproportionate in relation to a possible military advantage, in violation of international humanitarian law. It has found that several of the attacks were initiated with an apparent disregard for the presence of large concentrations of civilians or objects with special protection under international humanitarian law, which caused excessive harm and damage. It also found that in several cases, the attacking party failed to take feasible precautions to verify whether the objectives were civilian or benefitted from special protection.

144. Finally, in addition to the indiscriminate attacks in Mariupol, which are violations of international humanitarian law, the Commission is investigating whether the Russian armed forces' attacks and siege of the city from February to May 2022 may also amount to a crime against humanity.²¹¹ As described above, the Commission reviewed photos, videos and satellite imagery of destroyed buildings in Mariupol for that time period and interviewed over 30 civilians from the city. The witnesses reported, among other things, frequent and intensive bombardment and lack of basic services such as water, gas and electricity during the siege (see paras. 122-124). As the Commission has not had access to the Donetsk region including Mariupol, and the relevant events took place in an extended period of time in a complex

²⁰⁹ Additional Protocol I to the Geneva Conventions, article 57(2).

²¹⁰ Geneva Convention IV, articles 18-19.

²¹¹ Rome Statute, article 7(1).

situation of urban warfare, it lacks the basis to make a determination of crimes against humanity, but recommends that this be further investigated given indications that such crimes may have taken place.

Case descriptions

145. As stated above, the Commission has found a pattern of indiscriminate attacks launched or likely launched by Russian armed forces with explosive weapons in populated areas. Of those, some were also disproportionate. Below, the Commission will outline illustrations of the main cases it has documented. For each case, it has sought to determine the general context of the attacks, whether civilians or civilian objects were affected, the potential presence of military objectives at or near the impact sites, the weapons system used, whether feasible precautions were taken, and which party was responsible.

Attacks with anti-ship missiles

146. The Commission has investigated three attacks which were likely carried out with powerful and inaccurate long-range anti-ship missiles of the Kh-22 or Kh-32 type²¹² in densely populated areas in Dnipro and Kremenchuk cities and in the town of Serhiivka. It has also reviewed videos apparently showing attacks with the use of such missiles in populated areas in two other locations.

147. Kh-22 or Kh-32 missiles have been assessed as inaccurate, particularly when used against ground targets instead of against aircraft carriers, which they were originally designed to attack. The targeting systems of Kh-22 and Kh-32 missiles include a radar which identifies and homes in on large objects. In all the attacks that the Commission has examined, which were carried out with missiles bearing the characteristics of Kh-22 or Kh-32 anti-ship missiles, they have impacted large buildings or the vicinity of large buildings.

148. The Commission has determined that the weapon used in the attacks were likely Kh-22 or Kh-32 missiles based on analysis of video footage and photos of weapon remnants. The documented attacks carried out with such missiles led to a large number of civilian casualties and significant destruction. In combination with other relevant factors, the Commission has concluded that these attacks were indiscriminate, in violation of international humanitarian law.²¹³

149. Open-source information indicates that at the time of the investigated attacks, the Russian armed forces unit which was deployed closest to the Ukrainian border and had the means to deliver an attack with Kh-22 or Kh-32 type missiles, was the 52nd Heavy Bomber Long-Range Aviation Regiment located at the Shaykovka airbase in the Kaluga region, in the Russian Federation.

150. The Commission has reviewed satellite imagery which shows multiple objects with the characteristic shape of Kh-22 or Kh-32 missiles at the Shaykovka airbase, in the Russian Federation, in late June 2022, the time period when two of the attacks described below took place. A comparison with imagery from different days shows that several of these objects were being moved around the airbase and some appear missing after the attacks.

151. For example, objects with the shape of a Kh-22 or Kh-32 missile can be seen on the airfield next to several aircraft on 13, 23 and 25 June 2022. In imagery from 28 June 2022, however, the day after Kh-22 or Kh-32 missiles struck the city of Kremenchuk, some of the objects are no longer visible. Imagery from just before and after the 1 July 2022 attack on the town of Serhiivka shows similar reduction of visible missiles. Cloud cover did not allow for a similar analysis in connection with the attack in Dnipro. Based on these elements, it is likely that the 52nd Regiment carried out at least the attacks in Kremenchuk and Serhiivka described below.²¹⁴

²¹² Launched from aircraft, Kh-22/Kh-32 missiles have a range of 600 km to 1,000 km, depending on the model, and can carry up to a 1,000 kg conventional warhead.

²¹³ Additional Protocol I to the Geneva Conventions, articles 51(4)-(5) and 57 (2).

²¹⁴ The Ukrainian authorities have identified the commander of the 52nd Regiment as a suspect in several attacks using Kh-22/Kh-32 missiles, including the three attacks described in this report; see Security Service of Ukraine, "Following SSU's investigation, [R]ussian aviation regiment commander, who ordered strike on Dnipro, declared suspect", 24 January 2023.

Kremenchuk city, Poltava region, 27 June 2022

152. On 27 June 2022, in the afternoon, two missiles struck the centre of Kremenchuk city, Poltava region. One missile impacted a shopping mall, causing a fire, and another missile struck about 500 m away, on the compound of the Kredmash road machinery factory. According to local authorities, 21 civilians, including 11 women and 10 men, were killed, and dozens were injured.

153. At the time of the attack, Kremenchuk was 180 km from the frontline. The Kremenchuk Oil Refinery, located in the outskirts of the city, was repeatedly attacked with missiles in April, May, and June 2022.²¹⁵

154. The Commission has determined that the weapons used in the attack had the characteristics of Kh-22 or Kh-32 missiles.²¹⁶ Footage from two separate security surveillance cameras posted online, each show a missile in flight just before impact. Their distinctive shape and trajectory in the security surveillance footage, as well as their characteristics in photos of weapon remnants and videos obtained after the attack, are consistent with the known characteristics of the Kh-22 or Kh-32 missiles. The Commission has also geolocated the impact sites of the missiles, which are about 500 m apart, demonstrating the inaccurate nature of this weapon.

155. Russian authorities acknowledged that they had attacked the road machinery factory in Kremenchuk, but claimed that they had targeted a hangar storing weapons and ammunition with high-precision air-based weapons and that the detonation of the ammunition caused a fire which spread to a “non-functioning” shopping mall next to the factory.²¹⁷ The Commission has found no evidence to support the claim that ammunition and weapons were stored in the area. Witness accounts and videos of the immediate aftermath do not suggest possible secondary explosions or weapon remnants, which would have been consistent with detonation of arms or ammunition.

156. Evidence from the immediate aftermath of the attack indicates that the shopping mall was operational at the time of the attack. The Commission has established that the damage to the shopping mall and the civilian casualties were caused by a direct hit on the building, and not by fire spreading from elsewhere. Security surveillance footage of the strike and satellite imagery indicate that one missile hit the north-eastern corner of the shopping mall, about 50 m from the factory compound.

157. The factual circumstances of the attack show that an inaccurate missile was used in a populated area, and that it struck a functional shopping mall, causing numerous civilian casualties and damage to a civilian object. Russian authorities have acknowledged that they perpetrated an attack in the area. The Commission has therefore concluded that Russian armed forces carried out an indiscriminate attack in Kremenchuk on 27 June 2022 and failed to take feasible precautions such as verifying the objective to be attacked and regarding the choice of means and methods of attack. These are violations of international humanitarian law.²¹⁸

Serhiivka town, Odesa region, 1 July 2022

158. On 1 July 2022, after midnight, a missile struck the town of Serhiivka and destroyed the Godji hotel. Another missile struck about 230 m north of the hotel, next to a nine-story residential building, which it destroyed. The Commission has obtained the personal data of 22 civilians killed in the attack: 13 women, eight men, and a 12-year-old boy. Dozens of people, including six children, were injured.

159. At the time of the attack, the frontline was located about 100 km from Serhiivka, a town on the Black Sea. Russian armed forces appear to have been carrying out attacks along the coast during that period, including an attack the same day, about 70 km away. The day

²¹⁵ See “Russian forces again attack Ukraine’s biggest oil refinery in Kremenchuk”, *The Kyiv Independent*, 12 May 2022; Ukrinform, “Russians launch missile strike on Kremenchuk oil refinery”, 18 June, 2022.

²¹⁶ The Kh-32 missile is a physically similar upgraded variant of the Kh-22 missile.

²¹⁷ Ministry of Defence of the Russian Federation, “Report on the progress of the special military operation in Ukraine”, 28 June 2022. “Telegram message available only in Russian)

²¹⁸ Additional Protocol I to the Geneva Conventions, articles 51(4)-(5) and 57(2).

before, Russian armed forces announced the withdrawal from Zmiinyi Island, which is about 85 km from Serhiivka.²¹⁹

160. The Commission reviewed images of weapon remnants and the damage at the impact site and found them to be consistent with the known characteristics of the Kh-22 or Kh-32 missiles. Ukrainian authorities have informed the Commission that six Kh-22 missiles were launched in the attack that struck Serhiivka.

161. The missile impacted a populated area. The Commission has not identified any potential military targets in the immediate vicinity of the impact sites. There appears to be a Ukrainian military base, located about 3.5 km north-east of the impact site. However, satellite imagery from before and after 1 July 2022 does not show any damage to or near the site of this military base.

162. In relation to the attack, Dmitry Peskov, Press Secretary of President Putin, did not explicitly deny responsibility, but stated that Russian armed forces “do not attack civilian targets”, only “military ammunition storages, factories that produce and repair equipment, ammunition storage, places for the training of mercenaries.”²²⁰

163. Based on the context of the strike, the likely identification of the weapons as Kh-22 or Kh-32 missiles, and their use in a populated area, causing numerous civilian casualties, the Commission has concluded that Russian armed forces likely carried out an indiscriminate attack with inaccurate and powerful missiles in Serhiivka on 1 July 2022, and failed to take feasible precautions such as verifying the objective to be attacked and regarding the choice of means and methods of attack. These are violations of international humanitarian law.²²¹

Dnipro city, Dnipropetrovsk region, 14 January 2023

164. On 14 January 2023, in the afternoon, a missile struck a residential building at Naberezhnaya Peremoha Street 118, in Dnipro city, causing a significant part of it to collapse. According to local authorities, at least 44 people, including six children, were killed, and at least 81 were injured.

165. At the time of the attack, the frontline was located about 100 km from Dnipro. In Dnipro, missiles appear to have struck the Prydniprovsk Thermal Power Plant on four previous occasions during waves of Russian attacks against energy installations across the country. The power plant is located about four kilometres from the apartment building that was hit.

166. The Commission has determined that the weapon used in the attack had the characteristics of Kh-22 or Kh-32 missiles. One video from the attack shows that the missile struck the building at a steep angle, a typical characteristic of the Kh-22 or Kh-32 missile. Photos of the weapon remnants found at the impact sites and the damage from the attack are consistent with the known characteristics of the Kh-22 or Kh-32 missiles.

167. The missile struck a populated area. The Commission has not identified any obvious military targets in the immediate vicinity of the impact site. The apartment building was hit in the context of a massive missile attack by Russian armed forces against Ukraine’s “military command and control system and associated energy facilities” on 14 January 2023, as reported by the Russian Ministry of Defence.²²² The Ukrainian Air Force Command reported that 38 missiles had been fired against targets in Ukraine on that day, out of which 25 had been intercepted.

168. The Commission has considered whether attempts to intercept the missile by Ukrainian Air Defence Forces caused it to fall on the residential building, as claimed by an

²¹⁹ Ministry of Defence of the Russian Federation, “Summary of the Ministry of Defence of the Russian Federation on the progress of the special military operation on the territory of Ukraine”, 30 June 2022. (available only in Russian)

²²⁰ “Peskov commented on reports of missile strikes near Odessa”, *Kommercant*, 1 July 2022. (available only in Russian),

²²¹ Additional Protocol I to the Geneva Conventions, articles 51(4)-(5) and 57(2).

²²² Ministry of Defence of the Russian Federation, “Report on the progress of the special military operation in Ukraine”, 15 January 2023. (Telegram message available only in Russian)

external adviser to the President of Ukraine in the immediate aftermath.²²³ Proponents of this theory pointed to allegations of two explosions and the potential presence of more than one impact site near the apartment building. The Commission has not found evidence to support this theory. Witnesses interviewed heard only one explosion, and local residents verified that there was only one impact site in the immediate vicinity of the apartment building. The flight of the missile, as seen on a video obtained by the Commission, does not appear to show an interference in the trajectory of the missile.

169. In the aftermath, the Press Secretary of the Russian President stated that Russian armed forces do not attack residential buildings and social infrastructure, but only military targets. He also referred to the abovementioned allegations that the missile hit the building due to Ukrainian air defence, seemingly not excluding that the missile was Russian.²²⁴

170. Based on the context of the strike, the likely identification of the weapon as a Kh-22 or Kh-32 missile, its use in a populated area, causing numerous civilian casualties and damage to a civilian object, the Commission has concluded that Russian armed forces likely carried out an indiscriminate attack with inaccurate and powerful missiles in Dnipro on 14 January 2023, and failed to take feasible precautions such as verifying the objective to be attacked and regarding the choice of means and methods of attack. These are violations of international humanitarian law.²²⁵

Attacks with bombs dropped from aircraft

171. The Commission has investigated several attacks carried out or likely carried out with air-dropped bombs in populated areas. The attacks described below took place in the cities of Chernihiv, Izium, Mariupol, and Sumy. These attacks led to a large number of civilian casualties and significant destruction. Witnesses described how they saw or heard an airplane flying above the area at the time of the attack. In one case, video footage showed several projectiles falling in a line and in close succession, a pattern indicative of an attack with unguided air-dropped bombs. The damage at the impact sites was also consistent with the use of air-dropped bombs. The Commission has concluded that the five attacks described below were unlawful.

Chernihiv city, Chernihiv region, 3 March 2022

First airstrike

172. On 3 March 2022, at around 12.15 p.m., two airstrikes with multiple munitions struck the centre of Chernihiv city. One of the two strikes impacted a residential area near the intersection of Chernovola and Kruhova streets, significantly damaging three multi-story residential buildings, a pharmacy, and the Chernihiv Regional Cardiac Centre. The Commission observed the damage during its visit to the area. It has obtained a list of 15 people who were killed in the attack (seven men and eight women); the total number is likely higher. Dozens were injured.

173. At that time, Russian armed forces were launching numerous attacks against the city until the end of March 2022. They surrounded the city as they attempted to take control of it. A spokesperson for the Russian Ministry of Defence declared that Russian armed forces had imposed a blockade on the city on 25 February 2022.²²⁶

174. The Commission has determined that the attack was an airstrike. Several witnesses said that they heard an airplane before the attack and one witness located at a distance said she saw the plane fly low over the houses after the attack. A video of the attack analysed by the Commission shows several projectiles falling towards the intersection in a line and in close succession, a pattern indicative of an attack with unguided air-dropped bombs. The damage to buildings and impact craters are consistent with the use of such bombs.

²²³ The external adviser to the President of Ukraine subsequently said that his claim was based on information from an individual in Dnipro with knowledge of anti-aircraft systems who said that he heard two explosions, one of which sounded like an anti-aircraft weapon.

²²⁴ Rosbalt, "Peskov did not see the conflict between the Ministry of Defence and the Wagner PMC, Sevastopol is being attacked by drones, Ukraine has become a "weapons laboratory" of the United States", 16 January 2023. (available only in Russian)

²²⁵ Additional Protocol I to the Geneva Conventions, articles 51(4)-(5) and 57(2).

²²⁶ Ministry of Defence of the Russian Federation, "Briefing by the official representative of the Russian ministry of Defence", 25 February 2022. (available only in Russian)

175. The attack impacted a populated area. The Commission has found that there was likely some Ukrainian military presence in the vicinity at the time of the attack. Witnesses reported that there was a checkpoint at the intersection, which was staffed by members of the Ukrainian Territorial Defence Forces, as well as a small presence of Territorial Defence Forces in the area.

176. However, at the time of the attack, a large number of civilians were gathered on the streets nearby, queuing for bread and in front of a pharmacy, where people had to wait outside due to COVID-19 restrictions. There were also several medical institutions in the immediate vicinity. Given the nature of the populated urban area, Russian armed forces should have known or assumed that a large number of civilians could have been in the area and should have taken feasible precautions to verify their presence and to avoid harming them.

177. Based on the context of the attack and the use of multiple unguided munitions in a populated area, where a significant number of civilians were present, causing numerous civilian casualties and damage to civilian objects, the Commission has concluded that Russian armed forces conducted an indiscriminate, disproportionate attack in the area of the Chornovola and Kruhova streets intersection in Chernihiv city on 3 March 2022 and failed to take feasible precautions such as the choice of means and methods of attack with a view to minimize civilian harm. These are violations of international humanitarian law.²²⁷

Second airstrike

178. At about the same time as the attack described above, another attack struck the Stara Podusivka district of Chernihiv, about two kilometres away, and severely damaged two schools and several houses in a residential area. The Commission has found that six civilians, including a 14-year-old boy, were killed in the residential area, and that several people were killed in the schools, the latter including some members of the Territorial Defence Forces.

179. The Commission has determined that the attack was an airstrike, based on the extensive damage and on accounts from witnesses that they heard an aircraft flying above.

180. Several local residents interviewed by the Commission reported military presence at the two schools. School 18, in particular, appeared to function as a gathering point for the Ukrainian Territorial Defence Forces and local residents reported that several among their members were killed there during the attack. This is consistent with the Commission's own observations. During its visit, the Commission observed several improvised defence positions made of sandbags and tires along the perimeter of that school. Residents also said that volunteers were cooking and gathering items for Ukrainian Territorial Defence Forces at School 21 and that at times a significant number of armed personnel gathered there. Finally, obituaries posted on the internet confirm that several members of Territorial Defence Forces were killed at the two schools during the attack (see para. 286).

181. The Commission has, however, not found any evidence of military presence in the residential area north of School 21 that was also struck. At least two bombs fell in this area, about 100-200 m from the school. This distance is similar to the distance between bombs that fell in the abovementioned attack on Chernihiv carried out on the same day, which demonstrates how inaccurate unguided air-dropped bombs can be.

182. The Commission has also considered if Russian armed forces did everything feasible to verify whether there were civilians present in the schools that were attacked. Local residents said that people from the neighbourhood had started using School 21 as a bomb shelter on 25 February 2022 and that they had written "children" in large letters above the entrance to the school to indicate that there were civilians there. They said that civilians were coming and going to the school every day and that, by one estimate, up to 200 persons were sheltering on the ground floor and in the basement of the school at the time of the attack. The Commission believes that a proper assessment of whether civilians were present should have alerted the Russian armed forces to the presence of a large group of civilians at school 21 and that they should have refrained from attacking it.

183. Based on the context of the attack and the use of multiple unguided munitions in a populated area, where a significant number of civilians were present, causing numerous civilian casualties and damage to civilian objects, the Commission has concluded that

²²⁷ Additional Protocol I to the Geneva Conventions, articles 51(4)-(5) and 57(2).

Russian armed forces conducted an indiscriminate attack in a densely populated area in the Stara Podusivka district of Chernihiv city on 3 March 2022 and failed to take feasible precautions such as the choice of means and methods of attack with a view to minimize civilian harm. These are violations of international humanitarian law.²²⁸

Sumy city, Sumy region, 7 March 2022

184. On 7 March 2022, in the late evening, an attack struck a residential area between Romenska and Spartak streets, in Sumy city, completely destroyed six houses, and damaged residential buildings in at least five neighbouring streets. The Commission has obtained a list of 14 persons, comprising seven women, three men and four boys, who were killed in the attack.²²⁹

185. At the time of the attack, Russian armed forces were attempting to take the city and had encircled it.

186. The Commission has determined that that attack was carried out with unguided air-dropped bombs, based on witness accounts of the sound of an aircraft flying above, examination of weapon remnants, and the damage on the ground. During an inspection of the area, the Commission identified two large impact sites, located about 50 m apart. The Commission has received credible information that an aircraft, possibly the same that attacked the residential area, attacked two other sites further north shortly after the attack on the residential area. The damage to these sites also appears to be consistent with air-dropped bombs. This is consistent with information from the Ukrainian authorities that they detected and tracked “airborne targets” crossing the airspace from Russia to Ukraine in the direction of Sumy around 10.31 p.m. on 7 March 2022.

187. The attack impacted a populated area. The Commission has not been able to identify any likely military targets in the immediate vicinity. According to residents, a mobilization office was located about 350 m from the impact sites, but it was not in use at the time of the attack.

188. Based on the context of the attack, the use of unguided munitions in a populated area, causing numerous civilian casualties and damage to civilian objects, the Commission has concluded that Russian armed forces conducted an indiscriminate attack with air-dropped unguided bombs in Sumy city on 7 March 2022, and failed to take feasible precautions such as the choice of means and methods of attack with a view to minimize civilian harm. These are violations of international humanitarian law.²³⁰

Izium city, Kharkiv region, 9 March 2022

189. In the morning of 9 March 2022, an attack struck two residential buildings at Pershotravneva Street 2 and Khlibozavodska Street 3 in Izium city and killed more than 50 persons who were sheltering in their basements. During a visit to the area, the Commission observed that the midsections of two six-story apartment buildings had collapsed.

190. At the time of the attack, fighting was ongoing in Izium. Russian armed forces controlled the left (northern) bank of the Siverskyi Donets river, and Ukrainian armed forces controlled the right (southern) bank. The two apartment buildings that were hit were located next to a bridge in the Ukrainian-controlled part of the city.

191. The Commission has determined that the attack was likely carried out with an airstrike. One witness recounted that she heard an airplane overhead a few seconds before the explosion. An employee of the State Emergency Services who participated in the recovery of the bodies, told the Commission that weapon remnants from a high-explosive unguided air-dropped bomb were found among the ruins of the buildings, but that Russian armed forces who subsequently took over the area did not allow them to collect the remnants or to take photos. While the damage observed is consistent with air-dropped munitions, further investigation is required to conclusively identify the weapon.

²²⁸ Additional Protocol I to the Geneva Conventions, articles 51(4)-(5) and 57(2).

²²⁹ The Commission’s report to the General Assembly on 18 October 2022 (A/77/533) indicated that the attack killed 15 people. Further investigation has established that one of the 15 people was killed in an airstrike the same night in a different area.

²³⁰ Additional Protocol I to the Geneva Conventions, articles 51(4)-(5) and 57(2).

192. The attack impacted a populated area. Residents reported that as heavy fighting broke out from across the river in the morning before the attack, they saw Ukrainian soldiers around the apartment block and some of the weapons fire coming from a residential apartment block less than 100 m from Khlebozavodska Street 3. Residents of the latter building stated that they sought shelter in the basement of that building and that Ukrainian forces were trying to help them evacuate when the attack took place. Based on the casualties, it is clear that dozens of civilians were also sheltering in Pershotravneva Street 2.

193. Given the circumstances of the attack, including Russian armed forces fighting from across the river, the presence of Ukrainian soldiers in and around the buildings that were hit, and the direct impact on the two buildings, the Commission assessed that Russian armed forces likely carried out the attack on the two residential buildings. While the Ukrainian soldiers fighting from or near the apartment buildings were legitimate targets, Russian armed forces should have known or assumed that there may still have been civilians in the buildings and the forces should have taken feasible precautions to minimize harming civilians. The information currently available to the Commission does not allow it to draw firm conclusions whether, in this situation, Ukrainian armed forces fulfilled its obligations to protect civilians, in particular to avoid locating soldiers within or near densely populated areas.²³¹

194. Based on the context of the attack and the use of powerful munitions in a populated area, where a significant number of civilians were present, causing numerous civilian casualties and damage to civilian objects, the Commission has concluded that Russian armed forces likely conducted an indiscriminate attack with air-dropped bombs in Iuzivka city on 9 March 2022 and failed to take feasible precautions such as the choice of means and methods of attack with a view to minimize civilian harm. These are violations of international humanitarian law.²³²

Mariupol city, Donetsk region, 9 March 2022

195. On 9 March 2022, an attack struck the grounds of the Primary Medical and Sanitary Aid Centre No. 3, known as Maternity Hospital No. 3, in Mariupol city, significantly damaging the maternity and children's wing of the hospital. The attack was widely reported in local and international media. At least one pregnant woman and her unborn child were killed in the attack.

196. At the time of the attack, intense fighting was ongoing in Mariupol. Ukrainian armed forces controlled the part of the city where the hospital was situated.

197. The Commission has determined that the attack was carried out with an airstrike. Several witnesses told the Commission that they heard an airplane overhead before the impact. The crater in the courtyard and the damage caused in the attack are also consistent with an airstrike.

198. The attack struck a populated area. In the aftermath of the attack, Russian Government officials claimed that the hospital was not functional and that it was being used for military purposes, referring to information from local residents.²³³ The Commission has not found any support for these allegations. Witnesses interviewed confirmed that the hospital was functioning at that time and added that the oncology building of the hospital, located next to the maternity wing, was at the time used to treat wounded Ukrainian soldiers. It follows from international humanitarian law that the hospital does not lose its protected status if wounded soldiers are nursed there, nor are wounded soldiers – who are receiving medical treatment and no longer taking active part in hostilities (i.e., *hors de combat*) – legitimate targets.²³⁴ Witnesses said that apart from a few soldiers guarding the oncology department, there was no military presence or equipment at the hospital.

²³¹ Pursuant to article 58 of Additional Protocol I to the Geneva Conventions, parties to the armed conflict have the obligation, to the maximum extent feasible, to avoid locating military objectives within or near densely populated areas.

²³² Additional Protocol I to the Geneva Conventions, articles 51(4)-(5) and 57(2).

²³³ See Komsomolskaya Pravda, "Sergey Lavrov, "The maternity hospital in Mariupol was the base of the ultra-radical battalion "Azov""; Ministry of Defence of the Russian Federation, "Briefing by Russian Defence Ministry", 10 March 2022. (Telegram message available only in Russian)

²³⁴ For example, Geneva Convention IV, articles 18-19 and Additional Protocol I to the Geneva Conventions, article 41.

199. In his daily briefing on 10 March 2022, a spokesperson for the Russian Ministry of Defence said, regarding the strike on Primary Medical and Sanitary Aid Centre No. 3, that the “Russian aviation had no missions of hitting targets on the ground in the Mariupol area”.²³⁵

200. Based on the context of the attack, the use of powerful munitions in a populated area, causing civilian casualties and damage to a civilian object with special protection, the Commission has concluded that Russian armed forces conducted an indiscriminate attack on the Primary Medical and Sanitary Aid Centre No. 3, in Mariupol, on 9 March 2022. They also failed to take feasible precautions such as to verify whether the objective was a civilian object subject to special protection. These are violations of international humanitarian law.²³⁶

Mariupol city, Donetsk region, 16 March 2022

201. On 16 March 2022, in the morning, an attack struck the Donetsk Academic Regional Drama Theatre in Mariupol city, significantly damaging large sections of the building. The attack was widely reported in local and international media. Reports about the number of casualties vary widely. Initial reports suggested that several hundreds of people were killed.

202. At that time, intense fighting was ongoing in Mariupol. Ukrainian armed forces controlled the area of the city where the theatre was situated.

203. The Commission has determined that the attack was carried out with at least one high-explosive bomb delivered from an aircraft. Several witnesses confirmed hearing or seeing airplanes just before or at the time of the attack on the theatre. The damage to the theatre is consistent with the use of air-dropped bombs.

204. The attack struck a populated area. Several hundred civilians were sheltering in the theatre at the time of the attack, as it was one of the gathering points for attempts to evacuate civilians from Mariupol and planned evacuations were postponed. Witnesses estimate that on the day of the attack, there were 500 to 600 civilians in all parts of the building. Satellite imagery shows that the word “children” had been written in large letters on the ground in front of the theatre to signal their presence there.

205. In the aftermath of the attack, Russian Government officials claimed that the Azov battalion had used the upper floors as firing positions, holding civilians hostage. While some witnesses said that they occasionally saw a few Ukrainian soldiers around the theatre, the Commission has found no evidence of significant military presence there. Moreover, with hundreds of civilians in the building, the presence of a few soldiers should not have led to those planning or deciding upon the attack to consider it to be a proportionate attack. Rather, the expected incidental civilian harm would be excessive in relation to the concrete and direct military advantage anticipated.²³⁷

206. The Commission has considered whether the attack was intended to strike another target. It has collected information suggesting that Ukrainian armed forces were present in buildings about 150 m from the theatre and that they were conducting attacks from those locations. Nevertheless, the theatre is set apart from other buildings by roads, parking spaces, and a park. Because of this and since the air strike impacted the theatre directly, landing in the middle of the building, the Commission has found it most likely that the theatre was the intended target of the attack.

207. Based on the context of the attack, the use of powerful munitions in a populated area, where a significant number of civilians were present, causing numerous civilian casualties and damage to a civilian object, the Commission has concluded that Russian armed forces conducted an indiscriminate, disproportionate attack that struck the Mariupol Drama Theatre on 9 March 2022 and failed to take feasible precautions such as the choice of means and methods of attack with a view to minimize civilian harm. These are violations of international humanitarian law.²³⁸

²³⁵ Ministry of Defence of the Russian Federation, “Briefing by Russian Defence Ministry”, 10 March 2022. (Telegram message available only in Russian).

²³⁶ Additional Protocol I to the Geneva Conventions, articles 51(4)-(5) and 57(2).

²³⁷ Additional Protocol I to the Geneva Conventions, article 57(2).

²³⁸ Additional Protocol I to the Geneva Conventions, articles 51(4)-(5) and 57(2).

Attacks with cluster munitions

208. The Commission has investigated several attacks carried out with cluster munitions in populated areas. The three attacks described below took place in Chernihiv and Kramatorsk cities and Okhtyrka town, and they led to civilian casualties and destruction of civilian objects. Cluster munitions are inherently indiscriminate when used in populated areas. During its inspection of impact sites, the Commission noted small craters with surrounding scatter patterns consistent with the use of cluster munitions. The descriptions provided by witnesses, of multiple small explosions, are also consistent with the type of explosions created by cluster munitions. In two of the cases described below, the Commission has concluded that Russian armed forces were responsible for the attacks, which were indiscriminate.

Okhtyrka town, Sumy region, 25 February 2022

209. On 25 February 2022, an attack struck a residential area and Sonechko Kindergarten in Okhtyrka city, Sumy region. The Commission has gathered the names of five persons, four men and one woman, who were killed in the attack; furthermore, at least three victims were injured, including an eight-year-old boy.

210. At the time of the attack, there was heavy fighting between Russian and Ukrainian armed forces for control of the city. While Russian armed forces had managed to reach its centre, and an area close to the kindergarten the day before, Ukrainian armed forces had repelled the attack and remained in control on 25 February. The area that came under attack was therefore controlled by Ukrainian armed forces at the time.

211. The Commission has determined that the attack was carried out with cluster munitions. During its visit to the area, it observed small impact craters with surrounding scatter patterns consistent with the use of cluster munitions in the asphalt. Photos that were posted on the Internet, and that the Commission geolocated, show the cargo section of a 220-mm Uragan (“Hurricane”) cluster munition rocket stuck in the ground about 200 m from the kindergarten. This is also consistent with witness accounts.

212. The attack struck a populated area. Although the kindergarten was not operational on 25 February 2022, civilians were using its basement as a shelter. The Commission has identified two possible military targets in the vicinity of the kindergarten but has not been able to verify whether the cluster munition attack affected either of these locations. The headquarters of the 91st Separate Operations Support Regiment of the Ukrainian armed forces was located about 600 m to the east-southeast of the kindergarten. An attack on this facility on the following day resulted in the reported death of 70 servicemen of the Ukrainian armed forces. Another Ukrainian facility, which had been used, at least in the past, to store military equipment, was located 300 m to the north-east of the kindergarten.

213. The Commission has not been able to conclusively establish who was responsible for the attack. The military situation then prevailing in Okhtyrka and the presence of Ukrainian military bases in the vicinity, suggest that these were the likely targets and that Russian armed forces were responsible. To the Commission’s knowledge, there were no Russian armed forces in the affected area at the time of the attack. The analysis of the angle of a cargo section of a cluster munition stuck in the ground nearby indicated that the attack was fired from a west-northwest direction, which had been under the control of the Ukrainian armed forces. However, multiple reports indicate that Russian armed forces were seen north-west of Okhtyrka in the days following the attack, making it possible that they were in the potential launch area also at the relevant time. Nevertheless, the Commission has not been able to establish with certainty which forces were located in the launch area at the time of the attack.

214. Based on the above, the Commission has concluded that a cluster munition attack took place in Okhtyrka on 25 February 2022 but has not been able to establish who was responsible for the attack.

Chernihiv city, Chernihiv region, 17 March 2022

215. On 17 March 2022, an attack²³⁹ struck a residential area in Chernihiv city, including the Chernihiv Regional Children's Hospital; it killed several civilians and injured dozens.

216. At that time, Russian armed forces were launching numerous attacks against Chernihiv with a wide range of weapons, until the end of March 2022. The city was under Ukrainian armed forces control.

217. The Commission has determined that the attack was carried out using cluster munitions. Witnesses described hearing one explosion in the air and then many small explosions on the ground, which is indicative of a cluster munition attack. During a visit to the area, the Commission documented several impact craters with surrounding scatter patterns on hard surfaces around the hospital, and damage to the hospital walls, which are consistent with the use of cluster munitions. Medical staff showed fragments that were found after the attack that are also consistent with characteristics of cluster munitions. The Commission reviewed photos and videos of unexploded submunitions and the cluster munition cargo section that had been used in the attack. It has identified these as 220-mm 9M27K-series Uragan cluster munition rockets. Photographs obtained suggest that at least four such rockets were used.

218. The attack struck a populated area. The Commission has found no evidence of military targets in that area at the time of the attack. According to medical staff, the hospital was operational at that time, with dozens of patients, including eight children in intensive care. In addition, about 200 persons, including families and older persons, had sought shelter in the hospital. That morning, many civilians were also queueing for water which was being distributed on the grounds of the hospital.

219. The Commission has analysed damage from the attack and weapon remnants, including the damage on the hospital grounds and a cargo section from one of the cluster munition rockets stuck in the ground about 300 meters from the hospital. The available evidence suggests that the attack was launched from the south, south-east, or east of the hospital. The 9M27K-series Uragan rocket, identified above as the weapon used in the attack, has a range of 10 to 35 km. While the Commission has not been able to exclude the possibility that Ukrainian armed forces were located in some of the potential launch areas, frontline reports, satellite imagery, and testimony from local residents show that Russian armed forces were at the time present in areas to the south and east of Chernihiv and within firing range with Uragan rockets from the hospital.

220. Documents left behind by Russian armed forces list the 55th Separate Motorized Rifle Brigade, the 74th Separate Guards Motorized Rifle Brigade, and the 228th Motorized Rifle Regiment as present in the relevant area. The Commission has collected information about the identity of the commanders of these units.

221. Based on the context of the attack, the use of cluster munitions in a populated area, where a significant number of civilians were present, causing numerous civilian casualties and damage to civilian objects, the Commission has concluded that Russian armed forces likely conducted an indiscriminate attack in Chernihiv city on 17 March 2022, and failed to take feasible precautions such as the choice of means and methods of attack with a view to minimize civilian harm. These are violations of international humanitarian law.²⁴⁰

Kramatorsk city, Donetsk region, 8 April 2022

222. In the morning on 8 April 2022, an attack struck the area around the train station in Kramatorsk city, Donetsk region; it killed 59 persons, namely 38 women, 15 men, 3 girls and 3 boys, and injured 92 persons.

223. At the time of the attack, the closest frontline between Russian and Ukrainian forces ran a semi-circle about 60-75 km to the southeast, east, north, and northwest of Kramatorsk.

224. The Commission has determined that the train station was attacked with cluster munitions. Several witnesses who were present during the attack described multiple small explosions, which are typical of a cluster munition attack. Using available photos and videos,

²³⁹ The Commission reported on this attack in its report to the General Assembly (A/77/533, para. 48). It has since continued the investigation to establish responsibility.

²⁴⁰ Additional Protocol I to the Geneva Conventions, articles 51(4)-(5) and 57(2).

the Commission identified eight locations affected by such small explosions around the train station. In two locations, the explosions left a shallow indentation on hard surfaces with a surrounding scarring pattern, characteristics that are indicative of a cluster munition attack. Photos and videos from the aftermath of the attack also show a large missile remnant lying on a patch of grass in front of the train station. Based on the above, the Commission determined that the weapon used in the attack had characteristics of a 9M79-1 series Tochka U ballistic missile with a 9N123K cluster munition warhead.

225. The attack struck a populated area. At that time, the train station in Kramatorsk city was teeming with civilians. The State Emergency Service of Ukraine and Ukrainian Railways had been organizing evacuations for civilians from eastern Ukraine, including seven trains the day before the attack. More evacuation trains were expected on the day of the attack. A large crowd of people had gathered at the train station, hoping to evacuate. They included older persons, people with disabilities, and families with children.

226. The Commission has also found that there was a train with military equipment at the station before the attack. Two witnesses, interviewed separately, observed a train with military vehicles on the morning of the attack. One of them said that the train departed about one hour before the attack. The Commission obtained a photo of the train with military vehicles, taken by a family member of one of the witnesses.

227. Ukrainian and Russian armed forces have blamed each other for the attack. Since the Tochka-U missile has a range of 120 km, the launch of the missile could have originated from territory controlled by both armed forces. Since the position of the tail section and its relative location to the submunition impacts are not always reliable indications of the direction of the attack with this kind of weapon, the Commission has not been able to establish the direction of the attack based on the physical evidence on the ground.

228. Both armed forces are reported to have this type of missile in their arsenal. While the Russian Ministry of Defence stated in 2019 that it had introduced the Iskander-M, replacing the Tochka-U missile,²⁴¹ the Commission is not aware of any evidence that the Tochka-U missiles and their related equipment were destroyed. On the contrary, it has compiled videos, photos, and other information of multiple sightings of Tochka-U related equipment in Belarus and Russian-occupied areas in Ukraine. This includes a sighting of Tochka-U equipment in the relevant area around the time of the 8 April 2022 attack.

229. The Commission has noted that a key military objective of the Russian armed forces at the time of the attack was to disrupt the delivery of weapons and ammunition by train to Ukrainian armed forces in the east. In its 8 April 2022 daily update, for example, the Russian Ministry of Defence said that “[h]igh-precision missiles launched from the Donetsk region on train stations in Pokrovsk, Slovyansk, Barvenkovo destroyed weapons and military equipment of the reserves of Ukrainian troops that arrived in the Donbass”.²⁴² Slovyansk is located just 12 km north of Kramatorsk. The Russian Ministry of Defence posted similar updates about attacks on other train stations with “accumulation of Ukrainian military equipment” on 6 and 7 April 2022.²⁴³ Given the presence of military equipment at the Kramatorsk train station, attacking the train station would be consistent with Russian armed forces’ overall objective at that time.

230. Based on the context of the attack and the use of cluster munitions in a populated area, where a significant number of civilians were present, causing numerous civilian casualties and damage; also considering the presence of Ukrainian military equipment at the train station prior to the attack, and the objectives of Russian armed forces at the time, the Commission has concluded that Russian armed forces likely launched an indiscriminate, disproportionate attack using cluster munitions on the Kramatorsk train station on 8 April 2022 and that they failed to take feasible precautions such as the choice of means and methods

²⁴¹ Ministry of Defence of the Russian Federation, “Artillery operators of the combined arms army of the Western Military District will adopt the latest Iskander-M OTRK”, 19 November 2019.

²⁴² Ministry of Defence of the Russian Federation, “Briefing by Russian Defence Ministry”, 8 April 2022. (Telegram message available only in Russian). Pokrovsk and Barvenkovo are 60 and 50 km, respectively, from Kramatorsk.

²⁴³ See Ministry of Defence of the Russian Federation, “The main thing for the day”, 6 April 2022 (Telegram message available only in Russian); Ministry of Defence of the Russian Federation, Briefing by Russian Defence Ministry, 7 April 2022. (Telegram message available only in Russian)

of attack with a view to minimize civilian harm. These are violations of international humanitarian law.²⁴⁴

Attacks with artillery rockets

231. The Commission has investigated attacks carried out with unguided artillery rockets in Chernihiv and Marhanets cities. This weapon system consists of artillery rockets fired from a multiple launch rocket system. These attacks affected large areas and led to civilian casualties and destruction of civilian objects. The Commission has determined that BM-21 Grad-type rockets were likely used, based on accounts of witnesses and an analysis of videos and photos of the impact sites. The Commission has concluded that the attacks were carried out with rocket artillery in urban areas were indiscriminate.²⁴⁵

Chernihiv city, Chernihiv region, 16 March 2022

232. On 16 March 2022, in the morning, several munitions struck a residential area, including the Soyuz Supermarket in Dotsenka Street, in Chernihiv city. The attack killed at least 14 persons, seven of whom were 70 years or older.

233. At that time, Russian armed forces were launching numerous attacks against the city, until the end of March. The city was under Ukrainian armed forces control, but almost fully encircled by the attacking Russian forces.

234. The Commission has found it likely that two different weapons were used in the attack. One crater and the damage to a wall near the supermarket suggest that the site was struck by an artillery shell. In addition, damage to buildings and photos of weapon remnants indicate that several unguided artillery rockets, likely 122 mm Grad rockets, also struck the neighbourhood. In the latter case, accounts from witnesses indicate that multiple explosions took place at almost the same time, which is consistent with the use of unguided artillery rockets.

235. The attack struck a populated area. According to the Commission's interviews, a large crowd of people had gathered around the supermarket at that time. Some were standing in line on the eastern side of the supermarket, waiting to buy bread. Others were queuing to enter the supermarket or to receive pensions at the post office. Many of those present were older people.

236. There are indications that there might have been legitimate military targets in the vicinity at the time of the attack. Witness accounts collected by other organizations suggest that Ukrainian armed forces used the nearby Berezovyi Hai park to attack Russian armed forces. This is consistent with videos posted later on social media, which show extensive damage in the park and to nearby residential buildings, indicating that the park was a frequent target of attacks. Furthermore, this was supported by news and information about the city on a website, which described the park as "one of the important defensive outposts during the defense of Chernihiv" after Russian forces withdrew from Chernihiv region. While the supermarket is a few hundred meters from the entrance of the park, many of the buildings that were struck by 122 mm Grad rockets were located right next to the park, which would be consistent with the park being the intended target of the attack.

237. The Russian Ministry of Defence denied responsibility for the attack, claiming that the dead persons were either "victims of terror by Ukrainian nationalists," or that the videos were "another production" by the Ukrainian security services. The Ministry further stated that the videos contained no indications of explosions, that windows were intact, and that there was no damage to walls.²⁴⁶ The Commission visited the site of the attack and reviewed multiple photos and videos showing craters in the ground, damage to buildings, and destroyed windows.

238. The Commission has determined that the attack was launched from a position to the north-east of the impact site. The crater and the damage to the wall and a gate from the artillery shell that struck near the supermarket suggest that the shell arrived from the north-east. Likewise, all the BM-21 Grad rocket impacts on buildings struck walls that were facing

²⁴⁴ Additional Protocol I to the Geneva Conventions, articles 51(4)-(5) and 57(2).

²⁴⁵ Additional Protocol I to the Geneva Conventions, article 51(4)-(5).

²⁴⁶ Ministry of Defence of the Russian Federation, "Briefing by Russian Defence Ministry", 16 March 2022.

either in a northern, or north-eastern direction, showing that the attack came from that direction.

239. A document found at an abandoned command post of the Center Group of Forces of the Russian armed forces, indicates that on 6 March 2022, the forward command post of the 35th Separate Guards Motorized Rifle Brigade was located in Terekhivka village, about 14 km north-east of Chernihiv. Satellite imagery published by a non-governmental organization and taken on 17 March 2022 shows at least two artillery firing lines, two and four kilometres further north-east. These firing lines were within the maximum range of the weapons that struck around Dotsenka Street on 17 March 2022.

240. Based on the context of the attack, the use of rocket artillery in a populated area, where a significant number of civilians were present, causing numerous civilian casualties and damage to civilian objects, the Commission has concluded that Russian armed forces conducted an indiscriminate attack in Chernihiv city on 16 March 2022 using weapons, including unguided artillery rockets. They also failed to take feasible precautions, such as the choice of means and methods of attack with a view to minimize civilian harm. These are violations of international humanitarian law.²⁴⁷

Marhanets city, Dnipropetrovsk region, 10 August 2022

241. During the night of 9 to 10 August 2022, an attack struck Marhanets, damaging several buildings, including at least one school. It killed at least 11 civilians, all men, and injured 11 – eight men and three women.

242. Marhanets is located on the right bank of the Dnipro River. At the time of the attack, Russian armed forces were in control of the territory on the left bank.

243. The Commission has determined that the attack was carried out with weapons which had characteristics consistent with a multiple launch rocket system. Residents described the attack as lasting for a long time, with a large number of impacts. Witness accounts and photos and videos of the impact sites show that the attack affected a large area, as well as medium-sized craters and holes in the wall, where munitions have struck directly. Taken together, these indications on the duration of the attack, the size of the area affected, and the type of damage caused, point to an attack with a multiple launch rocket system, likely BM-21 Grad rockets.

244. The attack struck a populated area of the city, which included residential buildings, a school, and a dormitory. The Commission has received videos and photographs of significant damage to two civilian homes that were hit directly.

245. The Commission has assessed that the attack came from a south-southwest direction based on an analysis of the photos and videos of the impact sites. Residents told the Commission that there had been frequent attacks with explosive weapons in Marhanets since mid-2022. They could see some of the attacks coming from the direction of the Zaporizhzhia Nuclear Power Plant, in Enerhodar, which is about 14 km away on the opposite side of the river and therefore within the maximum range of 122 mm Grad rockets. According to an employee of the plant, Russian armed forces frequently attacked Marhanets from locations near the plant, including with multiple launch rocket systems.

246. Based on the context of the attack, the use of rocket artillery in a populated area, causing civilian casualties and damage to civilian objects, the Commission has concluded that Russian armed forces conducted an indiscriminate attack on a populated area in Marhanets on 10 August 2022, and failed to take feasible precautions such as the choice of means and methods of attack with a view to minimize civilian harm. These are violations of international humanitarian law.²⁴⁸

b) Attacks in areas controlled by Russian armed forces

247. The Commission documented several instances of cluster munitions and rocket-delivered anti-personnel mines use in attacks in populated areas when they were under the control of Russian armed forces. Both types of weapons are indiscriminate when employed in populated areas. Ukraine, unlike the Russian Federation, is a state party to the Convention

²⁴⁷ Additional Protocol I to the Geneva Conventions, articles 51(4)-(5), and 57(2).

²⁴⁸ Additional Protocol I to the Geneva Conventions, articles 51(4)-(5) and 57(2).

on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, which bans use of anti-personnel mines.

248. The Commission has reviewed incidents in Iziium city, Kharkiv region, which Russian armed forces took control of from 24 March to 10 September 2022, and in Donetsk city, in the Donetsk region. During its visits to Iziium, residents told the Commission that cluster munitions were frequently used both during the battle for the city and the Russian occupation. Local residents, including medical staff and people involved in burials, provided information about several cluster munition attacks that happened during the Russian occupation.

249. Also during visits to Iziium city, the Commission documented the use of anti-personnel mines at the time when the city was under Russian armed forces' control. Residents and medical staff reported that on multiple occasions, mines were scattered over populated areas. Information from residents and photos posted on social media indicate that mines were used in Iziium city at least from July to September 2022. Residents and medical staff said that use was particularly widespread in late August and early September, just before or as Russian armed forces withdrew from the city. They led to grave civilian injuries.

250. The Commission has so far not been able to conclusively attribute responsibility for the incidents it has investigated in the areas which were under Russian armed forces' control. The context in which they happened and the fact that they occurred on several occasions, indicate that they were likely launched by Ukrainian armed forces.

251. The Commission's investigation of incidents in areas controlled by Russian armed forces at the time of the attacks has been severely hampered by its lack of access to those locations. The Commission's numerous requests for access have not yielded any response, neither from the de facto authorities in these areas, nor from the Russian authorities. The Commission's investigation has also been challenging because of fewer photos and videos of incidents in areas controlled by Russian armed forces. Residents reported that attempting to take photos or videos of the aftermath of attacks involved significant security risks.

Case descriptions

252. In this section, the Commission will provide illustrations of some incidents it has documented. For each incident, the Commission has sought to determine the general context, whether civilians or civilian objects were affected, the potential presence of military objectives at or near the impact sites, the weapons systems used, and the party responsible. As noted above, the Commission faced particular challenges in documenting these incidents.

Attacks with cluster munitions

Iziium city, Kharkiv region, three instances

253. The Commission investigated three attacks that caused civilian casualties in Iziium city during the period it was under Russian armed forces control. In two of these cases, there was clear physical evidence of the use of cluster munitions.

254. On 9 May 2022, in the evening, an attack struck the First Microdistrict in Iziium, according to several local residents; they stated that three persons were killed and six were injured, including a 10-year-old boy. The Commission has determined that the attack was likely carried out with cluster munitions based upon the indentations in the ground and the scarring pattern. One resident said that a "rocket with holes that fired cluster munition", a likely reference to the cargo section of a 220-mm Uragan rocket, had been stuck in the yard of her building and was removed by Russian soldiers after two weeks. Another resident, whose friend was killed in the incident, showed damage to the walls in his house and a small crater outside his gate, with surrounding scatter pattern characteristic of a submunition explosion.

255. On 16 July 2022, around 11 a.m., an attack struck the Pidhirky district in Iziium, according to residents. Several submunitions impacted Kindergarten No. 13, where about 250 persons from the neighbourhood, including many children, had sought shelter. A 60-year-old man who sat in the garden was killed at the entrance to the basement. A 60-year-old woman who was about 200 m away was also killed. According to witnesses, she was among a large crowd of older persons who were waiting outside a newly opened branch of a Russian bank to receive pensions from the Russian authorities. Medical staff stated that many older

persons injured in that attack were hospitalized on that day. The Commission has determined that the attack was likely carried out with cluster munitions based upon the indentations in the ground and the surround scarring pattern. It has documented damage to the wall next to the entrance to the basement of the kindergarten, consistent with the use of cluster munition and a small impact crater in the asphalt with a surrounding scatter pattern typical of a submunition explosion. Two persons who were outside when the attack happened said that they heard small explosions in the air.

256. On 14 July 2022, around 11 a.m., an attack struck the area around the central market in Iziium, according to local residents; a 60-year-old woman told the Commission that she was injured in her knee in the attack, and that two of her neighbours, both in their seventies, sustained injuries in the attack. The witnesses confirmed the attack and reported that it was carried out with cluster munitions.

257. Based on the context of the attacks, the use of cluster munitions in a populated area, where a significant number of civilians were present, causing civilian casualties and damage, the Commission has concluded that Ukrainian armed forces likely launched an indiscriminate attack using cluster munitions in Iziium on 9 May and 16 July 2022, and that they failed to take feasible precautions such as the choice of means and methods of attack with a view to minimize civilian harm. These are violations of international humanitarian law.²⁴⁹ The attack on 14 July 2022 appears to be similar to the above two attacks.

Donetsk city, Donetsk region, 14 March 2022

258. The Russian Ministry of Defence said on 14 March 2022 that a cluster munition missile struck Donetsk city earlier that day, killing 20 civilians and injuring 28.²⁵⁰ Photos and videos from Donetsk city posted on various social media channels on 14 March 2022 and afterwards show at least seven people in civilian clothes who appear to be injured and 13 people who appear to be lifeless. The footage also shows the remnants of a Tochka-U ballistic missile and impact craters in asphalt with surround scatter patterns indicative of a cluster munition attack. One man in uniform said in a video that air defence intercepted the missile and that is why it landed where it did.

259. Ukrainian authorities denied that they were responsible in media statements. In response to a written question, the authorities said that they have no information about the 14 March 2022 incident in Donetsk city.

260. Without access to the area and in absence of communication with Russian authorities, the Commission has not been able to attribute responsibility for the attack or to determine whether the incident violated international humanitarian law.

Use of anti-personnel mines

Iziium city, Kharkiv region, multiple instances

261. The Commission has investigated incidents involving the use of anti-personnel mines in Iziium during the period in which the city was under Russian armed forces control.

262. Several local residents told the Commission that they saw anti-personnel mines or were injured by them on 9 and 10 September 2022 in the western part of Iziium. Witnesses stated that on 9 September 2022, mines fell on their neighbourhood behind the Povorotka supermarket in north-western Iziium. They explained that Russian armed forces had been located in the adjacent forest, and while Russian forces had started withdrawing by then, there were still some soldiers left. One local resident said that several vehicles used by Russian armed forces were damaged by the mines. At least two civilians were subsequently injured when stepping on mines.

263. One married couple told the Commission that in a neighbourhood a bit further south, mines fell around midday the following day. They heard short blasts and the sound of plastic objects falling on rooftops. When the man went out, he stepped on a mine, which exploded, severely injuring his leg. He saw several mines lying around him. A neighbour went to seek

²⁴⁹ Additional Protocol I to the Geneva Conventions, articles 51(4)-(5) and 57(2).

²⁵⁰ Ministry of Defence of the Russian Federation, "Briefing by the Russian ministry of Defence", 14 March 2022. (available only in Russian)

help but was shot at by Russian soldiers. The neighbour eventually managed to bring the injured man to the hospital where medical staff had to amputate his leg. Another local resident in the same area said that he started seeing mines in his neighbourhood in late August or early September 2022. He had destroyed nine mines himself and showed the Commission two unexploded mines that were still lying in his backyard.

264. While civilians continued to be injured by anti-personnel mines in and around Izium, the Commission is not aware of any allegations that they were used after Russian armed forces withdrew from the city.

265. After inspection of unexploded mines, photographs, and weapon remnants, the Commission has identified them as antipersonnel high-explosive landmines (PFM in Russian), also called “butterfly mines”. The Commission has seen photos of weapon remnants found in Izium that indicate that PFM mines had been delivered by 220-mm Uragan rockets with a range of 10 to 35 km. The Commission has not been able to establish the direction from where the rockets were fired. Both Ukrainian and Russian armed forces were stationed within striking distance of Izium.

266. Given the military context in Izium and the repeated use of PFM mines, including in areas with presence of Russian armed forces, the Commission has concluded that it is likely that the PFM mines in Izium were used by Ukrainian armed forces. In addition to being violations of international humanitarian law²⁵¹ – an indiscriminate attack and failure to take feasible precautions – this would be a violation of the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction.²⁵²

4. Large-scale attacks against the Ukrainian energy-related infrastructure

267. The Commission has investigated the series of large-scale attacks on energy-related installations in Ukraine. Since the beginning of the Russian Federation’s invasion of Ukraine, both Russian and Ukrainian armed forces, albeit to a very different degree, had carried out attacks on energy-related installations in each other’s countries. Although Russian armed forces had been carrying out strikes on Ukrainian energy facilities since the first days of the invasion, such attacks were expanded onto a large scale from 10 October 2022. For the purposes of its investigations, the Commission has focused on the period from 10 October to 26 January 2023.

268. Prior to 10 October 2022, attacks by the Russian armed forces impacted, among others, oil refineries and electric sub-stations related to railways. These early attacks affected civilians in many ways, including those trying to flee, as well as created fuel shortages during the spring and summer 2022.

269. After 10 October 2022, two days after an explosion on the Kerch Bridge, the energy-related infrastructure in Ukraine became an explicitly declared target of ramped-up attacks.²⁵³ On that date, President Putin declared that “at the proposal of the Defence Ministry and in accordance with the plan of Russia’s General Staff, a massive strike was launched with long-range precision air, sea and land-based weapons against Ukrainian energy, military and communications facilities”.²⁵⁴ The large-scale attacks on energy-related infrastructure were carried out with hundreds of long-range missiles and drones equipped with explosives and struck objectives in 20 of Ukraine’s 24 regions. They targeted many of the installations which are indispensable to the survival of the civilian population, such as electric substations and power plants. Many of these installations are thermal plants as well, meaning they produced both electricity and heating for entire urban areas, where individual dwellings do

²⁵¹ Additional Protocol I to the Geneva Conventions, articles 51(4)-(5) and 57(2).

²⁵² Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, article 1.

²⁵³ On 8 October 2022, the Kerch Bridge connecting the Russian mainland to Crimea came under attack. The bridge had been inaugurated by President Putin in 2018 and was therefore important both as a symbol of the annexation of the peninsula, and strategically important to the Russian Forces stationed there.

²⁵⁴ Official website of the President of the Russian Federation, “Meeting with permanent members of the Security Council”, 10 October 2022.

not have heating systems of their own but depend on the thermal energy produced by the plants.

270. As mentioned above, international humanitarian law requires that parties distinguish between military objectives and civilian objects.²⁵⁵ In principle, an energy-related facility may have both military and civilian purposes, i.e., it can be dual-use. However, given the widespread and intensive nature of the waves of attacks, the Commission has determined that the attacks likely included facilities that were not for military purposes or dual-use. Further, a dual-use facility does not automatically become a lawful military target. The Russian armed forces were required to confirm that each targeted facility made an effective contribution to Ukraine's military action and that attacking it offered a definite military advantage (i.e., not potential).²⁵⁶ Even if deemed to be a lawful military objective, from this perspective, the Russian armed forces were required to assess the proportionality of each attack. In particular, they were prohibited from launching an attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated.²⁵⁷ Moreover, intentionally launching such an attack with knowledge of its expected excessive nature is a war crime (i.e., war crime of excessive incidental death, injury or damage).²⁵⁸

271. The large-scale attacks launched by Russian armed forces on Ukraine's infrastructure starting 10 October 2022 were distinct from previous attacks on energy facilities. The intensity, geographical scope, and type of installations targeted lead the Commission to conclude that the objective of the large-scale attacks was not just to damage or destroy individual energy installations, which could serve a military purpose, but also to disrupt and destabilize the entire energy system in Ukraine. The scale of the disruption is of a nature to inflict significant harm to the civilian population.

Widespread and systematic character of the attacks

272. The Commission has found that the large-scale attacks launched between 10 October 2022 and 26 January 2023, which it has examined in closer detail, were widespread and systematic. First, the Commission's own investigations as well as information from the Ukrainian authorities show that the attacks struck energy-related installations across 20 of Ukraine's 24 regions and were therefore widespread.

273. Second, the intensity of the attacks led the Commission to assess that they were systematic. As of the end of January 2023, Russian armed forces had launched at least 13 waves of attacks, using hundreds of long-range missiles and drones equipped with explosives, to target Ukraine's energy-related installations. Such large-scale attacks took place in 2022 on 10 October, 11 October, 17 October, 31 October, 15 November, 23 November, 5 December, 16 December, 19 December, 29 December and 31 December; in 2023 on 14 January and 26 January.²⁵⁹ While Ukrainian air defence shot down many of these weapons, a significant number hit their targets. Ukrainian authorities have shared with the Commission a list of 159 attacks that damaged or destroyed 79 energy-related installations across the country between 10 October 2022 and 12 January 2023. Photographs and videos of the impact sites corroborate dozens of these attacks.

274. Finally, while attacks prior to 10 October 2022 focused mainly on fuel installations and electric infrastructure related to the railway system, attacks after that date targeted systematically powerplants and other infrastructure critical for the transmission of electricity and the generation of heat across Ukraine.

Civilian harm

²⁵⁵ For example, Additional Protocol I to the Geneva Conventions, articles, 52 and 57(2).

²⁵⁶ Additional Protocol I to the Geneva Conventions, article 52(2).

²⁵⁷ Additional Protocol I to the Geneva Conventions, article 51(4)-(5).

²⁵⁸ Additional Protocol I to the Geneva Conventions, article 85(3)(b)-(5).

²⁵⁹ See also International Energy Charter "Ukrainian Energy Sector Evaluation and Damage Assessment - V", 20 December 2022 and "Ukrainian Energy Sector Evaluation and Damage Assessment VI", 24 January 2023. The International Energy Charter is an intergovernmental organization with 51 member states (as of October 2022); See DIXI Group, Russian War against Ukraine: Energy dimension (Weekly updating DIXI Group Alert).

275. Russian authorities provided some indications regarding the anticipated military advantage of the attacks after 10 October 2022. On 1 December 2022, for example, Russian foreign minister Sergey Lavrov stated in a press conference that the attacks were intended to knock out of service “the energy facilities that are important for the operation of the Ukrainian armed forces and for the delivery of a huge number of Western weapons, which are sent to Ukraine to kill Russians”.²⁶⁰

276. Nevertheless, the Commission is deeply concerned that inflicting civilian harm may have been one of the objectives of the waves of attacks. Just a few days before the start of the official heating season in Ukraine, the attacks targeted many of the installations which are indispensable to the survival of the civilian population. Statements of Russian government officials since 10 October 2022 clearly indicated that the intended targets of these attacks were energy facilities. In addition to the abovementioned declaration of President Putin, in October and November 2022, the Russian Ministry of Defence frequently published similar statements in the daily updates.

277. The attacks have, among other things, impacted electricity-related installations, which caused outages, sometimes affecting millions of people across the country. Some of the targets included power-generating installations as well as transmission substations, which play a vital role in distributing electricity to some of the country’s regions. Their damage or destruction led to a disruption of the transmission of electricity in numerous areas. Following the attacks on 10 October 2022, for example, more than four million consumers were temporarily disconnected from the electricity supply. Even more significantly, the attack of 23 November 2022 deprived two-thirds of Ukrainian consumers of access to electricity, and it took a week to restore power to 80 per cent of them.²⁶¹ Several installations attacked were also directly related to the centralized heating system, which could have fatal effects on civilians, particularly during the cold winter months. In addition, the disruption of the transmission of electricity had an impact on health, education, and other key services.

278. Russian authorities could have reasonably assessed that considerable civilian harm would follow from the attacks. Despite public information about the harm suffered by the civilian population in the aftermath of the first few waves of attacks, Russian authorities continued to perpetrate several other waves of such attacks.

Disproportionate attacks

279. The Commission has considered whether the waves of attacks targeting Ukraine’s energy-related infrastructure, which were initiated on 10 October 2022, were disproportionate, as they inflicted considerable and predictable civilian harm, given the essential nature of electricity and heating for civilian life.

280. At the very least, after the first waves of attacks, the Russian authorities knew that subsequent similar waves of attacks would cause incidental death or injury to civilians or damage to civilian objects, and that such death, injury or damage would be of such an extent as to be clearly excessive in relation to the concrete and direct overall military advantage anticipated. If the intended object of the attack was the civilian population or civilian objects, the attack would amount to additional war crimes.

281. The Commission has therefore found reasonable grounds to conclude that the waves of attacks on Ukraine’s energy-related infrastructure launched starting 10 October 2022 by Russian armed forces was disproportionate and a violation of international humanitarian law. The Commission has also concluded that the Russian armed forces and their leadership should have known, based upon public information available to them, that the attacks would cause harm to civilians and damage civilian objects that would be excessive in relation to the anticipated military advantage. Consequently, the Russian armed forces committed the war crime of excessive incidental death, injury, or damage.

²⁶⁰ The Ministry of Foreign Affairs of the Russian Federation, “Foreign Minister Sergey Lavrov’s news conference on European security issues”, 1 December 2022.

²⁶¹ Stawomir Matuszak, “On the verge of blackout: Ukraine facing attacks on its electricity generation system”, Centre for Eastern studies 18 January 2023.

282. Due to the nature of the attacks, the Commission found that the attacks may amount to the crime against humanity of other inhumane acts, in addition to the violations of international humanitarian law and war crimes. The Commission has determined that Russian armed forces attacked the Ukrainian energy-related infrastructure starting on 10 October 2022 in both a widespread and systematic manner. As discussed above, the attacks were widespread as they were large-scale and launched against a significant number of targets over a broad geographical area. The attacks were also systematic as they were organized and specifically focused on the energy and heating infrastructure. Further time and resources are needed to investigate the attacks to clarify if their accumulated impact becomes comparable, as it possibly can, given their magnitude, to one of the enumerated acts of crimes against humanity, and to what extent the policy was directed against the civilian population.²⁶²

5. Endangering civilians

a) Situations in which both parties have endangered civilians

283. The Commission has found that, during the conduct of hostilities, both parties have, in some instances, exposed civilians to significant risks through the positioning of troops or equipment in or near civilian buildings, where civilians were present. International humanitarian law prescribes that parties to the armed conflict shall, to the maximum extent feasible, avoid locating military objectives within or near densely populated areas, and endeavor to remove civilians and civilian objects under their control from the vicinity of military objectives.²⁶³

284. The Commission documented situations in which Russian armed forces, on repeated occasions, deliberately deployed in residential areas, and, at times, forced civilians to remain there or in proximity. In Kozarovychi village, Kyiv region, an older woman reported that when Russian armed forces arrived in the village in late February 2022, soldiers came to her house with orders to find hiding places for their vehicles. The woman and other local residents told the Commission that Russian armed forces placed military vehicles between houses, in backyards, and in garages, and shot at Ukrainian positions from between the houses. In Lypivka village, Kyiv region, a woman and her daughter said that when Russian armed forces took control of the area on 28 February 2022, they parked one military vehicle they identified as a tank next to their house, while the family was hiding in the basement.

285. Russian armed forces used a similar tactic in March 2022, in Yahidne village, Chernihiv region, where they placed military vehicles between houses and fired at Ukrainian positions from people's backyards. In addition, the soldiers forced the entire village, 365 civilians, to stay in the basement of the school while they established their headquarters on the ground floor of the same building. With hundreds of civilians located in the building, Russian armed forces launched attacks on Ukrainian positions, also from the grounds of the school, placing civilians at significant risk (see paras. 541-543).

286. The Commission has further found that in areas controlled by Ukrainian armed forces, particularly during the first phase of the hostilities, on some occasions, there was also a lack of separation between armed forces and civilians, which placed civilians at risk. In Chernihiv city, residents stated that while schools 18 and 21 were used to distribute humanitarian aid to the civilian population and school staff had written "children" on the walls of one of the school buildings, Ukrainian Territorial Defence Forces had set up headquarters in school 18 and their members were also present at school 21. Both military and civilians were among those killed and wounded when an airstrike hit both schools and nearby houses on 3 March 2022. By not separating civilians from their personnel, the Ukrainian armed forces in this case failed to, among other things, take necessary precautions to protect civilians under their control against the dangers resulting from military operations.

287. The Commission has concluded that the parties, although to a different extent, have endangered civilians by not taking requisite precautions to the maximum extent feasible – such as avoiding locating military objectives within or near densely populated areas – and have thereby violated international humanitarian law.²⁶⁴

²⁶² See Crime against humanity of other inhumane acts, Rome Statute, article 7(1)(k).

²⁶³ Additional Protocol I to the Geneva Conventions, article 58.

²⁶⁴ Additional Protocol I to the Geneva Conventions, article 58.

b) The situation at the Zaporizhzhia Nuclear Power Plant

288. Military operations at or near the Zaporizhzhia Nuclear Power Plant, in Enerhodar, Zaporizhzhia region, have significantly endangered the plant, prompting the risk of a serious nuclear incident. International humanitarian law prescribes that a nuclear plant, among other things, shall not be made the object of attack if such attack may cause the release of dangerous forces and consequent severe losses among the civilian population. Further, armed forces shall endeavour to avoid locating any military objectives in its vicinity.²⁶⁵

289. On 4 March 2022, Russian armed forces launched an attack on the power plant and heavy fighting erupted as they attempted to take control of it. The Commission has spoken to witnesses confirming that there was heavy fighting in the vicinity of the facility on that night. Videos posted on social media, including by a staff member of the plant, show that a fire broke out as a consequence of the attack and inflicted damage to parts of the plant.

290. Russian armed forces placed military equipment in and near the facility. Satellite imagery from 29 August 2022 shows military equipment less than 150 m from a reactor. Russian armed forces have also been launching attacks from near the plant and have thereby placed the facility at risk for retaliatory attacks. For example, the 10 August 2022 attack on Marhanets city described above (see paras. 241-246) was launched from the vicinity of the plant.

291. Witnesses interviewed by the Commission and public statements of the IAEA have confirmed that there have been numerous incidents of shelling near the powerplant. The IAEA warned that the use of military force at or near the nuclear facility could lead to a serious nuclear incident.²⁶⁶ It is not only direct attacks on the powerplant that pose a risk. The plant requires power supply for the cooling systems and other essential safety functions. It relies on four 750 kilovolt power lines providing electricity supply, as well as one back-up 330 kilovolt powerline and fuel-powered generators for emergency use. Damage to energy installations have sometimes forced the powerplant to rely on its generators, leaving it extremely vulnerable. Loss of cooling systems can lead to a meltdown, and the release of radiation into the atmosphere.

292. While the Commission has not been, at this stage, in a position to determine which party was responsible for attacks on the power plant and the connected power lines, it has established that Russian armed forces had launched an armed attack to take control of the plant and has placed military equipment in and near the facility.

B. Personal integrity violations

1. Personal integrity violations committed by Russian authorities

293. The Commission has documented patterns of wilful killings, unlawful confinement, torture, rape, sexual and gender-based violence and unlawful transfers and deportations of detainees in the areas that came under the control of Russian authorities in Ukraine. Violations were also committed against persons deported from Ukraine to the Russian Federation.

294. On the basis of its investigations, the Commission noted certain elements which are common to the different patterns of violations that it has identified:

295. In cases of summary executions and torture, perpetrators mostly targeted persons for any form of real or perceived support of Ukrainian armed forces, or for any action directed against Russian armed forces.

296. During Russian armed forces' initial control of localities in Ukraine, many of the wilful killings, unlawful confinement, rapes, and sexual violence were committed in the context of house-to-house searches, which were aimed at locating supporters of the Ukrainian armed forces or finding weapons.

²⁶⁵ Additional Protocol I to the Geneva Conventions, article 56.

²⁶⁶ See International Atomic Energy Agency, *2nd Summary Report by the Director General, Nuclear safety, security, and safeguards in Ukraine, 28 April – 5 September 2022*; International Atomic Energy Agency Director General statements.

297. When Russian authorities controlled areas during longer periods of time, they established dedicated detention facilities, used more diverse methods of torture, and in addition, targeted persons who refused to cooperate. A wider array of perpetrators have been involved in the commission of unlawful confinement, torture, and sexual and gender-based violence, according to victims and witnesses. Such perpetrators included Russian armed forces, the Federal Security Service of the Russian Federation,²⁶⁷ the National Guard of Russia²⁶⁸ and its subordinate units, and Russian-affiliated armed groups of the former self-proclaimed ‘republics’.

a) Summary executions

1) Overview

298. Evidence collected by the Commission shows a widespread pattern of summary executions in areas that Russian armed forces controlled. It has examined 84 credible allegations about the summary execution of at least 142 men, eight women, and one boy in 43 localities in six regions. This section focuses on the four regions where the Commission has had access; Chernihiv, Kharkiv, Kyiv and Sumy.

299. International humanitarian law prohibits the wilful or intentional killing of persons protected under the Geneva Conventions, such as civilians or combatants *hors de combat*.²⁶⁹ Such killing constitutes a war crime. Similarly, international human rights law holds that no one shall be arbitrarily deprived of their life.²⁷⁰

300. The highest number of allegations collected so far came from the Kyiv region, including from the town of Bucha, which became notorious because of the high number of civilians killed and executed there. Most of the executions documented in the areas which the Commission has visited took place during the first months of the armed conflict. While the geographical and temporal distribution of summary executions will likely change as more information surfaces, the number of summary executions in the Kyiv region is striking, and further investigation is required to understand the underlying reasons.

301. The Commission has categorized a killing as a summary execution based on an overall analysis of the following factors: method of killing, in particular done within direct or close proximity to the victim, for example, a gunshot to the head, slit throat, or strangulation; whether the victim was last seen in the custody of a party to the conflict or whether there is evidence that the victim was under the control of the perpetrator before death, such as, blindfolds over the victims’ eyes, the victims’ hands or legs were tied, or indications of ill-treatment or torture; and whether information is available regarding a possible motive of the perpetrator for the execution.

302. Regrettably, the Commission has not been able to access some of the areas which were affected by ongoing hostilities, or which were under Russian armed forces control. The situations outlined below are therefore only a small sample of the cases which the Commission has been able to document.

2) Situations in which summary executions were committed

303. The Commission has verified and corroborated the execution of 68 persons in 17 localities. All the summary executions described in this section took place in areas that were under the control of Russian armed forces at the relevant times in Chernihiv, Kharkiv, Kyiv and Sumy regions.

304. In more than half of the cases documented, witnesses last saw the victims in the custody of Russian armed forces before their death. In a few cases, eyewitnesses observed

²⁶⁷ The Federal Security Service of the Russian Federation is a federal executive body with the authority to implement government policy in the national security of the Russian Federation.

²⁶⁸ The National Guard of the Russian Federation, referred to as Rosgvardiya, is an internal military force of the Russian Federation.

²⁶⁹ For example, Geneva Convention III, article 130; Geneva Convention IV, article 147; Additional Protocol I to the Geneva Conventions, articles 41 and 75(2)(a)(i).

²⁷⁰ International Covenant on Civil and Political Rights, article 6(1); Convention on the Rights of the Child, article 6.

Russian armed forces carry out the executions. In both situations, there are reasonable grounds to conclude that Russian armed forces are responsible for these executions.

305. In the remaining cases, the victims' bodies were found at or near locations that Russian armed forces used as bases, such as farms, forests, basements or courtyards of private houses and public buildings, and a basement of a children's camp. In these cases, the Commission has concluded that Russian armed forces were likely responsible based on the location where the bodies were found.

306. In the cases investigated by the Commission, accounts of survivors, witnesses, relatives, and in one case, a Russian armed forces soldier, suggest that perpetrators mostly pursued victims for real or perceived support of Ukrainian armed forces. They targeted victims for being members of or helping the Ukrainian armed forces or the Ukrainian Territorial Defence Forces, for suspicion of passing information about the movement of Russian armed forces to the Ukrainian armed forces, for any other type of association with current or former military personnel, or for any behaviour that might have been deemed suspicious at the time. This is consistent with the profile of the victims. In the cases investigated, almost all victims were men, the majority aged between 30 and 50. In the few exceptions documented, the victims were women, or a 14-year-old boy accompanying a man of fighting age.

307. Many of the executions occurred in towns and villages that were close to the frontlines, where Russian armed forces came into frequent contact with local residents. Most of the executions took place within the first couple of weeks after Russian armed forces assumed control over a place. Executions were also carried out after Russian armed forces stationed in a given location came under attack.

308. Perpetrators intercepted some of the victims on the street, as they were seemingly carrying out routine activities. In certain cases, executions occurred in the context of house-to-house searches or house visits, during which Russian armed forces looked for individuals cooperating with Ukrainian armed forces or who possessed weapons or military attires. This is consistent with the above-described pattern in which perpetrators targeted people for their real or perceived support of Ukrainian armed forces.

309. For instance, the Commission documented a case in which on 12 March 2022, after Russian armed forces visited several houses in a street of village Andriivka, in Kyiv region, the bodies of three men were found dead, one in his garden, and two others in their respective houses, all three with gunshot wounds in the back of their heads. The two latter men had in addition gunshot wounds to their knees and had their hands tied behind their backs (see case descriptions starting para. 317).

310. The Commission has reviewed multiple medical documents and photos of bodies which show that the most common method of killing was gunshot to the head from close range. Other victims died of multiple gunshot injuries to torso, or their throat was slit.

311. In many of the cases, there is evidence that Russian armed forces kept the victims in custody, often in places where they set up temporary bases, prior to the execution. In a number of cases investigated, one or several of the victims had their hands tied behind their backs, or their feet tied. The material used were zip ties, nylon ropes, plastic cords, or other types of improvised textiles.

312. In a few cases, witnesses indicated that victims were killed on the spot. This occurred, for example, in an incident on 3 March 2022, in Havronshchyna village, Kyiv region, in which a resident saw through his window a group of five soldiers interrogating two men in civilian clothes in front of a shop. After a while, they led one of the two men behind the shop and the witness heard two gunshots. Later the same day, another witness and a few local men found the body of the young man behind the shop. Similarly, on the night from 28 to 29 March 2022, near village Vesele, Kharkiv region, witnesses who were on buses bringing civilians to the Russian Federation described seeing a group of Russian soldiers taking two young men off the buses, interrogating them, beating them heavily, and shooting one of the men in the head.

313. In some instances, the execution was preceded by interrogation and torture or ill-treatment. Where available, the Commission reviewed photos of the bodies of the victims and noted traces of blunt force traumas on head, face, torso, and legs. Some of the victims also had traces of blood, gunshot wounds to the legs, and broken bones. These suggest torture

or ill-treatment prior to death. In a widely reported case from 23 March 2022, where the head of the Motyzhyn village, in Kyiv region, was detained and subsequently executed alongside with her family, a witness who participated in the exhumation of the bodies, reported that the husband of the head of the village had broken hands, while her adult son had a gunshot wound in his knee.

314. One victim who survived torture and a subsequent execution attempt in March 2022, in Vyshneve, Chernihiv region, reported that one of the perpetrators, a Russian soldier, threatened to cut off his ears and told him: “If you don’t say who blew up the convoy, I will kill you, you’d be my 82nd killed *khokhol*,” using a Russian derogatory term for Ukrainians. The two brothers of the victim had been tortured and executed by the same perpetrators. Another survivor described hearing a man being interrogated and beaten for one and a half hours, his arms broken, and legs shot, before he was killed.

315. The violent death of a close family member, and especially the knowledge that this was preceded by torture or ill-treatment, has a profound impact on the families. Those interviewed by the Commission spoke of their pain, anger and struggle to come to terms with their loss. One woman whose husband disappeared during the occupation of the village by Russian armed forces and whose burned body was later found in a cellar of a private house, shared the following with the Commission: “I cry every single day. I had a husband, a good man, hardworking, caring, wonderful father and grandfather. ... His grandson cries “Where’s my grandfather?” How do you explain what happened to a four-year-old child? I’ve lost my husband, my house, and my work. How should I go on living?”.

316. Based on the body of evidence it has collected, the Commission has concluded that Russian armed forces have committed numerous wilful killings of civilians or persons *hors de combat* in multiple locations that came under their control, which are war crimes and violations of the right to life.²⁷¹

Case descriptions

317. As stated above, the Commission has found a pattern of summary executions committed by Russian armed forces in areas which came under their control. In this section, the Commission will provide illustrations of the cases it has documented. The context and circumstances of each case are described. The Commission has included corroborated information about units present in the relevant area, even if it has not established a link between that unit and the violation. Where the Commission has found a direct link between a unit and the violation, this is specified.

Andriivka village, Kyiv region

318. Russian armed forces entered Andriivka on 26 February 2022. They occupied the village until 31 March 2022. The Commission has collected information indicating that the Russian armed forces 64th Separate Guards Motor Rifle Brigade was based in the village. In addition to the case described below, there are credible allegations regarding the killings of at least eight local men that bear signs of executions that occurred during the occupation of the village.

Executions on Slobody Street

319. According to witnesses, during their occupation of the Andriivka village, Russian soldiers were searching residential houses for weapons, uniforms, or any other indication that would link residents with the Ukrainian armed forces.

320. Ruslan Yaremchuk²⁷² (born 1975) was last seen alive on 11 March 2022. His body was found by residents five days later in his garden on Slobody Street. According to witnesses, he had a gunshot wound in the back of his head. This is confirmed by medical

²⁷¹ For example, Geneva Convention III, article 130; Geneva Convention IV, article 147; Additional Protocol I to the Geneva Conventions, articles 41, 75(2)(a)(i); International Covenant on Civil and Political Rights, article 6(1).

²⁷² In this section, the Commission has revealed the names of the victims only after explicit consent from close family members or relatives, or in the cases in which the names were publicly available.

documents reviewed by the Commission, which indicate perforating gunshot wound to the head as the main cause of death. Yeremchuk's mobile phone, destroyed by a gunshot, was found next to his body.

321. The Commission has also documented that two other identified men were killed in their respective houses in the same street on 12 March 2022. Information collected indicates that both died of gunshot wounds to their heads, in the same way as Yeremchuk. In addition, the men appeared to have gunshot wounds to their knees and had their hands tied behind their backs. One neighbour told a news outlet that he saw how several soldiers arrived in a military vehicle with the letter "V", entered the houses of the two men, after which he heard gunshots.

322. Using photos that Russian soldiers in Andriivka took with the phone of a local resident, journalists identified two soldiers from the 64th Separate Guards Motor Rifle Brigade. By analyzing obituaries of Russian soldiers killed in Ukraine, the Commission verified that the 64th Brigade was stationed in Andriivka. In a recorded phone conversation with a journalist in July 2022, one of the soldiers described witnessing the execution of two men and said that he had shot a third one himself. He said that he executed the man because he suspected him of providing information about the movement of Russian armed forces to Ukrainian armed forces, which led to an attack that killed several of his fellow soldiers. His description of the killings is consistent with the killing of the three men on Slobody Street. The Commission has collected information about the commanders of the 64th brigade, including one commander who might have been involved in the executions described above.

Bucha town, Kyiv region

323. On 3 March 2022, after several failed attempts, Russian armed forces entered Bucha. They remained in control of the town until their withdrawal on 31 March 2022. Information collected by the Commission indicates that forces from several Russian armed forces units were located in the town, including the 234th Guards Airborne Assault Regiment and the 104th Guards Airborne Assault Regiment of the 76th Guards Airborne Assault Division; the 5th Separate Guards Tank Brigade of the 36th Combined Arms Army; and the 147th Guards Self-Propelled Artillery Regiment of the 2nd Guards Motor Rifle Division.

Executions at Yablunska Street

324. In a well-documented case, eight men were found bearing signs of execution in an administrative building at Yablunska Street 144 after Russian armed forces left the town.

325. According to media reports, Russian soldiers detained nine men, eight of them members of the Ukrainian Territorial Defence during a house-to-house search on 4 March 2022. The soldiers looked for certain tattoos and forced the men to take off their winter jackets and shoes, after which they brought them to the administration building. The soldiers eventually brought the men to the courtyard, where they shot dead seven of them. The body of one more man was already lying in the courtyard with a gunshot wound to the head.

326. The media reports were based on interviews with one man who was wounded but survived the killing, closed circuit television footage of the soldiers bringing the men to their base, drone footage showing the presence of Russian soldiers, military vehicles, the bodies of the killed men at Yablunska Street 144, and photos and videos of the bodies in the courtyard.

327. In addition, the Commission interviewed a witness who was one of the first to enter Bucha after Russian forces withdrew. He confirmed seeing eight bodies in the courtyard of Yablunska Street 144. The witness shared with the Commission a video and several photos from the crime scene, which shows the bodies of eight men dressed in civilian clothes, missing jackets and shoes. At least two men have their hands visibly tied behind their backs, and at least five victims have obvious gunshot injuries, three of them in the head, which is consistent with the general pattern identified by the Commission.

328. Based on an analysis of the calls made by Russian soldiers on 4 March 2022 from two of the victims' mobile phones, as well as of the items left behind by soldiers stationed at Yablunska Street 144, journalists found strong indications that the perpetrators of the crime were from the 234th Guards Airborne Assault Regiment. The Commission has independently confirmed that forces from the 234th Regiment were stationed in Bucha during the occupation.

Executions at children's camp

329. Family members last spoke with Volodymyr Leonidovych Boichenko (born 1987) on 8 March 2022 and with Dmytro Vasylovych Shulmeister (born 1968) and Serhii Viktorovych Matyoshko (born 1981) on 12 March 2022. At the time, all three men were in Hostomel town, about three kilometres from Bucha. Then the men's mobile phones stopped working.

330. On 4 April 2022, the bodies of Boichenko, Shulmeister and Matyoshko, together with two other identified men, were found in the basement of a building in a children's camp called "Promenystyi" or "Radiant" at Vokzalna Street 123 in Bucha.²⁷³

331. Photos from the basement reviewed by the Commission show the bodies of five men in civilian clothes on their knees while facing a wall; four of them have their hands tied behind their backs with a plastic zip tie. Bloodstains are visible on the ground and on the wall, and there are several bullet casings noticeable on the ground, indicating that the men were shot. The injuries suggest that the victims were shot dead at close range, with at least two types of firearms.

332. Medical documents reviewed by the Commission show that Boichenko, Shulmeister and one of the two identified men died of multiple gunshot and shrapnel injuries to the torso, while the cause of death of Matyoshko were perforating gunshot injuries to the limbs and torso with injury of internal organs. Photos from the morgue of two of the victims obtained by the Commission also show signs of repetitive blunt force trauma on the head and on the torso, suggesting ill-treatment prior to death.

333. A witness told family members of two of the victims that Russian soldiers attacked and then detained the men as they were helping to evacuate residents. The Commission has not been able to verify this information.

334. Items found at the camp by Ukrainian authorities and others corroborate the allegations that the children's camp was used by Russian armed forces: discarded Russian uniforms, positions for military vehicles dug into the ground, boxes from Russian military rations, as well as civilian cars with white letter "V" sprayed on them. In an interview with a news outlet, a man claimed that Russian soldiers had held and tortured him in this camp in early March 2022, further corroborating the fact that Russian soldiers were using the premises at the time when the five men were killed.

Mass grave between Myrotske and Vorzel

335. When many civilians evacuated from Bucha, Artur Oleksiiiovych Rudenko (born 1995) decided to stay to take care of his grandfather. On 11 March 2022, Rudenko told a family member on the phone that he was heading to his grandfather's, about a kilometre away, with some food. That was the last time Rudenko's family member spoke with him.

336. Rudenko's body was found three months later, on 13 June 2022, in a forest area between villages Vorzel and Myrotske, a few kilometres from Bucha, in a mass grave together with six other bodies. Bucha, Vorzel and Myrotske were all under occupation by Russian armed forces at the time of Rudenko's disappearance.

337. The six other victims found in the mass grave were all men, aged between 20 and 50 according to the police, but at the time of writing, only one other man had been identified. The police told Rudenko's family member that his hands were tied behind his back. Photos of the body reviewed by the Commission show presence of a nylon rope fastened at the wrist area of each hand.

338. The authorities were not able to establish Rudenko's cause of death due to the decomposition of the body. The photos of the body reviewed by the Commission suggest blunt force injury to the upper arm and chest regions.

339. The photos of the body also show that Rudenko had a tattoo of an owl which, according to his family member, might have been the reason why he was targeted by the Russian armed forces, since an owl is used in insignia of Ukraine's Defence Intelligence.

²⁷³ The Commission knows the names of the two other men. The family has not wished that it be made public.

Hostomel town, Kyiv region

340. Hostomel Airport was attacked from the early hours of the armed conflict and Russian armed forces were in control of the town for most of the month of March, until their withdrawal on 31 March 2022. Information collected by the Commission indicates that several units of Russian armed forces were located in the town, including the 331st Guards Airborne Regiment of the 98th Guards Airborne Division; the 31st Guards Air Assault Brigade; and the 106th Guards Airborne Division.

Execution at Sviato-Pokrovska Street

341. On 6 March 2022, Russian armed forces took over a residential house on Sviato-Pokrovska Street 134 in Hostomel. Oleksii Oleksandrovych Kaluzhin (born 1992), who was staying with his family in the neighbouring house, went outside to see what was happening. A witness recounted seeing Kaluzhin talking to Russian soldiers on the street. Kaluzhin asked the witness to bring over his stepfather Andriy Ivanovych Vaskiv (born 1970), which he did.

342. When a relative went looking for the men later that day, she noticed a puddle of blood in front of the gate at house no. 134. However, Russian soldiers stationed in the house denied having apprehended the men. Another relative recalled seeing traces of blood, a hat, and a broken phone in front of the same gate on 11 March 2022.

343. The bodies of Kaluzhin and Vaskiv were found one month later in the yard of the house on Sviato-Pokrovska Street 134. Photos of the bodies show that their hands were tied behind their backs with a plastic cord. Both men had gunshot wounds to their heads. The tied hands and gunshot wounds to their heads are consistent with the overall pattern that the Commission has identified.

344. The victims' relative mentioned that both men were passing information about Russian troops' movement to the Ukrainian armed forces, and suspects that this is why they were killed.

Execution at Rekunova Street

345. In the early hours of 13 March 2022, Serhii Volodymyrovych Zakhliupanyi (born 1983), who was sheltering with other civilians in the basement of a building on Rekunova Street 9, in Hostomel town, went outside to look for his dog who had run away. A resident who was sheltering there told the Commission that when Zakhliupanyi returned to the basement, Russian soldiers came after him. After having ordered him to undress to look for tattoos, they took him away.

346. Zakhliupanyi's body was found about a week later in a garage on Rekunova Street. According to the witness who found the body, Zakhliupanyi was lying on his stomach, wearing only a t-shirt, underwear, and socks. His hands were behind his back, as if they had been tied previously, but untied later. His head was covered with a piece of fabric. The witness recalled that Zakhliupanyi had had an "oseledets" – a traditional Ukrainian style of haircut that features a long lock of hair left on the top of an otherwise shaved head.

347. According to a medical certificate, Zakhliupanyi died of multiple gunshot wounds to the head and chest. A relative of the victim mentioned that three bullets were found on the ground under his body, indicating that he was shot in the garage.

Havronshchyna village, Kyiv region

348. Around 26 February 2022, Russian military vehicles with a white letter "V" appeared in Havronshchyna and Russian armed forces set up a base in the premises of a golf club on the outskirts of the village. Russian soldiers withdrew from the area on 30 March 2022.

Executions near the house of culture

349. On 3 March 2022, around noon, a resident saw through his window a group of five soldiers interrogating two men²⁷⁴ in civilian clothes in front of a shop on Kyivska street, near the house of culture, in Havronshchyna. After a while, the soldiers let the older man go, while the younger man was forced to lie down and undress from the waist up. Two soldiers then led him behind the shop, and the witness heard two gunshots.

350. Another witness saw Russian soldiers breaking into the shop and heard several shots shortly thereafter. He said that soon after that, four Russian soldiers appeared at his house located nearby, forced him to lie on the ground, and briefly interrogated him. Later in the day, the witness and a few local men found the body of the young man behind the shop. Medical documents reviewed by the Commission show that he was shot in the head and neck.

351. A few minutes after the above incident, the first witness saw the same five soldiers shooting from automatic weapons at a target not visible to him in front of his gate, not far from the shop. The soldiers then looked closer at the object of their attack, exchanged a few words, and left in the direction of the shop. Later on the same day, the first witness and local men found at this location the body of Volodymyr Ivanovych Patsan (born 1952), an employee at a dam near the village. He was last seen that morning, as he left his home to cycle to the shop hoping to find bread.

352. On 3 March 2022, residents also found the body of the father of the young man killed behind the shop. The body was found close to the building of the house of culture, across the street from the shop. According to the medical documents, he died of “gunshot injury of the left thigh”. The Commission has not been able to establish with certainty the identity of the older man whom the Russian soldiers interrogated in front of the shop.

353. Finally, another resident found a fourth body behind the building of the house of culture on 5 March 2022. It belonged to a man who went missing on or around 3 March 2022. The Commission reviewed the photos of the body and concluded that the victim most probably died of a gunshot injury to the back of the head.

Kolonschyna village, Kyiv region

354. On 1 March 2022, Russian armed forces entered Kolonschyna. They were mostly stationed in the surrounding villages and only occupied a few empty houses on the edge of the village. Russian soldiers withdrew from the area on 30 March 2022.

Execution near a house outside of the village

355. On 10 March 2022, at around noon, Serhii Stanislavovych Sverblianskiy (born 1979) left home together with his neighbour, a 14-year-old boy, to walk to a friend’s empty house to charge an accumulator with solar panels. Sverblianskiy and his wife had a medium-sized animal farm that depended on electricity, which was cut in late February 2022 after a plane was shot down over the village, taking down the electric wires as it fell. Due to the cold weather, Sverblianskiy was wearing warm camouflage fleece trousers. He attached a white cloth to the bicycle on which he carried the accumulator.

356. The bodies of Sverblianskiy and the boy were found on 15 March 2022, close to the house with the solar panels. According to medical documents reviewed by the Commission, Sverblianskiy died of perforating gunshot wound to the head, while the cause of death of the 14-year-old boy was an open head injury, also consistent with a gunshot wound.

Motyzhyn village, Kyiv region

357. On 27 February 2022, Russian armed forces arrived in Motyzhyn and stayed until 27 March 2022. The village was partly occupied, but the Ukrainian Territorial Defence Forces appear to have been active during this period. After some defeats, Russian soldiers turned against those from the local population whom they suspected of supporting the Ukrainian armed forces.

²⁷⁴ The Commission knows the names of the two other men, but has not been able to establish contact with their families.

358. Ukrainian authorities have established that the 37th Motorized Rifle Brigade had been based in Motyzhyn. In a press release, the Office of the General Prosecutor of Ukraine identified eight Russian soldiers as responsible for the execution, killings, and torture in the village. Of these soldiers, five belonged to the 37th Motorized Rifle Brigade, and three to the Wagner Group.

Executions in a forest and at a farm

359. On 23 March 2022, Russian soldiers detained the head of the village, Olha Petrivna Sukhenko, her husband Ihor and her adult son Oleksandr. They were interrogated and eventually executed. A witness who was himself held, interrogated, and tortured at a farm northeast of Motyzhyn, where Russian armed forces set up a base, recounted how the soldiers told him: “Your Olga Petrovna, she also first said that they are only feeding old ladies here. But once we started to beat her, once we shot her in the legs, she confessed everything: about Territorial Defence Forces, about the weapons.”

360. On the same day, 23 March 2022, two identified men²⁷⁵, both members of the Territorial Defence Forces and armed, left from Boyarka to Motyzhyn to distribute humanitarian aid. Their relatives subsequently lost contact with them.

361. The bodies of Sukhenko, her husband and her son, as well as that of one of the two members of the Territorial Defence Forces, were found in a makeshift grave in a forest northeast of Motyzhyn. According to a witness who participated in the exhumation of the bodies, Sukhenko was shot in the back, her husband had a gunshot wound in his head and his hands were broken. Their son had gunshot wound in his knee and in the side of his torso, and a red cloth wrapped around his head. The body of the member of the Territorial Defence Forces was bruised and in part naked. His relative, who also participated in the exhumation, recalled that the man’s hands were tied with a plastic zip tie, he had a gunshot wound in his forehead and his body was covered with bruises.

362. The Commission visited the site of the grave and a few meters away, observed a bunker made of wood and dirt, dug-up holes spread through the woods, as well as an empty ammunition box. These findings are consistent with the claim that Russian armed forces and military vehicles had been stationed there.

363. The body of the second member of the Territorial Defence Forces was found accidentally by a journalist under the rubble of a destroyed house at a farm that Russian armed forces used as a base. Photos reviewed by the Commission show that the man’s hands were tied, and his trousers and underwear were pulled down to his ankles. Three gunshot wounds are clearly visible on the back of his head, and the pattern of injury on the head, neck, and gluteal region is highly suggestive of ill-treatment before death. According to a witness who saw the body when it was found, the victim also had gunshot wounds in his knees, and his face was injured beyond recognition.

364. Finally, the body of an unidentified man was found in a manhole on the grounds of the farm. According to a witness, who was held in the same manhole, Russian soldiers interrogated the victim during one hour and a half, beat him, shot him in his legs, and broke his arms, before finally killing him. A photo of the victim reviewed by the Commission shows a pattern of injury on the left arm and the torso, which is consistent with ill-treatment or torture prior to death.

365. The witness who was held in the manhole was arrested around the same time as the other victims - on 24 March 2022. He was beaten, interrogated, threatened with execution, and brought to the farm. There, he was placed in the manhole for 48 hours, during which he received no food or water. The space was so confined that he could neither sit nor stand, and after two days he was not able to walk. Russian soldiers that detained him stressed the importance of him being blindfolded: “The most important thing is that you don’t see anything, because if you do, you won’t leave this place alive.” The witness survived thanks to some of the Russian soldiers, who took him out of the manhole, and gave him food. When the Russian armed forces were withdrawing from Motyzhyn, the same soldiers refused to follow instructions and instead of killing him, they let him go.

²⁷⁵ The Commission knows the names of the two other men. Their families have not wished that they be made public.

Peremoha village, Kyiv region

366. Russian armed forces entered Peremoha on 28 February 2022 and remained in control of the village until the end of March 2022.

367. Journalists found indications regarding the presence of two Russian armed forces units in Peremoha: the 2nd Guards Combined Arms Army and the 15th Brigade Motorised Rifle Company. The Commission obtained a document which indicates that the 21st Brigade had a forward command post in the village at least from 6 March 2022.

Executions at the post office

368. On 1 March 2022, Russian soldiers stopped and interrogated two men as they were passing the building of the village council. One of the men noticed that another group of soldiers was walking nearby with his younger relative Yuriy Krasnozhon (born 1988), his hands tied behind his back and his face bearing signs of beating. He tried to protest, but the soldiers beat him, put him on the ground, tied his hands and put his hat inside his mouth. They did the same with the other man – Ivan Tretiak (born 1981) and led the three of them to the building of the post office. There, the soldiers brought Krasnozhon and Tretiak to the basement and ordered the older relative to show them the house of a suspected member of the Ukrainian Territorial Defence Forces. While they were walking, shelling started, and he managed to escape.

369. A news outlet interviewed another survivor, who was detained on 28 February 2022 and similarly brought to the building of the post office. He said that he was interrogated, threatened, and witnessed the execution of two other civilian men who were already in the basement when he was brought there. He said that he overheard Russian soldiers discussing about their intention to destroy the building to hide the evidence of the killings.

370. The bodies of Krasnozhon and Tretiak, together with those of six other men, were found in the ruins of the post office building, which exploded sometime in March 2022. All but one body had been identified. However, due to the explosion, the cause of death of the victims could not be established. According to a resident of Peremoha interviewed by the Commission, at least three of the men were members of the Ukrainian Territorial Defence Forces.

Shevchenkove village, Kyiv region

371. On 8 March 2022, Russian armed forces entered Shevchenkove village and controlled it until 30 March 2022.

Executions on Hoholivska Street

372. On 17 March 2022, Oleh Yevheniyovych Mironov (born 1971) went to the centre of Shevchenkove village to see whether evacuation of civilians would be possible. He did not come back home.

373. A week later, on 24 March 2022, Eduard Viktorovych Shpylovyi (born 1974) left his house in Bohdanivka village, about 12 km east from Shevchenkove. He did not come back home.

374. On the following day, 25 March 2022, a third identified man (born 1980)²⁷⁶ left home to collect humanitarian aid near the railway tracks. He did not return. A relative of the man inquired with Russian soldiers about his whereabouts. They did not reply to the question, but correctly named the street where he and his family lived. The relative took this as an indication that the man was in their custody.

375. On 25 March 2022, witnesses saw the brothers Vitaliy and Mykola Vasyliovych Korol (born 1978 and 1979) entering their house accompanied by five soldiers. The soldiers appeared in the house again on the following day, this time only with Mykola.

²⁷⁶ The Commission knows the name of the victim. The family has not wished that it be made public.

376. After the withdrawal of Russian forces from Shevchenkove village in the beginning of April 2022, the owner of a house on Hoholivska Street 21 found six bodies in an outdoor cellar near his house, not far from the railway tracks. Five of them were identified as Oleh Mironov, Eduard Shpylovyi, the third identified man, and Vitaliy and Mykola Korol.

377. All the victims were wearing civilian clothes and four bodies had visible white ribbon on their sleeves, underlining their civilian status. Photos of the bodies, as well as medical documents, show that Eduard Shpylovyi, the third identified man and the Korol brothers were shot in the head, while Oleh Mironov died of gunshot wounds to the torso and lower limbs.

378. The house where the bodies were found, was vandalized, and looted. Dozens of empty boxes of Russian military rations, military boots, and mattresses found by the owner indicate that it was used by Russian soldiers during their occupation of Shevchenkove village.

Execution on Lesi Ukrainky Street

379. On 24 March 2022, at around 2 p.m., Serhii Serhiiiovych Mykhailichenko (born 1983) left his home to go to the train station where a bread distribution had been announced. According to a witness, a group of Russian soldiers, accompanied by residents of the village collaborating with them, called on Mykhailichenko and asked him to follow them. They walked with him back to his home where two witnesses saw Mykhailichenko handing them a weapon, after which the Russian soldiers and the residents left. The witness briefly talked to Mykhailichenko, who was still shaken and kept repeating “They almost killed me!”. A few minutes later, one of the residents who previously accompanied Russian soldiers returned and asked Mykhailichenko to follow him. A few seconds later, two witnesses confirmed hearing two gunshots. One eyewitness saw the victim falling down after the shots, though could not see who had fired the weapon, as Mykhailichenko was taller than the person who accompanied him.

380. An uninhabited house about 50 m from Mykhailichenko’s was set on fire on the afternoon of the same day, shortly after the above events. The next day, residents found a burned body in the remains of the house. A close relative identified the remains as those of Mykhailichenko.

Vyshehrad village, Kyiv region

381. On 4 March 2022, Russian armed forces arrived to Vyshehrad village and began a house-to-house search. They occupied several houses in the village and, according to several accounts, set up a camp in the nearby forest. A woman reported that Russian soldiers had brought her to this camp after injuring her. Another witness saw the location after the departure of Russian armed forces and reported the presence of burned military vehicles, dugouts, and items looted from his own house, located on the edge of the village.

Executions on the western edge of the village

382. Serhii Ivanovych Kislitskyi (born 1983) and Stanislav Viktorovych Holian (born 1982) were construction workers living in a house they were renovating on the western edge of the village, less than 100 m from the forest. The owner of the house was last in telephone contact with the men on 27 February 2022, whereas Holian’s close relative last spoke to him on 1 March 2022. Two neighbours recalled seeing the men around 3 March 2022, just before Russian forces arrived.

383. When a resident of the village asked permission from Russian soldiers to check on Kislitskyi and Holian, they told him to stay away from the house, which was by then taken over by Russian armed forces. Another neighbour inquired with Russian soldiers about what happened to the two men. They told him that they had heard that the men were shot dead in the forest by another group of Russian soldiers who carried out the sweep operation in the village on 4 March 2022.

384. Kislitskyi’s and Holian’s bodies were found buried about 20 m from each other in the Vyshehrad’s forest on 27 May 2022 and in early June 2022, respectively. Both men were barefoot, wearing civilian clothes, and their bodies were in a state of decomposition. Medical certificates show that both men died of perforating gunshot wounds to the head. Furthermore,

photos from the exhumation of Serhii Kislitskyi reviewed by the Commission show multiple blunt force traumas to the torso of the victim suggesting ill-treatment or torture prior to death.

385. Yuriy Hryhorovych Makeev (born 1960) lived across the street from Kislitskyi and Holian. His family last spoke with him on 3 March 2022. His body was found a few days later. He was lying on his bed with signs of beating and multiple bruises, especially in the abdominal area, and a gunshot wound to his head. A resident of Vyshehrad recounted how a Russian soldier staying at her house admitted that his group killed Makeev, claiming that he tried to throw a Molotov cocktail at them.

386. In addition to the cases described, there are credible allegations that at least one more man was shot dead on the day of the arrival of Russian armed forces into the village.

Ivanivka village, Chernihiv region

387. Russian armed forces entered the village of Ivanivka on 5 March 2022 and controlled it until 30 March 2022. The Commission collected information indicating that forces from the 74th Separate Guards Motorized Rifle Brigade were located in the village.

Executions at an agricultural complex

388. Russian armed forces established one of their bases in the area of an agricultural complex on the outskirts of Ivanivka village. After they withdrew from the area, bodies of four men were found in the area of the complex. Two were identified as Serhii Yevheniiiovych Korinev (born 1988) and Maksym Volodymyrovych Ternov (born 1981); the identity of the remaining two victims is not known.

389. Serhii Korinev disappeared on 9 March 2022, after stepping out of his family's house on Shcherbyny Street to smoke. His body was found on 31 March 2022 in a small building in the agricultural complex. The hands were tied with a zip tie; his head was wrapped in a dirty bandana, which, when removed, revealed a gunshot wound to the head. According to one witness who saw Korinev's body when it was found, his face was purple and so swollen that his mother had to recognize him by his shoes. He had bruises on his face and body and injuries on his hands. A copy of the medical report obtained by the Commission indicates perforating gunshot wound to the head with skull fracture as Korinev's cause of death.

390. Maksym Ternov left his home in Cherkasy on 13 March 2022 with the plan to drive to Chernihiv. The following morning, his family heard from him for the last time. One resident of the village Yahidne saw Ternov as he was brought by Russian soldiers to the basement of a school where 365 civilians were confined by Russian forces for several weeks (see paras. 541-543). The witness reported that Ternov spent one night in the school basement and was seen standing outside the following morning. Ternov's body was found at the beginning of April 2022, about 300 m from that of Korinev, in a small building of the same agricultural complex in Ivanivka. Ternov's hands and feet were tied, his face was covered with bruises and blood. From the photos reviewed by the Commission, including from the morgue, Ternov's body bore multiple blunt force traumas on his head and torso, suggesting ill-treatment or torture prior to his death. A witness who saw Ternov's body when it was found spoke of a visible gunshot injury to his head. Indeed, "gunshot wound to the head with cranial bone injury" was the main cause of his death based on the copy of the medical report which the Commission has obtained.

391. The body of one of the unknown men was found about 200 m from the body of Korinev, and the body of the other unknown man was found nearby the building where the body of Ternov was uncovered. Those who discovered the first body described it as that of a man with his hands tied with the same type of zip tie as Korinev, his face covered in blood, with bruises on both his face and body. There was no obvious cause of death. The body of the second man appeared naked and was in an advanced state of decomposition. The Commission reviewed a photo of the body and assessed that it might have been set afire after the death and exposed to stray animals.

Saryi Bykiv village, Chernihiv region

392. On 27 February 2022, Russian armed forces entered Saryi Bykiv village and controlled it until 31 March 2022. A document that journalists found at the base of the Russian armed forces in Vyshneve, Chernihiv region, indicates that the forward command post of the 30th Separate Motorized Rifle Brigade was located in adjacent Novyi Bykiv village on 6 March 2022.

Execution on Tsentralna Street

393. On the day of their arrival to Saryi Bykiv village, Russian armed forces apprehended six local men at their homes: Volodymyr Hryhorovych Putiata (born 1975), Oleksandr Volodymyrovych Mohyrchuk (born 1983), and four other identified men.²⁷⁷ The soldiers were looking for those who had operated a drone that killed one of their soldiers earlier that day.

394. Later the same day, relatives went to the place Russian armed forces used, to search for the missing men. Soldiers told them that the men would be released after being interrogated. About 20 minutes later, the relatives heard screams coming from the base, followed by gunshots.

395. The next morning, witnesses saw the bodies of the six men lying on the street, about 300 m from where their relatives had heard the gunshots. The victims had multiple gunshot wounds, stab wounds, blunt traumas, a slit throat, and broken ribs. This is confirmed by medical documents of two of the victims and other evidence reviewed by the Commission. It took nine days before Russian soldiers allowed the relatives to recover and bury the bodies.

Yahidne village, Chernihiv region

396. On 3 March 2022, Russian military vehicles with white circles painted on them entered Yahidne village. Russian armed forces occupied the village until 30 March 2022. The Commission collected information indicating that forces from several units were located in or near the town, including the 55th Separate Motorized Rifle Brigade, the 74th Separate Guards Motorized Rifle Brigade, and the 228th Motorized Rifle Regiment.

Execution at Vyshneva Street

397. Relatives were last in contact with Viktor Mykhailovych Shevchenko (born 1971) in the afternoon of 3 March 2022, the day Russian armed forces entered Yahidne village. According to a neighbour, a group of Russian soldiers parked their military vehicles in Shevchenko's yard and moved into his house.

398. Another neighbour recounted that the following day, a group of Russian soldiers inquired about the presence of Ukrainian armed forces in the village. According to him, the soldiers said that they had shot Shevchenko when they found a military uniform and a photo of him in it, suggesting that he had served in the military.

399. On 21 March 2022, the first witness saw Russian soldiers digging the ground behind the barn near Shevchenko's house. About two hours later, a soldier informed the witness that they had buried Shevchenko and explained that he had been ill for a long time. However, medical documents reviewed by the Commission show that the victim died of a perforating gunshot wound to the head.

400. The witness later saw a makeshift grave in the victim's yard. There was a plate with the victim's full name, his date of birth and date of death – 3 March 2022.

Execution at Yabluneva Street

401. A video technician (born 1991) at the television broadcaster Ditinets, was sheltering with his family in the basement of a house in Yahidne village. A close relative reported to a

²⁷⁷ The Commission knows the name of the four men but has not been able to establish contact with their families.

news outlet that Russian soldiers took the man away on 5 March 2022 after they discovered that he had a phone.

402. On 9 March 2022, a resident accompanied by Russian soldiers noticed a body lying under a tree. After she recognized the body as a resident of Yahidne, the soldiers asked her to identify two more bodies located in the basement of a house nearby, on Yabluneva Street 26. She identified one of them as the video technician. The Commission interviewed another witness, who was brought to the same basement by Russian soldiers to bury the bodies. He stated that both men had gunshot injuries to their heads and their bodies, and their faces bore traces of beating. The unidentified man had his hands tied, similar to many other victims of executions.

403. According to a witness with good knowledge of the house on Yabluneva Street 26, in the basement of which the bodies were found, it had been at that time occupied by Russian soldiers from Tuva.

Bilka village, Sumy region

404. A large contingent of Russian armed forces arrived in Bilka village on 2 March 2022 and set up base at a farm located on a small hill on the western outskirts. They left the farm on 16 March 2022.

Executions at a farm

405. Oleg Volodymyrovych Malenko (born 1977) left from nearby Oleksyne village, to return to his house in Bilka in the early evening of 3 March 2022. He never arrived. On 17 March 2022, the day after Russian armed forces vacated the farm, residents discovered Malenko's body in a nearby field. Photos and witness descriptions of the body show that his hands and feet were tied together with a green rope. He had a gunshot wound to the head behind the ear and three oval bruises on the anterior neck. A relative who washed the body noticed further bruises on his legs, ribs, and groin. An analysis of the available photographs suggests manual strangulation and that death was then caused by a gunshot wound to the head.

406. Mykola Ivanovych Savchenko (born 1976) left his house in Bilka in the morning of 3 March 2022. He never returned. One resident who spoke with Savchenko on the phone that morning, said that he was planning to go to the farm. On 20 March 2022, Ukrainian armed forces, who had taken over the farm when the Russian armed forces left, guided residents to an adjacent field where they had discovered Savchenko's body. According to photos and witness descriptions of the body, he was lying face down with a woollen hat pulled over his eyes. There were significant traces of blood on his face. There were two gunshot wounds to the chest. Two spent bullet cases were lying on the ground near the body, suggesting that he was shot at close range.

Trostanets town, Sumy region

407. Russian armed forces entered Trostanets town on 24 February 2022 and remained in control until 26 March 2022.

Execution at "Kernel"

408. Viktoriya Volodymyrovna Ivanova (born 1969) was a member of a group that was recording and sharing information about Russian troop movements with Ukrainian armed forces. On 13 March 2022, Ivanova left her house to go for a walk at the local cemetery but did not return home. On the following day, a close relative went looking for her. Russian soldiers at a checkpoint nearby told him that they indeed saw Ivanova the previous day, but they did not allow her to enter the cemetery and sent her back.

409. On the day Ivanova disappeared, men in Russian military uniforms detained four male residents from Trostanets, including at least one who was a member of same group as her. They brought the men to TOV Kononivskyi Elevator, an agricultural facility referred to as the "Kernel", interrogated and beat at least two of them, and released them after less than 24 hours. One of them recalled hearing gunshots while detained at Kernel.

410. Two months later, on 19 May 2022, a worker of the Kernel facility found Ivanova's decomposed body in a makeshift grave on the grounds of the facility. Medical documents reviewed by the Commission show that she died of a gunshot wound to the head.

Husarivka village, Kharkiv region

411. Russian armed forces entered Husarivka village sometime in early March 2022, and a group of soldiers set up base in the first four houses on Oksana Petrusenko Street. They remained in control of the village until 26 March 2022. The Commission collected information indicating that forces from the 18th Guards Motor Rifle Division of the 11th Army Corps were located there.

Executions on Oksana Petrusenko Street

412. On 13 March 2022, Russian soldiers stationed at Oksana Petrusenko Street asked a group of farm workers, including Yehor Volodymyrovych Zhyrovkin (born 1985) and Oleksandr Volodymyrovych Tarusin (born 1982), to feed cattle at a nearby milk farm. The Russian armed forces came under shelling while the men were tending to the animals. They accused them of having directed the fire and detained them. Not long thereafter, a witness accompanied by Russian soldiers near that location heard a series of gunshots. As he entered the first house on Oksana Petrusenko Street, he saw five men whom he recognized as the said farm workers, lying on the ground in the yard, screaming with pain from gunshot wounds in their legs. Soldiers placed the witness in a cellar, from where he subsequently heard more gunshots. When the soldiers took him out shortly afterwards, he saw five lifeless bodies lying in the yard.

413. Two days after the above events, on 15 March 2022, Mykola Mykhailovych Pisarev (born 1965) and Oleksandr Oleksiiovych Pokhodenko (born 1978) left their apartment in the centre of the village and walked to the house of a relative, which was located about 200 m from the milk farm. They did not return.

414. On 7 April 2022, three bodies burned beyond recognition were found in an outdoor cellar of the second house on Oksana Petrusenko Street. As of January 2023, they had not been identified. Two weeks later, on 22 April 2022, less than 200 m away, two more burned bodies were found in a similar outdoor cellar of another house. The forensic analysis showed that they were the bodies of Pisarev and Pokhodenko. The Commission reviewed medical documents which show that Pisarev died of stab wounds to the neck and subsequent blood loss whereas Pokhodenko was shot in the chest.

Kapytolivka village, Kharkiv region

415. Russian armed forces entered Kapytolivka village on 7 March 2022. At the end of March or beginning of April, they were joined by forces from the so-called Luhansk People's Republic. They remained in control of the village until around 9 September 2022.

Execution in a forest

416. On 23 March 2022, Ivan Hryhorovych Shabelnik (born 1971) and Leonid Vasilievych Taran (born 1946) left their house in Kapytolivka and walked to the forest to collect pinecones for the fire. They did not return. Their relatives searched for them in the village and wrote a letter to the Military Prosecutor based in Izium, but with no result.

417. A man who was detained on 24 March 2022 by soldiers from the so-called Luhansk People's Republic told the relatives of Shabelnik and Taran that he saw the two men in one of the four adjacent houses that the forces occupied on Luhovaya Street. The witness said that the soldiers took Shabelnik upstairs several times and he could hear screams every time. He further reported that two days later, the soldiers brought a third man to the basement and beat him several times. The man was reportedly a veteran of the former Anti-Terrorist Operation in East Ukraine. The witness was then released.

418. The bodies of Shabelnik and Taran, in a state of decomposition, were found in August 2022 in a forest south of Kapytolivka. Medical documents reviewed by the Commission show that Shabelnik died of chest trauma and multiple broken ribs, while Taran died of gunshot wounds. The body of the third man who was also seen in detention was found in the same place.

*Vesele village, Kharkiv region**Execution next to a bus*

419. On the night from 28 to 29 March 2022, three buses bringing about 90 civilians to Belgorod, Russian Federation, stopped near the village Vesele, about 8 km from the border. Two witnesses on separate buses described seeing a group of Russian soldiers taking two young men off a bus. They interrogated the men next to the bus and beat them heavily, including with rifle butts. One man was then taken about 100 m further away, made to kneel and shot in the head. One witness said that she then covered her face with her hands and did not see what happened to the other man, but people on the bus told her that he was also shot and killed.

420. According to one witness, after the incident, a Russian soldier entered the bus and explained that the killed man was a soldier, and he was shot for passing information about Russian positions to Ukrainian armed forces.

421. The incidents described above are only a sample of the cases which the Commission examined in detail, among the multiple allegations of killings of civilians and persons protected under the international humanitarian law. The killings were committed in areas that came under the control of Russian armed forces; at the time they were in control. The victims were intercepted in the street or during house searches and visits. The executions were often preceded by confinement, ill-treatment, or torture. The hands of some of the victims were tied and a recurring cause of death was a gunshot to the head. The Commission has found that Russian armed forces were the perpetrators or the likely perpetrators. In many of the described cases, the victims were last seen in their presence, and in other cases, the bodies of the victims were found in locations used by them. Based on all the examined circumstances, the Commission has concluded that Russian armed forces have perpetrated wilful killings, which is a war crime.

b) Attacks on civilians on the move

1) Overview

422. The Commission has found a pattern of attacks committed against civilians on the move in towns, villages, or on highways, in some of the areas that came under Russian armed forces control. It has recorded credible allegations regarding at least 46 incidents in which soldiers fired with small arms upon civilian vehicles in 27 locations across Ukraine.

423. Under international humanitarian law, indiscriminate attacks are prohibited. Indiscriminate attacks include those which are not directed at a specific military objective and those which employ a method or means of combat which cannot be accurately directed at a specific military objective or the effects of which cannot be limited as required by international humanitarian law. Consequently, they are of a nature to strike military objectives and civilians or civilian objects without distinction.²⁷⁸ Additionally, those who plan or decide upon an attack must, among other things, do everything feasible to verify that the objectives to be attacked are neither civilians nor civilian objects, but are military objectives. An effective advance warning must be given of attacks which may affect the civilian population, unless circumstances do not permit.²⁷⁹ Moreover, intentionally making the civilian population or individual civilians the object of an attack is a war crime.²⁸⁰

424. In all the reviewed cases, the victims were dressed in civilian clothes and were driving in civilian vehicles. They came under attack as they were attempting to flee from areas affected by the armed conflict or were attending to their routine activities. The incidents investigated generally occurred when Russian armed forces entered new localities or encountered the victims on their way, or when civilian vehicles drove past or near locations where the Russian armed forces were deployed or stationed. Some of the attacks against civilian vehicles took place at the same location, suggesting that the same units perpetrated several attacks.

²⁷⁸ Additional Protocol I to the Geneva Conventions, article 51(4)-(5).

²⁷⁹ Additional Protocol I to the Geneva Conventions, article 57(2).

²⁸⁰ For example, Additional Protocol I to the Geneva Conventions, article 85(3)(a), (5).

425. In several incidents, soldiers opened fire immediately, as soon the vehicles of the victims came in their sight, and on some occasions, regardless of the fact that civilians came out of their vehicles, attempted to seek shelter, or to warn the soldiers that they are civilians. This indicates that the perpetrators did not take feasible efforts to verify that the objectives were not civilian, as prescribed by international humanitarian law. Some of the attacks also appeared to be deliberate attacks on civilians.

2) Specific situations in which civilians on the move were attacked

426. The Commission has documented 18 cases in which soldiers fired upon civilian vehicles, killing 26 civilians, namely eight women, 14 men, one girl and three boys, and injuring two women, two men and two girls. These incidents took place in February and March 2022, in or around ten towns and villages of the Kyiv, Kharkiv, and Sumy regions, with a majority in the Kyiv region. The actual number of attacks on civilian cars and resulting casualties is likely much higher, including in other regions.

427. The evidence gathered indicates that Russian armed forces carried out the attacks or likely carried out the attacks. According to victims' and witness' testimonies, some of the attacks were perpetrated by Russian military convoys, as they entered new localities or encountered civilians on their way. Other attacks came from Russian armed forces positions or temporary deployments. The persons impacted were civilians trying to evacuate, or carrying out daily life activities, such as driving to their homes, looking for food and other necessities, and visiting relatives. Soldiers mainly used small arms and light weapons.

428. Several of the attacks investigated took place in the same locations, suggesting that some military units were responsible for multiple incidents. Some of them occurred on the E40 highway, in Kyiv and Kharkiv regions. In two villages, attacks also occurred in the same location or in close proximity. For instance, the Commission has documented four separate attacks on civilian vehicles, on 16, 17, and 18 March 2022, on the E40 highway near Rohan village, in Kharkiv region, in which three men and one woman were killed. At that time, Russian armed forces were stationed on a neighbouring hill (see case descriptions starting para. 435).

429. In all the cases investigated, the victims were wearing civilian clothes, were not armed, and were driving civilian vehicles. All but one attack occurred in daylight when the civilian status of the victims and of their vehicles should have been apparent to the attacker. In two cases, the cars had signs with the word "children" taped to the windows. In two situations, soldiers stopped shooting only after the victims shouted repeatedly that they were civilians.

430. Some of the attacks seemed deliberate, for example when soldiers opened fire on civilian cars that posed no risk to them, because they had stopped, turned around, or were driving away from them. In some instances, the attackers shot regardless of the fact that the civilians left the cars and sought shelter or were attempting to flee.

431. In one of the documented cases, on 5 March 2022, five adults and two boys were attempting to flee from the town of Bucha in two cars, after Russian armed forces took control of the area. When the families saw a military vehicle with the letter "V" painted on it stationed ahead of them, they parked the cars on the side of the road. Without warning, the military vehicle opened fire on them, killing one woman, one man, and the two boys. In another case, on 28 February 2022, as four civilians were driving in a car on the E40 highway, in Kyiv region, they saw a military convoy with the letter "V" painted in white on vehicles driving towards them. They turned around and parked their car at a gas station. After hearing shelling, they ran out of the vehicles to a nearby field. Soldiers from within the convoy fired at them for about 10 minutes, injuring one of the women, and threw a grenade in their direction.

432. In the cases investigated, there were no indications that the attackers took steps to verify that the target was a military objective.²⁸¹ This is illustrated by the fact that on some occasions, the soldiers opened fire as soon as they saw the civilian vehicles, which gave them no time to verify the target. In the vast majority of cases, attacks took place without warning, and when it was given, it was immediately followed by the attack, rendering the warning moot.

²⁸¹ See Additional Protocol I to the Geneva Conventions, article 57(2).

433. In one example, on 28 February 2022, in the village of Katiuzhanka, in Kyiv region, four civilians driving in a car encountered a convoy of Russian military vehicles on their way. The driver stopped and tried to turn the car around, but the vehicle was fired upon from the direction of the convoy, without warning. One man and one woman were killed, and a 13-year-old girl was injured.

434. The Commission has concluded that Russian armed forces have committed or are likely to have committed indiscriminate attacks against civilians and civilian objects including some resulting in civilian deaths, which are violations of international humanitarian law and violations of the right to life.²⁸² They also did not take requisite precautions, such as doing everything feasible to verify that the objectives to be attacked were not civilians or civilian objects, and giving an effective advance warning.²⁸³ The attacks that appear to intentionally target civilians amount to war crimes.²⁸⁴

Case descriptions

435. This section provides illustrations of the attacks on civilians on the move that it has documented. The context and circumstances of each case are described. The Commission has included information it has managed to corroborate about units present in the relevant area, even if it has not established a link between that unit and the violation.

Bucha town, Kyiv region, 5 March 2022

436. On 5 March 2022, two days after the Russian armed forces took control of the town of Bucha, the Chikmarev²⁸⁵ family and the Tovchak family, altogether five adults and two boys, left their homes at around 8 a.m. to flee to Western Ukraine. They were wearing civilian clothes and used two white cars with windows that were not tinted. The first car had a sign with the word “children” written on the front and on both sides.

437. When the cars were approaching the UTEM factory on Chkalova Street in Bucha, the families spotted a military vehicle stationed on the opposite side of the road from the factory, about 150-200 m ahead. The vehicle had the letter “V” painted on it, a common marking of Russian military vehicles during the armed hostilities in Ukraine. One of the victims identified it as a “BMD,” an infantry fighting vehicle. The two cars parked on the side of the road. Without warning, the military vehicle opened fire on them, killing Marharyta Chikmareva (born 1988), nine-year-old Matvii, and four-year-old Klym in the first car, and Oleh Tovchak (born 1960) in the second car.

438. Among the victims, two women suffered minor injuries and hid in a nearby building. One man was more seriously injured but managed to crawl to a nearby park. From there, he saw the Russian military vehicle approaching the cars, after which the first car exploded. About half an hour later, Bucha residents found the husband, provided him with first aid and took him to a hospital where part of his leg had to be amputated.

439. The Commission interviewed two survivors of the attack and reviewed documents, as well as photos and video of the cars. The photos show that the cars were civilian; the first car is burned and two charred remains corresponding to those of children below the age of 12 are visible in the backseat; the damage to the second car is consistent with an attack with a light weapon.

440. According to the local authorities and an investigation conducted by a news outlet, the military vehicle, which was left behind in Bucha, belonged to the 104th Guards Assault Regiment of the 76th Guards Assault Brigade. The Commission has corroborated the information that the 104th Regiment was stationed in Bucha with other sources.

²⁸² Additional Protocol I to the Geneva Conventions, article 51(4)-(5); International Covenant on Civil and Political Rights, article 6(1).

²⁸³ Additional Protocol I to the Geneva Convention, article 57(2).

²⁸⁴ Additional Protocol I to the Geneva Conventions, article 85(3)(a)-(5).

²⁸⁵ In this section, the Commission has revealed the names of the victims only after explicit consent from close family members or relatives. In cases in which the Commission knows the name of the victim, but did not receive the consent to make them public, it indicated that the victims have been identified.

Bucha town, Kyiv region, 6 March 2022

441. On 6 March 2022, at around 10 a.m., three neighbours in civilian clothes were driving in a black Dacia Lodgy with a big “Uber” sign along Zhovtneva Street, in Bucha town. The man and the woman in the front seats, both in their 50s, were going to a store, hoping to find some food. Their 60-year-old neighbour caught a ride with them to join his wife who was taking shelter in a school basement.

442. As they were approaching the intersection of Zhovtneva and Vokzalna Streets, they suddenly heard gunfire, and the car was hit without warning. The man who was driving was shot in the right side of his hip and the woman was injured in her eye by glass from the broken windshield. The driver stopped at the intersection of Zhovtneva and Dymytrova Streets. All three civilians got out of the car and hid behind it. The victims saw two Russian soldiers who continued to shoot in their direction as they approached the car. One of the victims shouted at them repeatedly that they were civilians and that two persons were injured. The soldiers eventually stopped shooting. They interrogated the civilians, verified their identity documents and their phones, and finally allowed them to drive to the hospital to seek medical help. As they were leaving, the civilians noticed several Russian military vehicles parked about 100-150 m from where the car was attacked.

443. The Commission interviewed all three persons who were in the car, two of them still recovering from the injuries they suffered. The video of the car after the attack, which the Commission has reviewed, shows damage that is suggestive of an attack by small arms from the front and left side, which is consistent with the description of the events by the three survivors.

Katiuzhanka village, Kyiv region, 25 February 2022

444. On 25 February 2022, after Russian armed forces entered Katiuzhanka village, three civilian vehicles were fired upon on three separate occasions, killing four men and one woman. The Commission reviewed photos and videos taken after the attacks, which show that the vehicles were civilian. In two cases, the victims, in civilian clothes, were still inside the cars.

445. At around 11 a.m., a military convoy that had stopped at the intersection of Taras Shevchenko and Kyivska Streets opened fire on a 43-year-old man wearing civilian clothes and driving a white Tavia, as he turned right from Taras Shevchenko Street. The man was killed on the spot, and the car with the body inside was later set on fire. The upward deformed roof of the car and multiple shrapnel holes visible in the photos before the car burned down, are suggestive of use of small arms and light weapons.

446. Approximately at 1 p.m., a Russian soldier standing in front of a supermarket at the same intersection opened fire on a second car, as it was approaching from Kyivska Street. Vasylyna Oleksiivna Levandovska (born 1961) and an identified man (born 1969), wearing civilian clothes and driving a white minivan T4, were then on the way from Vladimirovka village to buy some food in Katiuzhanka. The soldier first fired an automatic weapon into the air above the minivan. The vehicle slowed down but did not stop. The soldier subsequently fired directly at it, instantly killing the man, who was driving, and injuring Levandovska. The soldier then inspected the vehicle and re-joined other soldiers at the parking lot in front of the supermarket. Levandovska died a few hours later in a school basement where she was brought by residents after the departure of Russian forces from the place of the incident.

447. The damage on the white minivan – about a dozen bullet holes on the hood and some more on the front left fender – is consistent with an attack by automatic firearm from the direction of the supermarket, which was front left from the car. The Commission reviewed medical documents indicating that the man in the white minivan died of gunshot injury to the chest, while the cause of death of Levandovska was a gunshot injury to the lower limbs.

448. In the afternoon on the same day, a military vehicle opened fire on another civilian car on Kyivska Street, about 500 m from the intersection with Taras Shevchenko Street. Two men, wearing civilian clothes and driving a white Ford Escort, were on their way to buy food and credit their phones. They died on the spot. The type of impact and multiple shrapnel holes suggest an explosion inside the car, caused most likely by a light weapon.

Katiuzhanka village, Kyiv region, 28 February 2022

449. On 28 February 2022, at around 5 p.m., a family of four, composed of two men, one woman and a 13-year-old girl, left their relatives' house on Poshtova Street to drive home on Vyshhorodska Street. They were driving a white Hyundai Sonata with a big "Bolt" sign on the side. As they approached the intersection with Taras Shevchenko Street, they encountered a convoy of Russian military vehicles. When the driver stopped the car and tried to turn it around, the convoy opened fire on them without warning. The man in the driver's seat and the woman on the passenger's seat were killed. The 13-year-old girl, although injured, managed to get out of the car together with the second man who was unharmed. The car subsequently caught fire.

450. The Commission interviewed the relatives of the victims who confirmed hearing the sound of gunfire and were the first to arrive to the place of the incident. A short video they shared with the Commission shows a civilian vehicle on fire, with two bodies lying on the ground, one partly burned and still burning. This is consistent with the account of the events by the surviving man, who pulled the bodies out of the car and unsuccessfully tried to extinguish the flames on the other man's body. Medical documents reviewed by the Commission indicate that the woman died of gunshot injury to the chest, and that the 13-year-old girl was hospitalized on 1 March 2022, with injury to her right arm and hip.

Peremoha village, Kyiv region, 11 March 2022

451. On 11 March 2022, at around noon, 17 civilians, including children, fled from their homes in the village of Peremoha, which was occupied by Russian armed forces since 28 February 2022. They drove to the south, towards the village of Hostroluchchia, which at the time was under the control of Ukrainian armed forces. The convoy consisted of five civilian cars: an old Moskvitch, a black Opel Astra, a dark red Dacia Logan, a silver Kia, and a white Volkswagen. All cars had a white cloth wrapped around the side mirrors, to indicate that they had civilians on board.

452. As they exited Peremoha, they passed a Russian armed forces checkpoint, where soldiers advised them to keep the windows open, so that everyone could see they were civilians. After about a five to 10 minutes' drive on a road surrounded by open fields, the convoy was attacked from several directions, including from the back. At least four civilians were killed: Tetiana Makarivna Scherbyna (born 1970), Petro Petrovych Scherbyna (born 1970), Elisei Yevhenovych Riabokon, a 14-year-old boy, all three in the second car, and an unidentified 18-year-old young man, in the fifth car.

453. The Commission interviewed survivors of the attack and reviewed documents, as well as photo and video evidence. Medical documents for three of the killed civilians indicate that they died of multiple gunshot injuries to the chest, head, and torso. Photos and a video of the black Opel Astra, in which three of the victims were killed, show multiple bullet holes on the left rear door and signs of the use of explosive weapons in the back of the car.

Shevchenkove village, Kyiv region, 8 March 2022

454. On 8 March 2022, around 11 a.m., a convoy of Russian military vehicles entered the village of Shevchenkove. At that time, Yulia Oleksiivna Vashenko (born 1984) and an identified man (born 1980) were at the market on Kyivska Street. Hearing the approaching convoy, they packed the food they were selling at the market in and drove away in their light blue Opel. The military vehicles soon caught up with them and opened fire at the car from the back, killing both Vashenko and the man. A few minutes later, about 500 m from the place of the incident, another car – a black Subaru – owned by the head of the village, was attacked and partly run over by a military vehicle.

455. The Commission interviewed three witnesses and reviewed a video interview by a news outlet of one more witness. It reviewed photos and videos showing the two vehicles after the attacks. According to the evidence, both vehicles were civilian and the victims were wearing civilian clothes. At least 15 bullet holes are visible on the back of the blue Opel, which is consistent with the account that the car was attacked from the back, and suggests that the perpetrators used small arms. While one photo of the car also shows shrapnel damage on the windshield, the Commission clarified with a witness that this damage was caused only later by incoming shelling.

456. Video footage shows that the black Subaru was almost completely destroyed, with visible marks on the road where a military vehicle ran over it. There are at least 18 bullet holes visible on the remains of the front bumper and the windshield, suggesting that similar small arms were used as in the attack described above.

Vyryvka village, Sumy region, 27 February 2022

457. On 27 February 2022, at around noon, a man, a woman and their adult son set out on the road in a dark blue sedan, fleeing from Konotop city to Mitchenky village, located about 20 km to the west. As they were driving on a side road near the Vyryvka train station, they were overtaken by a large military convoy. Without warning, one of the military vehicles opened fire at the car. Oleksandr Mykolaiovych Liutenko (born 1975) in the passenger's seat was hit in his left shoulder and neck and died soon after. His son, who was driving, was injured in the hand.

458. The Commission interviewed the survivors of the incident and reviewed photos of the car, which show three bullet holes in the windshield, two in the hood and at least three in the back of the car, consistent with the use of small arms. The location of the damage matches the description of the attack by the survivors.

Vilkhivka village, Kharkiv region, 27 March 2022

459. On 27 March 2022, around 10:30 a.m., two families living in the village of Stepanyk were forced out of their houses by Russian soldiers. They set out on the road towards Kharkiv as part of a convoy consisting of three vehicles: a yellow minivan Mercedes with an older woman, her son and daughter-in-law, and their nine-year-old daughter; a green Zhiguli with two men; and a black Geely with an older woman, her husband, their daughter and son-in-law, and their 13-year-old granddaughter. The last car had the sign "children" on the back windshield.

460. The cars drove north to Vilkhivka village, where they took Ukrainka Street in order to join Tsentralna Street – the main road to Kharkiv. As they turned left at the intersection, they saw two military vehicles in front of them on both sides of the road, not more than 100 m away. The civilian vehicles immediately stopped. Without any warning, soldiers on the military vehicles opened fire at them from either semi-automatic or automatic rifles. An older woman in the first car and 13-year-old Marharyta Andriivna Horbyk in the third car were wounded. One of the civilians screamed at the soldiers to stop shooting, which they did, and they let the convoy pass. The older woman died on the way to Kharkiv. The girl died three days later in a hospital in the city.

461. The situation was volatile in the village at that time. Between 25 and 27 March 2022, Ukrainian armed forces launched a counterattack to regain control of the area. Russian armed forces however remained at least partly in control until 28 March 2022, which is also illustrated by the fact that during that period, they forced dozens of residents to leave their homes and walk north to the village of Verkhnia Rohanka village, from where they were taken by bus to the Russian Federation. Given the fluid military situation, the Commission has not been able to establish who was responsible for the attack.

E40 highway, Kyiv region

462. The Commission has documented three incidents on or in the vicinity of E40 highway, also known as the Zhytomyr highway, in the Kyiv region. The highway connects Kyiv with Western Ukraine and was used by many civilians from the parts of the Kyiv region, which were then occupied by Russian armed forces, to flee to safety. The Commission has recorded credible allegations of at least five additional similar incidents, that took place close to Kyiv.

463. In January 2023, Ukrainian authorities publicly identified the 5th Separate Tank Brigade of the 36th Combined Arms Army of the Russian armed forces as responsible for attacks on ten civilian cars on Zhytomyr highway between 4 and 25 March 2022, which killed 13 civilians and injured six. According to the authorities, Russian soldiers were based in the village of Berezivka and near the village of Myla. The Commission has corroborated that the 5th Tank Brigade was stationed in the area.

E40 near Kolonshchyna village, Kyiv region, 28 February 2022

464. On 28 February 2022, at around 11:30 a.m., two women and two men left Kolonshchyna village in a light-coloured civilian car, hoping to reach Western Ukraine. All of them were wearing civilian clothes. When they turned right on to E40 highway, they saw a military convoy with the letter “V” painted in white on the vehicles driving towards them about 500 m away. They decided it was safer to turn the car around and parked at a nearby gas station.

465. After about 10 to 15 military vehicles of the convoy had passed the station, the civilians suddenly heard a sound of shelling coming from the front of the convoy. Afraid that the convoy might fire at their car, the four civilians left the car and three of them ran to a nearby field. At this point, the convoy started to shoot in their direction. The gunfire lasted for about 10 minutes and injured one of the women. The soldiers then threw a grenade into the field, which set it on fire. The civilians managed to get into their car and eventually found their way back to Kolonshchyna.

466. Medical documents reviewed by the Commission show that one of the four civilians suffered a non-perforating gunshot wound to the left thigh and on 11 March 2022 underwent surgery that removed a bullet from her leg.

E40 near Kopyliv village, Kyiv region, 1 March 2022

467. On 1 March 2022, at around 10 a.m., a man and a woman, both in their 60s, fled from their home in Berezivka village, located next to the E40 highway, to drive to Western Ukraine. As they passed Motyzhyn village in their beige Citroen, they noticed several military vehicles on the road surrounded by men in uniforms. The civilians slowed down and approached the soldiers.

468. When they were about 40 m away, a soldier opened fire on the car. The woman in the passenger seat ducked and was not injured when a bullet hit the windshield on her side. The driver then accelerated, and more bullets hit the wheel and the trunk of the car. They continued driving and passed at least two other cars with visible bullet holes.

469. When they noticed a second group of soldiers, they steered the car into a forest nearby. There they spent 21 days, too scared to move in any direction, until they finally made their way to the village of Kolonshchyna.

470. The Commission reviewed photos of the car, which showed damage from small arms consistent with the victims’ account.

E40 near Severynivka village, Kyiv region, 3 March 2022

471. On 3 March 2022, a family of four decided to leave the village of Severynivka and join their relatives in Western Ukraine. While the village itself was not at the time occupied by Russian armed forces, the electricity was cut a few days earlier, and they could hear explosions nearby. They set out at around 10 a.m. in two cars: one identified woman (born 1980) in a silver Mazda with their nine-year-old daughter, and her identified husband (born 1980) in a silver KIA with their 15-year-old daughter.

472. They drove to the E40 highway and turned west. In an interview to a news outlet, the younger daughter recalled seeing Russian military vehicles on the highway. After turning south towards Motyzhyn village, about 1.5 km from the highway, the cars were attacked. The woman and the man were severely injured and died shortly after. The older daughter was shot in the leg. After about two hours, the two girls were picked up by Russian military vehicles and driven to a Russian military base. They left the younger girl with an older couple in a village nearby and told her that they will take her older sister to Belarus for medical treatment. As of 15 February 2023, the older sister was still missing.

473. The Commission interviewed relatives of the victims, as well as residents of the village, who took care of the nine-year-old girl. The Commission also reviewed video footage from the place of the incident taken in early April 2022, when the bodies and the damaged cars were found. The footage shows that the victims were wearing civilian clothes at the time of the attack and that the vehicles were civilian. The damage on the left rear door and the rear fender on the silver Mazda is suggestive of the use of small arms and it appears that the silver KIA was pushed off the road.

E40 highway, Kharkiv region

474. The Commission has documented four separate attacks on civilian vehicles in which three men and one woman were killed on the E40 highway, in the Kharkiv region, near a Sun Oil gas station, in the vicinity of Rohan village.²⁸⁶

475. At the time of the attacks, Russian armed forces were stationed on a hill south of neighbouring Mala Rohan village, about 1.5 km north of the highway, and about 3.5 km from the Sun Oil gas station. They withdrew from the area after heavy fighting between 25 and 27 March 2022.

E40 near Rohan village, Kharkiv region, 16-18 March 2022

476. On 16 March 2022, at around 9 a.m., Yurii Ivanovych Vasiliiev (born 1980) and Denys Ivanovych Cherkov (born 1982) left Kamiana Yaruha village and set out on E40 highway towards Kharkiv, driving a yellow Renault Kangoo. They were planning to collect food that could be distributed in the village. Both were wearing civilian clothes. At around 10 a.m. their families lost contact with them.

477. On the same day, at around 3 p.m., Andrii Valeriiovych Moznichenko (born 1985) and Nataliia Mykolaivna Makar (born 1984) left Kharkiv, where they had dropped off relatives trying to flee the area at the train station and bought some food. They were returning by E40 highway to Vvedenka village, driving a grey Kia jeep. They were wearing civilian clothes. Their relatives lost contact with them shortly after.

478. On 17 March 2022, a resident of Kamiana Yaruha village went looking for Vasiliiev and Cherkov. About two kilometres after the last checkpoint staffed by the Ukrainian armed forces, he came across several damaged and burned cars near the gas station Sun Oil. Among them, he recognized the yellow Renault. Inside the burned car, there were charred remains of a human body on the passenger seat. Vasiliiev's burned body was on the ground next to the car. Near another destroyed car, the witness found the body of Moznichenko. Inside the car, there was Makar's burned body. The witness did not manage to recover the bodies as he came under fire from the direction of Mala Rohan village (north, north-west of the E40).

479. On the following day, 18 March 2022, between 8 and 9 a.m., a civilian man drove a bread delivery van from Kharkiv city to Chuhuiv city along the E40 highway. Near the Sun Oil gas station, he noticed several burning cars. When he turned around to drive back to Kharkiv city, the right side of his van that was pointing in the direction of Mala Rohan village was hit, leaving a large hole. The man managed to escape on foot.

480. There are indications that several other vehicles were attacked in the same way at the same location. Video footage from the scene shows about ten damaged vehicles on a stretch of the E40 highway near the Sun Oil station, including the yellow Renault Kangoo.

481. The Commission interviewed witnesses and relatives of the victims, and reviewed documents, photos and video footage from the place of the incident. Medical documents indicate that Vasiliiev and Cherkov died of blast injuries, Makar died of an explosion and shrapnel injury, and Moznichenko died of multiple injuries to head, torso and limbs.

c) Unlawful confinement, unlawful transfers and deportations, torture and inhuman treatment**1) Overview**

482. The Commission has found a pattern of widespread unlawful confinement in areas controlled by Russian armed forces. Wide categories of persons of different ages and occupations were detained, at times in groups. The Commission has identified detention facilities where Russian authorities detained large numbers of people for long periods of time and used torture and ill-treatment in six regions in Ukraine and in the Russian Federation.

483. In international humanitarian law, confining a protected person, such as a civilian, without lawful reason, is a war crime.²⁸⁷ Such confinement is also a violation of the right to

²⁸⁶ Rohan and Mala Rohan are two settlements in Kharkiv region, about 5 km from each other. The villages are divided by the E40 highway, with Rohan located south of the highway, and Mala Rohan north.

²⁸⁷ Geneva Convention IV, article 147.

liberty and security of person, under international human rights law.²⁸⁸ In addition, the detaining authority is under an obligation to fulfil certain procedural requirements,²⁸⁹ provide humane treatment,²⁹⁰ and not deprive protected persons of their civilian status.²⁹¹ Moreover, transferring or deporting a protected person such as a civilian to another location within the current territory or to another State without a lawful basis is a war crime.²⁹²

484. In the cases examined, lawful reasons for the confinement of civilians often appeared to be lacking. In all situations, procedural requirements for detention were not met, which also rendered them unlawful, and conditions were consistently inhuman. Detention was frequently a precursor to executions and torture. In some situations, perpetrators have unlawfully transferred detainees within Ukraine or have deported them to detention facilities in the Russian Federation. Many are still reported missing.

485. The Commission also found that Russian authorities have widely used torture or inhuman treatment against both civilians and prisoners of war in seven regions of Ukraine and in the Russian Federation. As Russian authorities consolidated control over certain areas, the Commission found that more diverse, but similar methods of torture were used in dedicated detention facilities across Ukraine.

486. International humanitarian law and international human rights law prohibit torture and other cruel, inhuman, or degrading treatment or punishment.²⁹³ Inflicting severe physical or mental pain or suffering upon a person for such purposes as obtaining information or a confession, or to punish, coerce or intimidate, or for any reason based on discrimination of any kind, can constitute the war crime of torture. Rape and sexual violence can constitute torture.

487. Victims and witnesses reported that perpetrators inflicted severe physical and mental pain and suffering. Torture has been frequently perpetrated during long interrogation sessions, with the aim of extracting information, confessions, intimidating, or punishing the victims. It was particularly severe against current or former members of Ukrainian armed forces and associated persons, and at times against their relatives. In some cases, torture was followed by executions or resulted in the death of the victims.

488. In addition to the war crime of torture and the respective violation of human rights, the Commission has investigated whether the conduct of the Russian authorities may also amount to the crime against humanity of torture. A crime against humanity is an enumerated act – such as torture – when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack²⁹⁴ and pursuant to or in furtherance of a State or organizational policy.²⁹⁵

²⁸⁸ International Covenant on Civil and Political Rights, article 9(1).

²⁸⁹ See Additional Protocol I to the Geneva Conventions, articles 75(3)-(4); see also International Covenant on Civil and Political Rights, article 9 (2)-(5).

²⁹⁰ For example, Geneva Convention IV, articles 27, 37 and 127; Additional Protocol I to the Geneva Conventions, article 75(1), see also International Covenant on Civil and Political Rights, article 10.

²⁹¹ Additional Protocol I to the Geneva Conventions, article 50, see also article 45.

²⁹² Geneva Convention IV, article 49; Additional Protocol I, article 85(4)-(5).

²⁹³ For example, Geneva Convention III, articles 17, 87 and 130; Geneva Convention IV, articles 32 and 147; Additional Protocol I to the Geneva Conventions, article 75(2)(a)(ii); International Covenant on Civil and Political Rights, article 7; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, article 1(1).

²⁹⁴ Rome Statute, article 7(1), in particular (f).

²⁹⁵ Rome Statute, article 7(2)(a) (defining “attack directed against any civilian population”). For further explanation of such an attack, see for example ICC, *Prosecutor v. Bosco Ntaganda*, Public redacted version of Judgment on the appeals of Mr Bosco Ntaganda and the Prosecutor against the decision of Trial Chamber VI of 8 July 2019 entitled ‘Judgment’, No. ICC-01/04-02/06 A A2, 30 March 2021, paras. 7, 416, 418, and 421-424.

489. The Commission has determined that the Russian authorities' use of torture was both widespread and systematic against, among others, civilians.²⁹⁶ In terms of widespread,²⁹⁷ the conduct occurred in the seven regions of Ukraine so far investigated by the Commission, affecting significant numbers of detained individuals. As for systematic,²⁹⁸ the Commission found three main indications based upon the evidence thus far supporting this determination. First, while the unlawful confinement affected broad categories of persons, the victims of torture seemed to have been selected deliberately; they were those suspected of sharing information with the Ukrainian forces, supporting Ukrainian military efforts, or those who had a family member affiliated with the Ukrainian forces. Second, there was an underlying motivation to punish, intimidate, coerce or obtain information from those perceived to be supporting the Ukrainian armed forces and authorities. Perpetrators also called some of these particular victims "nazis", "fascists" or "terrorists", thereby providing additional pretext and motivation to torture them. Third and most importantly, in areas under prolonged Russian control, torture methods that required advance preparation or planning were present and applied, such as electric shocks including the method of the "call to Lenin", as described below (see paras. 521-533).

490. Continued investigation is needed to establish whether there are sufficient indications of a State or organizational policy encouraging such attacks against the civilian population. Based upon the abovementioned indications of systematic torture, it is likely that there is an underlying policy. The Commission would conclude that the Russian authorities committed the crime against humanity of torture in the event that such a policy is inferred from further evidence.

2) Unlawful confinement

491. The Commission has received allegations regarding the unlawful confinement of hundreds of persons by Russian authorities in areas under their occupation. It documented such cases in the Chernihiv, Donetsk, Kharkiv, Kherson, Kyiv, Sumy, and Zaporizhzhia regions, in Ukraine, and in the Russian Federation. Men and women of all ages, as well as children and older persons, became the victims of detention. The Commission also found that Russian authorities maintained makeshift and dedicated detention facilities where they confined large numbers of persons for long periods of time and used torture in Chernihiv, Donetsk, Kharkiv, Kherson, Kyiv and Zaporizhzhia regions, in Ukraine, and in the Russian Federation. Lawful reasons for detention often seemed to be lacking and procedural requirements were violated. Conditions of detention were inhuman, with frequent prolonged confinement. Detention often went together with interrogations, executions, and torture or ill-treatment.

492. In international humanitarian law, confining a protected person, such as a civilian, without lawful reason, is a war crime.²⁹⁹ Confining a protected person does not deprive them of their civilian status; such status is dependent upon, among other things, whether they were participating in hostilities.³⁰⁰ Further, such confinement is also a violation of the right to liberty and security of person, under international human rights law.³⁰¹ In addition, the detaining authority is under an obligation to fulfil procedural requirements, such as promptly informing the detainee, in a language they understand, of the reasons why the measures have

²⁹⁶ The potential presence of non-civilians within the civilian population does not deprive the population of its civilian character. While the attack must be directed against the civilian population, individual victims are not required to be civilians for a crime against humanity; they need to be 'persons'. ICC, *Prosecutor v. Dominic Ongwen*, Public Redacted Trial Judgment, No. ICC-02/04-01/15, 4 February 2021, para. 2675.

²⁹⁷ "The term 'widespread' connotes the large-scale nature of the attack and the number of targeted persons. The assessment of whether the attack is widespread is neither exclusively quantitative nor geographical, but must be carried out on the basis of all the relevant facts of the case": ICC, *Prosecutor v. Dominic Ongwen*, Public Redacted Trial Judgment, No. ICC-02/04-01/15, 4 February 2021, para. 2681.

²⁹⁸ "The term 'systematic' reflects the organized nature of the violent acts, referring often to the existence of 'patterns of crimes' and the improbability of their random or accidental occurrence": ICC, *Prosecutor v. Dominic Ongwen*, Public Redacted Trial Judgment, No. ICC-02/04-01/15, 4 February 2021, para. 2682.

²⁹⁹ Geneva Convention IV, article 147.

³⁰⁰ Additional Protocol I to the Geneva Conventions, article 50, see also article 45.

³⁰¹ International Covenant on Civil and Political Rights, article 9(1).

been taken.³⁰² Detainees should be treated humanely and protected from life-threatening conditions.³⁰³

493. Most of the cases of unlawful confinement investigated by the Commission during the first weeks of the armed conflict, were committed by Russian armed forces. In the areas occupied for longer periods of time, Russian authorities, including personnel of the Federal Security Service of the Russian Federation, the National Guard of Russia, the Special Purpose Police Squad,³⁰⁴ the Special Rapid Response Unit,³⁰⁵ and Russian-aligned armed groups of the former so-called Donetsk and Luhansk People's Republics, locally appointed officials, and local residents supporting Russian armed forces, also reportedly detained individuals. This was in particular the case in Kharkiv, Kherson and Zaporizhzhia regions. Where possible, the Commission has attempted to identify perpetrators, their leaders and units on the ground, as well as their higher hierarchy.

i) Victims of confinement

494. Perpetrators targeted a broad category of people. Most of the persons detained were young or middle-aged men. Women, children, and older people were also detained. Victims were from various backgrounds and included law enforcement employees, persons formerly associated with Ukrainian armed forces and Territorial Defence Forces, veterans of the former Anti-Terrorist Operation, local officials, activists and journalists, teachers and school directors, priests, one doctor, employees of the Zaporizhzhia Nuclear Power Plant, volunteers evacuating civilians, and others. It also occurred that persons have been confined alongside with their relatives. On one occasion, a large group of individuals was unlawfully detained in a single location – namely 365 persons.

495. In some instances, Russian authorities appeared to have actively searched for specific individuals. In one example, perpetrators waited for the victim as he was leaving his workplace and detained him. In another case, a local resident collaborating with the Russian armed forces called the victim for a meeting, during which the latter was detained. In one more situation, Russian authorities visited a victim at his home and subsequently at his workplace, where they detained him. At times, detentions occurred with the support of local residents –whether willing or as a result of coercion. Some former detainees told the Commission that during confinement, perpetrators forced them to give information about others.

496. The Commission has investigated cases in which Russian armed forces detained persons who were influential in their communities in order to coerce them and the local residents to cooperate. In this regard, one emblematic case is the detention of the Mayor of Melitopol at the Palace of Culture of Melitopol, in Zaporizhzhia region, in March 2022. In another situation, the head of a rural community in the Kherson region was detained by Russian armed forces who broke in her home in August 2022. The Commission has obtained the names of 27 heads of territorial communities of Kherson region who have been reportedly detained by Russian authorities.

497. During detention, Russian authorities often searched the houses, phones, computers, social media accounts of the detainees, and sometimes confiscated electronic devices, vehicles, and money.

ii) Places where detention was initiated

498. Russian armed forces often detained people during house-to-house sweep operations, as they searched for individuals who supported Ukrainian armed forces. Such operations were usually carried out after Russian armed forces had arrived at a new place or after they suffered significant losses. Detentions also occurred at the victims' workplaces.

³⁰² Additional Protocol I to the Geneva Conventions, articles 75(3)-(4); International Covenant on Civil and Political rights, article 10(1).

³⁰³ For example, Geneva Convention IV, articles 27, 37 and 127; Additional Protocol I to the Geneva Conventions, article 75(1); International Covenant on Civil and Political rights, article 9(2).

³⁰⁴ The Special Purpose Police Squad is a Russian Federation special antiriot and antiterrorist police unit, under the National Guard of Russia.

³⁰⁵ Special Rapid Response Unit is a Russian Federation special unit of the National Guard of Russia.

499. In other cases, detention started at checkpoints or so-called filtration points manned by Russian armed forces, or in the street. In areas under their control, Russian armed forces established a 'filtration' system, mainly at checkpoints and border points, to screen persons by verifying their documents, mobile phones, and at times, interrogating them. There have been reports that at filtration points, Russian armed forces ordered men and women to undress, fully or partially, to verify the presence of specific tattoos, believing this indicated that a person belonged to certain military units or groups (see paras. 615-617). In some areas, Russian armed forces have set up filtration points in the premises of schools, cultural houses, or police stations. The overall procedure of filtration, including the waiting time, could take up to several days. If during the process, suspicions arose that a person maintained connections with Ukrainian armed forces or Ukrainian officials, filtration could lead to detention. This could also be the case if the person had a certain type of tattoos.

iii) Status of the victims and reasons for confinement

500. In most of the documented cases, perpetrators accused the detainees of assisting Ukrainian armed forces, participating in the Territorial Defence Forces, or of being members of the local resistance against the occupation. In many cases, however, according to information available to the Commission, the victims were not or no longer engaged in such activities at the relevant times. Hence, they retained their civilian status and their confinement, if valid reasons were absent, was unlawful. In some situations, family members of detained persons told the Commission that Russian authorities had given civilians the status of prisoner of war, while there was no evidence that the detainees were combatants or were directly participating in hostilities at the relevant times. This led them to lose their protected status. Depriving civilians of their protected status is unlawful.³⁰⁶

501. Some victims or witnesses, however, told the Commission that at the relevant times, they had been collecting and sharing information with Ukrainian armed forces or had in other ways assisted the Ukrainian armed forces. In such cases, these persons may lose their civilian protections and the detention would likely not be considered unlawful under international humanitarian law. In any case, international humanitarian law prohibits torture, regardless of the status of the victim.

502. The Commission has in addition documented numerous cases in which Russian authorities confined civilians based on information or indications that do not appear as lawful grounds. Some people were detained because of having relatives in the Security Service of Ukraine, Ukrainian law enforcement agencies, or the former Anti-Terrorist Operation. Other reasons invoked by Russian authorities included refusing to cooperate with the occupying power, for example teachers and school principals who refused to work under the occupying authorities' measures, protesting against the occupation, posting on social media, having a pro-Ukrainian position, refusing to vote in so-called referenda, their religious affiliation, or wearing certain types of tattoos. These cannot be considered as valid reasons for confinement.

503. In one case, Russian armed forces confined 365 people for 28 days in the basement of a school in inhuman conditions in Yahidne village, Chernihiv region. These forces claimed that they carried out the confinement for the safety of the large civilian group. However, such a claim is meritless given that Russian armed forces had established a military base in the same school, which transformed it into a military objective, and therefore endangered the civilians detained in the basement, in violation of international humanitarian law.³⁰⁷

iv) Procedural requirements

504. The Commission has found that Russian authorities consistently violated procedural requirements relating to confinement. Documented detentions lasted from three days to over nine months. In none of the examined cases did a judicial or administrative body review the detention, as far as the Commission has been able to establish. At times, perpetrators did not communicate reasons for detention. In some cases, they exercised torture or psychological pressure to force those detained to acknowledge allegations levelled against them. A local businessman who had been detained in Balakliia, in the Kharkiv region, told the Commission

³⁰⁶ For example, Additional Protocol I to the Geneva Conventions, articles 50(1) and 51(3).

³⁰⁷ Additional Protocol I to the Geneva Conventions, article 58.

that for 15 days, he did not know the reasons for his detention, and it was hard; he stated “*they wanted to kill people morally*”.

505. Families were frequently not informed of the whereabouts of their detained relatives, including in cases in which detainees were transferred to a different location in Ukraine, the Russian Federation, or Belarus. This rendered efforts to secure the release of detainees, for instance through prisoner exchanges, particularly cumbersome.

v) Detention facilities

506. The Commission identified detention facilities where Russian authorities detained large numbers of persons for long periods of time in Chernihiv, Donetsk, Kharkiv, Kherson, Kyiv and Zaporizhzhia regions, all in Ukraine, and in the Russian Federation. It focused its investigations on 14 such places and has received allegations regarding numerous other such facilities. It visited some of these locations accompanied by former detainees who described the conditions and their experience there. The actual number of detention places is likely much higher as it is challenging to obtain and verify information about places of confinement in areas that are under occupation or cannot be accessed because of security concerns.

507. Detention facilities investigated in detail were held in the School of Yahidne village, Chernihiv region; the Volnovakha Correctional Colony No.120, aka Olenivka penal colony, and pre-trial detention facility No.5 (SIZO-5) in Donetsk city, Donetsk region; the Police Station and Railway Polyclinic in Iziium city, Kharkiv region; the Police Department, Printing House “Baldruk”, and Transport Company in Balakliia city, Kharkiv region; the Nova Kakhovka Police Station in Kherson Region; the Alians-Service metal plant, usually referred to as “Viknaland”, in the southern part of Dymmer town, Kyiv region; the Police Station in Enerhodar and a garage in Melitopol, both in Zaporizhzhia region; the pre-trial detention facility No.1 (SIZO-1) in Kursk region and the pre-trial detention facility No. 2 (SIZO-2) in Bryansk region, in the Russian Federation.

508. Some detention places were improvised, for example, in the basement of a school, an industrial or an agricultural facility, a train station, an airport, garages, and other dwellings. Makeshift facilities were common during the first weeks of occupation, as Russian armed forces gained control of certain areas.

509. In localities where the Russian authorities remained for longer periods, they established more formal facilities in police offices, pre-trial detention facilities, a medical institution, a school, and a printing house. Those in charge organized cells and, in some cases, allocated specific rooms for interrogation and torture.

v) Conditions of confinement

510. In nearly all the detention facilities investigated by the Commission, the conditions were lacking basic protection and requirements. Detention often occurred in cramped and overcrowded cells, with persons forced to share small spaces, to sleep on the floor, or to take turns to sleep. On some occasions, men, women, and children were held together. In one instance, 10 older persons died during confinement in a school basement because of inhumane conditions and other detainees, including children, had to share the same space with the bodies of the deceased.

511. In numerous detention facilities, there was a lack of light and ventilation, and victims described difficulties to breathe. Absence of heating in freezing temperatures was reported. Some detainees were confined in a metal cellar or placed outside in cold temperatures. In many of the facilities, sanitary conditions were lacking, and buckets were used as a toilet. Detainees had to seek permission to take out the excrement from the cell. There was limited or no possibility to wash. Access to food, water, and medical care for some was limited or none.

512. Victims described receiving spoiled soup, leftovers, porridge or pieces of bread, and dirty water in bottles. In some detention facilities, food was brought by family members.

3) Unlawful transfers and deportations

513. The Commission has reviewed situations concerning men and women who were initially confined in Ukraine, and then forcibly transferred within Ukraine or unlawfully

deported to the Russian Federation, on some occasions through Belarus. Of those, the Commission interviewed nine men and two women.

514. Under international humanitarian law, transferring or deporting a protected person such as a civilian to another location within the current territory or to another State without a lawful basis is a war crime.³⁰⁸

515. Former detainees who had been deported told the Commission that in the Russian Federation, they were confined in pre-trial facilities in Kursk and Bryansk regions. The Commission reviewed additional allegations regarding similar confinement, after deportations, in detention facilities in other regions of the Russian Federation. The victims interviewed stated that dozens of Ukrainians were detained in such facilities. Some of them were reportedly released after a while, including through prisoner exchanges. Many more were still detained at the time when the Commission's interlocutors were liberated. Victims shared detailed accounts of torture in those facilities (see paras. 561-566).

516. In one case, in March 2022, Russian armed forces detained a civilian man who helped evacuations from conflict-affected areas in Kozarovychi village, in Kyiv region. Perpetrators confined him near Dymmer locality, in Kyiv region, and subsequently transferred him to a detention facility in Hostomel Airport, also in Kyiv region. From there, Russian armed forces transferred him in military trucks, alongside with other detainees, to Belarus. There, he was issued a document which stated that he "counteracted a special military operation conducted in accordance with the procedure established by the President of the Russian Federation" and was further transported by military vehicle to a pre-trial detention facility in the Russian Federation. During the transportation, two Russian officers stated that before the 2022-armed conflict, the facility had been emptied in order to host Ukrainian detainees. The Commission also interviewed a woman, who was detained and transferred as part of the same group. She corroborated the previous account. Both victims were tortured during their detention in the Russian Federation.

517. In two other cases, Russian armed forces detained two men from Hrebnykivka, and another man from Trostianets, and confined them in a makeshift detention facility in Boromlia village, in Sumy region. One of the victims was a Ukrainian official. The perpetrators detained them in a metal cellar and subjected them to torture. Subsequently, they deported the men, together with other detainees, to the Russian Federation, and confined them in a facility not far from the border. There, Russian authorities asked the Ukrainian official "why was Okhtyrka resisting, while Russians want to liberate them".

518. The Commission also received numerous similar testimonies regarding transfers of detainees by Russian authorities from areas under their control to locations in Ukraine. In some cases, after releasing detainees, Russian authorities expelled them from occupied areas to territories under Ukrainian Government control, with no right to return. The Commission documented such situations in the Kharkiv, Kherson and Zaporizhzhia regions. The victims were school principals, teachers, employees of the State Emergency Service of Ukraine, and management of the Zaporizhzhia Nuclear Power Plant, who had been detained as they refused to co-operate with the Russian authorities. In some cases, detainees were forced to denounce Ukrainian authorities on video. Perpetrators dropped the detainees at checkpoints, from where they had to walk in a grey zone to reach territories under Ukrainian Government control. This endangered their lives (see para. 710).

4) Missing persons

519. Numerous persons detained in areas that were under Russian occupation were still missing several months after they were detained. Family members who reached out to Russian authorities regarding the whereabouts of missing persons reported that they did not receive a response. For example, in Dymmer town, Kyiv region, the Commission received a list of 58 people from different places in the region, who had not returned after having been last seen in custody of Russian armed forces. Relatives have received confirmation that some of these persons were in detention in the Russian Federation, but the fate of many remained unknown for long periods of time. In Kharkiv region, interlocutors told the Commission that their attempts to acquire information from Russian authorities in occupied territories on the

³⁰⁸ Geneva Convention IV, article 49; Additional Protocol I to the Geneva Conventions, article 85(4)-(5).

whereabouts of their family members did not yield results, and that after the withdrawal of Russian armed forces from certain areas, they had no information about the fate of their family members. In the Kherson region, after the Russian Federation relocated the local population and retreated from the right bank to the left bank of the Dnipro river, they also transferred people who were in detention. As a consequence, family members told the Commission that they lost contact with relatives who were in detention facilities.

520. Some family members received information that their detained relatives were in the Russian Federation, but could not ascertain their exact whereabouts. In other cases, people received letters from their family members months after they went missing. Although the letters did not contain any address or location, they were stamped with “Russian Post – Free of Charge”, indicating that they were being held in the Russian Federation.

5) **Torture and inhuman treatment**

521. The Commission has found a widespread pattern of torture and inhuman treatment committed by Russian authorities against persons they detained in Chernihiv, Donetsk, Kharkiv, Kherson, Kyiv, Sumy, and Zaporizhzhia regions, in Ukraine, and in the Russian Federation. Torture has been prevalent against certain categories of people. Most victims were men. Both civilians and prisoners of war were tortured. Torture or inhuman treatment were frequently perpetrated in combination with interrogation sessions, to extract information or confessions, or to intimidate or punish the victims. As Russian authorities consolidated control over certain areas, the Commission found that more diverse, but similar methods of torture were used systematically in detention facilities which they held across various regions of Ukraine. In some cases, torture was a precursor to execution, was so severe that it led to death, or consisted of sexual and gender-based violence (see para. 509-601).

522. International humanitarian law and international human rights law prohibit torture and other cruel, inhuman, or degrading treatment or punishment.³⁰⁹ Inflicting severe physical or mental pain or suffering upon a person with the purpose of obtaining information or a confession, or to punish, coerce or intimidate, or for any reason based on discrimination of any kind, can constitute the war crime of torture. Rape and other sexual violence can constitute torture. The threat or witnessing of such may also constitute torture depending upon the circumstances. Further, conduct that may not rise to the level of severity of torture but still involve severe physical or mental pain or suffering may constitute the war crime of inhuman treatment. This war crime does not need to be committed with a specific purpose, as requisite for the war crime of torture.

523. Victims subjected to detention and torture in the first few weeks after the Russian invasion mostly claimed that the perpetrators belonged to the Russian armed forces. In areas that Russian armed forces controlled for a longer period, victims mentioned a wider range of perpetrators, including the National Guards of Russia, and its under-subordinate units, the Special Purpose Police Squad and Special Rapid Response Unit. The Federal Security Service of the Russian Federation, Russian-affiliated armed groups of the former so-called Donetsk and Luhansk People’s Republics were also mentioned by victims as interrogators who inflicted torture. In the Russian Federation, according to victims, the prison guards along with special security services were inflicting torture, while the interrogation sessions were led by special forces, including the Federal Security Service of the Russian Federation and the Investigation Committee of the Russian Federation.

i) **Victims of torture and interrogation sessions**

524. Persons targeted with torture included current and former members of the Ukrainian armed forces or their relatives, volunteers evacuating civilians, veterans of the former Anti-Terrorist Operation, local authorities, employees of the local administration, retired and active law enforcement personnel, employees of Zaporizhzhia Nuclear Power Plant, participants in rallies against the occupation, a journalist, local business owners, and other civilians with pro-Ukrainian positions. Torture was particularly harsh against persons associated with Ukrainian armed forces.

³⁰⁹ For example, Geneva Convention IV, article 32; Additional Protocol I to the Geneva Conventions, article 75(2)(a)(ii); International Covenant on Civil and Political Rights, article 7; Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, article 1(1).

525. According to accounts of victims and witnesses, perpetrators used torture against persons whom they accused of sharing information with Ukrainian armed forces or providing any form of support to the Ukrainian armed forces, as well as of committing attacks and sabotage against Russian armed forces. Torture was generally aimed at obtaining information about Ukrainian armed forces and their positions, identifying people supporting Ukrainian armed forces and other Ukrainian officials, extracting confessions, forcing victims to collaborate, or inflicting punishments upon the victims for real or perceived sabotage or cooperation with Ukrainian armed forces or Ukrainian officials.

526. In most of the cases, long interrogation sessions took place, sometimes lasting for days, which were combined with torture, ill-treatment, threats, and sexual and, in some cases, gender-based violence. Victims were often brought to the places of detention or interrogation and kept hands tied or handcuffed, legs tied, eyes blindfolded with hoodie or tape, and had clothes or bags placed on their heads. Former detainees reported that they were asked about the movement, positions, and supporters of Ukrainian armed forces, locations of Territorial Defence Forces and their numbers. Witnesses described hearing loud and “unbearable” screams of their co-detainees during interrogation sessions. One victim explained how, after interrogation and the administration of electric shocks, perpetrators requested him to sit and write his “confession”. Former detainees reported that during interrogation and torture sessions, Russian armed forces referred to them as “fascists”, “nazis”, “livestock”, “terrorists”, or “supporters of terrorists preventing the liberation process”. On several occasions, they forced the detainees to say: “glory to Russia” and “glory to Putin”. One victim who had been in the Olenivka penal colony, reported that perpetrators held “denazification sessions”, during which they forced the victims to lie down, stepped on their heads and legs, and beat them.

ii) Methods of torture

527. Perpetrators inflicted severe physical and mental pain and suffering upon the victims. Those who underwent torture during the first weeks of the armed conflict and in makeshift detention facilities in Ukraine, described beatings with rifle butts or batons, electric shocks with tasers, rape, mock executions, and prolonged exposure to cold. In some cases, victims were executed after torture.

528. In areas which Russian armed forces controlled for longer periods of time and in more established detention facilities, the Commission has documented the use of additional, more diverse, but similar methods of torture across detention facilities which Russian authorities held in various regions of Ukraine. These methods involved sessions of electric shocks, hanging and strangling with cables, and suffocating with plastic bags. Former detainees described electric shocks with a military field phone called “*tapik*” connected to an electricity cable, or with clips on feet or fingers or men’s genitals. This was referred to as a “call to Lenin” or “call to Putin”. Victims also reported that they were hung to the ceiling using a rope, with hands tied behind the back, a method called “parrot position”. Furthermore, perpetrators also raped women while in detention, which, in the cases reviewed, amounted to torture. Some victims stated that gas masks were placed on their heads, so that their screams would not be heard, or to suffocate them. Former detainees witnessed the death of co-detainees following severe torture. One victim who had been in the Olenivka penal colony stated: “*The detainees were made to squat and were beaten up. If you were silent, they would beat you up and if you screamed, they would beat you up as well. So, in any case you would get beaten up. Once a guy screamed and he was beaten for two hours nonstop; it was really scary to listen to.*”

529. According to persons who were detained in the Russian Federation, confinement was in some situations initiated with an “acceptance procedure”, or “*priyomka*” in Russian, during which both men and women were forced to stay naked in front of others for prolonged times. Victims stated that they were submitted to electric shocks, beatings with a baton, and suffocation with plastic bags. A former detainee reported beatings as a “punishment for speaking Ukrainian” and for “not remembering the lyrics of the anthem of the Russian Federation”. Perpetrators forced Ukrainian nationals to memorize and sing the Russian Federation anthem and other Russian patriotic songs, to kiss and apologize to portraits of historical persons of the Russian Federation or the Union of Soviet Socialist Republics, and threatened to beat them if they refused. “*I felt so helpless and angry when singing songs and kissing the photos, but I and all others preferred to do it instead of being beaten*”, said a former detainee.

530. Victims of torture sustained short-term and long-term injuries and trauma, including broken facial bones, ribs, knees, hands, and fingers, bruises, or injuries leading to the inability or difficulty to walk. One victim reported that on the ninth day of severe torture, he started throwing up blood and fell in a coma. One couple stated that upon release, after ten days of torture, one of them had a blue face from bruises, while the other had the face covered in blood. The majority of detainees reported a deep psychological impact from torture on their lives.

iii) Widespread and systematic use of torture

531. The Commission has investigated whether the conduct of the Russian authorities may also amount to the crime against humanity of torture. A crime against humanity is an enumerated act – such as torture – when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.³¹⁰ Such an attack is defined as a course of conduct involving the multiple commission of enumerated acts against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack.³¹¹ For the policy, the State or organization must actively promote or encourage such an attack against a civilian population.³¹²

532. The body of evidence collected has allowed the Commission to determine that the Russian authorities' use of torture was both widespread and systematic.³¹³ It has found that torture was used in the seven regions of Ukraine where it has so far led investigations and that significant numbers of detained individuals have been affected, which are indicative of a widespread conduct. The Commission has also found three main indications which led it to determine that torture was systematic. First, perpetrators specifically targeted persons they suspected of sharing information with the Ukrainian forces, supporting Ukrainian military efforts, or those who had a family member affiliated with the Ukrainian forces. Second, there was an underlying motivation to punish, intimidate, coerce or obtain information from those perceived to be supporting the Ukrainian armed forces and authorities. Perpetrators also called some of these particular victims “nazis”, “fascists”, or “terrorists”, thereby providing additional pretext and motivation to torture them. Third and most importantly, in areas under prolonged Russian control, torture methods that required advance preparation or planning were present and applied, such as electric shocks including the method of the “call to Lenin”, as mentioned above.

533. Continued investigation is needed to establish whether there are sufficient indications of a State or organizational policy encouraging such attacks against the civilian population. Based upon the abovementioned indications of systematic torture, it is likely that there is an underlying policy. The Commission would conclude that the Russian authorities committed the crime against humanity of torture in the event that further evidence points to such a policy.

Case descriptions

534. As stated above, the Commission has established a pattern of widespread unlawful confinement in areas controlled by Russian armed forces. It has collected detailed first-hand testimonies from former detainees regarding both makeshift and more established detention facilities maintained by Russian authorities in areas they controlled in Ukraine and in the

³¹⁰ Rome Statute, article 7(1), in particular (f).

³¹¹ Rome Statute, article 7(2)(a) (defining “attack directed against any civilian population”). For further explanation of such an attack, see for example ICC, *Prosecutor v. Bosco Ntaganda*, Public redacted version of Judgment on the appeals of Mr Bosco Ntaganda and the Prosecutor against the decision of Trial Chamber VI of 8 July 2019 entitled ‘Judgment’, No. ICC-01/04-02/06 A A2, 30 March 2021, paras. 7, 416, 418, 421-424.

³¹² Elements of Crimes of the International Criminal Court, p. 3, para. 3 (requirement for “policy to commit such attack”). For further explanation of “pursuant to or in furtherance of a [...] policy”, see for example ICC, *Prosecutor v. Dominic Ongwen*, Public Redacted Trial Judgment, No. ICC-02/04-01/15, 4 February 2021, paras. 2678-2679.

³¹³ The potential presence of non-civilians within the civilian population does not deprive the population of its civilian character. While the attack must be directed against the civilian population, individual victims are not required to be civilians for a crime against humanity; they need to be ‘persons’: ICC, *Prosecutor v. Dominic Ongwen*, Public Redacted Trial Judgment, No. ICC-02/04-01/15, 4 February 2021, para. 2675.

Russian Federation. Within those detention centres, the evidence has shown widespread torture, ill-treatment, and inhuman conditions.

535. The Commission describes below some of these detention facilities. In this section, the descriptions are based on the detailed accounts of at least three independent first-hand testimonies. In many cases, former detainees listed the names of other people held together with them, providing independent corroboration of their detention. The Commission has collected information about the identity of perpetrators and their units. Given the scale of these violations, this section will be limited to some illustrations.

Makeshift detention facilities in Ukraine

“Viknaland”, Dymer town, Kyiv region

536. The Commission has found that Russian authorities maintained a makeshift detention facility at the Alians-Service metal plant, often referred to as “Viknaland”, in the southern part of Dymer town, Kyiv region, when they controlled the area between 5 and 28 March 2022. It documented inhuman conditions, ill-treatment, and torture in this facility, based on detailed accounts from 10 people who were detained at the plant.

537. The conditions of confinement were inhuman. According to former detainees, women and men, sometimes more than 40 at a time, were held in a room of about 20 square m, making the space overcrowded. There was no light and no heating in the room, detainees were sleeping on the concrete floor, and a bucket served as toilet. Food was poor and made many of them sick.

538. Five former detainees said that they were subjected to various forms of ill-treatment and torture in the facility and eight said that they heard or saw Russian armed forces torture and ill-treat others. The methods of torture included severe beatings with rifles, electric shocks with tasers, mock executions, and threats of execution of family members. Several people reported that they or others sustained severe injuries from the treatment, including lost teeth, broken ribs, legs, or fingers.

539. One of the victims was a 44-year-old man, who told the Commission that Russian soldiers interrogated him to extract information about Ukrainian armed forces, beat him with rifles and gave him multiple electric shocks with a taser. His hands were tied and eyes blindfolded. A 38-year-old woman stated that she was interrogated by four soldiers for several hours about the position of Ukrainian armed forces and about ways to cross the frontline, during which she was beaten with a baton on her back and her arms. Other detainees confirmed that they saw these two detainees in this facility.

540. The former detainees and other residents who interacted with the forces at the plant described them as “military police”, based on their appearance. There are also indications that the 83rd Guards Air Assault Brigade were involved in running the detention facility. One of the former detainees heard that soldiers who released a group of detainees on 11 March 2022, told them that they should say that the “83 military brigade” had released them if they were stopped at any checkpoints. Journalists who visited the site after Russian armed forces had left, found documents apparently belonging to the 83rd Brigade.

School basement, Yahidne village, Chernihiv region

541. The Commission found that in March 2022, Russian armed forces used the basement of a school in Yahidne village, Chernihiv region, as a makeshift detention facility. There, they confined in inhuman conditions 365 people for 28 days. When Russian armed forces arrived in Yahidne in early March 2022, some residents initially sought shelter in the basement of the local school voluntarily. Soon, however, the Russian armed forces started forcing others to go there, and eventually confined 365 people, including at least 70 children. The Commission collected the testimonies of eight residents from Yahidne and inspected the school.

542. The conditions of confinement were inhuman. The space was extremely crowded and there was no room for everybody to lie down. There was no light except for candles, torches and kerosene lamps. It was unbearably hot, with no ventilation and lack of oxygen. People received food once or twice per day. There was close to no access to health care and medication, and limited access to toilet and washing facilities. The detainees had to use a

bucket as a toilet, or to seek permission to exit the premises or to use the toilet outside, which was only given sporadically. In the yard of the school, the soldiers randomly shot near the detainees to scare them. As a consequence of these conditions, 10 older persons died during detention. These conditions severely impacted the health of some of the others.

543. The Commission collected information indicating that forces from several units were located in or near Yahidne, including in the school. These forces comprised the 55th Separate Motorized Rifle Brigade, the 74th Separate Guards Motorized Rifle Brigade, and the 228th Motorized Rifle Regiment.

Railway Polyclinic, Iziium city, Kharkiv region

544. The Commission has found that Russian authorities established a makeshift detention facility at the abandoned Railway Polyclinic located at Zavodska Street 35b, in Iziium city, Kharkiv region. It visited the facility and documented inhuman conditions, ill-treatment, and torture there, based on testimonies of five persons who were held there for up to 14 days in June-July 2022.

545. The conditions of confinement at the facility were inhuman. According to former detainees, they were held in several garages of about 16 square meters in size, with up to 16 persons in one garage. There were no windows, the detainees slept on the concrete floor, and there was only a bucket for toilet, which they could empty only every three days. Food was poor. One woman was held in a storage room in one of the buildings.

546. Three former detainees testified about ill-treatment and torture at the facility, including electric shocks with a military field phone called “*tapik*” connected to fingers, toes, or genitals; suffocation using gas masks; as well as rape, beating, and hanging with a rope.

547. Among them was a couple, a 53-year-old man and a 52-year-old woman. The man told the Commission that they were detained for ten days at the facility, because their son was serving in Ukrainian law enforcement and because they refused to work for the administration appointed by Russian authorities. He reported that perpetrators tortured him for two hours during the afternoons. Once he was hit against the wall so hard that he lost consciousness. Perpetrators ordered him to wear a gas mask, to cut off his oxygen supply. The woman recounted being subjected to torture and sexual violence. She told the Commission that she scratched her name on the wall of the facility, which the Commission observed during its inspection.

Established detention facilities in Ukraine

Police Department, Iziium city, Kharkiv region

548. The Commission has found that Russian authorities maintained a detention facility at the Police Department in Iziium city, Kharkiv region. It documented inhuman conditions, ill-treatment, and torture in this facility and detentions that lasted from five to 50 days. The findings of the Commission are based on testimonies of four detainees and the Commission’s own observations during a visit to the location.

549. The conditions of confinement at the facility were inhuman. Former detainees said that they were mainly held in cells in the basement, while women were kept on the ground floor. The cells were about four to five square meters in size, with two to four persons in each cell, a wooden bench to sleep on, and no natural light. A bucket was used for toilet, while some detainees were given only a bottle for urine. There was no option to wash and limited to no access to food. The detainees’ description of the facility matched the Commission’s observations at the site.

550. Three of the four former detainees recounted being subjected to electric shocks with a military field phone connected to fingers or toes, beatings, including with objects, and being hung by their hands with rope from the ceiling. They listed different types of injuries from their ill-treatment and torture, including a broken arm, broken ribs, and problems with kidneys.

551. Among the detainees, a 67-year-old man told the Commission that he had been confined in August 2022, following accusations that he had cooperated with the Ukrainian armed forces and had blown up a school that Russian armed forces had used as a base and military hospital. He was interrogated several times, during which perpetrators beat him all

over his body and electrocuted him with a device connected to his fingers. The first interrogation session left him with a broken arm and incapable of walking on his heels. On the ninth day of his detention, he was beaten so badly, that he lost consciousness. Another detainee who was held in the neighbouring cell confirmed that the 67-year-old man was tortured and lost consciousness. He was eventually brought to the local hospital. A local doctor confirmed that he had been hospitalized and had barely survived. The Commission reviewed medical documents confirming that his arm had been broken and observed stitches on his left arm and that the mobility of that arm, hand, and fingers were reduced.

Police Department, Balakliia town, Kharkiv region

552. The Commission has found that Russian authorities maintained a detention facility at the Police Department in Balakliia town, Kharkiv region. It documented inhuman conditions, ill-treatment, and torture in this facility. Most detentions lasted about two weeks, while one man was held there for 95 days. The findings of the Commission are based on accounts from 13 former detainees.

553. The conditions of confinement at the facility were inhuman. The former detainees said that they were mainly held in four cells of about five square m in size, containing a few wooden benches for sleeping. There were often six to eight people in each cell. There were no windows, natural light, or proper ventilation, making the cells unbearably hot. Detainees were brought to the toilet twice per day, in the morning and in the evening. There was no possibility to wash. Food was poor. Five women who had been detained there said that they were held in a separate room and that their conditions were somewhat better, with more and better food and with windows in their room. The detainees' description of the facility was in conformity with the Commission's observations during its visit.

554. Five of the former detainees described sustained beatings, beatings with objects, and electric shocks using a military field phone connected to fingers or toes. Detainees reported that at least two of them suffered a broken rib and arm. One young woman told the Commission that one of the soldiers raped her (see para. 609). Former detainees also said that the perpetrators forced them to record videos saying that they were ready to cooperate with the Russian armed forces, that they hated the Ukrainian armed forces, or that they were grateful to the Russian Federation for the liberation of their town.

555. Among the detainees, a 45-year-old man told the Commission that he was detained after being accused of being a spotter for the Ukrainian armed forces. The perpetrators interrogated him, asked him to identify spotters, and beat him with a rubber baton on his head and face until he was bleeding in three places. They also gave him electric shocks with a taser on different parts of his body. According to the victim, the perpetrators were not interested in his answers. A second detainee who had shared the cell with the man confirmed that he had been tortured, and both witnesses mentioned the same call sign for one of the perpetrators.

556. During its visit, the Commission observed the words "Smerch" and "Orlan" written on garages and on a schedule which listed the days when "Smerch," "Orlan," and "LNR" could use an improvised washing facility in the backyard. "Smerch," and "Orlan" likely refer to Special Purpose Police Squad forces from two cities in the Russian Federation, Samara and Togliatti, respectively, suggesting that they were located at the police station. Other information which the Commission has obtained independently confirms that Special Purpose Mobile Unit forces from Samara and Togliatti were located in Balakliia town during the occupation. The Commission has identified the Russian armed forces' military commandant in Balakliia who likely played a key role in managing the interaction between Russian armed forces and civilians, including those detained at the police station.

Police Department, Enerhodar city, Zaporizhzhia region

557. The Commission has found that Russian authorities maintained a detention facility at the Police Department in Enerhodar city, Zaporizhzhia region. It documented inhuman conditions, ill-treatment, and torture in this facility. Four detainees who had been confined in this centre between March and August 2022 were interviewed; their periods of confinement lasting from one to 53 days.

558. The conditions of confinement at the facility were inhuman. It consisted of three cells of about 10 m² each, and one additional cell for women. Twelve to 20 people were held at a time in each of the cells, making it overcrowded. Each room had one latrine and two beds

and no space to sleep for all. Detainees washed with a water bottle on top of the latrine. Ventilation was lacking. The detainees were mainly fed with what their relatives brought for them.

559. Four former detainees recounted how they and other detainees were subjected to interrogations accompanied by beatings with batons, rifle butts, or a cable, electric shocks referred to as “a call to Lenin”, strangling with a cable, and shooting with rubber bullets, including near the ears of the victims. Interrogators reportedly referred to one of the victims as a “terrorist” and a “nazi”. Former detainees also witnessed the death of three persons following torture, including one employee of the Zaporizhzhia Nuclear Power Plant.

560. One of the detainees, a 45-year-old man, told the Commission that during interrogation, the perpetrators questioned him about the names of officials of the Security Service of Ukraine. He said that he was electrocuted at least five times with a military field phone and was shot with a rubber bullet. As the result of the torture, he sustained bruises on his body and face and six broken ribs and required prolonged medical treatment. Two other former detainees confirmed to the Commission that the man was detained and tortured at the police station. Additionally, all three witnesses mentioned the same call sign for two of the perpetrators, and two of the witnesses mentioned the same call sign or name for four other perpetrators.

Detention facilities in the Russian Federation

SIZO-1, Kursk city, Kursk region, Russian Federation

561. The Commission has found that Russian authorities transferred and held detainees from Ukraine in SIZO-1, in Kursk city, Kursk region, in the Russian Federation. The facility falls under the Federal Penitentiary Service Directorate for the Kursk region. The Commission has documented ill-treatment and torture at this facility based on testimonies of 11 former detainees who were confined there between March and October 2022.

562. Former detainees delivered testimonies regarding a violent “admission procedure”, during which they were forced to sing Russian songs, were subjected to forced nudity, electric shocks using a taser, suffocation using plastic bags, beatings with fists or objects, and to stand for prolonged periods of time. Three former detainees described how they were placed in a room where they received threats of being burned alive. Some detainees were threatened with sexual violence.

563. Among the victims, a 26-year-old woman told the Commission that when she was brought to SIZO-1 in April 2022, prison guards tied her hands and blindfolded her. They beat her, gave her electric shocks on her back, shoulder, legs, and neck, and stood on her spine while she was lying on the ground. She said that she passed out a few times from the beatings, but they woke her up again to continue. After a registration procedure, they took her to another room where they suffocated her with a plastic bag and then locked her in a small room with a piece of burning paper, saying that they would turn on the gas so that she would burn alive. The woman also recounted being forced to learn by heart and sing the Russian anthem and other songs multiple times per day and kiss photos of war veterans and Russian leaders. For example, she mentioned having to sing the songs “*Katyusha*” and “*Uncle Vova*”, that other detainees in this facility also specifically recall being forced to learn and sing.

SIZO-2, Novozybkov city, Bryansk region, Russian Federation

564. The Commission has found that Russian authorities transferred and held Ukrainian detainees in SIZO-2, in Novozybkov city, Bryansk region, in the Russian Federation. The facility falls under the Federal Penitentiary Service Directorate for the Bryansk region. The Commission has documented ill-treatment and torture in this facility, based on testimonies of seven former detainees who were confined there between March and September 2022, for a duration of up to 42 days. Former detainees said that they saw several hundred detainees from Ukraine in the facility, both men and women.

565. The seven former detainees interviewed by the Commission described an abusive “admission procedure” upon arrival to the facility, interrogation, being forced to learn Russian songs and being punished if they failed, electric shocks with tasers, beatings, forced nudity, and being forced to stand for prolonged periods of time. Two detainees told the

Commission that they suffered from physical and psychological problems due to the detention.

566. Among the victims, a 44-year-old man reported to the Commission about the “admission procedure”, during which he was stripped naked, forced to stand against a wall with his legs spread, and shout “glory to Russia” while being beaten, mostly on his calves and lower back. The guards forced the detainees to learn by heart the lyrics of the Russian anthem and other songs and beat them if they could not recall the lyrics. A woman who was detained and released together with the man confirmed that he had been detained in the facility.

d) Sexual and gender-based violence

1) Overview

567. The evidence gathered by the Commission indicates that Russian authorities have committed sexual and gender-based violence, often committed with brutality, and in combination with other grave violations, across areas they controlled in Ukraine and in the Russian Federation. It has documented cases of sexual and gender-based violence, including rape, threat of rape, sexual slavery, and forced nudity involving women, men, and girls, of an age range from 4 to over 80, in nine regions of Ukraine, and in the Russian Federation.

568. Rape, sexual violence and sexual slavery are war crimes.³¹⁴ Rape and other forms of sexual violence may also amount to torture.³¹⁵ Sexual and gender-based violence also constitutes human rights violations, such as those contained in international human rights treaties, including the right to be protected from torture or cruel, inhuman or degrading treatment,³¹⁶ the right to equality,³¹⁷ and the right to health.³¹⁸

569. In areas that have fallen under the occupation of the Russian armed forces since 24 February 2022, the Commission has documented many instances of rape and sexual and gender-based violence committed during house searches and forced visits carried out by Russian armed forces. Sexual violence often went together with other grave violations and crimes, such as summary executions, torture, and ill-treatment. It has also documented that Russian authorities used sexual violence, including rape and threat of rape, against Ukrainian prisoners of war and detained civilians, as a method of torture. Moreover, in some situations, they imposed forced nudity, which can be a form of sexual violence, during controls at check points and filtration points, and in detention.

570. Victims and witnesses have pointed to differences in behaviour between soldiers and units of Russian armed forces. In many cases, they described violent, degrading, humiliating, and intimidating behaviour of perpetrators towards the victims. In a few cases, the Commission also received reports that Russian commanders or soldiers have intervened to stop or have told victims and witnesses that they have punished perpetrators of sexual violence.

571. Sexual and gender-based violence has severely impacted victims, their families, and communities. It has caused internal and cross-border displacement and eroded family and community networks: some women survivors decided to leave their families, homes, and communities because of the shame and stigma associated with rape. Most survivors of sexual and gender-based violence documented by the Commission received some psychological

³¹⁴ For example, Geneva Convention IV, articles 27 and 147; Additional Protocol I to the Geneva Conventions, articles 75(2)(b), 76(1) and 77(1).

³¹⁵ For example, ICTY, *Prosecutor v. Delalić et al.*, Case No. IT-96-21-T, Judgement, 16 November 1998, paras. 475-496; ICTR, *Prosecutor v. Akayesu*, Case No. ICTR-96-4T, Judgement, 2 September 1998, para. 687

³¹⁶ International Covenant on Civil and Political Rights, article 7; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, article 1; Convention on the Rights of the Child, articles 19 and 37 (a).

³¹⁷ Convention on the Elimination of All Forms of Discrimination against Women, articles 1 to 5.

³¹⁸ International Covenant on Economic, Social and Cultural Rights, article 12; Convention on the Elimination of All Forms of Discrimination against Women, article 12; Convention on the Rights of the Child, articles 24 and 39.

support. The Commission ensured that all the survivors it had contacted were referred to adequate services, if they were not receiving such before.

572. The Office of the Prosecutor General of Ukraine has been developing a prosecution and investigation strategy on conflict-related sexual violence. As of 27 January 2023, the Prosecution services of Ukraine were seized of 166 cases of sexual violence relating to the ongoing armed conflict, 11 of which concerned a child victim. Some of the alleged perpetrators have been identified and proceedings were initiated. The Commission investigated some of these cases.

573. Due to security and other constraints, the Commission did not have physical access to some areas of Ukraine and to some victims. It is therefore unable to describe the full spectrum of sexual and gender-based violence linked to the armed conflict. Particular challenges in documenting such violations were due to various factors, including fear or shame of reporting, and to the fact that some victims were not yet ready to share their experiences. Additional obstacles were caused by the displacement of victims, the trauma following the events and the taboos associated with discussing and reporting these issues. For these reasons, the Commission believes that the actual number of cases of sexual and gender-based violence is higher.

2) **Situations in which sexual and gender-based violence was committed**

574. The Commission has identified two main situations in which Russian authorities committed sexual violence: during house searches or forced visits carried out by Russian armed forces in areas that came under their control, and against victims they had confined. It has also found that Russian authorities imposed forced nudity, which can be a form of sexual violence, in detention, at checkpoints, and filtration points. Sexual violence committed during house searches appears to have been more prevalent during the first two months of the armed conflict, with a majority of cases in Kyiv region, as Russian armed forces first deployed to or consolidated control over certain areas. Sexual violence in detention was perpetrated throughout the armed conflict.

575. Both men and women have been victims of sexual violence. In the cases of rapes committed during house searches, the majority of victims were women, including older women and girls in rural areas, who did not manage to evacuate before Russian armed forces arrived in their areas or had no financial or logistical resources to go to safety. Some of them remained due to care-taking obligations of older relatives. In the cases of sexual violence committed in detention, the majority of victims were men, both civilians and prisoners of war.

576. Most of the survivors who engaged with the Commission asked that their privacy be respected and that their village not be named. For this reason, most of the cases in this section only refer to the region in which the incident occurred and do not indicate the exact dates of the events.

i) **Sexual and gender-based violence during house searches**

577. The Commission's investigation shows that in the areas that came under their control, Russian armed forces committed rape, attempted rape, sexual violence, sexual slavery, as well as the corresponding human rights violations. These crimes and violations were often accompanied by other violations, committed against the victims of rape or their relatives, such as wilful killing of civilians, torture, outrages upon personal dignity, and unlawful confinement. The Commission documented such violations and crimes in Chernihiv, Kharkiv, Kherson, and Kyiv regions, with a majority in Kyiv region, mainly during the first two months of the armed conflict.

578. Rape, sexual violence and sexual slavery are war crimes.³¹⁹ For rape, the perpetrator, among other things, invaded the body of a person by conduct resulting in penetration, however slight, of any part of the body of the victim or of the perpetrator with a sexual organ, or of the anal or genital opening of the victim with any object or any other part of the body.³²⁰

³¹⁹ For example, Geneva Convention IV, articles 27, 147; Additional Protocol I to the Geneva Conventions, articles 75(2)(b), 76(1) and 77(1).

³²⁰ Elements of Crimes of the International Criminal Court, p. 19 (article 8(2)(b)(xxii)-1, war crime of rape).

Sexual violence involves, among other things, a grave act of a sexual nature, but does not require penetration of a person's body.³²¹ For sexual slavery, the perpetrator exercised any or all of the powers attaching to the right of ownership over a person, such as by purchasing, selling, lending or bartering such a person, or by imposing on them a similar deprivation of liberty, and caused the person to engage in acts of a sexual nature.³²² Rape and other forms of sexual violence may also amount to torture.³²³ Sexual and gender-based violence also constitutes human rights violations, such as those contained in international human rights treaties, including the right to be protected from torture or cruel, inhuman or degrading treatment,³²⁴ the right to equality,³²⁵ and the right to health.³²⁶

579. Many of the instances of rape and sexual violence documented by the Commission took place in the course of operations during which Russian armed forces went from house to house, looking for persons collaborating or sympathizing with Ukrainian authorities. There are instances in which several rapes were allegedly committed in the same village.

580. The majority of victims were women who were alone at home. Rapes were committed at gunpoint, with extreme brutality and with acts of torture, such as beatings and strangling. Perpetrators at times threatened to kill the victim or her family if she resisted. In some cases, more than one soldier raped the same victim, or the perpetrator raped the victim several times. In one incident, the victim was pregnant and begged, in vain, the soldiers to spare her; she had a miscarriage a few days later (see case descriptions starting para. 586).

581. In some instances, perpetrators also executed or tortured husbands and other male relatives, who tried to interfere. Family members, including children, and relatives were sometimes forced to watch perpetrators rape their loved ones. If they were not in the same room, they could hear their ordeal without the possibility to intervene. Victims reported on occurrences in which perpetrators also stole money, phones or other belongings.

582. In one case, the control and power exercised over the victim was such that the perpetrator's behaviour amounted to sexual slavery. In March 2022, in a village in the Chernihiv region, Russian armed forces occupied the home of the victim for 20 days. Every night, the unit commander slept with a 16-year-old girl, raped, strangled, and beat her; he threatened to kill her relatives and have soldiers of his unit gang rape her. The Commission has received allegations regarding two other cases in which Russian armed forces exercised their power over members of two families, requesting them to cook or do their laundry, while regularly raping and abusing a woman and a 14-year-old-girl, respectively.

583. Interlocutors often mentioned that Russian soldiers occupying villages were under the influence of alcohol, which was especially the case of younger soldiers. This was reported by survivors from Chernihiv, Kherson, Kyiv and Zaporizhzhia regions. Under international law, voluntary intoxication is not recognised as a ground for excluding criminal responsibility.³²⁷

584. Some women resorted to tactics to avoid attracting Russian soldiers' attention when they had to go out, such as wearing dirty and baggy clothes and not doing their hair. When Russian soldiers were checking homes or shelters, some inhabitants hid younger women by fear the soldiers would take them away and sexually abuse them.

³²¹ Elements of Crimes of the International Criminal Court, p. 20 (article 8(2)(b)(xxii)-6, war crime of sexual violence).

³²² Elements of Crimes of the International Criminal Court, p. 19 (article 8(2)(b)(xxii)-2, war crime of sexual slavery).

³²³ For example, ICTY, *Prosecutor v. Delalić et al.*, Case No. IT-96-21-T, Judgement, 16 November 1998, paras. 475-496; ICTR, *Prosecutor v. Akayesu*, Case No. ICTR-96-4T, Judgement, 2 September 1998, para. 687.

³²⁴ International Covenant on Civil and Political Rights, article 7; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, article 1; Convention on the Rights of the Child, articles 19 and 37 (a).

³²⁵ Convention on the Elimination of All Forms of Discrimination against Women, articles 1 to 5.

³²⁶ International Covenant on Economic, Social and Cultural Rights, article 12; Convention on the Elimination of All Forms of Discrimination against Women, article 12; Convention on the Rights of the Child, articles 24 and 39.

³²⁷ Rome Statute of the International Criminal Court, article 31(1)(b) states that intoxication may be a ground for excluding criminal responsibility, with the exception of voluntary intoxication.

585. Victims shared feelings of shame, anger and fear with the Commission. One woman stated: “*I am an old woman, I am a mother and grandmother, and I am a widow, but even I was so scared that Russian soldiers would come for me and rape me. I did not understand why they spotted me, why that prison-guard-looking soldier stopped me and harassed me*”. Psychologists who assisted victims told the Commission that survivors believed that Russian soldiers committed rapes to humiliate the victims; one of the survivors reportedly stated: “*it was done just to humiliate us as human beings*”. Another psychologist and a lawyer supporting survivors of rape mentioned that Russian soldiers used xenophobic and vulgar expressions while they raped two girls.

Case descriptions

Kyiv region

586. In March 2022, in a village in the Kyiv region, two Russian soldiers entered a home of a young couple and their four-year-old daughter. The soldiers raped the woman several times and forced the man to watch. The perpetrators then committed various acts of sexual violence on the husband, mocking and humiliating him. They subsequently forced the couple to have sexual intercourse in their presence and threatened to kill them if they did not obey. Their little girl was in an adjacent room and heard the screams of her mother during the whole time. One of the soldiers then went to the other room and forced the four-year-old girl to perform oral sex on him. The little girl is now scared of men in uniform.

587. In March 2022, a Russian soldier entered the home of a couple in a village in the Kyiv region. As the husband was trying to protect his wife, the soldier shot him several times in the abdomen, and took the wife to a nearby house. He threatened to kill her, ordered her to undress, and raped her. As he was doing so, other soldiers arrived and took him away. When she returned to her home, she found her husband seriously wounded. She was unable to take him to the hospital because of the fighting. He died of his injuries two days later. Witnesses alleged that the perpetrator was involved in similar acts in the neighbourhood.

588. In March 2022, in a village in the Kyiv region, four Russian soldiers broke into a 47-year-old woman’s house. She recollected that the soldiers were “dirty, smelly, and drunk.” She told the Commission that one of the soldiers asked for her name, and then ordered the other three to wait for him outside of the house. He raped her several times and beat her with his rifle. She lived on the outskirts of the village and could not call for help.

589. At the beginning of March 2022, in a village in the Kyiv region, nine Russian soldiers visited a couple’s home a first time. Later, two soldiers returned. While the wife was hiding in the shelter with her four-year-old son, her husband went to open the door. She heard a gunshot. The soldiers ordered her out of the shelter. After threatening to kill her in front of her son, one of the soldiers ordered the woman to take off her clothes. The two soldiers raped her multiple times. Being intoxicated, they fell asleep. The victim took this opportunity to run away with her son. She saw the body of her husband lying in the family yard. In June 2022, the Ukrainian authorities initiated proceedings *in absentia* against a soldier from the 239th Regiment of the 90th Guards Tank Division of the Armed Forces of the Russian Federation for the rape and murder. The Commission has independently collected information showing that the 239th Regiment was located near the village in early March.

590. In March 2022, in the same village in the Kyiv region, three Russian soldiers forced their way into a woman’s home. She was alone, as her husband had left a few days before to help the Ukrainian military. The three soldiers went into the basement and stole food and money. Two of them raped the woman in turns and choked her, while the third soldier watched masturbating. The victim later found out that her husband had been tortured and executed by Russian armed forces about 15 km away. The victim said that she had suicidal thoughts in the aftermath.

591. In March 2022, in another village in the Kyiv region, three Russian soldiers, acting under the influence of alcohol, forced their way into the home of a three-month pregnant woman. They started to interrogate her about Ukrainian armed forces positions in the area. They beat her and tortured her, breaking several of her teeth with the butt of a rifle and pouring burning liquid on her skin. Two of the soldiers then raped her while continuing to beat and choke her to the point that she lost consciousness several times. She kept repeating to them she was pregnant and begged them to spare her. She had a miscarriage a few days

later. The Ukrainian authorities launched an investigation into the incident and identified two of the perpetrators.

592. The Commission has been investigating other serious allegations of sexual violence committed during the same period in another village of the Kyiv region. The allegations include the gang rape of a woman and her teenage daughter, as well as forced nudity of two men in front of a woman relative. A 66-year-old woman from this village told the Commission how she was sexually harassed by a Russian soldier, who was around 50 years old, while she was trying to fetch water with one of her female neighbours. The soldier stopped them on the road, grabbed her upper arm, and said aggressively: “your green eyes are driving me crazy, bitch!”. He asked her to invite him for tea, to “have good time”. He held his rifle pointed at her and kept his finger on the trigger all the time while talking to her and threatened that he would kill her. The husband of one of the women arrived and they eventually managed to talk their way out. The victim told the Commission that she perceived the soldier’s comments and actions as a threat of rape and murder.

Chernihiv region

593. In March 2022, in a village in the Chernihiv region, Russian armed forces occupied a home for 20 days. Every night, the unit commander slept with a 16-year-old girl, raped, strangled, and beat her; he threatened to kill her relatives and have soldiers of his unit gang rape her. In addition to the war crimes of rape, torture and unlawful confinement, the conduct of the perpetrators also amounts to sexual slavery. When the commander was assaulting the victim and her brother tried to intervene, the soldiers kept him with cuffs on his hands outside and beat him, each night, for several nights. The Ukrainian authorities identified two of the perpetrators as belonging to the 80th Tank Regiment of the 90th Guards Tank Division and convicted two of them *in absentia*.³²⁸ The Commission has independently collected information showing that the 80th Tank Regiment was located near the village in early March 2022. In the same village, in March 2022, a resident found the body of an 82-year-old woman in her apartment. He said that she was half naked with blood around her genitals, suggesting that she might have been subjected to sexual violence before her death. Her family refused to report the case to the police or to request a post-mortem examination.

594. In March 2022, in a village in the Chernihiv region, an intoxicated Russian soldier attempted to rape a young woman in front of her three-year-old son. One of her relatives interrupted the soldier, as he was trying to undress the victim. The relative’s screams triggered the soldier to discharge his firearm, which prompted the neighbours to seek help from other Russian soldiers stationed nearby, who came and took him away. The day after the incident, a sergeant came to verify what had happened. He apologised and promised to control his men.

Kharkiv region

595. In the middle of March 2022, in a village in the Kharkiv region, then under Russian armed forces control, some soldiers forced their way into the basement of a school, in which about 40 inhabitants, mostly women and girls, were sheltering. One of the soldiers, who was armed, ordered everyone to line up. He took one of the women into one of the empty classrooms. At gunpoint, he ordered her to undress and raped her several times. He also slashed her cheek and neck and cut off some of her hair.

596. The Commission has investigated other allegations concerning rape and sexual violence committed in the Kharkiv region. In one of these situations, starting March 2022, a Russian armed forces commander reportedly sexually abused and raped a 14-year-old girl living with her mother and her 17-year-old brother, during almost four months, in exchange for protection, food, and medicine. The whole family ultimately managed to escape. In another situation, at the beginning of July 2022, several drunk Russian soldiers came to the house of a 72-year-old woman. One young Russian serviceman reportedly beat her, undressed her, pushed her onto the bed, unsuccessfully attempted to penetrate her, and forced her to perform oral sex on him. The Commission was told that his fellow soldiers arrived and

³²⁸ Office of the General Prosecutor of Ukraine, “Two more soldiers of the Russian Federation were sentenced for brutal treatment of civilians and sexual violence against a minor”, 2 November 2022. (available only in Ukrainian)

told him that they had to go. The woman lodged a complaint at the Russian armed forces' local office and was subsequently invited on two occasions to review photos of possible perpetrators.

Kherson region

597. At the end of April 2022, in a village in the Kherson region, a Russian soldier approached a couple who were feeding a neighbour's animals and introduced himself as the commandant of the area. The woman felt very uncomfortable, as she could feel that he was looking at her. The commandant asked her whether she had children. She answered negatively. A few days later, the commandant and some of his men presented themselves at their home. The soldiers undressed the husband partially and one of them said that they were taking him to the nearby school, which they used as a detention place. When the woman tried to interfere, the commandant grabbed her saying he would take her with him because she needed "psychological assistance, as she was too stressed". The husband's mother tried to follow her daughter-in-law, but the commandant ordered her to stay at her home and fired a shot near her head. The soldiers took the husband to the school, tied him up to a chair, questioned, and beat him so violently that he had difficulties breathing. One soldier poured hot water onto him and beat his fingers with a knife handle. During this time, the commandant brought the woman to another room of the school, from where she could hear her husband scream. The commandant threatened to kill her husband or make him "invalid" if she did not agree to have sex with him. He further said that if she did not agree, he would rape her in a forced and painful manner, make her his frontline wife, and when he would be tired of her, she would become someone else's wife. The commandant raped the woman and told her that in case she became pregnant, she should call the baby "Aleksandra" or "Aleksander" and gave her his call sign.

598. The Commission has also investigated a situation in the middle of March 2022, in a village of the Kherson region. Two Russian soldiers entered a home where two girls, aged 12 and 16, were present. One of the soldiers, intoxicated, called for the 16-year-old, and ordered her to undress. The second soldier tried to intervene, but to no avail. The attacker reportedly assaulted the adolescent girl, strangled her, said he would kill her, adding "either you sleep with me now or I will bring 20 more men", and raped her. He tried to rape her again, but other soldiers prevented him.

ii) Sexual and gender-based violence in detention

599. The Commission has found numerous instances of sexual and gender-based violence committed by Russian authorities and persons supporting them in detention facilities, or otherwise during detention. This included rape and sexual violence as war crimes, which can also amount to torture. In some cases, perpetrators threatened detainees with rape and sexual violence. Victims were both women and men, with a majority of men, and both civilians and prisoners of war. Cases were documented in Donetsk, Kharkiv, Kherson, Kyiv, Luhansk regions, in Ukraine, and in the Russian Federation.

600. In addition to being war crimes, rape and other forms of sexual violence may also amount to torture.³²⁹ Torture involves, among other things, the intentional infliction of "severe pain or suffering, whether physical or mental".³³⁰ Threats of rape in certain circumstances may also cause severe mental pain or suffering amounting to torture or inhuman treatment.

601. The evidence collected shows that rape and sexual violence that amount to torture, and the threat of such, have been important aspects of the torture which has been exercised by Russian authorities during detention. Such acts consisted of rape, electric shocks on genitals, and exercising traction on the penis. According to victims, the purpose of such treatment was to extract information or confessions, to force the victims to cooperate or sign documents, to punish, intimidate, or humiliate the victims, as individuals or as a group. The Commission also reviewed cases in which Russian authorities committed sexual violence

³²⁹ For example, ICTY, *Prosecutor v. Delalić et al.*, Case No. IT-96-21-T, Judgement, 16 November 1998, paras. 475-496; ICTR, *Prosecutor v. Akayesu*, Case No. ICTR-96-4T, Judgement, 2 September 1998, para. 687.

³³⁰ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, article 1.

amounting to torture in other circumstances shown on authenticated open-source videos, and it has analysed signs of such acts on photographs of bodies of deceased victims.

602. Victims shared accounts regarding cases of detention in inhuman conditions, some of which have a gender aspect. In several cases, men and women were detained in the same cells. Inhuman conditions were mainly a consequence of inadequate access to hygiene. Former detainees overwhelmingly reported on the lack of proper access to a toilet during detention. Toilets often consisted of a bucket in the corner of the room, or a bottle for urine. Access to water for hygiene was also limited or non-existent. When it was available, there was no privacy. Such conditions can lead to serious infections and diseases, women being more prone to them because of their anatomy. Some women restricted their water and food intake out of shame to use the toilet in front of others. Menstruating women also suffered because of the lacking hygiene (see para. 511).

603. Victims and witnesses who shared their traumatic experiences expressed feelings of humiliation. In addition to the use of dehumanising terms to address detainees, perpetrators used sexual slurs towards women. For example, at the Iziurm Railway Hospital Russian authorities routinely addressed a woman in sexualised terms.

Case descriptions

Sexual violence committed during torture

604. Victims of torture in detention facilities maintained by Russian authorities described methods of torture using sexual and gender-based violence, both in Ukraine and in the Russian Federation. One former prisoner of war detained in the Olenivka penal colony, Donetsk region, indicated that Russian armed forces used such methods as electric shocks on men's genitals or lifting them with a rope tied to their genitals, to force them to sign self-incriminating documents. One man detained at the Iziurm Railway Hospital, Kharkiv region, told the Commission that Russian authorities attempted to put clips to administer electroshocks on his genitals but had to discontinue as he lost consciousness. In the pre-trial detention facility No. 5 (SIZO-5) in Donetsk city, electric shocks on genitals were also reportedly used.

605. At the end of March 2022, in Kherson city, Russian armed forces unlawfully confined a priest. During confinement, they tied his hands and hooded him, beat and strangled him, undressed him, threatened to rape him using a baton, and, according to the victim, attempted to penetrate his anus; all in order to force him to make statements in which he would agree to cooperate with Russian-appointed authorities.

606. At the end of March 2022, in Motyzhyn village, Kyiv region, after the withdrawal of the Russian armed forces, two members of the Ukrainian Territorial Defence Forces who had been detained, were found dead, with shots in the head. Their bodies were undressed from the waist down and showed signs of torture. One of the bodies bore signs consistent with sexual violence (see paras. 360-363).

607. The Commission analysed a video which emerged in April 2022, showing seven dead bodies in what appear to be Ukrainian uniforms, lined up on the ground. One of them, lying on his belly, had his pants pulled down to his ankles and underwear pulled down to his knees and presented signs highly suggestive of sexual violence.

608. At the end of July 2022, three videos circulated which appear to show four Russian soldiers emasculating and killing a person who appears to be a wounded Ukrainian prisoner of war. The prisoner, lying face down on the ground, had his hands tied at the back, each leg tied to a rope, and a part of his uniform cut at the buttocks' level. The soldiers gagged him, and two of them kicked him with their feet on the head and on his back. One of the soldiers cut his underwear with a cutter and emasculated the victim with the same tool. One of the soldiers then shot the victim in the head and two of them dragged his body towards a nearby ditch. After analysing all the information at its disposal, the Commission identified two of the suspected perpetrators on the video and the unit to which they belong – the “Akhmat-Special Rapid Response Unit” of the Russian armed forces, as well as its likely command structure.

Rape and threats of rape and sexual violence

609. The Commission has documented cases in which Russian authorities raped women during confinement. A young woman who had been detained in July 2022, in the Police Department of Balakliia, in Kharkiv region (see paras. 552-556), by Russian armed forces, told the Commission that in an interrogation room, a Russian soldier undressed her forcefully, insulted her, and started to touch her all over her body. He raped her, ordered her to be silent, and threatened that otherwise he would call his colleague to rape her too. Subsequently, he told her to not tell anyone, as otherwise he “will not be so kind anymore”, adding that he knew her name and where she lived. Another guard was standing at the door when she came out of the room and made sarcastic comments.

610. A 52-year-old woman who had been detained together with her husband by Russian armed forces, in July 2022, in a detention facility in the Railway Polyclinic in Izium, Kharkiv region, told the Commission that in the detention facility, Russian authorities took her to an interrogation room. There, they undressed her forcefully. They touched her on different parts of her body. They called her “whore”. The commander ordered her to perform oral sex on him. He told her that in the future, each time she heard a knock on the door, she needed to undress quickly, turn around and face the wall, and wait for further orders. She later overheard that the commander told her husband that he had raped her and that “she had liked it”. The victim also underwent electric shocks and was hanged with hands tied behind her back (see para. 528).

611. During confinement, Russian authorities also in some instances threatened detainees with rape and sexual violence. A woman told the Commission that in June 2022, Russian armed forces had detained her together with her 16-year-old daughter in the Printing House of Balakliia, Kharkiv region. During interrogation, after the perpetrators disliked her answers, they stated that “now the real interrogation had started” and asked her if she wanted to see how her daughter was raped. The woman, who had a heart condition, collapsed, and required hospitalization. A Ukrainian woman reported to the Commission how, at the end of March 2022, Russian armed forces detained her after searching her home, confined her first in Ukraine, deported her to the Russian Federation, and detained her again in SIZO-1, in Kursk city (see 561-563). There, Russian authorities placed her in a room with male detainees. They commented how they could easily kill her, that no one would be looking for her, how they could rape her, and no one would be punished for that, adding that they could throw her body at the border, and everyone would think that she was raped and killed by Ukrainians. Former prisoners of war in the Olenivka penal colony and SIZO-5 in Donetsk city, both in Donetsk region, told the Commission that they were threatened “to be put on the bottle”, which is a euphemism for rape.

Inhuman conditions

612. Conditions of detention were consistently inhuman during unlawful confinement, which, in some instances, disproportionately affected victims depending on their gender and sex. In Yahidne village, Chernihiv region, where 365 civilians were unlawfully confined in the basement of a school, victims described that toilets consisted of buckets that the detainees had to use in front of everybody. As a consequence, women restricted their water and food intake. One woman told the Commission that her mother was hardly eating or drinking, out of shame to use the toilet in front of others. When water was available to wash, there was no privacy (see paras. 541-543).

613. In the Olenivka penal colony, Donetsk region, one victim explained that the barracks were so crowded that some prisoners had to sleep in the toilet. At some point, detainees were reportedly not allowed to defecate, as the sewage system was not functioning. In case detainees could not hold themselves, they were allegedly severely beaten by the guards; as a result, some avoided eating. At times, detainees were reportedly only authorised to use the toilet for one minute. Some detainees had to get medical attention as a consequence. Former prisoners explained that they were also not allowed to use toilets during transport. A man detained during one night in Boromlia, Sumy region, explained that he was not allowed to use the toilet.

614. One victim told the Commission that in the Manhush Police Office, Donetsk region, women were not allowed to close the door while on the toilet, as guards allegedly were afraid they would attempt suicide. In the Olenivka penal colony and SIZO-5 in Donetsk city,

detained women reportedly did not have access to hygienic pads or tampons and were not allowed to wash during their menstruation. Most of the time, there was no access to hygienic paper. In the Makiivka temporary detention facility, in the Donetsk region, a former detainee told the Commission that they were provided with Ukrainian books to use as toilet paper.

iii) **Forced nudity**

615. The Commission has found that in a variety of situations, Russian armed forces ordered people to fully or partially undress, as part of detention and interrogation processes, or to verify the presence of tattoos. Victims were men, women, and one 17-year-old boy. The Commission documented such cases in Donetsk, Kharkiv, and Kyiv regions in Ukraine and in the Russian Federation.

616. Forcing someone to remain naked, including for prolonged periods, can be a form of sexual violence, which may constitute a war crime.³³¹ Forced nudity may also be qualified as outrages upon personal dignity as a war crime, namely for an act that severely humiliates, degrades or otherwise violates the dignity of one or more persons.³³² Strip-searches in an institutional setting, often in connection with a detention procedure, are only valid when performed for a specific function and for a legal purpose within an authorised framework.

617. In the cases investigated, forced nudity went beyond possible security requirements and was part of a process of ill-treatment and humiliation. Russian armed forces ordered forced nudity when they stopped people at filtration points, checkpoints, or in the streets, and during detention. Sometimes, victims were told to undress up to the waist, sometimes they had to remove all the clothes, except the underwear, and other times they had to fully undress. In detention, Russian armed forces subjected women and men to intimate searches, in a humiliating environment. Some victims reported that they were forced to undress or remain naked for long periods of time, during a so-called “acceptance procedure” or during interrogation (see paras. 562 and 565).

Case descriptions

618. In March 2022, Russian armed forces arrested a woman in Demydiv, Kyiv region. She told the Commission that male soldiers stripped her fully naked, tied her hands, placed a bag on her head, and transported her to a detention place, while she was still fully naked. There, they beat and interrogated her and gave her some clothes only the next day. In a nearby village, in March 2022, another witness told the Commission that he heard of several cases in which Russian soldiers fully undressed residents at a checkpoint and put them on the ground for 10-15 minutes.

619. At the end of March 2022, one man went through a filtration process as part of a group evacuating from Mariupol. He explained that Russian armed forces told him to remove all his clothes so they could check whether he had tattoos. They checked his wife in a separate room; she was allowed to keep her underwear. Other men and women from the same group underwent the same process. Children were not subjected to this procedure, with the exception of a 17-year-old boy who looked “suspicious” to the Russian armed forces.

620. Also at the end of March 2022, one man was detained by Russian armed forces in the street of Balakliia city, Kharkiv region. He stated that upon checking his documents, the soldiers discovered that he had served in the military and requested him to undress. They subsequently brought him to a makeshift detention facility, where they asked him to undress again.

621. In May 2022, two men who had been detained in the Olenivka penal colony, Donetsk region, were forced to undress upon arrival. Some of the detainees were told to bend forward. The process was humiliating.

622. In March 2022, a woman who was deported by Russian armed forces to SIZO-2 situated in the Bryansk region, in the Russian Federation, told the Commission that upon arrival, she was forced to undress in front of everyone. Also in March 2022, another woman

³³¹ For example, Geneva Convention IV, article 27; Additional Protocol I to the Geneva Conventions, articles 75(2)(b), 76(1) and 77(1); Rome Statute of the International Criminal Court, article 8(2)(b)(xxii).

³³² For example, Additional Protocol I to the Geneva Conventions, article 75(2)(b).

was subject to similar treatment at a detention facility in Glushkovo village, in the Russian Federation.

623. In the middle of March 2022, in Kyiv region, Russian armed forces detained a priest. He explained to the Commission that they forced him to undress fully, as they were looking for marks of weapons' use on his skin. They beat him, interrogated him, and ordered him to parade naked for one hour in the streets of his village. He mentioned that one co-detainee was also ordered to fully undress.

iv) Sexual and gender-based violence against people belonging to the lesbian, gay, bisexual, transgender and intersex community

624. The Commission has received reports of violations of human rights targeting people belonging to the lesbian, gay, bisexual, transgender and intersex (LGBTI)³³³ community because of their sexual orientation or gender identity. It examined reports of such violations committed during various situations, including during attacks on the premises of LGBTI organizations, at checkpoints, during a house search, and at one victim's workplace. Victims have been at particular risk at checkpoints, where armed forces carried out inspections, including of telephones, and were likely to discover the sexual orientation of the victims. The Commission documented one such case in Kyiv and examined reports of additional cases in Kherson and Donetsk regions.

Case descriptions

625. In late February 2022, the premises and staff of the "LGBT Human Rights Nash Svit centre in Kyiv" were attacked twice. The first time, under the pretext of a flashing light coming from the organization's apartment, about ten members of a Ukrainian Territorial Defence Forces broke into the premises, where two gay couples were staying. After searching the apartment and making comments about their sexual orientation, the attackers took the four men to a nearby police station where the police officers forced them to stay in a stressful position, insulted them because of their sexual orientation, and physically ill-treated them. Men who identified themselves as members of the Security Service of Ukraine interrogated them and forced them to give access to their electronic devices. The victims were then detained in a garage and released the next morning without further explanation. The next night, a dozen men, most with automatic weapons and dressed in uniform, some with "Territorial Defence" markings, broke into the same premises, shouted homophobic slurs at the same four men, and threatened to kill them. They ordered the four men to lie face down on the floor, tied their hands behind their backs, and threatened to kill them while holding weapons to their heads. The attackers took some electronic devices, forced one of the victims to open a safe, and stole a large sum of money. After the attackers had left, the victims called the police, who only came the next morning. Ukrainian authorities have identified some of the attackers.

626. In March 2022, at a checkpoint near Posad-Pokrovske, Kherson region, Russian soldiers reportedly detained two men because of their perceived sexual orientation, and robbed them, ill-treated them, and shot at their vehicle. Also in March 2022, in Kherson city, a patrol of the Russian armed forces reportedly stopped several men who had left the Kherson AIDS centre with medicine. During a documents verification and a search procedure, they found AIDS drugs. The soldiers allegedly came to the conclusion that the men were gay, insulted them on their sexual orientation and HIV status, and threatened to rape and kill them; they also stole money from them.

627. In April 2022, Russian armed forces reportedly detained about 50 traders, including two men aged 48 and 17, at the wholesale vegetable market in Velyki Kopani village and confined them near the town of Oleshky, both in Kherson region. They allegedly subjected the detainees to abuse and ill-treatment, and threatened to rape the two men, who in the view of the Russian soldiers, had a homosexual orientation.

628. In May 2022, in Kherson city, Russian armed forces allegedly attacked the premises of the LGBTI organization "Insha". Also in May 2022, in a small village in Kherson region, Russian armed forces reportedly burst into the house of a lesbian couple and requested to

³³³ The Commission uses the acronym adopted by OHCHR available here: <https://www.ohchr.org/en/sexual-orientation-and-gender-identity>.

spend the night there. After they understood that the two women were a couple, the soldiers started to question them on their sexual orientation and allegedly raped them.

629. In May 2022, in Donetsk city, a new supervisor appointed by Russian authorities, reportedly subjected a woman to persistent sexual harassment because of her sexual orientation.

3) Challenges in reporting and investigating sexual and gender-based violence

630. Owing to various challenges, sexual and gender-based violence is generally under-reported and the Commission believes that this is the case also in the current armed conflict. The culture of silence that surrounds sexual violence, linked to gender stereotypes, stigma, social ostracism, religious and family considerations – real or perceived – makes survivors reluctant to speak out, or report to the authorities, or seek medical services, especially in rural areas.

631. Consequently, at the time of the Commission's investigations, many victims of sexual and gender-based violence and their families were not yet willing to make their cases public or known to authorities; a situation that victims themselves, mental health professionals, journalists and local officials confirmed to the Commission. In addition to this reluctance to report, victims, witnesses, authorities, and psychologists informed the Commission that many women and girls victims have left their village, or even the country, because of the fear of stigma or of being blamed for having been sexually assaulted. Another reason for the under-reporting of sexual violence was the fear of some victims that the perpetrators will come back or that Russian agents will transmit this information to authorities in the Russian Federation.

632. Male survivors, both civilian and military, are also likely to choose not to report such a crime, and generally remain reluctant to mention sexual violence. Survivors of sexual torture will be more inclined to report torture than the sexual aspect of it.

633. Media reporting practices regarding situations in which sexual violence has been committed can be harmful.³³⁴ Although reporting on sexual violence in the current conflict has been mostly ethical, some survivors have expressed distress after tactless media coverage. Such reports can have a direct bearing on them in reinforcing stereotypes and the stigma attached to sexual violence, notably through allowing the identification of the survivors or through reporting differently the ordeal of men and women.

634. Owing to the context of the ongoing armed conflict, in many cases survival needs take priority over other concerns. Several psychologists working with survivors of sexual and gender-based violence told the Commission that some victims do not consider their traumatic experience to be a serious violation of human rights and crime because of the context of the current conflict. They explained that women who have children and relatives to take care of need to attend to their basic needs and protect them. Therefore, it is of utmost importance to give victims sufficient time and space to come forward.

635. Sometimes victims are in a state of confusion and may not identify a violation if it was committed in exchange for food, a transfer out of a dangerous area, or access to health and medicine; in some situations, victims may even feel gratitude to the perpetrators and refuse to identify them because they protected them from others, spared their daughter or did not kill them.

636. Finally, it is not always possible to document forensically the existence of rape and the full extent of the victims' traumas, as in some areas, access to such specialised services is lacking, or displacement has impacted the access to victims. Forensic reports cannot always document sexual violence owing to a variety of reasons, such as heavy workloads or focus on the immediate cause of death, rather than the entirety of the trauma sustained by the victims or the condition of the remains.

³³⁴ UN Women, Guidelines for Gender and Conflict-sensitive Reporting, 2022; UN Women, UNICEF, Evidence review, mapping the nexus between media reporting of violence against girls. The normalization of violence, and the perpetuation of harmful gender norms and stereotypes, 2022.

4) Impact of sexual and gender-based violence and access to services

637. Survivors of sexual and gender-based violence generally face devastating direct long-term impacts on their physical conditions, including physical pain, miscarriage, unwanted pregnancy, and sexually transmitted diseases. Sexual and gender-based violence may also result in severe psychological trauma, depression and suicidal thoughts. In addition, survivors face socio-economic challenges, as they often lose their economic income and social networks when they flee their communities due to the security situation or the sense of shame and extra attention they face. Some survivors even face difficulties in relating with close family members or relatives.

638. For example, the Commission spoke with a survivor whose situation sheds light on the multi-layered impacts sexual gender-based violence may have. The sole breadwinner of her family, the victim explained that she suffers serious physical and socio-economic consequences from the rape she experienced while being pregnant. Following complications due to the rape and a subsequent miscarriage, she needs gynaecological treatment. Furthermore, in March 2022, her home was destroyed, and she had to entrust her three children to a relative who is now in a neighbouring country. The survivor had to move to a collective shelter in Kyiv. She also lost her work, as her former employer had closed down. She faced difficulties finding a new job, because she was wounded during the attack on her and now suffers from a speech impairment.

639. The Commission received many accounts of psychological trauma resulting from sexual and gender-based violence. Some survivors of rape or relatives forced to watch someone close to them being raped expressed that they are suffering from trauma and have had suicidal thoughts, or even attempted suicide. One man explained that shortly after Russian armed forces committed sexual violence on him in public, humiliating him, his hair and beard turned completely white overnight. Another survivor, whose husband was also killed by Russian soldiers, said that her daughter and her new-born grandson she cares for saved her from suicide and that she was now living for them. A young girl victim of rape by a Russian soldier is now scared at the sight of persons in uniform.

640. Rape and sexual violence also affect social and economic aspects of the life of survivors, with women being disproportionately impacted because of pre-existing economic inequalities.³³⁵ In a case documented by the Commission, a victim of rape whose husband was executed, explained that she is now the only breadwinner in her family. But since she lost her job because of the current economic situation and everyone in the village knows that she was raped, she had to move to another place, with all the economic implications that this entails.

641. Despite the setup of specific services, including mobile and remote services, access to sexual and reproductive health services in Ukraine has become challenging because of attacks against health facilities, infrastructure, and displacement. In some of the neighbouring countries hosting many Ukrainian refugees, access to sexual and reproductive health services also appeared to be challenging, which adds anxiety and trauma to the victims of rape and sexual violence. Many refugees have indicated they have an urgent need for health and legal services.³³⁶

642. In addition, those services should take into account gender disparities among those seeking help. A psychologist told the Commission that men who survived sexual violence tend to seek help later, share their experience with more difficulties, and take longer to recover. She explained how strong gender stereotypes that still prevail in Ukrainian society³³⁷ have a negative impact on people's health and well-being: *"In Ukraine, strong men are not supposed to be victims of sexual violence."*

643. It is nevertheless essential to underline that many Ukrainian civil society organizations, international non-governmental and governmental organizations that support victims of sexual and gender-based violence provide services to survivors inside and outside

³³⁵ UN Women, Care, Rapid Gender Analysis of Ukraine, 4 May 2022.

³³⁶ UNHCR, Ukraine situation: Regional protection profiling and monitoring factsheet, December 2022.

³³⁷ The CEDAW Committee, in its Concluding observations on the ninth periodic report of Ukraine, noted with concern that "persistent stereotypes on the patriarchal roles and responsibilities of women and men in the family and in society" persisted in Ukraine. See CEDAW/C/UKR/CO/9, paras 27-28.

Ukraine, face-to-face or remote. Most of the time services are comprehensive and include reproductive health and other health care, psychological and social support, as well as legal aid. However, some organizations can only afford to support individuals for a finite number of sessions or a limited time. Similarly, some mobile services established in order to reach rural areas and recently liberated zones are not permanently available, leading to uneven access. Psychologists, who also cope with the consequence of the conflict, explained that they were themselves overwhelmed and in need of psychological support.

644. Stress provoked by the conflict, loss, displacement, and change in the socio-economic situation can lead to an increase in domestic violence.³³⁸ Tackling domestic violence was a priority in Ukraine before the war. The recording of domestic violence cases had decreased due to the conflict.³³⁹ In its Concluding observations on the ninth periodic report of Ukraine, the Committee on the Elimination of Discrimination against Women has recommended additional measures to tackle domestic violence.³⁴⁰ On 1 November 2022, Ukraine acceded to the Istanbul Convention on preventing and combating violence against women and domestic violence.³⁴¹

2. Personal integrity violations committed by Ukrainian authorities

a) Killing, torture, and wounding of prisoners of war

645. In accordance with its mandate, the Commission has investigated allegations of violations and crimes, irrespective of which party to the armed conflict was believed to be responsible. In this context, it has examined allegations of personal integrity violations committed by Ukrainian authorities and persons affiliated with them. It has so far been able to document two incidents concerning the unlawful killing, wounding, or torture of captured Russian soldiers in the Kharkiv and Kyiv regions and has considered a third incident in Luhansk region. The victims were men with prisoner of war status.

646. Under international humanitarian law, prisoners of war must at all times be humanely treated and protected, particularly against acts of violence or intimidation and against insults and public curiosity.³⁴² The wounded shall receive, to the fullest extent practicable and with the least possible delay, the medical care and attention required by their condition.³⁴³ Moreover, it is unlawful to torture, wound or kill prisoners of war or persons *hors de combat*.³⁴⁴ Such conduct amounts to war crimes.³⁴⁵ Conversely, it is prohibited to commit perfidy, such as feigning an intent to surrender or feigning an incapacitation by wounds.³⁴⁶

647. Two of the cases documented were described in the Commission's report to the United Nations General Assembly on 18 October 2022.³⁴⁷ Investigations into these and other incidents have continued, and the Commission has been able to establish new elements, including related to the identity of the perpetrators. In the two incidents, it has concluded that the people responsible either officially belonged to the Ukrainian armed forces or fought closely with them when the incidents described below took place. In the third case, Ukrainian armed forces killed a number of Russian soldiers in the context of what appeared to be an attempt to surrender, but further investigation is needed to determine whether violations took place (see case descriptions starting para. 649).

³³⁸ UN Women, Care, Rapid Gender Analysis of Ukraine, 4 May 2022.

³³⁹ OHCHR, "Experts of the Committee on the Elimination of Discrimination against Women commend Ukraine for Achievements in gender equality, raise questions on conflict-based sexual violence", press release, 19 October 2022.

³⁴⁰ CEDAW/C/UKR/CO/9, para. 29.

³⁴¹ Chart of signatures and ratifications.

³⁴² Geneva Convention III, articles 13-14. For definitions of 'prisoner of war', see Geneva Convention III, article 4 and Additional Protocol I to the Geneva Conventions, article 44.

³⁴³ Geneva Convention III, articles 15, 30; Additional Protocol I to the Geneva Conventions, article 10.

³⁴⁴ Geneva Convention III, articles 17, 87, 130; Additional Protocol I to the Geneva Conventions, articles 20, 41, 75, 85. For the definition of *hors de combat*, see Additional Protocol I to the Geneva Conventions, article 41.

³⁴⁵ Geneva Convention III, article 130; Additional Protocol I to the Geneva Conventions, article 85.

³⁴⁶ Additional Protocol I to the Geneva Conventions, article 37.

³⁴⁷ A/77/533, paras 86-87.

648. The Ukrainian authorities have responded to questions from the Commission related to these incidents. In a written response dated 30 September 2022, the Office of the Prosecutor General of Ukraine informed the Commission that it had launched investigations into allegations of ill-treatment of Russian prisoners of war in the incidents in villages Mala Rohan, Kharkiv region, and Dmytrivka, Kyiv region, as described below. In response to further questions, on 27 January 2023, the Office of the Prosecutor General of Ukraine said that it had initiated pre-trial investigations in those cases. It further stated that no objective data supporting the involvement of Ukrainian military servicemen had been established at that time, but the investigations were continuing.

Case descriptions

Mala Rohan village, Kharkiv region, 24-26 March 2022

649. Starting on 27 March 2022, a video circulated that shows a group of armed soldiers standing over five apparently captured soldiers lying on the ground. They interrogate the captured soldiers and sometimes beat and kick them. Most of the captured soldiers appear wounded in their legs. The video further shows an individual shooting three additional standing soldiers one by one in their legs from close range. They fall to the ground. Afterwards the shooter hits the third shot victim on the head with his rifle butt. The interrogation of the captured soldiers has continued during this time.

650. The Commission has established that the incident took place at the Malorohansk Dairy Plant in Mala Rohan village, Kharkiv region. Heavy fighting took place in that area in the days before the video was made public, as Ukrainian armed forces launched an offensive that resulted in the withdrawal of Russian armed forces on 27 March 2022.

651. While the Commission has not been able to conclusively determine what happened to all the captured soldiers, there are strong indications that at least some of them died. An undated video from a compilation of footage, among other details, shows other captured soldiers and parts of the dairy plant on fire at night. Another video filmed on the dairy plant on 28 March 2022 shows the remains of three burned corpses in the same location as the one where the captured soldiers were lying. Separately, a woman from the Russian Federation has claimed in a media interview that one of the captives is her adopted son, who was reported missing on 29 April 2022 in the course of his military service.

652. The Commission has established that the unit most likely responsible for the incident is the “Slobozhanshchyna” volunteer unit, which was assembled partially from a disbanded police battalion by its former commander after Russian armed forces invaded Ukraine on 24 February 2022. It has also identified the commander of the unit. Other videos from the dairy plant show him together with some of the captured soldiers who are later seen being ill-treated and tortured in the original video. The Commission has confirmed that this unit and its commander had been fighting together with the Ukrainian armed forces in the offensive to re-take Mala Rohan. It has not been able to determine whether the unit was formally integrated into the Ukrainian armed forces at the time of the incident.

653. In addition, the Commission has examined videos and evidence suggesting that at least three other captured Russian soldiers were subjected to similar treatment around the same period in the same general area, possibly by the same unit. It recommends further investigations into these allegations.

Dmytrivka village, Kyiv region, around 29 March 2022

654. On 30 March 2022, a video emerged in which one soldier is shooting three times from close range at the upper body of an already wounded soldier lying on the ground. The video also shows three other motionless soldiers nearby in large puddles of blood, including one with hands tied behind his back and a gunshot wound to his head, suggesting that he had likely been executed. Several damaged military vehicles are visible at a distance and one military vehicle with the letter “V” painted on it can be seen closer by. The faces of three soldiers walking among the motionless bodies are clearly visible in the footage.

655. The Commission has geolocated the video to a road close to Dmytrivka village, Kyiv region. This incident took place in the context of a Ukrainian attack on a convoy of Russian military vehicles. Ukrainian media outlets and other journalists reported on the attack and showed footage from the site, including one video in which one of the Ukrainian soldiers

from the initial video and the bodies of the Russian soldiers on the ground can be seen. On 2 April 2022, the Ukrainian Ministry of Defence published on social media a video showing a destroyed convoy of Russian military vehicles on the same road under the heading “[j]ewellery work by Ukrainian forces in the Kyiv region”.

656. Based on indications in the video and other contextual information, the Commission has concluded that the victims were Russian soldiers, and that the perpetrators belonged to the Ukrainian armed forces or fought closely together with them. In the video, the perpetrators are wearing blue armbands and repeat “glory to Ukraine” several times. At least three of the motionless bodies are wearing white armbands, usually worn by Russian soldiers, and the letter “V” is a common symbol on Russian military vehicles.

657. In media coverage, the Georgian Legion, a military unit of mostly ethnic Georgian volunteers under the control of the Ukrainian armed forces and the 114th Separate Territorial Defence Brigade (military unit A7042) of the Ukrainian armed forces, have been mentioned as participating in the abovementioned attack on the Russian military vehicles.³⁴⁸

Makiivka village, Luhansk region, 11 November 2022

658. The Commission has analysed two videos relating to the surrender and death of a group of Russian soldiers on 11 November 2022. The first video shows a group of Russian soldiers in the process of surrendering to a small group of Ukrainian armed forces. The surrendering soldiers are seen coming out of a house with their hands behind their heads and lying down next to each other in the courtyard. The video apparently further shows that one of the surrendering soldiers opens fire on the Ukrainian armed forces, as he is stepping out of the house. The video then stops. The second video is a drone footage of the courtyard shot sometime after the first video. It shows nine soldiers lying on the ground. All of them appear motionless, and several have blood pooling around their bodies, including near their heads, that was not visible in the first video.

659. The Commission has established that the incident took place at a farm near Makiivka village, Luhansk region. At that time, Ukrainian armed forces were retaking control of the village from Russian armed forces. A Ukrainian journalist describing the incident named both the Ukrainian and Russian military units likely involved.³⁴⁹

660. Without further information, the Commission has not been able to conclude whether violations took place in this incident. It has identified several hypotheses of possible violations committed by both parties in this context. Some of them are outlined below.

661. The incident possibly shows a violation of the prohibition of perfidy, in this case feigning surrender, by the Russian soldier who appears to be shooting.

662. The Commission has investigated whether the Russian soldiers lying on the ground also feigned their surrender and therefore were still combatants, whether they were genuinely surrendering and were either killed by accident in the ensuing shootout, or unlawfully killed.

663. The drone footage shows most of the soldiers lying generally in the same position as in the first video, which suggests that they did not attempt – or did not have time – to move or to reach for weapons lying nearby. This could be an indication that the other soldiers were sincere in their attempts to surrender.

664. In such a tense situation, with a soldier unexpectedly opening fire during a surrender, the ensuing exchange of fire would likely injure and kill several of the soldiers lying on the ground, even if they were sincere in their attempt to surrender.

665. However, the Commission does not find it very likely that all the soldiers lying on the ground were instantly killed in such a situation, particularly since they were lying in a row, partially covering each other. The Commission also notes that the drone footage shows pooling of blood near the head of several of the soldiers, which could be an indication that some of them were killed by gunshot to the head.

³⁴⁸ Meduza, “Verified video appears to show Ukrainian troops killing Russian captives. Here’s what we know about it.”; 8 April 2022.

³⁴⁹ “New details of the battle for the village of Makiivka, Luhansk region”, *New Voice*, 24 November 2022. (available only in Ukrainian and Russian)

666. Without further information, the Commission has not been able to conclude whether any violation took place. It recommends further investigations of the incident.

b) Alleged torture and ill-treatment of suspected collaborators

667. Since 24 February 2022, the Ukrainian authorities have opened thousands of investigations into allegations of collaboration and treason in the context of the armed conflict.³⁵⁰ The Commission has collected and examined dozens of accounts from lawyers, former detainees, and detainees' relatives related to detentions under charges of high treason, collaborative activity, and support for the aggressor state. It has reviewed allegations concerning torture, ill-treatment, violations of procedural rights, and inhuman conditions committed by Ukrainian authorities during the detention of persons accused of collaboration.

668. Witnesses reported beatings, mock executions, and threats to harm the detainee or their families. The Commission received reports concerning violations of procedural rights relating to detention. For example, it was informed that law-enforcement officials frequently did not produce arrest warrants and that some detainees were held incommunicado, sometime for several days, according to lawyers. Sleep and food deprivation during detention have also been reported. The Commission is concerned about these allegations. However, at the time of the writing of this report, it has not been in a position to corroborate them.

C. Violations of the Law of Occupation

1. Overview

669. The Commission has collected and reviewed allegations of violations of international law in the territories which the Russian Federation has occupied and placed under its authority. It has examined the context and circumstances in which Russian-backed de facto authorities organized and held so-called referendums in the occupied territories of Donetsk, Kherson, Luhansk, and Zaporizhzhia regions on their annexation to the Russian Federation in September 2022. The Commission has documented a series of violations of international law committed by Russian authorities, including associated persons, in these areas with the aim of forcing certain categories of persons to cooperate.

670. Under international humanitarian law, the Russian Federation was the Occupying Power of the four Ukrainian territories at the relevant times.³⁵¹ An Occupying Power has the obligation to respect the laws in force in the country, unless absolutely prevented.³⁵² International humanitarian law prohibits physical or moral coercion against protected persons such as those in the hands of the Occupying Power.³⁵³ Such persons shall be protected against all acts of violence or threats thereof.³⁵⁴ Confining a protected person without lawful reason is prohibited.³⁵⁵ An Occupying Power shall treat all protected persons with the same consideration without any distinction based on, among other factors, political opinion.³⁵⁶ It is prohibited to compel inhabitants of an occupied territory to swear allegiance to the Occupying Power.³⁵⁷ Further, an Occupying Power may not compel protected persons to serve in its armed or auxiliary forces, and no pressure or propaganda which aims at securing voluntary enlistment is permitted.³⁵⁸

671. The Commission has found that the holding of the so-called referendums, with disregard to relevant provisions of the Ukrainian legislation, was in violation of international humanitarian law. Moreover, it assessed that the preparation and unfolding of the so-called referendums, in a general climate of fear and coercion, were also in violation of international humanitarian law and did not respect relevant international standards. It notes that

³⁵⁰ Prosecutor General's Office of Ukraine. As of 8 February 2023, 6827 investigations were launched, as follows: state treason, article 111: 2017 cases; collaborationism, article 111-1: 4351 cases; accessory to aggressor-state, article 111-2: 459 cases accordingly.

³⁵¹ Hague Regulations respecting the Laws and Customs of War on Land, 1907, article 42.

³⁵² Hague Regulations respecting the Laws and Customs of War on Land, 1907, article 43.

³⁵³ Geneva Convention IV, articles 4 and 31.

³⁵⁴ Geneva Convention IV, article 27.

³⁵⁵ Geneva Convention IV, article 147.

³⁵⁶ Geneva Convention IV, article 27.

³⁵⁷ Hague Regulations respecting the Laws and Customs of War on Land, 1907, article 45.

³⁵⁸ Geneva Convention IV, article 51.

international bodies and States widely condemned the so-called referendums and the ensuing illegal annexation of these regions to the Russian Federation.

672. After annexation “treaties” between the Russian Federation and the de-facto authorities of the occupied territories of the four regions granted Russian citizenship to persons residing in these areas, the Commission was informed of situations in which local residents felt compelled to apply for Russian passports, which can be in violation of international humanitarian law. The Commission also documented instances in which Russian authorities used coercion against school personnel to force them to apply Russian curricula, and against parents, to force them to enrol their children in schools operating under the Russian education system. Furthermore, it collected testimonies indicating that Russian authorities unlawfully confined local officials and public service employees to force them to cooperate and that they also carried out unlawful military conscription.

673. Due to security reasons and a lack of access, the Commission faced considerable challenges in conducting investigations in Russian-occupied territories. It managed to carry out interviews with victims and witnesses from these areas, including interviews with victims and witnesses who have fled to other countries.

2. Unlawful annexation following unlawful so-called referendums

a) Context

674. On 16 March 2014, the Russian Federation had organized a so-called referendum on the incorporation of Crimea and the city of Sevastopol in the Russian Federation and proceeded to their illegal annexation on 18 March 2014 (see para. 55).³⁵⁹ Less than two months later, on 11 May 2014, Russian-backed de facto authorities organized so-called referendums on the “self-rule” of the Donetsk and Luhansk regions³⁶⁰ and declared the independence of the then so-called Donetsk and Luhansk People’s Republics (see para. 59).³⁶¹

675. In July 2022, Russian-backed de facto authorities in some of the occupied territories undertook preparations to conduct so-called referendums on acceding to the Russian Federation.³⁶² On 20 September 2022, Dmitri Medvedev, former Russian President and vice-chairman of the Russian Federation’s National Security Council, stated on his telegram channel that “[r]eferendums in Donbass are of great importance, not only for the systemic protection of the inhabitants of the LNR, DNR and other liberated territories, but also for the restoration of historical justice”.³⁶³ On the same day, the Russian-backed heads of the four temporarily occupied regions³⁶⁴ simultaneously announced that so-called referendums on the joining of the Russian Federation would be held shortly and enacted legislation and decrees on their modalities.³⁶⁵ On 21 September 2022, in his address to the nation announcing a

³⁵⁹ A/RES/68/262.

³⁶⁰ OHCHR, Report on the human rights situation in Ukraine, 15 June 2014.

³⁶¹ European Court of Human Rights, *Ukraine and the Netherlands v. Russia*, Applications No. 8019/16, 43800/14 and 28525/20, Decision, 25 January 2023.

³⁶² See TASS, “Kherson Region creates election committee for referendum on joining Russia, 23 July 2022 (available only in Russian); Yevgen Balitsky, Telegram message, 23 July 2022.

³⁶³ Dmitri Medvedev, Telegram message, 20 September 2022.

³⁶⁴ Denis Pushilin and Leonid Pasechnik, de facto heads of the former so-called Donetsk People’s Republic and Luhansk People’s Republic, respectively, were “elected” in 2017-2018. Volodymyr Saldo and Yevgen Balitsky, de facto heads of the occupied territory of Kherson and Zaporizhzhia regions were appointed by Russian authorities on 27 April 2022 and 9 May 2022, respectively.

³⁶⁵ See, for the occupied territories in the Donetsk region, Denis Pushilin, Telegram message announcing the organization of the “referendum” on 20 September 2022; so-called Donetsk People’s Republic, “Law on the referendum of the Donetsk People’s Republic on joining the Russian Federation as a subject of the Russian Federation”, N° 410-IINS, 20 September 2022; so-called Donetsk People’s Republic, “Decree of the head of the Donetsk People’s Republic on the announcement of days off”, DNR N° 582, 20 September 2022;

For the occupied territories in the Kherson region, Vladimir Saldo, Telegram message announcing the organization of the “referendum”; decree on the “referendum”.

For the occupied territories in the Luhansk region, Leonid Pasechnik, Telegram message announcing the organization of the “referendum” on 20 September 2022; so-called Donetsk People’s Republic,

partial mobilization, President Putin stated: “The parliaments of the people’s republics of Donbass, as well as the military-civilian administrations of the Kherson and Zaporozhye regions decided to hold referendums on the future of these territories and appealed to us, Russia, to support such a step.” He added: “[w]e will do our best to ensure safe conditions for holding referendums so that people can express their Will”.³⁶⁶

676. Between 23 and 27 September 2022, the Russian-backed de facto authorities held the so-called referendums in the four regions. The respective ballot question could be answered by “yes” or “no”. For example, in Donetsk region, a ballot stated: “Are you in favour of the Donetsk People’s Republic entry into the Russian Federation as a subject of the Russian Federation?”. In Kherson region, the ballot stated: “Are you in favour of the Kherson region secession from Ukraine, the formation of an independent state by the Kherson region and its entry into the Russian Federation as a subject of the Russian Federation?”.

677. Already in the morning of 28 September 2022, Russian media announced the results, claiming that from 87 to more than 99 per cent of the voters in the four regions had voted in favor of joining the Russian Federation.³⁶⁷ On the same day, the Russian-backed heads of occupied territories of Kherson, Luhansk and Zaporizhzhia regions addressed separate, though identical, requests to President Putin for their regions to be integrated in the Russian Federation. The head of the so-called Donetsk People’s Republic had already on 20 September 2022 expressed a similar appeal, addressed to President Putin, “I ask you to consider the issue of the Donetsk People’s Republic’s joining the Russian Federation as soon as possible in the event of a positive decision on the results of the referendum, which we have no doubt about.”³⁶⁸ On 30 September 2022, President Putin and the de facto authorities of the four regions signed “treaties” regarding their “accession” to the Russian Federation.³⁶⁹ On 3 October 2022, the Russian Parliament adopted bills on the same.³⁷⁰

678. International organizations condemned the so-called referendums and the illegal annexation. On 30 September 2022, the European Union “firmly reject[ed] and unequivocally condemn[ed] the illegal annexation by Russia of Ukraine’s Donetsk, Luhansk, Zaporizhzhia and Kherson regions”.³⁷¹ On the same day, the Council of Europe leaders published a similar statement.³⁷² On 12 October 2022, the United Nations General Assembly adopted a resolution declaring that the “[...] illegal so-called referendums [...] and the

“Law on the referendum of the Donetsk People’s Republic on joining the Russian Federation as a subject of the Russian Federation”, N° 411-III, 20 September 2022; so-called Luhansk People’s Republic, “Decree of the head of the Luhansk People’s Republic on the announcement of days off”, DNR N° UG-886/22, 20 September 2022;

For the occupied territories in the Zaporizhzhia region, Yevgen Balitsky, Telegram message announcing the organization of the “referendum”; decree on the “referendum”.

³⁶⁶ Official website of the President of the Russian Federation, “Address by the President of the Russian Federation”, 21 September 2022. (available only in Russian)

³⁶⁷ TASS, “Majority of voters in Donbass, Zaporozhye, Kherson Regions opt to join Russia”, 27 September 2022. (available only in Russian)

³⁶⁸ See, for the occupied territories in the Donetsk region, Denis Pushilin, Official website of the former so-called Donetsk People’s Republic, “Address to the Russian President and the Russian people”, 20 September 2022. (available only in Russian);

For the occupied territories in the Kherson region, Vladimir Saldo, Telegram message, Official letter addressed to the President of the Russian Federation, 28 September 2022, (available only in Russian);

For the occupied territories in the Luhansk region, Leonid Pasechnik, Telegram message, Official letter addressed to the President of the Russian Federation, 28 September 2022, (available only in Russian);

For the occupied territories in the Zaporizhzhia region, Yevgen Balitsky, Telegram message, Official letter addressed to the President of the Russian Federation, 28 September 2022, (available only in Russian).

³⁶⁹ Official website of the President of the Russian Federation. “Signing of treaties on accession of Donetsk and Lugansk people’s republics and Zaporozhye and Kherson regions to Russia”, 30 September 2022. (available only in Russian)

³⁷⁰ The States Duma, Russian Federation, “The State Duma ratified treaties and adopted laws on accession of DRP, LPR, Zaporozhye and Kherson regions to Russia”, 3 October 2022.

³⁷¹ European Council, Statement by the Members of the European Council, 30 September 2022.

³⁷² Council of Europe, Council of Europe leaders condemn the illegal annexation of occupied territories of Ukraine, 20 September 2022.

subsequent attempted illegal annexation of these regions, have no validity under international law and do not form the basis for any alteration of the status of these regions of Ukraine”.³⁷³

b) Unlawful so-called referendums

679. The Commission has found that, under international humanitarian law, the holding of so-called referendums in the occupied territories of the Donetsk, Kherson, Luhansk, and Zaporizhzhia regions was unlawful. In addition to the illegal holding of such referendums, the conduct of them violated international standards on referendums.

680. In virtue of international humanitarian law, at the relevant times, the Russian Federation was the Occupying Power of the four Ukrainian territories.³⁷⁴ An Occupying Power must respect the laws in force in the territory it occupies, unless absolutely prevented. The Occupying Power “shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country”.³⁷⁵

681. The organization of a referendum in Ukraine is regulated by the Constitution, which stipulates that “altering the territory of Ukraine are resolved exclusively by an All-Ukrainian referendum”.³⁷⁶ To initiate the referendum process, the Constitution requires the signatures of no less than three million citizens of Ukraine eligible to vote from at least two-thirds of the regions, with at least 100,000 signatures in each region. It also states that the Parliament (the Verkhovna Rada) or the President of the country shall call an All-Ukrainian referendum, in accordance with their authority determined by the Constitution.³⁷⁷ The Commission considered that none of the constitutional requirements were followed in the organization of the so-called referendums. It has therefore concluded that the holding of so-called referendums did not comply with the laws of Ukraine and violated the Occupying Power’s obligations under international humanitarian law.

682. More generally, pursuant to principles of international law, no territorial acquisition resulting from the threat or use of force shall be recognized as legal, and they also recognize that the territorial integrity and political independence of a State are inviolable.³⁷⁸ The Commission has established that the use of armed force by the Russian Federation against Ukraine was an act of aggression as defined in United Nations General Assembly resolution 3314 (XXIX) (see paras. 100-107). In this regard, the resolution holds that “[n]o territorial acquisition or special advantage resulting from aggression is or shall be recognized as lawful”.³⁷⁹

683. Further, pursuant to international humanitarian law, protected persons in occupied territories shall not be deprived of the benefits of international humanitarian law by any change introduced into the institutions or government of the occupied territory including by any annexation.³⁸⁰ Therefore, if the outcome of a referendum required changes to the institutions or government of the occupied territory that would reduce the protection afforded to such persons, any such measures would be without legal effect under international humanitarian law.

684. The Commission has also considered the circumstances in which the so-called referendums were organized in light of the Revised Code of Good Practice on Referendums from the European Commission for Democracy through Law (Venice Commission). The Code underlines that “[t]he use of referendums must comply with the legal system as a whole. In particular, referendums cannot be held if the Constitution or a statute in conformity with the Constitution does not provide for them [...]”.³⁸¹ The Code covers different aspects of the holding of referendums, such as the requirements that electoral registers are to be reliable, which, *inter alia*, involves that they must be constantly updated, made public, and that an

³⁷³ A/RES/ ES-11/4.

³⁷⁴ Hague Regulations respecting the Laws and Customs of War on Land, 1907, article 42.

³⁷⁵ Hague Regulations respecting the Laws and Customs of War on Land, 1907, article 43.

³⁷⁶ Ukraine, Constitution of Ukraine, 28 June 1996, article 73.

³⁷⁷ Ukraine, Constitution of Ukraine, 28 June 1996, article 72.

³⁷⁸ Resolution 2625(XXV).

³⁷⁹ Resolution 3314(XXIX), Annex, art. 5(3).

³⁸⁰ Geneva Convention IV, article 47.

³⁸¹ European Commission for Democracy through Law (Venice Commission), Revised Code of Good Practice on Referendums, 20 June 2022, p. 11.

administrative or judicial procedure should allow voters to register. It foresees that administrative authorities should hold a neutral attitude and that freedom of the press and balanced press coverage is guaranteed. The Code also states that voters should be able to form an opinion freely, which involves that administrative authorities observe a duty of neutrality and that an impartial body exercises prior scrutiny on the clarity of the question and provides balanced information. Finally, it prescribes that observers must be allowed to be present and that the body organizing the referendum is to establish the result in an accurate and transparent manner.³⁸²

685. When examining the circumstances in which the so-called referendums were organized and held, it appears that none of the elements prescribed by the Code were in place in any of the four regions and that therefore none meets the international standards for credible referendums. First, considering that they were announced with a short notice, in a context marked by armed conflict, in which thousands of civilians were displaced, killed or missing, it is unlikely that genuine electoral registers could have been held and updated. Although Russian media claimed that the so-called referendums were held in the presence of international observers,³⁸³ no internationally recognized electoral observation bodies had been invited. International bodies in fact strongly condemned the so-called referendums. Moreover, as outlined below, the Commission examined credible reports according to which people were not free to cast their votes but were rather placed in a general situation of fear and coercion.

c) Coercion during the preparation and the holding of referendums

686. The Commission interviewed civilians who were in Russian-occupied areas during the period in which so-called referendums were prepared and organized. Their accounts show that these were held in a general climate of coercion, intimidation, and fear.

687. International humanitarian law states that no physical or moral coercion shall be exercised against protected persons, such as civilians.³⁸⁴ Additionally, they shall be protected against all acts of violence or threats thereof and against insults, and an Occupying Power shall treat all protected persons with the same consideration without any distinction based on, among other factors, political opinion.³⁸⁵

688. Some interlocutors reported that Russian-backed de facto authorities carried out apartment visits ahead of the so-called referendums, which created a climate of fear. As reported to the Commission, an older woman resident of Melitopol city, Zaporizhzhia region, explained that Russian authorities requested heads of apartment buildings to carry out rounds to ask people what they would do in relation to the referendum and that soldiers were doing rounds in private residential houses. The woman was of the opinion that many voted “yes” out of fear. One man from the Kherson region stated, *“I know of a few acquaintances who voted during the referendum, but I do not know one single person who voted on their own free will.”*

689. Many interlocutors said that, as a sign of passive resistance, they did not vote. The majority stayed inside their homes during the five days of the so-called referendums, to avoid being coerced to vote by the de facto authorities. Many noted that they did not switch the lights on after dark in order not to raise suspicion about their presence.

690. Residents also reported that mainly older persons voted in the so-called referendums, as they were generally more likely than younger persons to remain in occupied territories due to family obligations and physical conditions. Many of them were deprived of sources of income. In June 2022, Maryna Lazebna, Minister of Social Policy of Ukraine, announced that 300,000 pensioners would no longer be able to receive pensions in occupied territories and areas affected by armed conflict, due to the inability to deliver funds there.³⁸⁶ The older woman resident of Melitopol (see para. 688) stated that during rounds ahead of the referendum, the head of the apartment building presented her with papers to sign. When she

³⁸² Ibid., pp. 7-13.

³⁸³ TASS, “International observers note voluntarily nature of referendums in Donbass”, 25 September 2022.

³⁸⁴ Geneva Convention IV, article 31.

³⁸⁵ Geneva Convention IV, article 27.

³⁸⁶ Visit Ukraine Today, “How to get a pension or social benefits in temporarily occupied or war-torn territories”, 19 June 2022.

asked, “*do I have a choice?*”, he replied, “*well, you still want to get your pension, right?*”. According to her, everyone said “yes” because they feared for themselves.

691. In most cases, interlocutors saw through their windows or in the street “electoral staff” carrying ballot boxes accompanied by armed personnel. Others heard those “mobile voting teams” knocking on their doors but did not open and the teams left. The Commission also reviewed open-source reports on the intimidating atmosphere during the period of the so-called referendums. Several videos from surveillance systems featuring two or three civilians carrying ballot boxes and accompanied by armed military personnel could be seen knocking on doors in apartment buildings and calling “referendum, referendum”. The Commission interviewed a woman who stated that two men in military uniforms and a civilian woman with a ballot box came to her son’s house in Kakhovka city, in the Kherson region, and detained him after he refused to vote.

3. Imposition of Russian Federation citizenship in the newly Russian-occupied areas

692. The Commission has found that in the areas that Russian authorities occupied since February 2022, and where they held so-called referendums, they created conditions in which some categories of residents felt compelled to apply for Russian passports. This was the case in the occupied territories of Kherson and Zaporizhzhia regions, and the city of Mariupol, Donetsk region. On 30 September 2022, “treaties” on the “annexation” of the four occupied regions to the Russian Federation³⁸⁷ automatically recognized Ukrainian citizens and stateless persons permanently residing in these areas as Russian citizens. Exception was made for the persons who, within one month, declared their “wish” to retain their existing citizenship.³⁸⁸

693. According to international humanitarian law, it is prohibited to compel inhabitants of an occupied territory to swear allegiance to the Occupying Power.³⁸⁹ Moreover, the Occupying Power must respect the laws in force in the country, unless absolutely prevented.³⁹⁰ Compelling or imposing foreign citizenship upon Ukrainian citizens would, among other things, be counter to national laws and may impact the rights of affected persons as Ukrainians.³⁹¹

694. The Commission interviewed interlocutors from Kherson and Zaporizhzhia regions, and Mariupol city, Donetsk region, who reported that some categories of people feared that without a Russian passport, they would lose or not have access to social benefits or employment. Others stated that Russian authorities advertised incentives according to which those applying for a Russian passport would receive 10,000 rubles and said that such applicants would not need to renounce Ukrainian citizenship.

³⁸⁷ See Russian Federation, “Agreement between the Russian Federation and the Donetsk People’s Republic on the admission of the Donetsk People’s Republic to the Russian Federation and the formation of a new subject within the Russian Federation”, 30 September 2022; Russian Federation, “Agreement between the Russian Federation and the Kherson Region on the admission of the Kherson Region to the Russian Federation and the formation of a new subject within the Russian Federation”, 30 September 2022; Russian Federation, “Agreement between the Russian Federation and the Lugansk People’s Republic on the admission of the Lugansk People’s Republic to the Russian Federation and the formation of a new subject within the Russian Federation”, 30 September 2022; Russian Federation, “Agreement between the Russian Federation and the Zaporizhzhia Region on the admission of the Zaporizhzhia Region to the Russian Federation and the formation of a new subject within the Russian Federation”, 30 September 2022.

³⁸⁸ Article 5 of all four “annexation treaties”, see footnote 393. For example, article 5 of the “treaty” between the Russian Federation and the Kherson region on the admission of the Kherson region to the Russian Federation and the formation of a new subject within the Russian Federation states: “From the date of admission to the Russian Federation of the Kherson region and the formation of a new subject within the Russian Federation, citizens of Ukraine and stateless persons permanently residing on that day in the territory of the Kherson region are recognized as citizens of the Russian Federation, with the exception of persons who within one month after this day declare their desire to retain their existing citizenship and (or) existing citizenship of their minor children or remain stateless.”

³⁸⁹ Hague Regulations respecting the Laws and Customs of War on Land, 1907, article 45.

³⁹⁰ Hague Regulations respecting the Laws and Customs of War on Land, 1907, article 43.

³⁹¹ For example, pursuant to article 92 of the Constitution of Ukraine, citizenship, the legal personality of citizens, the status of foreigners and stateless persons shall be determined exclusively by laws of Ukraine.

695. The same interlocutors told the Commission that particularly civilians at retirement age wishing to receive or to continue to receive a pension from the Russian-backed de facto authorities, have applied for Russian passports. As mentioned above, Ukrainian authorities declared that thousands of pensioners in these areas would be cut off from their existing pensions (see para. 690). Many of these also received promises that Russian authorities would pay pensions, and therefore carried out formalities to obtain a Russian passport. As of December 2022, de facto authorities in Mariupol, for example, reportedly paid pensions, provided that there had been a prior registration. Holding a Russian passport was until then not an underlying condition to receive pensions. Nevertheless, a Ukrainian official from Kherson region told the Commission that Russian-backed de facto authorities announced that to continue receiving pensions residents would have to hold a Russian passport by 1 March 2023. A Russian draft law on “pensions in new regions”, presented in January 2023, stipulates that from 1 March 2023, pensions for their residents “will be appointed on the basis of applications, according to Russian standards”.³⁹²

696. Similarly, according to local sources, civil servants and other people wanting to keep their employment under the de facto authorities of the Russian-occupied areas had to request a Russian passport. In one example, in a city of Kherson region, civil servants at the city council were reportedly requested to apply for a Russian passport as a condition to maintain their positions. In another example, in a different city of Kherson region, Russian-backed de facto authorities appointed a new head doctor who cooperated with them in a hospital. A worker of the hospital said to the Commission that the new head doctor subsequently forced the other staff of the hospital to work with the de facto authorities. They were reportedly informed that in order to receive their next salaries, they would have to apply for a Russian passport, resign from their current contracts with the hospital, and re-register through the administration run by the de facto authorities. Also in the Kherson region, one school principal who had been detained by Russian authorities for his refusal to cooperate, was told that he would remain in detention indefinitely, unless he agreed to apply for a Russian passport.

697. A Ukrainian authority from Enerhodar city, Zaporizhzhia region, told the Commission that in the spring of 2022, a “passport desk” had been opened at the Zaporizhzhia Nuclear Power Plant and that some workers applied for passports willingly, while others were forced. In November and December 2022, several employees of the facility reported to him that in addition to the demand that they sign contracts with the Russian State Atomic Energy Corporation (Rosatom), employees were told that access to the facility’s premises would henceforth only be granted to holders of a Russian passport. An employee of the Zaporizhzhia Nuclear Power Plant who had been detained by Russian authorities told the Commission that he received information that as of November 2022, access badges to the plant premises of those without a Russian passport were blocked.

4. Coercion and threats towards education personnel

698. The Commission has documented instances of coercion, threats, and intimidations issued by Russian authorities and persons closely cooperating with them towards teachers in Russian-controlled areas in the Kherson and Zaporizhzhia regions to secure their observance of the new educational regulations imposed by the Occupying Power. According to school personnel from these areas, Russian authorities, or local residents supporting them, carried out home visits or school visits to seek their cooperation. Interlocutors reported threats to detain them, expel them from their localities, harm their families, or confiscate their houses. Home visits and fear of being detained created psychological pressure and led some teachers to decide to leave for territories under Ukrainian Government control. The Commission is of the view that this issue deserves closer examination.

699. International humanitarian law prohibits physical or moral coercion against protected persons such as those in the hands of the Occupying Power.³⁹³ Additionally, such persons shall be protected against all acts of violence or threats thereof.³⁹⁴

³⁹² Official website of the Government of the Russian Federation, “Government meeting”, 26 January 2023.

³⁹³ Geneva Convention IV, articles 4 and 31.

³⁹⁴ Geneva Convention IV, article 27.

700. One school principal stated that in late March 2022, in Melitopol city, in the Zaporizhzhia region, armed men visited his house. He referred to them as “Russian occupation police”. They ordered his family to go outside with one of the armed men, while the others threatened to detain him if he did not cooperate. A deputy principal of a school in a village in the Zaporizhzhia region informed the Commission that, in July 2022, after he had refused to cooperate with the de-facto authorities, two teachers came to her house to convey that the principal – who had decided to cooperate – told her that she should hand over the key to her house. Some days later, after she had fled from the area, Russian armed forces came to her house, searched it, and detained her husband in a police station where reportedly members of the Russian Federal Security Service interrogated him and released him on condition that he would convince her to come back and collaborate.

701. The Commission also documented cases in which Russian authorities visited schools to threaten educators with eviction from the localities in which they resided unless they agreed to collaborate and apply newly imposed curricula. A schoolteacher told the Commission that after Russian authorities took control of Melitopol city, Zaporizhzhia region, during a round of visits to schools, persons dressed in civilian clothes and wearing masks who presented themselves as Russians, told school staff to choose between teaching the Russian program or leaving the town and sell their apartments and properties. During a subsequent visit, these patrols warned school staff that they had one day to leave the town unless they agreed to collaborate.

5. Coercion of parents to force them to send their children to schools

702. The Commission received testimonies showing that Russian authorities threatened, intimidated and used psychological pressure against parents to coerce them to send their children to schools run in conformity with the Russian system in the territories which came under their control. It documented such cases in Kharkiv, Kherson, and Zaporizhzhia regions.

703. School personnel and parents informed the Commission of situations in which, during door-to-door home visits, Russian authorities requested parents to send their children to schools run by them and threatened to otherwise impose a fine, to rescind their parental rights, or to send their children away to institutions. Such messages were also communicated by school personnel, who chose to cooperate with the de facto authorities, via text messages or at school meetings. Some parents were offered 10,000 rubles if their children went to such schools.

704. One principal of a school in a village of Zaporizhzhia region told the Commission that in July and August 2022, Russian authorities and school administrators who chose to support the de facto authorities invited parents for meetings. There, they told the parents that if they did not send their children to school, they would separate them and send them to the Russian Federation to receive education; they also said that those who did not collaborate would be considered traitors and would find a hand grenade in their yards. The principal of a school in another village of the Zaporizhzhia region informed the Commission that she received voice messages from around ten pupils asking if they would be treated as traitors if they attended school. These students informed her that Russian armed forces had visited their homes to request them to attend schools run by Russian authorities and told parents that children would be moved to orphanages and forced to dig trenches in case of non-compliance. One teacher stated to the Commission that students called in distress, as they feared that they would be separated from their parents.

705. The Commission received reports regarding children who were terrified that they could be caught attending Ukrainian school online. Parents in Enerhodar city, Zaporizhzhia region, described situations where Russian soldiers questioned children they saw in the streets; therefore, the children tried to stay indoors. Parents and children created fake accounts and cleared their phones out of fear that they could be searched.

706. As a result of such threats and intimidations, some parents in territories under Russian control had, out of fear, enrolled their children in schools providing Russian education. Others enrolled their children in schools operating under the Russian system because that was the only option for in-person school attendance, while some may have been favourable to such education.

6. Unlawful confinement of local officials and other public service employees

707. The Commission has documented cases in which public officials and education personnel were confined by Russian authorities in areas which came under their control in the Kharkiv, Kherson, and Zaporizhzhia regions. Detention of public officials occurred following refusal to cooperate with Russian authorities. Detention of education personnel occurred after accusations that they refused to cooperate in implementing the Russian-imposed curricula or to teach Russian language in school. Both women and men were affected. In one case, a schoolteacher was detained together with her 16-year-old daughter (see paras. 611).

708. In international humanitarian law, confining a protected person, such as a civilian, without lawful reason, is prohibited.³⁹⁵ Such confinement is also a violation of the right to liberty and security of person, under international human rights law.³⁹⁶ The detaining authority is under an obligation to fulfil procedural requirements, such as promptly informing detainees, in a language they understand, of the reasons why the measures have been taken.³⁹⁷ Confined persons shall be treated humanely and protected from life-threatening conditions.³⁹⁸ More broadly, international humanitarian law prohibits physical or moral coercion against protected persons, such as those in the hands of the Occupying Power.³⁹⁹ Additionally, such persons shall be protected against all acts of violence or threats thereof.⁴⁰⁰

709. The Commission investigated two cases of elected public officials confined by Russian authorities in Kherson and Zaporizhzhia regions. One is the Mayor of Melitopol, Zaporizhzhia region, and the other is head of a territorial community in Kherson region (see para. 496). According to the victims, the perpetrators were Russian armed forces, including reportedly Russian Federal Security Service personnel. In both cases, victims were blindfolded when taken away and not informed of the reasons for their arrest. They reported long interrogations during detention, no physical violence, but psychologic pressure. Perpetrators requested their cooperation or that they sign resignation documents. According to one of the victims, interrogation sessions were carried out in the presence of an electric shocker, while the perpetrators repeatedly requested collaboration with the Russian armed forces. Perpetrators stated that, “*Ukrainians are Nazis that we came to liberate*” and “*if you like the Ukrainian Armed Forces so much, we will drop you in the middle of a mine field for you to join them*”. The Commission collected allegations regarding other situations in which local officials have been detained.

710. The Commission documented situations in which Russian authorities detained education personnel during visits at their homes or in schools. They searched houses of the victims and their telephones, and confiscated telephones, identity documents, keys, and money. Perpetrators were members of the Russian armed forces, soldiers of the former so-called Donetsk and Luhansk People’s Republics, and local residents who supported them. Reportedly, Russian Federal Security Service personnel participated in some of the detentions and the interrogations sessions. Detention occurred both in makeshift facilities and at police stations. Some of the victims had bags placed on their heads. During confinement, perpetrators interrogated and threatened the victims and requested their cooperation. In the case mentioned above, in which Russian armed forces detained a schoolteacher together with her 16-year-old daughter, they threatened to rape the girl (see para. 611). In some situations, perpetrators transferred the detained victims out of their municipalities and dropped them near areas under Ukrainian armed forces control. One victim of such a transfer reported that Russian armed forces told several of transferred civilians to go onwards without turning, otherwise they will be shot at. This is a violation of international humanitarian law (see

³⁹⁵ Geneva Convention IV, article 147.

³⁹⁶ International Covenant on Civil and Political Rights, article 9(1); Convention on the Rights of the Child, article 37(b). Moreover, article 38(1) of the Convention on the Rights of the Child calls upon “States Parties [to] undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child”.

³⁹⁷ Additional Protocol I to the Geneva Conventions, article 75(3)-(4); International Covenant on Civil and Political Rights, article 10(1); Convention on the Rights of the Child, article 37(b).

³⁹⁸ For example, Geneva Convention IV, articles 27, 37 and 127; Additional Protocol I to the Geneva Conventions, article 75(1); International Covenant on Civil and Political rights, article 9(2); Convention on the Rights of the Child, article 37 (c).

³⁹⁹ Geneva Convention IV, articles 4 and 31.

⁴⁰⁰ Geneva Convention IV, article 27.

para. 518). Military operations were ongoing at that time and this in addition exposed the victims to significant risks.

711. According to a school principal from Kharkiv region, two Russian soldiers came to her home, asked her why she refused to work with Russian-appointed administration, told her that “*she had to follow the rules of Putin*” and detained her. During confinement, perpetrators requested her, together with two other detainees, to declare on camera: “*Zelenskyy is an awful President*” and “[w]e thank the Russian Federation for the liberation of our town.” Another woman detained in the same facility reported having been asked to make similar statements in front of a camera, together with the former victim. In a distinct case, in which a teacher was detained at his workplace in a school, allegedly by members of the FSB, and confined in a police station, also in Kharkiv region, during interrogation perpetrators offered him to cooperate with Russian armed forces; one of them told him “*we are here, and if you don’t like it, go away.*”

7. Unlawful and forced conscription

712. Ahead of the 24 February 2022 Russian Federation invasion of Ukraine, on 19 February 2022, Russian-backed de facto authorities of the former so-called Donetsk and Luhansk People’s Republics announced a “general mobilisation”.⁴⁰¹ The mobilization concerned all men aged 18 to 55. The Commission interviewed and reviewed allegations relating to over 65 situations in which men in this age group were forcibly conscripted by Russian authorities in the former self-proclaimed ‘republics’. In the majority of situations reviewed, enlistment occurred between 19 February and 1 March 2022. They were prisoners of war in Ukraine-controlled territories at the time they were interviewed.

713. Under international humanitarian law, an Occupying Power may not compel protected persons to serve in its armed or auxiliary forces, and no pressure or propaganda which aims at securing voluntary enlistment is permitted.⁴⁰²

714. The Commission interviewed the wife of a 48-year-old Ukrainian citizen resident of so-called Luhansk People’s Republic. She said that her husband was conscripted by Russian-backed de facto authorities. On 24 February 2022, he received a telephone call from the head of the village council requesting him to present himself to the conscription office. He was threatened to lose his salary and pension in case of refusal. He never received a written summons but reported for duty within two hours. Reportedly, he was sent to dig trenches in the occupied territory of Kharkiv region.

D. Transfers and deportations of children to territories occupied by the Russian Federation in Ukraine and to the Russian Federation

1. Overview

715. Governments, international, regional and local organizations, and media have reported on situations of transfers and deportations of Ukrainian children by Russian authorities since the outset of the armed conflict on 24 February 2022. Ukrainian and Russian official declarations pointed to large-scale transfers, of hundreds of thousands of children, with figures that vary greatly. In June 2022, President Zelenskyy stated that more than 200,000 Ukrainian children had been “deported” so far.⁴⁰³ During the same month, Russian authorities informed that 307,423 children had been “evacuated” to the Russian Federation since 24 February 2022.⁴⁰⁴ However, a data collection system maintained by the Government of Ukraine based on citizens’ reports of individual situations had recorded 16,221 deportations of children as of the end of February 2023.⁴⁰⁵ Both Russian and Ukrainian

⁴⁰¹ TASS, “Lugansk and Donetsk republics’ heads order general mobilization”, 19 February 2022; Militarnyi, “Occupants announced the general mobilization in temporarily occupied territories of Ukraine, 19 February 2022.

⁴⁰² Geneva Convention IV, article 51.

⁴⁰³ Official website of the President of Ukraine, “Every person matters, this is the main thing that distinguishes us from the occupiers - address by the President of Ukraine”, 2 June 2022.

⁴⁰⁴ Ministry of Defence of the Russian Federation, “Information Bulletin, Interdepartmental coordination headquarters humanitarian response”, 18 June 2022.

⁴⁰⁵ Children of war, (in Ukrainian).

authorities have stated that the majority of transfers of children occurred from the Luhansk and Donetsk regions in Ukraine.⁴⁰⁶

716. Russian officials have promoted transfers⁴⁰⁷ of children from Ukraine to the Russian Federation, describing them as a humanitarian undertaking to rescue them from war zones and bring them to safety.⁴⁰⁸ Official communications illustrate that Russian officials have put in place dedicated legislative and policy measures, such as the granting of Russian citizenship and the placement of children in foster families, which are indicative of a strategy to accommodate certain categories of children from Ukraine in the Russian Federation for a longer term or permanently. Ms. Maria Lvova-Belova, the Russian Federation's Presidential Commissioner for Children's Rights, has spearheaded a wide range of initiatives aimed at transferring and accommodating Ukrainian children in the Russian Federation. She has also travelled to Russian-controlled territories of Donetsk and Luhansk regions, inter alia, to coordinate transfers and placements of children in Russian families.

717. States condemned these undertakings and imposed sanctions targeting Ms. Lvova-Belova.⁴⁰⁹ In response, President Putin stated, "it is only natural that she evacuated children from the zone of combat operations or dangerous areas in Donbass. What is wrong about it? We should thank her for that and make a low bow to her".⁴¹⁰

718. Ukrainian authorities have also condemned, in the strongest terms, the transfers of Ukrainian children to the Russian Federation. President Zelenskyy declared that Russian armed forces "abducted" Ukrainian children.⁴¹¹ The Office of the Prosecutor General of Ukraine had been leading investigations into this matter with the aim of building an indictment for genocide.⁴¹² In August 2022, Ukraine's Ministry of Foreign Affairs stated, "[t]he Russian Federation continues to abduct children from the territory of Ukraine and arrange their illegal adoption by Russian citizens."⁴¹³

719. The Commission has identified a variety of situations in which Russian authorities have transferred children from territories that came under their control in Ukraine to other occupied areas in Ukraine or deported them to the Russian Federation. These concerned children who lost a parent or temporarily lost contact with them during the hostilities; children whose parents had been detained at filtration points; children in institutions, and children who had travelled to vacation camps.

⁴⁰⁶ See, for example, official website of the Russian Federation's Presidential Commissioner for Children's Rights, "The HRC sent a refutation of fakes about the forced removal of Ukrainian children to international organizations", 19 October 2022. (available only in Russian)

⁴⁰⁷ Various terms (for instance, transfer, deportation, and evacuation) have been used in the present context. For the purposes of this report, the Commission will use the term "transfer" in generic sense, referring to all situations in which children have been relocated from one locality to another. When the Commission has concrete elements allowing it to analyse specific situations, it has further determined whether these situations amount to unlawful transfers within Ukraine or deportations to Russia, and thereby violate international humanitarian law.

⁴⁰⁸ See, for example, "They are afraid of loud noises, they are worried about their future", *Izvestia*, 19 December 2022. (available only in Russian)

⁴⁰⁹ See, for example, European Union, Council Regulation (EU) 2022/1269 amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (21 July 2022), Official Journal of the European Union, vol. 65, 21 July 2022; United Kingdom of Great Britain and Northern Ireland, Foreign, Commonwealth and Development Office, "UK sanctions Russian linked to forced transfers and adoptions", press release, 16 June 2022; United States of America, Department of Treasury, "Treasury Targets Additional Facilitators of Russia's Aggression in Ukraine", press release, 15 September 2022.

⁴¹⁰ TASS, "Putin says sanctions against Russian children's ombudswoman are outrageous", 16 September 2022.

⁴¹¹ Official website of the President of Ukraine, "All Russian criminals must face a mandatory and principled punishment - Speech at the International Conference in The Hague on holding Russia accountable for crimes in Ukraine", 14 July 2022.

⁴¹² Anthony Deutsch, Stephanie van den Ber, "Exclusive-Ukraine investigates deportation of children to Russia as possible genocide", Reuters, 3 June 2022.

⁴¹³ Ministry of Foreign Affairs of Ukraine, "Statement of the Ministry of Foreign Affairs of Ukraine regarding the illegal adoption of Ukrainian children by citizens of the Russian Federation", 23 August 2022.

720. International humanitarian law⁴¹⁴ states that individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited, regardless of their motive. However, the Occupying Power may undertake total or partial evacuation of a given area if the security of the population or imperative military reasons so demand, but this may not involve the displacement outside the occupied territory, unless it is unavoidable; evacuations should be temporary. International humanitarian law⁴¹⁵ also holds that no Party to the conflict shall arrange for the evacuation of children, other than its own nationals, to a foreign country except for a temporary evacuation where compelling reasons of the health or medical treatment of the children or, except in occupied territory, their safety, so require. The written consent of parents or legal guardians is required, and if they cannot be found, of the persons primarily responsible for the care of the children.

721. The Commission has found that certain situations of transfers of children which it has reviewed generally did not fulfil the requirements set forth by international humanitarian law. In most cases, transfers did not appear to have been justified by a valid reason, such as a safety requirement or a medical reason. In the situations examined, there is no information that the Russian authorities sought the consent of the children's parents, legal guardians, or those who are legally responsible for the children, as required by law. In addition, due to a variety of circumstances, many transfers became prolonged. Children and their families encountered an array of difficulties in establishing contact and reuniting with their families, which resulted in long-lasting family separations. The Commission received reports that in some situations, during transfers, social services told the children that they would be placed for adoption, or with foster parents, or in an institution.

722. In this regard, international humanitarian law requires that the parties to the conflict facilitate in every possible way the reunion of families dispersed as a result of armed conflicts.⁴¹⁶ An unjustifiable delay in the repatriation of civilians is a war crime.⁴¹⁷ Under international human rights law, if a child is separated from one or both parents as result of detention, deportation or death, state parties shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child.⁴¹⁸ International humanitarian law also states that an Occupying Power may not, in any case, change the personal status of children.⁴¹⁹ Under international human rights law, the child has the right to preserve his or her identity, including nationality, name and family relations as recognised by law without unlawful interference.⁴²⁰

723. In most of the situations of transfers of children which the Commission has examined, Russian authorities did not appear to have attempted to facilitate family reunifications. In the cases reviewed, children themselves or their families took the initiative to establish contact. Russian authorities required parents and relatives to travel in person to pick up the children, which came with considerable logistical, financial, and security difficulties, as outlined below. In addition, in some of the reviewed situations, parents and relatives informed the Commission that the children were accommodated in camps and institutions where conditions were inadequate, with poor food, hygiene, and medical care, as well as bad treatment by the local staff. Family members or legal guardians who have retrieved children after transfers reported that uncertainties regarding the prospects of finding and reuniting with parents or relatives led to immense psychological suffering. This experience has deeply affected the children and they expressed a profound fear of being permanently separated from parents, guardians, or relatives.

⁴¹⁴ Geneva Convention IV, article 49.

⁴¹⁵ Additional Protocol I to the Geneva Conventions, article 78(1).

⁴¹⁶ Additional Protocol I to the Geneva Conventions, article 74.

⁴¹⁷ Additional Protocol I to the Geneva Conventions, article 85(4)(b), (5).

⁴¹⁸ Convention on the Rights of the Child, article 9(4). This provision should be read in conjunction with article 10 of the Convention. In addition, article 38 (1) and (4) of that Convention provide for general protection measures for children in line with international humanitarian law applicable to the states involved.

⁴¹⁹ Geneva Convention IV, article 50.

⁴²⁰ Convention on the Rights of the Child, article 8(1).

724. The Commission has concluded that certain situations of transfers of children which it has examined amount to the war crime of unlawful transfers and deportations of children.⁴²¹ It also found that in those situations, the Russian authorities violated their obligation under international humanitarian law to facilitate in every possible way the reunion of families dispersed as a result of the armed conflict,⁴²² which may amount to the war crime of unjustifiable delay in the repatriation of civilians.⁴²³ This in addition violated the right of the child to not be separated from parents and to family environment.⁴²⁴ Measures aimed at granting Russian citizenship to certain categories of children are in addition violating international humanitarian law, which prohibits the Occupying Power to change the personal status of children, and the right of a child to preserve their identity, including nationality, as recognised by international human rights law.⁴²⁵

725. Investigating situations of transfers of children has been particularly challenging. A fundamental obstacle has been the lack of access to direct victims and witnesses, and in particular to foster families and childcare institutions within the Russian Federation, as well as the absence of a response from the Russian Federation to the Commission's queries. This factor, in combination with the security situation of vulnerable interlocutors, has limited the Commission's possibility to access first-hand sources of information. The Commission also regrets that it did not receive a response from Ukraine to its requests for detailed information regarding figures and specific cases of transfers of children.

2. Situations in which child transfers took place

726. The Commission has reviewed in detail several situations involving the transfer of children from Donetsk, Kharkiv, and Kherson regions, and has received credible allegations regarding numerous other such instances. These incidents concerned children aged four to 17 and occurred in different types of circumstances, affecting children who temporarily lost contact with parents or legal guardians due to the armed conflict, or lost a parent due to the fighting, or after the confinement of a parent at a filtration point, as well as children in institutions. In the situations examined, Russian authorities transferred the children to areas occupied by the Russian Federation in Ukraine, including Donetsk and Luhansk regions, Crimea, or deported them to regions in the Russian Federation, such as Moscow or Krasnodar. There, Russian authorities temporarily accommodated the children in hospitals, social institutions, or camps. In some of the reviewed situations, children transited through several places during transfers.

727. The Commission also interviewed parents from Kharkiv and Kherson regions whose children travelled with their initial consent to Crimea or the Russian Federation to participate in vacation camps, together with hundreds of other school children. When these areas returned to Ukrainian control, Russian authorities did not facilitate the return of the children and required individual parents or legal guardians to travel in person to pick them up.

728. International humanitarian law states that individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited, regardless of their motive.⁴²⁶ However, the Occupying Power may undertake the total or partial evacuation of a given area if the security of the population or imperative military reasons so demand.⁴²⁷ Such evacuations may not involve the displacement of protected persons outside the bounds of the occupied territory except when for material reasons it is impossible to avoid such displacement.⁴²⁸ Persons thus evacuated shall be transferred back to their homes as soon as hostilities in the area in question have ceased.⁴²⁹ Moreover, international humanitarian law holds that no Party to the conflict shall arrange for the evacuation of children, other than its own nationals, to a foreign country except for a temporary evacuation where compelling

⁴²¹ Geneva Convention IV, article 147; Additional Protocol I to the Geneva Conventions, article 85(4)(a), (5).

⁴²² Additional Protocol I to the Geneva Conventions, article 74.

⁴²³ Additional Protocol I to the Geneva Conventions, article 85(4)(b), (5).

⁴²⁴ Convention on the Rights of the Child, articles 9 and 10.

⁴²⁵ Geneva Convention IV, article 50; Convention on the Rights of the Child, article 8(1).

⁴²⁶ Geneva Convention IV, article 49.

⁴²⁷ *Ibid.*

⁴²⁸ *Ibid.*

⁴²⁹ *Ibid.*

reasons of the health or medical treatment of the children or, except in occupied territory, their safety, so require.⁴³⁰ Where the parents or legal guardians can be found, their written consent to such evacuation is required.⁴³¹ If these persons cannot be found, written consent to such evacuation of the persons who by law or custom are primarily responsible for the care of the children is required.⁴³² Furthermore, under international humanitarian law, transferring or deporting a protected person such as a civilian to another location within the current territory or to another State without a lawful basis is a war crime.⁴³³

729. The Commission evaluated the circumstances of the transfers of children it examined in light of the applicable law and paid particular attention to the underlying reasons or circumstances of the transfers, whether consent had been given, and whether the measures were temporary. The Commission generally made the following findings:

730. First, with some exceptions, the Commission has no indications that the transfers were justified by a safety or a medical reason; that the Russian authorities sought alternative possibilities, which could avoid the transfer of unaccompanied children to Russian-controlled areas or to the Russian Federation; or – in some cases – that there were material reasons making it impossible to allow the children to relocate to other parts of occupied territory or to territory controlled by the Government of Ukraine. In two incidents in which Russian authorities transferred and accommodated the children in hospitals, this could have been justified for medical reasons, as in both situations the children had been injured and required medical attention. However, also in these situations, there is no available information that the additional legal requirements relating to consent and temporariness were fulfilled.

731. Second, Russian authorities do not appear to have sought the consent of the parents, legal guardians, or those who are legally responsible for the children, as prescribed by law. While in some situations, consent could not be sought because the children had lost contact with their parents at the moment of the events, or the parent was deceased or arrested, the Commission is not aware of Russian authorities having sought the consent of other relatives or of the Ukrainian authorities. In some incidents, transfers occurred regardless of the explicit refusal of the parents or the children.

732. Third, due to a variety of reasons, many of the transfers were not temporary, as required by international law. Parents and children encountered considerable challenges in establishing contact and achieving family reunification and the return of the children to Ukraine. This led to prolonged separations, as outlined below.

733. In conclusion, the Commission has found that the three above-mentioned legal conditions were mostly not fulfilled. It has therefore concluded that some of the transfers of children that it has examined amount to unlawful transfers within Ukraine or to deportations to the Russian Federation, respectively, which are war crimes.

3. Prolonged duration of transfers of children and difficulties in establishing contact and recovering children

734. As mentioned above, in most of the examined situations of transfers of children, the stay of the children in Russian-occupied areas or in the Russian Federation has been prolonged, owing to a variety of reasons. Regardless of the large number of transfers of children which have been reported, the Commission is not aware of measures taken by Russian authorities to facilitate the establishment of family contacts or to facilitate the return of the children to territories controlled by the Government of Ukraine. The onus of finding family members rested upon the children themselves or their families. When contacts were established, Russian authorities required individual family members to pick up their children in person. This involved long and complicated travel, with considerable security and logistical difficulties. These factors prolonged the duration of the family separations. In some situations, it took weeks and up to several months, for children and families to be reunited. Therefore, each individual situation of transfers of children developed in a different way and,

⁴³⁰ Additional Protocol I to the Geneva Conventions, article 78(1).

⁴³¹ Ibid.

⁴³² Ibid.

⁴³³ Geneva Convention IV, article 147; Additional Protocol I to the Geneva Conventions, article 85(4)(a), (5).

while in some situations family reunification has taken place, a solution leading to the child's reunification with his or her relatives was not found in each case.

735. In this regard, international humanitarian law requires that the parties to the conflict facilitate in every possible way the reunion of families dispersed as a result of armed conflicts.⁴³⁴ An unjustifiable delay in the repatriation of civilians is a war crime.⁴³⁵ Further, international humanitarian law emphasizes the importance of maintaining family unity and provides that each Party to the conflict shall facilitate inquiries made by members of families dispersed owing to the war, with the object of renewing contact with one another and of meeting, if possible.⁴³⁶ A prolonged separation of children from their families is in violation of the child's right to family life and is not in the child's best interests, pursuant to the Convention on the Rights of the Child.⁴³⁷ The child has the right to be cared for by his or her parents⁴³⁸, and States Parties to the Convention must ensure that a child shall not be separated from his or her parents against their will except in accordance with applicable law and procedures.⁴³⁹ Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation, or death of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family, unless such information would be detrimental to the well-being of the child.⁴⁴⁰ In all actions concerning children, the best interests of the child shall be a primary consideration.⁴⁴¹

736. In the cases of transfers which the Commission has documented, children, parents, or relatives encountered significant difficulties in establishing contact. In several situations, the children took the initiative and managed to locate their family members. In some incidents, family members only learned about the children's whereabouts through media reports. Witnesses informed the Commission that some of the children transferred to institutions in Russian-occupied areas or deported to camps in the Russian Federation have not been able to establish contact with their families. The Commission is concerned that this may lead to indefinite or permanent separation. In this regard, younger children are particularly vulnerable, as they are less likely to be able to contact their parents, and therefore they face a higher risk of losing contact with their families indefinitely.

737. In several of the incidents examined, parents or relatives informed the Commission that, during the period of separation, social services in Russian-occupied territories or in the Russian Federation told the children that they would be placed for adoption, or with foster parents, or in an institution. This was a source of considerable psychological pressure and fear for the children. In some situations, parents additionally conveyed to the Commission that in places of transfer, children were screamed at, that meals were poor, and that children were otherwise not provided with adequate accommodation or hygiene. Some children with disabilities did not receive adequate care and medication, which can be life threatening in some situations.

738. Parents and relatives encountered serious challenges in organizing travel to pick up their children, due to the dire security situation and logistical difficulties. In many incidents, travel was long and complicated, up to one week one way, at times requiring transit through the Russian Federation, and several other countries. Some family members lacked financial means, adequate travel documents, or were afraid of being detained in the Russian Federation. Some parents or relatives of children who travelled to Russian vacation camps faced criticism for their decisions and were reluctant to seek help from the Ukrainian Government, out of fear of being accused of collaboration.

739. In several of the incidents reviewed by the Commission, Ukrainian authorities have assisted parents, legal guardians, or family members in the endeavour to establish the necessary contacts and prepare the travel to fetch the children, notably through the issuance

⁴³⁴ Additional Protocol I to the Geneva Conventions, article 74.

⁴³⁵ Additional Protocol I to the Geneva Conventions, article 85(4)(b),(5).

⁴³⁶ Geneva Convention IV, article 26.

⁴³⁷ Convention on the Rights of the Child, Preamble, articles 3, 7, 8, 9, 10, and 16.

⁴³⁸ Convention on the Rights of the Child, article 7(1).

⁴³⁹ Convention on the Rights of the Child, article 9(1).

⁴⁴⁰ Convention on the Rights of the Child, article 9(4).

⁴⁴¹ Convention on the Rights of the Child, article 3(1).

of required documents. Some organizations have offered to facilitate such travel of parents or relatives through logistic or financial means. In some cases, family members of transferred children or Ukrainian authorities have managed to establish contact with Russian authorities or de facto authorities in Russian-occupied territories to obtain their authorisation and facilitation of the arrival of a parent or relative to pick-up a transferred child.

740. Parents, relatives, and legal guardians interviewed emphasized that such situations have a severe impact on children. The uncertainty and fear of being permanently and forcibly separated from their loved ones in a foreign country, is highly traumatising. The children who had been transferred reported how they missed their parents, relatives, and friends in Ukraine. Studies on children separated from their parents during wartime, with the intention of sparing them from hostilities, show that the trauma of separation is often more harmful and long lasting than remaining with the families and enduring war related traumas together.⁴⁴²

741. In conclusion, in the situations examined by the Commission, a lack of information and structures to facilitate the establishment of family contacts and reunifications led to prolonged separation of children from their families, and even bore risks for permanent separation for some of the children. The Commission has found that Russian authorities violated their obligation under international humanitarian law to facilitate in every possibly way the reunion of families dispersed as a result of the armed conflict.⁴⁴³ This may amount to the war crime of unjustifiable delay in the repatriation of civilians.⁴⁴⁴ Such conduct is also in violation of a child's right to family environment and is not in the best interests of the child.⁴⁴⁵

4. Measures put in place by the Russian Federation regarding certain categories of deported children

742. The Commission has followed official statements and media coverage regarding legal and policy measures adopted by Russian officials regarding the deportations of some categories of children from Ukraine to the Russian Federation and their status. Such measures appear to affect children from the Donetsk and Luhansk regions in Ukraine. Initiatives relate in particular to the placement of children in Russian foster families and measures facilitating such placements, notably the granting of the Russian citizenship to some categories of children and the coordination of transfers of children with the Russian-backed de facto authorities in Donetsk and Luhansk regions. These undertakings are indicative of an intent to accommodate some of the children transferred from Ukraine on a longer-term basis, or even permanently, in the Russian Federation. An intent of permanence has been also stated in several official declarations, as outlined below.

743. In March 2022, during a meeting with President Putin regarding "families evacuated from Donbass and children", Ms. Lvova-Belova discussed the possibility for Russian families to temporarily accommodate orphan children and raised the issue of legislative delays linked to their citizenship. President Putin replied that relevant changes to the legislation would be made.⁴⁴⁶ In May 2022, he signed a decree introducing modifications in the existing legislation, providing that orphans and children without parental care, who are "citizens" of the former so-called Donetsk and Luhansk People's Republics, and of Ukraine, can acquire Russian citizenship in a simplified way. The process, among other things, involves a guardian or custodian, along with the respective authorities or organizations, applying on behalf of the individuals.⁴⁴⁷

⁴⁴² See, for example, Everett M. Ressler, *Evacuation of children from conflict areas, Considerations and guidelines*, (Geneva, UNICEF & UNHCR, 1992).

⁴⁴³ Additional Protocol I to the Geneva Conventions, article 74.

⁴⁴⁴ Additional Protocol I to the Geneva Conventions, article 85(4)(b),(5).

⁴⁴⁵ Convention on the Rights of the Child, for example, articles 3(1), 9 and 10.

⁴⁴⁶ Official website of the President of the Russian Federation, "Meeting with Commissioner for Children's Rights Maria Lvova-Belova", 9 March 2022. (available only in Russian)

⁴⁴⁷ Russian Federation, Decree of the President of the Russian Federation, No. 330, on Amendments to the Decree of the President of the Russian Federation dated April 24, 2019, No. 183 "On Determining for Humanitarian Purposes the Categories of Persons Entitled to Apply for Citizenship of the Russian Federation in a Simplified Manner", of 30 May 2022, article 1, (in Russian).

744. International humanitarian law states that an Occupying Power may not, in any case, change the personal status of children.⁴⁴⁸ Under the Convention on the Rights of the Child, a child has the right to preserve his or her identity, including nationality, name, and family relations as recognised by law without unlawful interference.⁴⁴⁹

745. Subsequent to this legislative amendment, in June 2022, Ms. Ksenia Mishonova, the Ombudsperson for Children's Rights in the Moscow Region, referring to children from the so-called Donetsk People's Republic, stated that a presidential decree on citizenship "will remove the last obstacles for children to live and be brought up in Russian families."⁴⁵⁰ In a media interview in July 2022, Ms. Lvova-Belova declared: "now that the children have become Russian citizens, temporary guardianship can become permanent".⁴⁵¹ Also in July 2022, she stated that the transfer of children "was preceded by a large and painstaking work, which was carried out taking into account the legislative features of the interested states, and was connected with the preparation of documents, the choosing of regions capable of creating the necessary conditions, the search, and selection of families ready to adopt children with disabilities or a large family group at once – 4-9 children each".⁴⁵²

746. During official visits to the former so-called Donetsk and Luhansk People's Republics, Ms. Lvova-Belova discussed, among other issues, transfers and placements of children in Russian families. In May 2022, she said in a media interview that "[t]emporary guardianship is now the only way to accommodate such children in families. But the format of temporary guardianship does not cover all the needs of children. They need Russian citizenship. This will help not only to arrange them in the family constantly, but also provide all social guarantees [...]. Therefore, agreements are being prepared with the LPR and the DPR on guardianship and trusteeship and on the adoption of children, and then amendments to the legislation of the LPR and the DPR will be initiated, which will allow Russian citizens to adopt and take custody of children from these territories."

747. In August 2022, Ms. Lvova-Belova travelled to the so-called Donetsk People's Republic, where she met with the de facto authorities and "agreed to continue working on the placement of children from social institutions in Russian foster families". Also in August 2022, she visited the so-called Luhansk People's Republic and discussed legal issues for "regulating the process of transferring children from the so-called Luhansk People's Republic to the Russian families". She stressed the importance of creating a database of orphans and children left without parental care in the former so-called Luhansk People's Republic, which would accelerate and improve the quality of the work of relevant agencies in selecting foster families for these children.⁴⁵³ In September 2022, Ms. Lvova-Belova also stated that, if, based on the results of referendums in the Donetsk, Kherson, Luhansk, and Zaporizhzhia regions, "a decision is made to join Russia, a clear algorithm for the placement of children will be obtained". She added, "[n]ow such a wave is active on the part of our families who are ready to take these children, it will be available for them, because these children will first get into regional data banks, then into federal ones. And they will be able to find each other without our help and without those difficulties that we had."⁴⁵⁴

748. Several official statements and events illustrated how groups of children transferred from the former so-called Donetsk and Luhansk People's Republics to the Russian Federation were granted citizenship and accommodated in Russian families. In July 2022, Ms. Lvova-Belova referred to a group of almost 200 children from Ukraine who were to receive Russian

⁴⁴⁸ Geneva Convention IV, article 50.

⁴⁴⁹ Convention on the Rights of the Child, article 8(1).

⁴⁵⁰ Verstka Media, "Mom, we'll be there soon.", 27 June 2022. (available only in Russian)

⁴⁵¹ Nina Nazarova, "We are in a hurry, they are calling from Moscow." How a boy from Donbass ended up in a Russian family and received Russian citizenship, *BBC Russian Service*, 20 September 2022. (available only in Russian)

⁴⁵² Official website of the Russian Federation's Presidential Commissioner for Children's Rights, "Maria Lvova-Belova visited the Kaluga region and met with foster families who took custody of children from the DPR", 22 July 2022. (available only in Russian)

⁴⁵³ Official website of the Russian Federation's Presidential Commissioner for Children's Rights, "Let's give them a chance - Maria Lvova-Belova about orphans in the LPR", 5 August 2022.

⁴⁵⁴ TASS, "Lvova-Belova: more than 80 orphans from the LPR will soon come to Russia for placement in families", 27 September 2022. (available only in Russian)

citizenship.⁴⁵⁵ In September 2022, she stated that she brought 125 additional children orphans from the so-called Donetsk People’s Republic, who had already received Russian citizenship, for placement in Russian families, and that 104 children from the so-called Luhansk People’s Republic are preparing for travel.⁴⁵⁶ In September 2022, during a press briefing of the Civic Chamber of the Russian Federation, Ms. Lvova-Belova said that she had also hosted one Ukrainian boy in her family: “One of the boys ended up in my own family. And I see before my own eyes how this integration began to happen... You see, there is some negativity. At first, it is there, but then the love is formed – the love for Russia.”⁴⁵⁷

749. After international condemnation regarding the placements of Ukrainian children with Russian families in the Russian Federation, in October 2022, Ms. Lvova-Belova published an explanation of the foster placement process, as follows: “Currently, about 300 orphans and children left without parental care have been placed in the care of Russian families. All decisions on family arrangements were made by the authorised bodies of the republics, exclusively with the consent of the children, in full compliance with the requirements of international law. Families were selected taking into account the individual characteristics of each child, his state of health, and needs, with the necessary experience”.⁴⁵⁸

750. The Commission is highly concerned that such measures may have a profound implication on a child’s identity and found them to be in violation of the right of a child to preserve his or her identity, including nationality, name and family relations without unlawful interference, as recognised by international human rights law.⁴⁵⁹

Case descriptions

751. As stated above, the Commission has examined situations in which Russian authorities have transferred children to territories they occupied in Ukraine or to the Russian Federation. The case descriptions outlined below are based on the detailed accounts of parents, personnel of specialised institutions, at times accompanied by the children who had been the victims of transfers. Testimonies provided descriptions of the circumstances of the transfers and, in some occasions, of the conditions in which the children were accommodated. In several of these incidents, interlocutors listed examples of other children who were in a similar situation and had not yet been recovered by family members or had been unable to establish contact with them.

Transfers of children after separation from parents or legal guardians due to hostilities

752. In a first category of incidents, Russian authorities transferred to Russian-controlled areas in the Donetsk region children who lost contact with their legal guardians or lost their parents during the ongoing hostilities. The children were transferred to hospitals in Donetsk city. In the situations reviewed, Russian authorities did not seem to have searched for a way to facilitate their evacuation to territory controlled by the Ukrainian government. They also did not appear to have made any proactive attempts to find the parents or relatives of the children or to notify the Ukrainian authorities. The children and their families took the initiative to establish contact. Family members had to undertake long and complicated travel, through several countries, to retrieve the children. A combination of these factors has resulted in separations of children from their families lasting one to two months. According to witnesses, some children in similar situations had not been able to locate their families.

Transfer of 17 children evacuating from Mariupol

⁴⁵⁵ Mordovmedia, “In early July, 200 children from Donbass will receive Russian citizenship”, 28 June 2022. (available only in Russian)

⁴⁵⁶ Official website of the Russian Federation’s Presidential Commissioner for Children’s Rights, “Maria Lvova-Belova brought 125 orphans from the DPR to be placed in Russian families”, 16 September 2022. (available only in Russian)

⁴⁵⁷ Civic Chamber of the Russian Federation, “Press briefing on the work of the Public Situation Center for Monitoring Referendums in the DPR, LPR, Zaporozhye and Kherson regions”, 27 September 2022. (available only in Russian)

⁴⁵⁸ Official website of the Russian Federation’s Presidential Commissioner for Children’s Rights, “The HRC sent a refutation of fakes about the forced removal of Ukrainian children to international organizations”, 19 October 2022. (available only in Russian)

⁴⁵⁹ Convention on the Rights of the Child, article 8(1).

753. In a situation widely covered in the media, as the fighting broke out in Mariupol city in February 2022, 17 children aged four to 17 years who were on vacation in a health resort there, lost contact with their families and attempted to join them in Ukraine-controlled areas. According to media interviews, Russian-backed authorities at a checkpoint denied their passage and instead the children ended up in a hospital in Donetsk city.⁴⁶⁰

754. The foster mother of six of these children informed the Commission that during their stay at the hospital, her children had been pushed, slapped, insulted, screamed at, called names, and given bad food. Three among them who had disabilities were not provided with adequate medicine. She said: “[they] constantly told my children that they would be given to other families, so that they forget their own parents and that [they] were making documents of the [former so-called] Donetsk People’s Republic for them”.

755. Russian-backed de facto authorities did not appear to take measures to reunite the children with their families and guardians. Only in June 2022 volunteers managed to assist twelve of these children to be reunified with their foster parents. The Commission has received information that at least one of the 17 children was subsequently deported to the Russian Federation and placed in a foster family.

Transfer of three boys evacuating from Mariupol

756. In March 2022, in Mariupol city, three boys aged 15 and 16, who attended school together, lost contact with their legal guardians as the shelling intensified and electricity and mobile connection were disrupted. They attempted to leave the area with a convoy. At a checkpoint, when authorities of the so-called Donetsk People’s Republic noticed that the children were unaccompanied, they handed them to the police department of the former so-called Donetsk People’s Republic, who brought them to a hospital in Donetsk city. From the hospital, the boys managed to establish contact with Ukrainian authorities and find their legal guardian; they had been in touch with him during their stay. According to their legal guardian, representatives of armed groups provided the children with promises of a better life and provided some criticism of their legal guardian. At the beginning of June 2022, he travelled to pick them up. This involved a long and complicated journey through the Russian Federation and three other countries.

Transfer of injured boy after the death of the mother in Mariupol

757. In March 2022, in Mariupol city, a shell that landed not far from a shelter injured a 10-year-old boy in the leg and killed his mother. The boy’s grandmother told the Commission that Russian armed forces transported the boy to a hospital in Donetsk city, where he received treatment for his leg. She learned about her grandson’s situation through the media. The boy subsequently managed to contact her with a phone borrowed from a volunteer at the hospital. He told her that, at the hospital, two men approached him and asked him if he wanted to go to Moscow, but he refused. The boy was issued with a so-called Donetsk People’s Republic certificate. At the end of April 2022, the grandmother managed to travel through the Russian Federation and two other countries and was reunified with her grandson.

Children transfers following the arrest of the parent at a filtration point

758. In a second category of incidents, Russian authorities transferred children to Russian-controlled territories in the Donetsk region after the detention of a parent at a filtration point. Social services accommodated the children in an institution or a hospital. The Commission is not aware of any attempts by Russian authorities to establish contacts or seek alternative care options by family members, or by Ukrainian authorities, while the parents of the children were in detention. In one of the incidents, the children were further transferred to the Russian Federation, without clear reasons for the transfer. Family members had to undertake long and complicated travel to fetch the children. As a result of these combined factors, the separation of the children and their families lasted two to three months. Family members who travelled

⁴⁶⁰ For example, BBC, “Ukraine war: Why I never gave up trying to find my children, 18 July 2022”; Sarah El Deeb, Anastasiia Shvets, Elizaveta Tilna (Associated Press), “How Moscow grabs Ukrainian kids and makes them Russians”, first published on 13 October 2022.

to retrieve children, reported that they saw other children in a similar situation, and that some of them had not been able to locate family members.

Transfer of three children after the detention of their father at a filtration point

759. In April 2022, a former member of the Ukrainian armed forces attempted to leave Mariupol in an evacuation convoy with his two daughters, aged seven and nine, and son aged 12. He told the Commission that at a filtration point, he was detained and transferred to the Olenivka penal colony. Meanwhile, social services of the so-called Donetsk People's Republic transferred the children to a children's home and then to a hospital in the Donetsk region. In mid-May 2022, the children were further deported by plane to the Russian Federation, together with almost 30 other children, and were accommodated in a camp near Moscow. The father found out that his children had been transferred to the Russian Federation upon his release from detention at the end of May 2022. According to media coverage, in early June 2022, the boy called his father to convey that the siblings were informed that they would be placed in a foster family or an institution.⁴⁶¹ During the second half of June 2022, the father managed to travel to the Russian Federation to pick up his children, after a challenging trip, with multiple security and logistical constraints. The family saw other Ukrainian children in the camp, who told them that they were to be accommodated in Russian families.

Transfer of one child after the detention of his mother at a filtration centre

760. In late March 2022, on the outskirts of Mariupol, a 11-year-old boy, was injured by shrapnel in the eye and his mother brought him to a neighbouring steel and iron plant, where he could benefit from the assistance of military paramedics. According to the boy's grandmother, after Russian armed forces took control of the plant, they transported the civilians present at the plant to a filtration camp. The mother was taken for interrogation to a separate room. Russian soldiers also interrogated the boy and screamed at him. The family has not seen the mother again. Social services subsequently took the boy to a hospital in Donetsk city. In the hospital, the boy managed to borrow a phone and establish contact with his grandmother.

761. He asked several other times people to lend him a phone to call her. Social services of the so-called Donetsk People's Republic told the grandmother to pick up her grandson as they could not keep him any longer. At the same time, hospital staff told the boy that if his grandmother did not come, he would be transferred to a children's home. The grandmother managed to obtain the necessary official documents to retrieve the boy and at the end of June 2022, she travelled via the Russian Federation and two other countries, which took over one week. She stated that in the hospital in Donetsk city, the doctors said that it was too late to perform surgery on the boy's eye. However, upon return to Ukrainian-controlled territory, he underwent eye surgery and treatment. She also told the Commission that when fetching her grandson, she became aware of two other situations of unaccompanied children transferred to the same hospital.

Transfers of children in institutions

762. In a third category of incidents, Russian authorities transferred children from certain institutions in Kharkiv and Kherson regions to Crimea and Luhansk region, or to the Russian Federation; generally this took place because of nearby hostilities. Parents, legal guardians, personnel of institutions told the Commission that they did not consent to such transfer and that the children themselves had expressed strong objections. In two situations, Russian authorities prevented heads of institutions from evacuating to territory controlled by the Government of Ukraine. In one incident, children from an institution and their legal guardian were left without accommodation after transfer, while in another incident, children appear to have been treated inadequately and did not receive the care required for children with special support needs. According to witnesses, these experiences had been highly traumatic for many of the children and risk having long-term physical and psychological consequences. In cases

⁴⁶¹ See, for example, “‘We hugged for a long time’: the Ukrainian father who rescued his children from Moscow”, *The Guardian*, 19 March 2023; Meduza, “Dad, you have five days before they adopt us”, 4 November 2022.

where parents could establish contact, they had to undertake long and complicated travel to fetch them. Due to these combined factors, family separations lasted up to three months. Witnesses reported that also numerous other children were in this situation and did not have the possibility to establish family contacts.

Transfer of 15 children from an institution in Mykolaiv region

763. As the armed conflict broke out in February 2022, the head of a boarding school in Mykolaiv region facilitated the return of most of the children from the institution to their families. However, she remained with 15 children orphaned or deprived of parental care, with a mild disability, under her care and legal guardianship. Regardless of her efforts, she did not manage to evacuate the children to a territory controlled by the Government of Ukraine because of security and logistical constraints. Russian armed forces repeatedly visited the institution and told her to evacuate to Crimea, at times using threatening language or behaviour, which she refused, as she told them that the children had relatives in Ukrainian-controlled territories. In July 2022, after Russian authorities learnt that she was attempting to evacuate the children to a territory under Ukrainian control, they told her that they had now decided to evacuate her. Russian armed forces transferred the children and the head of institution to a rehabilitation centre in the Kherson region, which was then under Russian control, despite the fact that all of them repeatedly objected to the transfer.

764. In October 2022, as Russian armed forces were about to lose control of numerous areas in the Kherson region and ordered evacuations of civilians, a Russian-appointed administration official gave the same head of institution ten minutes to prepare the children for further evacuation. Russian armed forces transferred the group to Crimea, where they left them without accommodation or any option for return to Ukraine. Local emergency services told the head of institution to proceed, by train, to a camp in the Russian Federation. She said that children were crying, and “every child from her group wanted to go back to Ukraine because they had relatives there”. They were very afraid of being forcibly separated from their legal guardian and being forced to remain in the Russian Federation. In November 2022, the group managed to move to a third country with the help of a volunteer.

Transfer of 80 children from an institution in the Kherson region

765. Starting in February 2022, when Russian authorities took control of areas in the Kherson region, a boarding school hosting about 85 children and young adults with disabilities found itself in territory under Russian control. As the institution contemplated an evacuation, the police came to the school and said, “if we hear that you are trying to evacuate, you will have problems”, and removed Ukrainian flags and insignia from the premises. Children in this institution had mobility and mental disabilities, with about 40 bedridden and some in wheelchairs. Around half of them were orphans, some had been abandoned, and others had been placed there by their parents to receive special education and adequate care.

766. In October 2022, according to the staff of the institution, as the former director refused to collaborate, Russian authorities appointed a new director. During the same month, Russian authorities undertook the transfers of the children and young adults from this institution to Russian-controlled territories, which occurred in three groups. The official reason given for the transfer was temporary rest, treatment, and rehabilitation. In October 2022, the first group of 16 children was brought by bus to a hospital in Simferopol, in Crimea. In November 2022, 12 additional children and young adults were transferred by bus to the same hospital. On these two occasions, medics from Crimea came to fetch the children and accompanied their transfer. Also in November 2022, the third group of over 50 residents of the institution with the most severe disabilities, was transferred to a kindergarten in another location of the Kherson region.

767. A former staff member of the institution stated that prior to evacuation, parents were called and asked for their consent. However, some parents could not be reached due to the absence of telephone connection and internet in some areas, and the children were evacuated regardless of the absence of consent. They reported that some of the children opposed the transfer and cried.

768. The mother of a 13-year-old girl residing in this institution, who had a disability and used a wheelchair, told the Commission that when asked, she did not consent to her daughter’s transfer, unless it was to a Ukrainian-controlled area. Nevertheless, in November

2022, she received a call informing her that her daughter had been transferred despite her lack of consent. She was told that Russian armed forces took the children without giving them time to pack. During the same month, she travelled through Georgia to Crimea to fetch her daughter. She found that her wheelchair was broken, that she was dirty, with clothes and shoes missing, and had received very poor food. After her return, the girl had repeated nightmares and avoided talking about her experience in Crimea.

Transfer of 13 children from an institution in Kharkiv region

769. The Commission interviewed the mother of a 15-year-old boy with a disability, who was transferred as part of a group of 13 children with disabilities attending a boarding school in the Kharkiv region, in September 2022, at a moment when Ukrainian armed forces were recovering control of numerous localities. When she went to pick-up her son at the school, a security guard informed her that the children had been picked up by a bus led by Russian armed forces, after a decision by the school director. She had not been informed of the transfer and only learned about the whereabouts of her son through a video circulated on the media. Her son later informed her that the transfer was organized by Russian armed forces and that the children were brought to a boarding school and then to a children institution in the Luhansk region. Subsequently, the principal of the institution called her to ask her to come and fetch her child. Three months after the initial transfer, she managed to travel through the Russian Federation and two other countries to reach Luhansk region. She stated that other children in a similar situation cried when she left, as she could not take them home. She also noted that the condition of her son had become more acute since the transfer, that he needed treatment, and was waking up screaming at night.

Travel of children with parental consent

770. The Commission also reviewed situations in which numerous children from areas that came under Russian Federation control in Kharkiv, Kherson, and Zaporizhzhia regions travelled temporarily to vacation camps in Crimea or the Russian Federation.⁴⁶² Radio and television channels informed residents of the possibilities for children to spend vacations of up to three weeks in summer camps in the Russian Federation. Parents of children who travelled to such camps explained to the Commission that they consented to the children's travel and stay in the camps, as they believed that such vacations would be a good opportunity for the children to take a break from the armed conflict. However, since numerous areas in these regions returned to Ukrainian armed forces control, Russian authorities did not organize the return the children and required individual parents or legal guardians to travel in person to pick them up.⁴⁶³ Travel to the locations of the camps implied significant logistic, financial, and security constraints, and the crossing of several international borders, which in turn led to long family separations. Some parents had no financial means to cover the costs of the trip, lacked travel documents, or feared that they would not be able to return from the Russian Federation and were therefore unable to travel. On some occasions, the Government of Ukraine has issued the necessary documents, local administrations have helped raise funds to cover the travel costs, and a local organization has helped parents to organize their travel.

771. The Commission met with the head of an institution who saw hundreds of children from the Kherson region, together with their teachers, in a summer camp in the Russian Federation. She said that the groups had travelled voluntarily. Those who were from the areas of Kherson region which remained under Russian control, managed to return to Ukraine, accompanied by their teachers. The teachers from areas recovered by Ukrainian armed forces feared being accused of collaboration and were reluctant to return. In addition, numerous families from those areas had been displaced. These factors resulted in prolonged family separations for some of the children.

772. The mother of a 14-year-old boy from Kherson city told the Commission that her son travelled with her consent to join a vacation camp in Crimea for about two weeks. However, the teachers at the camp informed her twice that due to the insecurity, the children's return

⁴⁶² See, for example, TASS, "4500 children from Kherson and Zaporizhzhia regions will rest in sanatoriums and camps of Crimea", 15 October 2022. (available only in Russian); "Weeks turn to months as children become stuck at camps in Crimea", *The Guardian*, 27 December 2022.

⁴⁶³ See, for example, Svyatoslav Khomenko, Nina Nazarova, "Parent's personal problem". Dozens of Ukrainian children separated from their families remain in camp in Russia", *BBC Russian Service*, 17 October 2022, (available only in Russian).

had been postponed. They also said that if parents wished to pick up the children, they could do so, but in such case they could not return to Kherson, because of security constraints. Such travel would be long and complicated, and would involve crossing several international borders. At the moment of the interview, she did not have the required documents and financial means to undertake such travel.

E. Genocide

773. Genocide is one or more specified acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group. Enumerated acts include, among others, killing members of the group and forcibly transferring children of the group to another group. Under the Genocide Convention, several acts are punishable, including direct and public incitement to commit genocide.⁴⁶⁴

774. The Commission is concerned about allegations of genocide in Ukraine. It has not, based on available evidence, reached a conclusion whether there is genocide in Ukraine. The Commission's investigations are an ongoing process. Certain allegations raise issues under the Genocide Convention. For instance, some of the rhetoric transmitted in Russian state and other media may constitute direct and public incitement to commit genocide.

VI. Impact of the armed conflict

1. Overview

775. The ongoing armed conflict has had devastating effects on every aspect of life in Ukraine. The wide array of grave violations, abuses and crimes committed in the context of the armed conflict are a source of immense human suffering and destruction. The effects on the enjoyment of almost all human rights by people living in Ukraine are considerable, with both present and long-term ramifications. This will in turn lead to significant delays in the fulfilment of the Sustainable Development Goals.⁴⁶⁵

776. In addition to the human losses, the armed conflict in Ukraine has caused a population displacement not seen in Europe since the Second World War. As of 21 February 2023, according to the UNHCR, relying on national authorities' data, there were about eight million refugees from Ukraine across Europe, with about 4.8 million registered for temporary protection.⁴⁶⁶ Due to the martial law preventing men between the ages of 18 to 60 from leaving the country but for some exceptions, about 90 per cent of the refugees are women and children.⁴⁶⁷ In a protection profiling and monitoring exercise conducted by UNHCR and its partners between May and December 2022 in eight countries hosting Ukrainian refugees, 63 per cent of the respondents reported plans to stay in their current host country citing safety, family ties, employment and asylum procedure as the main reasons.⁴⁶⁸

777. In its update on 23 January 2023, the International Organization for Migration estimated that 5.4 million people are displaced across Ukraine, after reaching a peak of over eight million in May 2022.⁴⁶⁹ Half of the respondents surveyed reported that their habitual residence had been completely destroyed (five per cent) or damaged (45 per cent).⁴⁷⁰ Women

⁴⁶⁴ Convention on the Prevention and Punishment of the Crime of Genocide, articles II and III.

⁴⁶⁵ Paulo Peira and others, "The Russian-Ukrainian armed conflict will push back the sustainable development goals", *Geography and Sustainability*, vol. 3, No. 3 (September 2022), pp. 277-287. The conflict has led to a refocus on Sustainable development Goals 2, 8, 9, 12, 13 and 15 in 2022, <https://ukraine.un.org/en/sdgs>.

⁴⁶⁶ UNHCR, Ukraine Refugee situation ; European Commission (Migrations and Home Affairs), Temporary Protection.

⁴⁶⁷ UNHCR, "Displacement Patterns, Protection Risks and Needs of Refugees from Ukraine - Regional Protection Analysis # 1", 26 October 2022.

⁴⁶⁸ UNHCR, "Regional protection profiling & monitoring factsheet – Profiles, needs, & intentions of refugees in Ukraine, 21 December 2022.

⁴⁶⁹ International Organization for Migration, "Ukraine – Internal Displacement Report – General Population Survey Round 12 (16-23 January 2023)", 2 February 2023. <https://dtm.iom.int/reports/ukraine-internal-displacement-report-general-population-survey-round-12-16-23-january-2023?close=true>

⁴⁷⁰ International Organization for Migration, "Ukraine – Internal Displacement Report – General Population Survey Round 10 (17-27 October 2022)", 4 November 2022.

and girls represent about 55 per cent of internally displaced persons.⁴⁷¹ Displaced households average over three people with 73 per cent of them having at least one vulnerable member.⁴⁷² In addition, some persons have moved several times, including since 2014.⁴⁷³

778. The destruction of essential infrastructure, schools, health facilities, residential buildings, and others has had an immense impact on people's lives and on their enjoyment of a wide range of human rights, placing special burdens on the vulnerable. While the enjoyment of certain rights is affected only temporarily, some of the long-term effects of this armed conflict are clearly visible. In addition to the many physical injuries that will need time to heal, deteriorating mental health will have long-lasting, multi-generational effects.⁴⁷⁴ In addition, many places in Ukraine will remain unsafe because of unexploded ordnance and explosive remnants of war. Demining will take years.⁴⁷⁵ In August 2022 the Minister of Environmental Protection and Natural Resources of Ukraine estimated that 27 per cent of Ukraine's territory would need to be cleared of mines and explosives.⁴⁷⁶ Similarly, the full range and severity of the environmental consequences of the armed conflict will need to be verified and assessed, but preliminary monitoring indicates significant impacts on urban and rural environments that could leave the country and the region with a toxic legacy for generations to come.⁴⁷⁷

779. This section describes some of the consequences of the armed conflict on the rights to life, health, education, adequate housing, food and water, which the Commission has documented during its investigations, and the impact on some vulnerable groups. It does not constitute an exhaustive list of the legacies left by the conflict in its wake. Most of the effects and consequences of the armed conflict described are believed to be still ongoing and are likely to continue in a longer term.

2. Right to life

780. The armed conflict in Ukraine has killed thousands of civilians. As of 15 February 2023, OHCHR had recorded 8,006 civilians killed and 13,287 injured in Ukraine since 24 February 2022.⁴⁷⁸ Those killed included 3,533 men, 2,096 women, 256 boys, and 200 girls. Those injured included 3,460 men, 2,361 women, 394 boys, 290 girls. Most of the civilian casualties were caused by the use of explosive weapons with wide area effects, including shelling from heavy artillery, multiple launch rocket systems, missiles and air strikes. OHCHR believes that the actual figures of civilians killed and injured are considerably higher.⁴⁷⁹

781. These figures also do not take into account the indirect victims of the armed conflict. Lack of access to regular health care, reduced living standards, including limitations on access to food, water, and housing, particularly in areas where hostilities are taking place, have likely increased mortality rates. The overall effects of the attacks on the energy

⁴⁷¹ International Organization for Migration, "Ukraine – Internal Displacement Report – General Population Survey Round 12 (16-23 January 2023)", 2 February 2023. Women between 18 and 59 years old (32 per cent), women of 60 years old or more (9 per cent), and girls (14.2 per cent); men between 18 and 59 years old (25.4 per cent), men of 60 years old or more (7.1 per cent), and boys (12.4 per cent).

⁴⁷² International Organization for Migration, "Ukraine – Internal Displacement Report – General Population Survey Round 12 (16-23 January 2023)", 2 February 2023.

⁴⁷³ Ibid.

⁴⁷⁴ Neil Bowdler (Radio Free Europe radio Liberty), "Psychologists battle to help Ukraine's shell-shocked population", video, 11 October 2022.

⁴⁷⁵ The Geneva International Centre for Humanitarian Demining, "Clearing landmines from Ukraine may take decades Work to find, map, and remove them has already begun", 13 May 2022.

⁴⁷⁶ Ruslan Strilets, "Mines threaten Ukrainian forests, soils, and biodiversity", tweet, 11 August 2022; Reuters, "Almost one third of Ukraine needs to be cleared of ordnance, ministry says", 12 August 2022.

⁴⁷⁷ United Nations Environment Programme, "UN warns of toxic environmental legacy for Ukraine, region", press release, 4 July 2022.; United Nations Environment Programme, "The Environmental Impact of the Conflict in Ukraine: A Preliminary Review", October 2022.

⁴⁷⁸ OHCHR, "[Türk deplores human cost of Russia's war against Ukraine as verified civilian casualties for last year pass 21,000](#)", press release, 21 February 2023.

⁴⁷⁹ OHCHR, Civilian casualties in Ukraine from 24 February 2022 to 15 February 2023, 21 February 2023.

infrastructure, for example, ripple across health, sanitation, food security, education, employment, and other areas, and will become clear only over time.

782. International human rights law states that every human being has the inherent right to life, and no one shall be arbitrarily deprived of his life.⁴⁸⁰ Rules of international humanitarian law may be relevant for the interpretation and application of the relevant international human rights law norm when the situation calls for their application. Both spheres of law are complementary, not mutually exclusive.⁴⁸¹

783. The armed conflict has also killed and injured thousands of Ukrainian and Russian soldiers, but estimates are difficult to establish because of the confidential character of this information. The impact of the loss of thousands of people in their prime will be long-lasting. The process of rehabilitating those left physically and psychologically harmed by war is costly and long.

3. Right to health

784. The armed conflict has had a significant impact both directly on people's physical and mental health and on access to healthcare, particularly in areas close to the frontlines, and where health facilities have been destroyed or damaged, or otherwise became inaccessible. In many cases, civilians suffered life-changing injuries, long-lasting psychological trauma, and had to cope with deep anxiety and fear.

785. Every human being is entitled to the enjoyment of the highest attainable standard of physical and mental health.⁴⁸²

786. The hostilities have caused a deterioration in the level of access to health-care services and medicines. According to a World Health Organization assessment, this has been in particular the case for people living in regions close to the front line, in areas that are not fully controlled by Ukraine, and for people who have been internally displaced.⁴⁸³

787. Fighting and attacks have affected a large number of medical facilities. The World Health Organization recorded 611 attacks by heavy weapons on medical facilities between 24 February 2022 and 1 February 2023.⁴⁸⁴ In December 2022, the Deputy Ministry of Health of Ukraine reported that over 1,000 medical facilities in Ukraine had been damaged, and 144 had been completely destroyed.⁴⁸⁵ The Commission investigated the damage or destructions of some of them.

788. Among the medical facilities that were damaged or destroyed were maternity hospitals, such as the Primary Medical and Sanitary Aid Centre No. 3 in Mariupol, better known as Maternity Ward No. 3, whose maternity and children's wing was significantly damaged during an airstrike, while several women were either waiting to give birth or had just done so. In several maternity hospitals across Ukraine, women have had to give birth in basements.⁴⁸⁶ This situation raises concern, as it was reported that caesarean deliveries

⁴⁸⁰ See, for instance, International Covenant on Civil and Political Rights, article 6; Convention on the Rights of the Child, article 6.

⁴⁸¹ CCPR/C/GC/36, para. 64.

⁴⁸² For example: Universal Declaration of Human Rights, article 25; International Covenant on Economic, Social and Cultural Rights, article 12; Convention on the Elimination of All Forms of Discrimination against Women, article 12; Convention on the Rights of the Child, article 24; Convention on the Rights of Persons with Disabilities, article 25.

⁴⁸³ World Health Organization, *Health needs assessment of the adult population in Ukraine: survey report*, September 2022, 13 January 2013, p. 9. As of 30 May 2023, the World Health Organization had recorded more than 1000 attacks on Ukrainian health infrastructure during the armed conflict, which would have predictably diminished capacity and constrained access to health care. This does not include the effects on health of the attacks on the energy and thermal infrastructure, including long term effects, which will require further investigation. See World Health Organization "WHO records more than 1000 attacks on health care in Ukraine over the past 15 months of full-scale war", press release, 30 May 2023.

⁴⁸⁴ World Health Organization, Surveillance system for attacks on health care (SSA).

⁴⁸⁵ Ministry of Health of Ukraine, "Russians destroyed hospitals worth more than 1 billion dollars", 10 December, 2022 (available only in Ukrainian);

⁴⁸⁶ OHCHR, Update on the human rights situation in Ukraine Reporting period: 24 February – 26 March, para. 19.

increased due to stress and disruption to prenatal services, especially for internally displaced persons, as well as an increase of complicated deliveries and miscarriages.⁴⁸⁷

789. The World Health Organization also found that, while the situation has been improving, access to health and medicine has been challenging, especially for people close to frontlines and in areas which returned to Ukrainian control.⁴⁸⁸ It identified cost and time constraints to get to and from health facilities, as well as limited transportation options, as the main barriers to accessing health care. For access to medicines, the top three barriers consisted of the increase in price, unavailability and long queues in local pharmacies.⁴⁸⁹ The Health Cluster in Ukraine also reported that the armed conflict has disrupted the supply chains for medicines and medical supplies.⁴⁹⁰

790. The above-mentioned factors have exacerbated the burden of chronic disease.⁴⁹¹ People living close to frontlines and in Russian-controlled territories have been particularly affected. For instance, one woman told the Commission that during a time when Ivankiv village, Chernihiv region, was under Russian control, chemotherapy was not accessible to people suffering from cancer. It should also be noted that the World Health Organization found that women with chronic conditions were less likely than men not to receive the medical care they needed.⁴⁹²

791. The armed conflict has left numerous persons with long-lasting injuries and trauma. Many victims of attacks with explosive weapons, including landmines, had to undergo amputations, sometimes of several limbs, requiring long rehabilitation. Others sustained severe injuries, such as one woman who suffered significant loss of sight, damage to her hearing, and scarring across her face and body when a missile struck near her apartment building in Kharkiv city.

792. Persons who remained in basements or in crowded spaces also suffered from illnesses and disease, sometimes leading to death. In a case in which Russian armed forces confined 365 civilians, including older persons, over 70 children and five persons with disabilities, in a basement in Yahidne village, Chernihiv region, during 28 days, 10 older people died because of the inhuman conditions. Victims suffered from infections, bedsores, and hallucinations (see paras. 541-543). One woman who, because of heavy fighting, had to spend the night in the basement of a hospital in Chernihiv city together with patients, persons from the neighbourhood, and wounded soldiers, told the Commission that there were too many persons there, including those infected with COVID-19, and that it was very cold.

793. The armed conflict has had a major impact on the mental health of the population. According to the Minister of Health of Ukraine, more than 90 per cent of Ukrainians have one or more symptoms of post-traumatic stress disorder due to the ongoing armed conflict.⁴⁹³ During a survey by the International Organization for Migration in November-December 2022, 27 per cent of internally displaced persons asked for the number to the organization's free psychological support hotline. The percentage among older persons reached 35.⁴⁹⁴ A

⁴⁸⁷ World Health Organization (Health Cluster in Ukraine), *Public Health Situation Analysis (PHSA) – Long-form*, 1 August 2022, p. 42.

⁴⁸⁸ World Health Organization, *WHO response to the Ukraine crisis, March 2023 Bulletin*, Situation Report, 15 May 2023; World Health Organization (Health Cluster in Ukraine) "The Health Cluster in Ukraine – 1 year after the war", press release, 26 April 2023; World Health Organization, *WHO response to the Ukraine crisis; February 2023 Bulletin*, Situation Report, 27 March 2023.

⁴⁸⁹ World Health Organization, *Health needs assessment of the adult population in Ukraine: survey report, September 2022*, 13 January 2023, pp. 24-25.

⁴⁹⁰ World Health Organization, *Health needs assessment of the adult population in Ukraine: survey report, September 2022*, 13 January 2023, p. 9.

⁴⁹¹ United Nations, Office for the Coordination of Humanitarian Affairs, "Ukraine Humanitarian Needs Overview 2023", 28 December 2022, p. 24.

⁴⁹² World Health Organization, *Health needs assessment of the adult population in Ukraine: survey report, September 2022*, 13 January 2023, p. 10.

⁴⁹³ Neil Bowdler (Radio Free Europe radio Liberty), "Psychologists battle to help Ukraine's shell-shocked population", video, 11 October 2022.

⁴⁹⁴ International Organization for Migration, "Ukraine – Internal Displacement Report – General Population Survey Round 11 (25 November – 5 December 2022)", 2 February 2023 (25 November-5 December 2022), 13 December 2023.

psychologist shared that suicidal thoughts have been mentioned by patients more often than before the armed conflict.

794. During its investigations, the Commission witnessed first-hand some of the psychological effects of the armed conflict. Interlocutors showed visible signs of trauma and recalled the psychological impact on family members, including children. The death of close relatives significantly affected the survivors. When asked about the impact of the death of her 7-year-old daughter and her 67-year-old father, one woman in Sumy region told the Commission: “I know for sure that my war will never end.”

795. The mental impact of the death of a family member was in many cases compounded by the lack of a proper burial according to cultural and religious rituals, either due to security concerns, because armed forces prevented it, or because the bodies were never found. There are reports that Russian armed forces in several places prevented relatives and local residents from burying bodies lying in the street, leaving them there for days or even weeks.⁴⁹⁵ In Mariupol city, Donetsk region, and Rubizhne city, Luhansk region, for example, people laid loved ones to rest on a patch of soil near apartment building entrances, school grounds, gardens, and parks when hostilities were ongoing. When circumstances allowed it, the exhumation, the forensic examination, and the re-burial of their loved ones added to their grief and trauma.

796. Several survivors of explosive weapons attacks reported how they experienced panic attacks and anxiety in the aftermath and reported the same about their children. A woman from Kharkiv explained that her 11-year-old daughter, who received minor injuries during an air raid, continued to have panic attacks for a long time after they had reached safety, whenever she heard an air raid alarm. A resident of Mariupol city remained traumatized by the sound of airplanes several months after her evacuation from the city, while a father of an 8-year-old boy, also from Mariupol city, explained that his son continued to have panic attacks triggered by the sound of airplanes or by power cuts. A psychologist said that she had observed air raid sirens triggering physical reactions with children; for instance, their hands started to shake.⁴⁹⁶ One victim recounted that she is now scared of thunder and fireworks, even when she is outside of Ukraine, and that she sits in the corridor, just in case.

797. According to United Nations and media reports, stress provoked by the armed conflict has impacted pregnant women and increased the risks of premature births. Premature babies are more likely to develop medical complications which require incubators and ventilation devices, which rely on the availability of power.⁴⁹⁷

798. The mental health toll has also affected volunteers and medical personnel who respond to mass casualty events or support in the exhumation or care of bodies.⁴⁹⁸ A doctor who treated injured people in Kremenchuk city, Poltava region, after a missile struck a shopping centre killing 21 persons and injuring dozens, noted the psychological impact on his staff, and in particular the traumatic effect of interacting with desperate relatives who were searching for their loved ones. Psychiatrists and psychologists have also been directly impacted by the armed conflict and have been overwhelmed because of the increased workload; some had to take refuge outside the country.⁴⁹⁹

799. The general feeling that violations were committed with impunity has been an important source of fear and anxiety. For instance, the wife of a detained person said that the

⁴⁹⁵ Malachy Browne, David Botti, Haley Willis, “Satellite images show bodies lay in Bucha for weeks, despite Russian claims”, *The New York Times*, 4 April 2022 (updated on 6 April 2022).

⁴⁹⁶ See also Informative posters regarding symptoms: Lesia Vasylenko, Tweet, 24 December 2022.

⁴⁹⁷ United Nations, “More breathing devices needed for premature babies born in Ukraine”, press release, 9 August 2022; Ukraine World, “Giving birth and being a mother during war: What is it like?”, 11 January 2023; Jan-Philipp Scholz, Tamara Kiptenko (Deutsche Welle), “Wartime Ukraine: more babies born prematurely”, 5 November 2022.

⁴⁹⁸ Isobel Koshiw, Lorenzo Tondo, “‘Someone has to do it’: the volunteers exhuming Kyiv region’s dead”, *The Guardian*, 30 April 2022.

⁴⁹⁹ Handicap International, “Ukraine, where sirens sound day and night. A focus on persons with disabilities and provision of emergency health services”, factsheet, October 2022; International Medical Corps “Mental Health & Psychosocial Support Rapid Situational Analysis Ukraine—Kyiv, Odessa & Lviv (April 2022)”, 18 August 2022; World Health Organization, Ukrainian Prioritized Multisectoral Mental Health and Psychosocial Support Actions During and After the War: Operational Roadmap, 9 December 2022.

fear of being shelled and killed aside, the knowledge that one can be detained and killed at any moment, or that you can live without the respect of the rule of law, was terrifying. One man explained that, when his family hears the sound of a vehicle at night, they wonder if people are “coming for them”. Another man told the Commission that he feared the return of Russian armed forces, if they are not held accountable. A psychologist explained that some of her patients were reluctant to report crimes, fearing retaliation from people cooperating with the Russian authorities.

800. Survivors of human rights violations and related crimes have suffered both physical and psychological effects. One woman who was unlawfully detained said “*seven months past, it is still aching, and I still feel humiliation and fear [...] I have flashbacks*”.

4. Right to education

801. The armed conflict has deeply affected children and their right to education. The use of explosive weapons in populated areas has led to the damage and destruction of numerous educational institutions across many of the regions affected by hostilities. It has forced children living in the concerned areas to spend considerable time in shelters. Large-scale displacement has further compounded these challenges. Online education also came with a range of difficulties. The psychological effect of the armed conflict, fear and anxiety, have impacted the children’s ability to focus on their studies. Occupation of territories by Russian armed forces has also led to changes in the type of education provided.

802. The right to education is universal.⁵⁰⁰ International human rights law provides that education shall be directed to, among other things, the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms.⁵⁰¹ It also states that education shall be directed to the development of respect for the child’s parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilisations different from his or her own.⁵⁰²

803. The current armed conflict has led to the damage and destruction of over 3000 educational institutions.⁵⁰³ Through witness accounts and reviews of photographs and video footage, the Commission has examined reports regarding the damage or destruction of 30 institutions and has inspected five of them in person. Several of the schools it visited had been completely destroyed.

804. Because of the damage to and destruction of schools, the lack of electricity, heating and sometimes water in schools as a consequence of the armed conflict, the lack of appropriate bomb shelters, as well as dangers related to fighting and the presence of mines and unexploded ordnance, a significant number of children had to enrol in online education (see para. 277). As of November 2022, almost half of operational schools in Ukraine were functioning online, while a third was operating in a hybrid online/in-person regime, according to the Ukrainian Ministry of Education and Science.⁵⁰⁴

805. A key problem was the frequent need, at times for prolonged periods, to go to shelters or basements, which disrupted the conduct of classes. While out of 95 per cent of the educational institutions checked by the Ministry of Education and Science in December 2022, 68 per cent had approved shelters, 56 per cent of schools did not have the capacity to deliver

⁵⁰⁰ For example: Universal Declaration of Human Rights, article 26; International Covenant on Civil and Political Rights, article 18; International Covenant on Economic, Social and Cultural Rights, article 13; Convention on the Elimination of All Forms of Discrimination against Women, article 10; Convention on the Rights of the Child, articles 28-29.

⁵⁰¹ Universal Declaration of Human Rights, article 26(2); International Covenant on Economic, Social and Cultural Rights, article 13(1); Convention on the Rights of the Child, article 29(1).

⁵⁰² Convention on the Rights of the Child, article 29(1)(c).

⁵⁰³ UNICEF, “War has hampered education for 5.3 Million children in Ukraine”, press release, 24 January 2023.

⁵⁰⁴ Response by the Ukrainian Education Ombudsman: as of 11 December 2022, 9,855 preschool institutions started operations, including: 5,083 institutions - in face-to-face mode (334,303 students), 3,455 institutions - in remote mode (235,916 students), 1,317 institutions - in blended mode (112,154 students). As of 24 December 2022, 12,900 general secondary education institutions have started the educational process, including: in face-to-face format 3,600 schools; in remote format 4,500 schools; in blended format - over 4,600 schools.

lessons in-person inside the shelters.⁵⁰⁵ A 17-year-old girl who wrote to the Commission said “as soon as there’s an air raid warning the studying process stops and everybody goes to the shelter. Sometimes you can sit the half of the school day in the shelter.”⁵⁰⁶

806. As outlined above, the armed conflict in Ukraine has resulted in a massive displacement of populations, both across the borders and within Ukraine. Refugees and internally displaced persons include primarily children, women, and older persons. Large numbers of students and educators are among the displaced persons and this has had a significant impact on education service delivery.⁵⁰⁷ While authorities and educators have made efforts to adapt and continue with the education process during the armed conflict, it has not been a full-fledged substitute for in-person education. The armed conflict has also affected online education. In a survey by the Office of the Education Ombudsman of Ukraine, parents invoked that in some areas, distance learning was organized partially or only for a certain period of time – this was mainly the case for Donetsk, Dnipropetrovsk, Kharkiv and Luhansk regions – or was not organized at all. Online education was particularly challenging in Russian-occupied territories, where access to the internet was poor and many Ukrainian sites were blocked. Witnesses from those territories said that students faced the challenge of finding locations that were both safe and with connectivity, to be able to submit their homework. A 19-year-old student from occupied Nova Kakhovka city, in Kherson region, told the Commission how she had to go outside and sit by a certain window to find connectivity and send her exams from there.

807. Parents also identified poor or no access to the internet and challenges related to the lack of devices⁵⁰⁸ as the main problem hampering children’s education.⁵⁰⁹ In some places, during a power outage, there was no mobile internet and network connection, so the educational process was interrupted. Systematic attacks on the country’s energy infrastructure compounded the challenges of organizing education remotely. A 17-year-old boy from Kharkiv region wrote to the Commission: “now due to attacks at power plants, electricity is not always working, so Ukrainian children cannot even study online like it was before”.⁵¹⁰

808. In the survey of the Office of the Education Ombudsperson of Ukraine, parents identified the children’s emotional or psychological state as a main factor preventing them from studying. According to a mother interviewed by the Commission, her children had practically lost one year of schooling due to the electricity cuts, the need to stay in basements and due to displacements, and that after the children settled in Georgia, they found it very difficult to concentrate and follow classes offline. Lack of socialization also has a toll on children’s well-being. An education assessment in Kharkiv region found that most teenagers were fully dependent on their smartphones for learning and social communication, and due to the insecurity, many children had stayed indoors for almost the entire year.⁵¹¹

809. The armed conflict has not only had an impact on access to education. The Commission documented instances in which Russian authorities used coercion against school personnel to force them to apply Russian curricula, and against parents, to force them to enrol

⁵⁰⁵ Serhiy Shkarlet, Telegram message, 12 December 2022 (available only in Ukrainian)

⁵⁰⁶ Written submissions sent to the Commission by children aged 12 to 17 who fled Ukraine due to the war.

⁵⁰⁷ The World Bank, Education: Impact of the War in Ukraine, 18 May 2022, see also: UNICEF, Ukraine war response: Ensuring access to learning; United Nations, “Ukraine war disrupts education for more than five million children: UNICEF”, press release, 23 January 2023.

⁵⁰⁸ An education assessment in Kharkiv region found that the lack of devices was especially pressing for children from larger families or families with limited economic means. Parents reported that children in such situations often had to take turns in using the devices, at times till late in the evening; see: AVSI Foundation, Finn Church Aid, People in Need, Plan International, Save The Children, Ukraine: Kharkiv oblast - Joint Education Needs Assessment”, 30 January 2023, p. 5.

⁵⁰⁹ Ukrainian Education Ombudsman, “Problems related to the education of children who are in Ukraine”, 16 August 2022. (available only in Ukrainian) To face these problems, local governments were providing educational institutions with generators and uninterruptible power supply systems, to ensure minimum electric power supply in educational institutions.

⁵¹⁰ Written submissions sent to the Commission by children aged 12 to 17, who are based outside Ukraine due to the armed conflict.

⁵¹¹ AVSI Foundation, Finn Church Aid, People in Need, Plan International, Save The Children, Ukraine: Kharkiv oblast - Joint Education Needs Assessment”, 30 January 2023.

their children in schools operating under the Russian education system (see paras. 700-708). This has affected children's right to education, and notably the type of education available.⁵¹²

5. Right to adequate housing

810. The armed conflict has affected civilians' right to an adequate standard of living, including adequate housing. The use of explosive weapons with wide-area effects has damaged or destroyed thousands of residential buildings across the country, particularly in areas close to the front line. This has had a worrisome toll on civilians, and in particular on the most vulnerable groups.

811. International human rights law recognises the right to an adequate standard of living, including adequate housing.⁵¹³

812. The Commission has observed first-hand damage and destruction of houses and buildings, as well as of schools and hospitals in most of the areas it visited. It has been concerned by the level of destruction in several Ukrainian cities, including Chernihiv, Iziurm, Kharkiv, and Mariupol. In many instances, buildings have been damaged beyond repair. In other cases, people had no other place to live than in partially demolished homes, despite freezing temperatures. Entire sections or walls of apartment buildings have collapsed or disappeared, which endangered their internal structure. Humanitarian organizations launched programmes to provide people with warm, safe and dignified living conditions.⁵¹⁴ However, many persons, especially residents of small villages close to fighting or directly on frontlines, did not have access to this type of support. Fighting has also been the most intense in the regions with the lowest temperatures.⁵¹⁵

813. Civilians' right to adequate housing has also been affected by the systematic attacks on Ukraine's energy-related infrastructure (see paras. 275-278). The attacks have put the Ukrainian energy system under considerable pressure just as winter was setting in. They caused disruptions not only impacting the electricity supply for the population, but also water, heating, sanitation, and telecommunication.

6. Right to food and water

814. The armed conflict has significantly compromised civilians' access to food and water. This has been particularly the case in areas affected by heavy fighting or under siege. Fighting or attacks led to damage of critical installation providing water and electricity, and civilians took considerable risks while attempting to find basic supplies.

815. International human rights law recognises the right to an adequate standard of living, including adequate food.⁵¹⁶ Adequacy will differ for infants, children, adults and older persons.⁵¹⁷ In the same vein, everyone has a right to water.⁵¹⁸

816. According to the United Nations Office for Coordination of Humanitarian Affairs, 11.1 million persons in Ukraine were in need of food assistance as at the end of 2022.⁵¹⁹ Intense fighting in many areas meant that people were unable to look for food and water. For instance, in Hostomel city, a few days after the outset of the armed conflict, there was already

⁵¹² Convention on the Rights of the Child, articles 28 and 29.

⁵¹³ For example: Universal Declaration of Human Rights, article 25; International Covenant on Economic, Social and Cultural Rights, article 11(1); Convention on the rights of the child, article 27.

⁵¹⁴ United Nations, Office for the Coordination of Humanitarian Affairs, "Ukraine: Winterization Plan - Winter Priority Procurement & Repair Plan 2022 - 2023", 15 July 2022.

⁵¹⁵ United Nations, Office for the Coordination of Humanitarian Affairs, "Ukraine: Winterization Plan - Winter Priority Procurement & Repair Plan 2022 - 2023", 15 July 2022.

⁵¹⁶ For example: Universal Declaration of Human Rights, article 25; International Covenant on Economic, Social and Cultural Rights, article 11; Convention on the Rights of the Child, article 24(2)(c).

⁵¹⁷ E/C.12/1999/5, para. 13, see also paras. 6-12.

⁵¹⁸ The right to water is derived from the right to an adequate standard of living under article 11(1) of the International Covenant on Economic, Social and Cultural Rights before being expressly included in various international instruments, including the Convention on the Elimination of All Forms of Discrimination Against Women in article 14(2)(h) and the Convention on the Rights of the Child in article 24(2)(c) (see E/C.12/2002/11, paras. 2-6).

⁵¹⁹ United Nations, Office for the Coordination of Humanitarian Affairs, United Nations, Office for the Coordination of Humanitarian Affairs, "Ukraine Humanitarian Needs Overview 2023", 28 December 2022.

no electricity, limited water and gas, and people were struggling to find food. A resident of Mariupol told the Commission that starting early March 2022, there was first no electricity, then no water, and finally no gas and heating. She was cooking over a small stove in the yard. Airstrikes had also started in early March 2022. Another resident from Mariupol recounted that together with his family, he spent nearly a month without most essential necessities, including water, electricity, heating, and communications. They cooked in the courtyard on a grill, with a fire, and gathered water from open sources outside. One woman in Izium, Kharkiv region, reported to the Commission that she did not eat for two days after shelling struck her building, cutting it off from water, electricity and gas during intensive fighting in her area.

817. Getting water was sometimes challenging. Residents from Kupiansk city, Kharkiv region, and Mariupol city, Donetsk region, explained that they had to collect and boil water from rain or wells. Several people indicated that for some time, they only had access to non-potable water, which led to health issues.

818. Civilians' rights to food and water were particularly affected in towns and cities that came under siege by Russian armed forces. Many people in these cities recounted the scarcity of food, especially when their ability to move was limited.

819. Despite ongoing attack and considerable risks, civilians eventually had to leave their shelters to look for food and water. A woman farmer in Mala Rohan village, Kharkiv region, recounted how she, at considerable risk because of ongoing shelling, distributed bread and milk from her farm to older persons in the village because of the shortages. While she was not injured, in several cases documented by the Commission, civilians were killed or injured because they went to search for food.

820. Detained civilians and Ukrainian prisoners of war consistently described that they were not provided adequate food and water during their detention, and that those who were subject to prolonged detention often lost significant weight.

821. In some places, restrictions imposed by Russian authorities seemed to aggravate the scarcity of food. Residents in Kharkiv and Kherson regions told the Commission that once Russian armed forces had occupied an area, they did not allow humanitarian aid from Ukrainian controlled territory to enter or they controlled who received aid. Witnesses said that humanitarian aid in territories controlled by Russian armed forces was scarce, of low quality, and sometimes subject to conditions, especially with the referendums approaching.

822. For example, in Nova Kakhova city, Kherson region, it was reported that an official was arrested in August 2022 and detained for almost two months because she had refused to collaborate with the occupying authorities and was bringing humanitarian aid from Ukrainian-controlled territory. Russian authorities reportedly insisted that only Russian-provided aid should be distributed and that residents should refuse Ukrainian humanitarian aid.

7. Impact of the armed conflict on vulnerable groups

823. While the current armed conflict is affecting the entire population in Ukraine, some individuals have been more vulnerable than others. This includes older persons, persons with disabilities, members of the LGBTI community, and persons belonging to a minority group. Some individuals present intersectional vulnerabilities, which puts them at even greater risk. Persons residing in social protection and education institutions may also be in a particularly vulnerable situation. The specific problems faced by persons belonging to these groups are often not visible, and therefore not addressed. This increases their vulnerability and affects the full realization of their human rights.

a) Older persons

824. Older persons have been particularly affected by the armed conflict. Many older persons living near or on frontlines, have been unable or unwilling to evacuate to safety and became trapped in the conflict zone.⁵²⁰ It is estimated that about 25 per cent of the population in Ukraine is older than 60 years. In the Donetsk and Luhansk regions alone, this proportion

⁵²⁰ United Nations, "UN disability rights committee publishes findings on Bangladesh, China, Indonesia, Japan, Korea, Lao, New Zealand, Singapore and Ukraine", press release, 9 September 2022; HelpAge, "Older people at the edge of survival in Ukraine", 4 March 2022.

is estimated at 30 per cent. In June 2022, OHCHR, the United Nations Population Fund, the World Health Organization Regional Office for Europe and HelpAge International signed a joint statement highlighting the challenges faced by older persons related to health, housing, and financial and economic needs. The statement underlined that 60 per cent of older persons who have been affected by the armed conflict are women.⁵²¹

825. In smaller towns and villages, older persons told the Commission that they sheltered from explosive weapons in small cellars, usually used for food storage and often located outside the main dwelling, which exposed them to particular risks and hardship. One 62-year-old woman in Sumy region was injured in an explosion while running to her cellar – her husband and an older couple staying with them were killed. A 75-year-old woman told the Commission that she spent 83 days taking cover in a small cellar, with her son and her three-year-old grandson.

826. Often dependent on distribution of aid or pensions, which required them to stand in queue in the street, older persons were sometimes more vulnerable to the impact of attacks with explosive weapons. In two cases documented by the Commission, older persons were disproportionately represented among those killed and injured because they were standing in line outside when the attacks happened. This was the case of the 17 March 2022 attack in Chernihiv city and the 16 July 2022 cluster munition attack in Izium city (see paras. 215-221 and 255). The Commission received reports that in Russian-occupied territories, pensioners felt compelled to apply for a Russian passport in order to receive social benefits. The dependence of older persons on pensions also played a role in their participation in the so-called referendums organized in temporarily occupied territories in September 2022 (see para. 690)

b) Persons with disabilities

827. Children and adults with disabilities have faced a disproportionate risk of death or injuries in the armed conflict in Ukraine. Persons with a disability and those caring for them have encountered considerable difficulties in seeking safety or fleeing from the hostilities, or they have been unable to do so. Women and girls with disabilities, particularly women with intellectual and psychosocial disabilities, are facing a higher risk of sexual and gender-based violence, and trafficking during armed conflict.⁵²²

828. Ratified by both the Russian Federation and Ukraine, the Convention on the Rights of Persons with Disabilities requires States to take all necessary measures to ensure the protection and safety of persons with disabilities in situations of risk, including armed conflict and humanitarian emergencies.⁵²³ United Nations Security Council Resolution 2475(2019), addressing the disproportionate impact of armed conflict and related humanitarian crises on persons with disabilities, calls upon Member States and parties to armed conflict to, among other things, protect persons with disabilities and to ensure they have access to justice and basic services on an equal basis with others.⁵²⁴

829. In mid-April 2022, the Committee on the Rights of Persons with Disabilities estimated the number of persons with disabilities potentially affected by the armed conflict in Ukraine to be 2.7 million.⁵²⁵ In a special report released in September 2022,⁵²⁶ the same Committee expressed its concerns related to the disproportionate risk of death or injury to which persons with disabilities are exposed, as a result of indiscriminate attacks against the civilian population, the lack of involvement and meaningful participation of persons with disabilities in emergency preparedness and response, including in setting priorities for evacuation strategies and aid distribution, or the lack of accessibility of information and alert mechanisms in evacuation procedures. It also expressed its grave concerns about the situation

⁵²¹OHCHR, United Nations Population Fund (UNFPA), World Health Organization Regional Office for Europe and HelpAge International. “Joint statement on the situation of older persons in Ukraine”, 14 June 2022.

⁵²² A/HRC/20/5.

⁵²³ Convention on the Rights of Persons with Disabilities, article 11.

⁵²⁴ S/RES/2475(2019), paras. 1-2, 5.

⁵²⁵ UN Committee on the Rights of Persons with Disabilities, “Ukraine: 2.7 million people with disabilities at risk, UN committee warns”, 14 April 2022.

⁵²⁶ On 9 September 2022, the same committee released a special report on the situation of persons with disability in Ukraine and in countries they had to fled: CRPD/C/27/2, Section XI.

of persons with disabilities in areas under the control of the Russian Federation. The Committee addressed the specific situation of children with disabilities in the same report. In addition, on 7 October 2022 together with the Committee on the Rights of the Child, it issued a joint statement calling for urgent action to protect Ukrainian children with disabilities in residential care institutions.⁵²⁷

830. Many persons living with disabilities are bedridden and most often unable to seek shelter during attacks.⁵²⁸ For instance, in Iziium city, an older woman who was bedridden and could not go to the shelter in the basement remained in her apartment on the third floor. The building was destroyed in an airstrike and the woman was never found.

831. Caregivers, mostly women, are often put in a very difficult situation where they have to choose between fleeing to safety or staying to care for their loved ones.⁵²⁹ In Mariupol city, a woman became exposed to airstrikes because she had to help her 71-year-old uncle who had a disability and was unable to leave his apartment. One man who was living with his chronically ill mother in Mariupol city explained how he could not leave the city because of her.

c) Persons belonging to the LGBTI community

832. The armed conflict has also had a serious impact on the rights of persons belonging to the LGBTI community, who have notably been victims of discrimination. It has been reported that members of this community have lived in fear in territories under Russian Federation control because of the extreme views prevailing in the Russian Federation on LGBTI questions.⁵³⁰ On a positive note, in December 2022, several provisions prohibiting discrimination or harassment against individuals and groups of persons on the basis of, among other things, sexual orientation, have been introduced in the Ukrainian Media Law.⁵³¹

833. The Commission has been informed of instances in which persons from the LGBTI community have been discriminated against in collective displacement centres. As a consequence, civil society organizations have organized private shelters for LGBTI displaced persons and their family members. At the beginning of the armed conflict, reports emerged that transgender women were being turned back at the Ukrainian border when the gender on their identification documents did not match their actual gender or because Ukrainian border guards refused to let transgender women leave the country, despite identification documents stating they were women. Several feminist organizations have therefore engaged in the evacuation of transgender persons from Ukraine, particularly at the beginning of the conflict.⁵³² Because of lack of access to hormone medicines, some internally displaced or refugee transgender persons have had to pause their treatment, or had to ‘cook’ their own hormones with the inherent risks that this represents, leading some organizations to set up networks to find and distribute hormones and to support LGBTI refugees’ access to health care and medicine.

d) Persons belonging to minorities

834. The situation of the Crimean Tatar community remains of serious concern. Since the occupation of Crimea by the Russian Federation in 2014, a range of human rights violations targeted Crimean Tatars (see para. 58). For instance, since 2014 over 230 persons have reportedly been prosecuted in Crimea for violations of public order during mass gatherings; 85 per cent of them are Crimean Tatars. In addition, since 24 February 2022, allegations of

⁵²⁷ OHCHR, “UN experts call for urgent action to protect Ukrainian children with disabilities in residential care institutions”, statement, 7 October 2022.

⁵²⁸ Handicap International, “Ukraine, where sirens sound day and night. A focus on persons with disabilities and provision of emergency health services”, factsheet, October 2022; Sam Mednick (Devex), “People with disabilities left behind during the war in Ukraine”, 05 July 2022.

⁵²⁹ UN Women and CARE, *Rapid gender analysis of Ukraine: Secondary data review*, 29 March 2022.

⁵³⁰ Olena Tkalic (Socportal), “We should not look abnormal. How the LGBT community survives in the occupied Kherson”, 2 August 2022.

⁵³¹ Ukraine, Law of Ukraine about media, № 2849-IX, 13 December 2022.

⁵³² Lorenzo Tondo, “‘I will not be held prisoner’: the trans women turned back at Ukraine’s borders”, *The Guardian*, 22 March 2022; UNAIDS, “Ukrainian activist Anastasiia Yeva Domani talks to UNAIDS about how the transgender community is coping during the war in Ukraine”, 30 March 2022.

detentions, abusive use of the law process against Crimean Tatar persons, including for opposing the Russian invasion, as well as of forced conscription, have emerged. The Organization for Security and Co-operation in Europe has noted that several Crimean Tatar activists have been arrested on dubious grounds, such as high treason or financial support of terrorism.⁵³³ According to OHCHR, Crimean Tatars have been disproportionately targeted by the police and under terrorist proceedings, which often fell short of human rights standards.⁵³⁴ It reported that a school administration in Crimea refused to prolong a contract with a female Crimean Tatar teacher following complaints by students' parents, as she had discussed with her students alleged violations against civilians by the Russian armed forces in Ukraine. She was convicted for "discrediting the Russian Federation Armed Forces", which was upheld by the Supreme Court of Crimea on 10 August 2022. She was fined 30,000 Russian roubles and forced to seek employment in a different region.⁵³⁵ Another example is the case of Dzhemil Hafarov, who had been reportedly detained for several years and sentenced by a Russian court, in January 2023, to 13 years of imprisonment, despite very poor health. He died a few weeks later.⁵³⁶

VII. Accountability measures

A. Introduction and overview

835. According to the Commission's mandate, it shall "make recommendations, in particular on accountability measures, all with a view to ending impunity and ensuring accountability, including, as appropriate, individual criminal responsibility, and access to justice for victims".⁵³⁷

836. "Accountability measures" is a broad term which can be interpreted in several ways. The Commission's main focus will be on three aspects: general recommendations with a view to criminal responsibility; specific recommendations individualising persons or entities that appear to have committed criminal offences; and non-judicial accountability, including the right to truth, reparation, and guarantees of non-recurrence.

837. *Part I* of this chapter covers investigatory mechanisms and criminal accountability measures. As described previously in this report, the Commission has found numerous violations of international human rights and of international humanitarian law, as well as related crimes. The Commission will first consider existing and possible national measures in Ukraine (see B and C) as well as in other States investigating the violations (see D). Then follows an overview of existing investigatory and criminal accountability alternatives at the international level (see E) before some issues of coordination between national and international measures (see F). Finally, the Commission considers proposed international accountability measures (see G).

838. The purpose of part I of this chapter is twofold. First, to take stock and describe the existing and proposed main accountability measures, as well as efforts to coordinate them to minimize both re-traumatisation of victims and unnecessary duplication of similar measures. Second, to develop a basis for the Commission's assessments.

839. In *part II* of this chapter, the Commission will consider non-judicial measures of accountability. Throughout its work, the Commission has consistently emphasized its victim-

⁵³³ Organization for Security and Co-operation in Europe, Report on violations of international humanitarian and human rights law, war crimes and crimes against humanity committed in Ukraine since 24 February 2022 (Moscow's Mechanism), 13 April 2022, pp. 82 and 84.

⁵³⁴ OHCHR, "Human Rights Council discusses the situation of human rights in Ukraine and in the Democratic Republic of the Congo under its technical assistance and capacity building agenda item", press release, 4 October 2022. <https://www.ohchr.org/en/press-releases/2022/10/human-rights-council-discusses-situation-human-rights-ukraine-and-democratic>

⁵³⁵ OHCHR, Report on the Human Rights Situation in Ukraine, 1 August 2022 – 31 January 2023, para 80.

⁵³⁶ Dzhemil Hafarov was a Crimean Tatar activist who had been reportedly held in detention since 2019, after being accused of participating in the activities of a terrorist organization. He was reportedly not provided with necessary medical assistance during detention. See: Media Initiative for Human Rights, "Statement by human rights organizations regarding the death of Ukrainian prisoners of the Kremlin Kostiantyn Shyring and Dzhemil Hafarov in Russian prisons", 15 February 2023.

⁵³⁷ A/HRC/RES/49/1, para. 11(e).

centred approach, including the needs of the various groups of victims, integrating a gender perspective, the importance of accountability, as well as of measures of recognition, reparation, rehabilitation, reconstruction and guarantees of non-repetition. The Commission's mandate explicitly refers to "access to justice for victims" when considering recommendations on accountability. After an introduction (see H), discussions of reparations and truth follow (see I and J). Part II also contains the Commission's assessments with respect to non-judicial accountability measures.

840. It follows from the above overview that this chapter is limited to accountability measures indicated in the Commission's mandate. Many international organizations and mechanisms (courts, ombudspersons, committees, rapporteurs etc.) focus on state responsibility. Their work, which is very important and supplements individual accountability, will not be described in this chapter. It is noted that such work is directly relevant in order to reduce, avoid or remedy violations and abuses in connection with the armed conflict in Ukraine. Illustrations from the UN system are, for instance, the committees operating under the International Covenant on Civil and Political Rights, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the Convention on the Rights of the Child. Accountability measures also depend on the contributions and efforts of civil society organizations that collect, preserve and present evidence to relevant mechanisms.

841. Furthermore, the European Court of Human Rights is considering a large number of individual applications by victims in Ukraine, submitted both between 2014 and late February 2022, and subsequently. It is also seized with five inter-state cases of relevance to the armed conflict, of which four are between Ukraine and the Russian Federation.⁵³⁸ Another illustration is the case instituted by Ukraine against the Russian Federation before the International Court of Justice (ICJ) relating to the Genocide Convention of 1948, where the ICJ ordered the Russian Federation to suspend its military operations.⁵³⁹

Part I. Investigatory Mechanisms and Criminal Accountability Measures

B. Existing Ukrainian criminal accountability measures

Ukrainian investigating and prosecuting authorities

842. The main prosecution body in Ukraine is the Office of the Prosecutor General, pursuant to, among others, article 131-1 of the Constitution of Ukraine.⁵⁴⁰ Since 1991, the Office of the Prosecutor General has undergone several developments and reforms, including its constitutionally granted powers and organizational structure. As part of reforms in 2019, the total number of prosecutors in Ukraine was planned to be reduced to less than 10,000, which was more in line with the per capita average of prosecutors in other European states.⁵⁴¹ Within the Office of the Prosecutor General is a central war crimes unit, as well as regional

⁵³⁸ It follows from the Court's country profile about Ukraine that 10,398 individual applications were pending as of 1 January 2023; they appear to be related to the events in Crimea, Eastern Ukraine and the Azov Sea. Four interstate cases between Ukraine and the Russian Federation are under consideration. Of particular significance is the admissibility decision of 30 November 2022 in the case of *Ukraine and the Netherlands v. Russia* (European Court of Human Rights, *Ukraine and the Netherlands v. Russia*, Applications no. 8019/16, 43800/14 and 28525/20, Decision, 30 November 2022). The Court found that the Russian Federation had effective control over all areas in the hands of separatists from 11 May 2014 on account of its military presence in eastern Ukraine and the decisive degree of influence it enjoyed over these areas as a result of its military, political and economic support to the "Donetsk People's Republic" and the "Lugansk People's Republic". The decision is final.

⁵³⁹ *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation), Provisional Measures, Order of 16 March 2022, I.C.J. Reports 2022*, p. 211.

⁵⁴⁰ Ukraine, Constitution of Ukraine, 28 June 1996.

⁵⁴¹ William D. Meyer, *Under Assault: A Status Report on the Ukrainian Justice System in Wartime*, (Stockholm, International Legal Assistance Consortium, 2022), p. 26.

war crimes units, that focus on investigating crimes related to the ongoing armed conflict.⁵⁴² In October 2022, the Ukrainian Prosecutor General stated that they are prioritizing “effective investigation and prosecution of war crimes, cases of treason and acts of collaboration”. A specialized unit has also been established to deal with conflict-related sexual violence crimes.⁵⁴³

843. Two of the main Ukrainian authorities involved in investigating the conflict-related crimes are the Security Service of Ukraine and the State Bureau of Investigation. The Security Service of Ukraine has the main responsibility for investigating war crimes.⁵⁴⁴ The State Bureau of Investigation assists at the request of the Office of the Prosecutor General. The two authorities collaborate on investigative activities. Generally, the State Bureau of Investigation investigates allegations against, among others, senior Ukrainian officials and Ukrainian military personnel. However, since 2014, the State Bureau of Investigation has been working on war crimes investigations.

844. One of the main challenges for the Office of the Prosecutor General is addressing the large number of registered cases relating to the armed conflict. As of 10 February 2023, the Office of the Prosecutor General reported that it had registered 68,893 crimes of aggression and war crimes, pursuant to, among others, articles 436, 437 and 438 of the Criminal Code of Ukraine.⁵⁴⁵ For any prosecution office anywhere in the world, this number of registered crimes would be a challenge to investigate and, if sufficient evidence exists, to prepare cases for trial and subsequent legal proceedings. The crimes related to the armed conflict are in addition to the usual workload of domestic crimes that a public prosecution service would need to handle.

845. Flowing from the above challenge is the need for enough prosecutors experienced or trained in investigating international humanitarian law and international criminal law cases. Given the specialized nature of the applicable legal provisions, training would not be limited to substantive law but likely include techniques on building cases concerning large, complex crime bases, methods of organizing and assessing volumes of evidence, and means of obtaining evidence to connect suspects to crime bases. Further, as discussed below in the Commission’s assessment, there is a need for the articulation of a prosecutorial prioritization strategy.

846. The Office of the Prosecutor General cooperates with Ukrainian agencies as well as national bodies from other States and international bodies, such as the Office of the Prosecutor at the International Criminal Court. Such collaboration aids in, among other things, addressing the need to develop and enhance expertise within Ukraine, as well as providing resources such as forensic investigative resources and information technology tools.

847. The challenges for the Security Service of Ukraine and the State Bureau of Investigation are similar to those of the Office of the Prosecutor General, namely that the vast number of allegations and registered cases require sufficient personnel and resources. However, the authorities have been developing and strengthening their expertise since 2014 regarding investigating crimes related to armed conflict. The authorities have also engaged with experts from other States who have assisted with training and conducting specific investigations.

848. *The Commission’s assessment:* The Commission notes that the Office of the Prosecutor General is pursuing justice in circumstances that would be challenging for any public prosecution office. The sheer number of registered crimes calls for a comprehensive investigative and prosecutorial prioritization strategy that is feasible for the current situation and adaptable for the changing environment of the armed conflict. Such a strategy would need to factor, among other things, division of labour and workflows among the Office of the

⁵⁴² Office of the Prosecutor General of Ukraine, “History of the prosecutor’s office” (available only in Ukrainian); Office of the Prosecutor General of Ukraine, “Strategy for the development of the prosecutor’s office for 2021-2023” (available only in Ukrainian).

⁵⁴³ International Bar Association, “The IBA interview: Andriy Kostin, Prosecutor General of Ukraine”, 4 October 2022.

⁵⁴⁴ Security Service of Ukraine, “Pre-trial investigation”

⁵⁴⁵ Ukraine, Criminal Code of Ukraine, No. 2341-III, 5 April 2001; Office of the Prosecutor General of Ukraine, “Crimes committed during full-scale invasion of the Russian Federation.(date accessed:10 February 2023)

Prosecutor General central and regional offices, and ways to filter and prioritize the cases. The Commission understands that the Office of the Prosecutor General has been developing such a strategy and appreciates that certain aspects of it may need to remain confidential. This said, the Commission encourages the Office of the Prosecutor General to publish its strategy, at least those parts that are not confidential, in order to enhance facilitation of national and international support for Ukraine's investigations, as well as ensuring transparency.⁵⁴⁶ Further, the Office of the Prosecutor General is encouraged to continue considering and implementing reforms to its office and practices (see para. 841) in order to enhance the rule of law.

849. While the Commission appreciates the Office of the Prosecutor General's essential role in pursuing the rule of law in Ukraine, it invites the Office of the Prosecutor General to enhance transparency about investigations into allegations of war crimes committed by Ukrainian forces. For example, the Office of the Prosecutor General publishes updates about the number of registered crimes under article 438 of the Criminal Code of Ukraine (violations of rules of the warfare), which stood at 66,845 as of 10 February 2023.⁵⁴⁷ In either a similar or different format, the Office of the Prosecutor General could provide timely and thorough updates about its investigations into allegations pertaining to Ukrainian forces. Such transparency and demonstrated willingness to apply the rule of law equally will only strengthen the credibility of the Office of the Prosecutor General and engender further support for its investigations.

850. The Commission encourages the Office of the Prosecutor General to build-upon and enhance its victim-centred approach. The Commission understands that the Office of the Prosecutor General is emphasizing the importance of such an approach in its specialized conflict-related sexual violence unit. This is highly commendable and such an approach should be prominent in other areas of the Office of the Prosecutor General's work. Elements of a victim-centred approach that can be operationalized or further enhanced include (i) practices and procedures to diminish retraumatizing victims, such as minimizing the number of victim interviews, and promoting the use of audio or video-recorded interviews or written signed statements, as opposed to new oral testimonies each time; (ii) psychological, social and medical support for victims during and after legal processes; and (iii) keeping the victims informed about the status and progress of the legal processes.

851. International partners and donors are to be commended for their support to the Office of the Prosecutor General, the Security Service of Ukraine and SBI. Moving forward, the focus should be on updating the respective needs assessment for the Office of the Prosecutor General and the investigative bodies and providing them with the requisite assistance. One area that appears to require particular attention is ensuring adequate support for forensic investigation capabilities. Other important aspects are coordination (see F below) and the prosecutorial prioritization strategy (see para. 847). International partners and donors should also consider support that applies to justice needs that include, as well as go beyond, those related to the armed conflict. For example, support for victims (such as those mentioned in para. 849) and assistance in victim participation in judicial procedures.

Ukrainian judicial authorities

852. The judicial system of Ukraine has undergone significant changes since Ukraine gained independence in 1991, including the reform of the judicial system in the Constitution of 1996.⁵⁴⁸ The structure also follows from the Law of Ukraine on the Judiciary and the Status of Judges. The Supreme Court is the highest court, with a separate Constitutional Court to resolve issues of compliance of the laws with the Constitution and to provide interpretation

⁵⁴⁶ For example, the Office of the Prosecutor General of Ukraine published its Strategy for the development of the prosecutor's office for 2021-2023. It was aimed at implementing new priorities for criminal law policy and contributing to their legislative, personnel, scientific and information support.

⁵⁴⁷ Office of the Prosecutor General of Ukraine, "Crimes committed during full-scale invasion of the Russian Federation. (date accessed: 10 February 2023)

⁵⁴⁸ William D. Meyer, *Under Assault: A Status Report on the Ukrainian Justice System in Wartime*, (Stockholm, International Legal Assistance Consortium, 2022), p. 7.

of the Constitution.⁵⁴⁹ Criminal cases related to the armed conflict will generally proceed by way of trial at a first instance court, then potential appeal to a Court of Appeal and finally possibly an appeal to the Supreme Court. In terms of ongoing reforms, the Ukrainian legal system overall is continuing to undertake such initiatives, including measures against corruption, and they are supported by international partners, such as the European Union.⁵⁵⁰

853. The Commission is aware of various forms of criticism of the Ukrainian legal system in general and the judiciary specifically.⁵⁵¹ For example, in November 2021, the United Nations Human Rights Committee remained concerned about, among other things, the “lack of measures to fully ensure the independence of judges and prosecutors”, and the “challenges faced during the qualification assessment of judges, including the lack of a transparent evaluation procedure, allegations of corruption in the assessment process and the resignation of a high number of judges during the qualification assessment process”.⁵⁵² It is important that the abovementioned reform processes continue in order to reduce and eliminate such deficiencies.

854. One of the main challenges for the judiciary is the expected influx of cases regarding crimes related to the armed conflict. As of 23 February 2023, 26 individuals with the Russian armed forces had reportedly been convicted of such crimes, either while in custody or in absentia.⁵⁵³ Based upon the Office of the Prosecutor General’s figures, it is expected that a significant number of cases will eventually make their way through the court system. This development will be even more challenging in the context of the current number of judicial vacancies. While the Ukrainian authorities have improved in filling such vacancies between 2021 and 2022, there are still many to be filled, especially in the appellate courts.⁵⁵⁴ Additionally, some of the court buildings and infrastructure have suffered damages due to the ongoing armed conflict.⁵⁵⁵

855. Another challenge is the applicable laws, in at least two perspectives. First, training is needed for some members of the judiciary regarding international humanitarian law and international criminal law, including those filling vacant judicial posts. The judiciary is being called upon to apply competencies that were not needed during peacetime. The Commission understands that training programs have occurred and plan to be enhanced.⁵⁵⁶ Second, there is a need to re-examine existing legislation or develop new legislation to address issues relating to the investigation of conflict-related crimes and to ensure harmonization with international standards where it is not in conformity. For example, Ukrainian laws may need to be amended to better facilitate the use of evidence collected by experts sent from other States, as well as that collected by international bodies. As another example, article 111-1 of

⁵⁴⁹ Ukraine, Constitution of Ukraine, 28 June 1996, for example, articles 124-130 (Supreme Court), 147-153 (Constitutional Court); Ukraine, Law of Ukraine on the Judiciary and the Status of Judges, 23 December 2022.

⁵⁵⁰ For example, European Union Advisory Mission, “War against corruption is a priority on Ukraine’s way to EU membership”, 5 July 2022.

⁵⁵¹ See for instance Council of Europe, Group of States against Corruption (GRECO), Fourth Evaluation Round – Corruption prevention in respect of members of parliament, judges and prosecutors, Interim compliance report – Ukraine, GrecoRC4(2023)2, 24 March 2023, paras. 163-164; CCPR/C/UKR/CO/8, paras. 43-44; European Court of Auditors, Reducing grand corruption in Ukraine: several EU initiatives, but still insufficient results, 23 September 2021, for example, paras. 50-69.

⁵⁵² CCPR/C/UKR/CO/8, para. 43(a), (c).

⁵⁵³ Léonie Chao-Fong., “Russia-Ukraine war at a glance: what we know on day 365 of the invasion”, *The Guardian*, 23 February 2023.

⁵⁵⁴ High Qualification Commission of Judges of Ukraine, Regarding the report of the High Qualification Commission of Judges of Ukraine for 2022, 19 January 2023; High Qualification Commission of Judges of Ukraine, Regarding the report of the High Qualification Commission of Judges of Ukraine for 2021, 19 January 2022.

⁵⁵⁵ William D. Meyer, *Under Assault: A Status Report on the Ukrainian Justice System in Wartime*, (Stockholm, International Legal Assistance Consortium, 2022), for example Annexes 1-2; ILAC, *The Ukrainian Justice System in Wartime – Areas liberated from Russian control or remaining under occupation*, December 2022, for example p. 16 (Conclusions).

⁵⁵⁶ Supreme Court of Ukraine, “SC Judges met with representatives of the UN Independent International Commission of Inquiry on Ukraine”, 1 December 2022.

the Criminal Code of Ukraine on “collaborative activity” warrants clarification, especially its definition, to avoid legal uncertainty and being overly broad.

856. *The Commission’s assessment:* The reform of the general deficiencies of the judicial system should continue (see paras. 851852). The Commission commends and encourages the international community to further support these efforts. Further, the Ukrainian authorities are encouraged to ensure that legislation related to conflict-related crimes are harmonized with international standards where it is not already in conformity.

857. The Ukrainian judiciary plays a pivotal role in ensuring accountability and protecting rights, including the rights of the accused. In the context of the significant harms that the Ukrainian people have suffered and the understandable consequential emotions, the judiciary is looked upon to demonstrate that Ukraine can apply the law fairly, objectively, and impartially, including to accused who are considered as aggressors or collaborators. The Commission encourages the members of the judiciary to remain steadfast in their commitment to the rule of law, as this will reflect national values to future Ukrainian generations, as well as the international community that supports and monitors Ukrainian legal proceedings.

C. Proposed new Ukrainian criminal accountability measures

858. Several suggestions have been made with a view to enhancing judicial measures in Ukraine to address the magnitude and specialized legal nature of the respective international humanitarian law and international criminal law violations. Reflection processes that have not resulted in specific public proposals will not be considered in this report.

Public International Law and Policy Group Draft Law for a Ukrainian High War Crimes Court

859. In July 2022, the Public International Law and Policy Group presented its Draft Law for a Ukrainian High War Crimes Court (Draft Law). In advocating for this proposal, the Public International Law and Policy Group stated that “history has shown that without international assistance and involvement it is inherently difficult to fairly and effectively prosecute foreign nationals and separatists in ordinary domestic courts during and in the aftermath of an armed conflict”.⁵⁵⁷

860. The proposed High War Crimes Court is meant to complement existing Ukrainian courts, the International Criminal Court and any potential international tribunal for the crime of aggression. The Public International Law and Policy Group noted that international mechanisms generally prosecute a handful of high-level perpetrators, leaving domestic courts to try the vast majority of accused. The Draft Law provides a template for a specialized national court based upon the Ukrainian Law on the High Anti-Corruption Court and best practices of internationalized domestic war crimes courts from other States.⁵⁵⁸

861. According to the Draft Law, the High War Crimes Court would be a highly specialized court within the Ukrainian judicial system composed of Trial Chambers and an Appeals Chamber. Its jurisdiction would be for war crimes, crimes against humanity, genocide and crimes of aggression committed in Ukraine since November 2013. Its subject-matter jurisdiction would incorporate both articles of the Ukrainian Criminal Code and crimes from international legal instruments. While the judges would be Ukrainian, international legal advisors would be appointed to assist and advise the court on international humanitarian law, international criminal law, and the experience of similar tribunals. The court would be funded by the Ukrainian national budget and international donations.⁵⁵⁹

862. *The Commission’s assessment:* The Ukrainian judiciary is being called upon to develop and apply competencies that were not required during peacetime, as described in para. 854. The Draft Law aims to bolster that transition by offering a specialized judicial

⁵⁵⁷ Public International Law and Policy Group, Draft Law for a Ukrainian High War Crimes Court, July 2022, Introductory Note.

⁵⁵⁸ Public International Law and Policy Group, Draft Law for a Ukrainian High War Crimes Court, July 2022.

⁵⁵⁹ Public International Law and Policy Group, Draft Law for a Ukrainian High War Crimes Court, July 2022, articles 2 (composition), 6 (jurisdiction), 9 (nationality of judges), 11 and 12 (international advisers) as well as 16 (funding).

infrastructure building upon existing Ukrainian legal principles and practices. The Commission encourages further discussion and exploration of the Draft Law and similar proposals for buttressing the Ukrainian legal system. The scale and nature of the respective crimes require developing a long-term, dependable body of expertise in international humanitarian law and international criminal law within Ukraine, in particular the judiciary and court system. In principle, the Draft Law and proposals like it offer feasible solutions based upon lessons learnt from other internationalized and hybrid courts.

D. Existing Third State investigative and criminal accountability measures

863. As early as March 2022, third-party States publicly announced that they had begun investigative activities into alleged crimes related to the armed conflict in Ukraine.⁵⁶⁰ As of 16 February 2023, at least 15 States had announced investigative activities.⁵⁶¹ Depending upon the State and its laws, an investigation may be based upon universal jurisdiction,⁵⁶² or require a connection to the investigating State such as the crime being committed by persons having the nationality of the State (nationality or active personality principle) or committed against nationals of the State (passive personality principle).⁵⁶³ Investigative activities may also be for the purpose of collecting information and evidence within a State's territory for use at the International Criminal Court or proceedings in other States.⁵⁶⁴

864. The nature of the investigations varies between States. Some States, at this time, are focused on structural investigations.⁵⁶⁵ Such investigations may have slightly different connotations in different jurisdictions or prosecution offices. Essentially, a structural investigation examines evidence of a crime but potential perpetrators have not yet been identified; it focuses on structures related to the crime and groupings of potential perpetrators.⁵⁶⁶ Other States, instead of or in addition to a structural investigation, may have a particular perpetrator or victim as the focus of their investigation.⁵⁶⁷

⁵⁶⁰ For example, Lithuanian National Radio and Television, "Lithuania opens probe into crimes against humanity in Ukraine attacked by Russia", 3 March 2022; Bojan Pancevski, "Germany opens investigations into suspected Russian war crimes in Ukraine", *The Wall Street Journal*, 8 March 2022; The Local, "Spain opens probe into 'serious violations' by Russia in Ukraine", 8 March 2022.

⁵⁶¹ These States include Canada, Czechia, Germany, Latvia, Lithuania, Spain, Switzerland, the United Kingdom of Great Britain and Northern Ireland. Further, Estonia, France, Poland, Romania, Slovakia, Sweden, United States of America – "Estonia's Internal Security Service also investigating war crimes committed in Ukraine", *The Baltic Times*, 30 March 2022; Stacey Meichtry, "French prosecutors open war-crimes probe in Ukraine", *The Wall Street Journal*, 5 April 2022; Reuters, "Poland say it has collected more than 300 witness statements on war in Ukraine", 16 March 2022; Andra Timu, Irina Vilcu (Bloomberg), "Romania says starting probe against Russia for crimes in Ukraine", 11 July 2022; Eurojust, "Estonia, Latvia and Slovakia become members of joint investigation team on alleged core international crimes in Ukraine", press release, 31 May 2022; Reuters, "Swedish prosecutors open preliminary investigation into war crimes in Ukraine", 5 April 2022; US Department of Justice, "U.S. Attorney General and Ukrainian Prosecutor General met to strengthen joint efforts to hold accountable perpetrators of war crimes and other atrocities committed in Ukraine", 20 September 2022.

⁵⁶² "Universal jurisdiction refers to the assertion of jurisdiction over offences regardless of the place where they were committed and the nationality of the perpetrator or the victim. It is held to apply to a range of offences the repression of which by all States is justified, or required, as a matter of international public policy due to the gravity of the crimes, and the importance of their repression in the eyes of the international community": International Committee of the Red Cross, Universal Jurisdiction over War Crimes, Advisory Service on IHL, 21 May 2021, p. 2.

⁵⁶³ International Committee of the Red Cross, Universal Jurisdiction over War Crimes, Advisory Service on IHL, 21 May 2021, p. 2.

⁵⁶⁴ For example, Counter Terrorism Policing, "Met police refreshes appeal for evidence of war crimes in Ukraine", 17 February 2023.

⁵⁶⁵ For example, Royal Canadian Mounted Police, "A statement by the partners of Canada's War Crimes Program on the conflict in Ukraine", 7 April 2022.

⁵⁶⁶ European Center for Constitutional and Human Rights, "Structural investigation". See also IIMM for Syria description of its Structural Investigation Framework.

⁵⁶⁷ For example, Radio Prague International, "Czech tried over killings with pro-Russian separatists in Ukraine", 17 March 2022; Lithuanian National Radio and Television, "Lithuanian prosecutors to

865. One of the main challenges for third-party State investigations is effective and efficient collection of evidence. Some States are primarily collecting evidence from people fleeing the armed conflict and seeking refuge in their respective territory,⁵⁶⁸ while other States are involved in evidence collection and sharing via bilateral or multilateral coordination mechanisms (see F below regarding international coordination).

866. *The Commission's assessment:* The Commission commends the international community for its strong response in support of accountability measures for violations committed in Ukraine. It is encouraged by States dedicating resources to investigative activities, including the collection, preservation and sharing of information and evidence. To utilize these resources efficiently and effectively – including minimizing duplication – robust and active coordination is needed, both bilaterally and multilaterally. The Commission encourages States to continue to actively participate in existing coordination mechanisms with a view to strengthening practical and tangible means of coordinating efforts.

867. During discussions with third-party State authorities, one of the interesting ideas that was shared with the Commission was mapping the accountability actors who are involved in the collection of evidence, including States and civil society organizations. One practical outcome of a mapping exercise could be to produce an index (catalogue) of sharable information and evidence that would be regularly updated. The index could include a brief description of an accountability actor's investigative activities and the general overview of evidence that it has collected, such as at which locations in Ukraine the evidence relates to and during which timeframe, and the type of evidence (for example, witness evidence relating to alleged crimes in a particular oblast in March 2022). Such an index would allow State authorities to become aware of which entities may possess information or evidence of relevance to their respective investigations and case-building.

E. Existing international investigatory and criminal accountability measures

International Criminal Court, Office of the Prosecutor

868. The International Criminal Court was established by The Rome Statute of 17 July 1998, which came into force in 2002 after the 60th State ratified the Statute. Presently, there are 123 State Parties to the Statute. The International Criminal Court is the sole permanent international court that investigates and, where warranted, tries individuals charged with the most serious crimes of international concern, namely genocide, crimes against humanity, war crimes and the crime of aggression. This section discusses the investigations of the Office of the Prosecutor in relation to Ukraine as it is presently the main Court organ actively engaged in the situation.

869. The Office of the Prosecutor is an independent organ of the Court. It is responsible for receiving referrals and any substantiated information on crimes within the jurisdiction of the Court, for examining them and for conducting investigations and prosecutions before the Court, pursuant to, among others, Article 42 of the Rome Statute.

870. Although neither Ukraine nor the Russian Federation are State Parties to the Rome Statute, the Court may exercise jurisdiction regarding allegations of genocide, crimes against humanity and war crimes in Ukraine, including allegations of such acts committed on and after 24 February 2022. This jurisdiction is based upon two declarations that Ukraine lodged with the Court, in accordance with Article 12(3) of the Rome Statute. In its first declaration of 9 April 2014, Ukraine recognized the Court's jurisdiction "for the purpose of identifying, prosecuting and judging the authors and accomplices of acts committed on the territory of Ukraine within the period 21 November 2013 – 22 February 2014".⁵⁶⁹ Ukraine's subsequent declaration of 8 February 2015 accepted the "jurisdiction of the Court for the purpose of identifying, prosecuting and judging the perpetrators and accomplices of acts committed in

probe filmmaker's killing in Ukraine as war crime", 5 April 2022; Baltic News Network, "Authorities commence criminal procedure against Latvian for taking part in Russian aggression", 4 January 2023.

⁵⁶⁸ For example, Sébastien Ruche "La Suisse enquête sur des crimes de guerre en Ukraine", *Le Temps*, 12 June 2022.

⁵⁶⁹ International Criminal Court, Declaration of Ukraine, 9 April 2014.

the territory of Ukraine since 20 February 2014”.⁵⁷⁰ Both declarations were made for an indefinite duration.

871. Notwithstanding Ukraine’s two declarations, the Court may not exercise jurisdiction regarding allegations of the crime of aggression in Ukraine. In particular, the Court cannot exercise its jurisdiction over the crime when committed by nationals of a State that is not party to the Rome Statute, pursuant to Article 15 *bis*(5) of the Statute. While allegations regarding the crime of aggression have been made against nationals of the Russian Federation and Belarus, neither is a State Party to the Rome Statute.

872. On 28 February 2022, the Prosecutor announced that he decided to proceed with opening an investigation into the situation in Ukraine. In view of an earlier preliminary examination he confirmed that there was a reasonable basis to proceed with an investigation, in particular with respect to war crimes and crimes against humanity. Given the expansion of the conflict in recent days, it was his intention that this investigation will also encompass any new alleged crimes falling within the jurisdiction of the Office of the Prosecutor that are committed by any party to the conflict on any part of the territory of Ukraine.⁵⁷¹

873. In the same announcement, the Prosecutor stated that a referral of the situation to his Office by a State Party would expedite matters under the Rome Statute. Without a referral, the Prosecutor would need to seek authorisation from the Pre-Trial Chamber to open an investigation, as required under Article 15(3). A referral of the situation by a State Party requesting an investigation under Article 14 would dispense with the requirement to obtain judicial authorisation.

874. On 2 March 2022, the Prosecutor stated that 39 State Parties had referred the situation in Ukraine to his Office. He confirmed that the referrals enabled him to proceed with opening an investigation into allegations of war crimes, crimes against humanity and genocide committed on any part of the territory of Ukraine by any person. He stated that his Office’s work in the collection of evidence had now commenced.⁵⁷² As of the writing of this report, the number of referrals had increased to 43.⁵⁷³

875. The Office of the Prosecutor has been actively engaged in Ukraine, in particular since opening its investigation. The Office has been working with the General Prosecutor of Ukraine and civil society interlocutors. On 25 April 2022, the Office became a participant in the Joint Investigative Team composed of Estonia, Latvia, Lithuania, Poland, Romania, Slovakia and Ukraine (see paras. 899-902). In a presentation on 9 February 2023, hosted by the Council of Europe, the Office indicated that its investigative priorities included (i) deportation of civilians, including children; (ii) attacks on the civilian population and infrastructure, including power grids; and (iii) torture, executions, filtration camps, unlawful transfers, etc.

876. The Prosecutor may seek an arrest warrant or a summons from the Pre-Trial Chamber for a person that he believes has committed a crime within the jurisdiction of the Court. For either an arrest warrant or a summons, the Chamber must be satisfied that, among other things, there are reasonable grounds to believe that the person has committed such a crime, pursuant to Article 58 of the Rome Statute. Following the person’s surrender to the Court or voluntary appearance, one of the subsequent main steps is the confirmation of the charges before trial. At that stage, the Pre-Trial Chamber determines whether there is sufficient evidence to establish substantial grounds to believe that the person committed each of the crimes charged, pursuant to Article 61.⁵⁷⁴

⁵⁷⁰ International Criminal Court, Declaration of Ukraine, 8 February 2015.

⁵⁷¹ International Criminal Court, “Statement of ICC Prosecutor, Karim A.A. Khan QC, on the Situation in Ukraine: “I have decided to proceed with opening an investigation.””, 28 February 2022.

⁵⁷² International Criminal Court, “Statement of ICC Prosecutor, Karim A.A. Khan QC, on the Situation in Ukraine: Receipt of Referrals from 39 States Parties and the Opening of an Investigation”, 2 March 2022.

⁵⁷³ International Criminal Court, Situation in Ukraine.

⁵⁷⁴ On 17 March 2023, after the submission of the Commission’s report to the Human Rights Council, the ICC announced that a Pre-Trial Chamber had issued arrest warrants for Vladimir Putin, President of the Russian Federation, and Maria Lvova-Belova, Commissioner for Children’s Rights in the Office of the President of the Russian Federation, for the alleged war crime of unlawful deportation of

877. *The Commission's assessment:* The ICC is the only permanent international court covering genocide, crimes against humanity and war crimes. The Prosecutor, who is independent, is investigating these crimes. In the Commission's view, this eliminates the need to establish a new ad hoc tribunal for Ukraine with the power to investigate and adjudicate these three international crimes, similar to the tribunals for the former Yugoslavia and Rwanda. As regards proposals to set up a possible special tribunal on aggression, see paras. 0-945.

878. It is a general experience that initial and ongoing outreach with victims and other stakeholders is important to the success of an investigatory and accountability mechanism. Victims and human rights defenders, who may have many questions for a mechanism, should be treated as equal partners in seeking justice, and not only as providers of evidence. Setting expectations at the start of a mechanism's work is important. The Commission recommends that the Prosecutor of the International Criminal Court ensure that regular and scheduled outreach meetings continue to be held with stakeholders including victims' groups and human rights defenders. The Commission understands that the Office has been seeking an appropriately representative range of such stakeholders,⁵⁷⁵ and it encourages the Office to continue to formulate tailored strategies for engaging with them.

United Nations Human Rights Monitoring Mission in Ukraine

879. The United Nations Human Rights Monitoring Mission in Ukraine was deployed in 2014 and has continued its work through the on-going armed conflict. Its mandate was to "monitor and report on the human rights situation throughout Ukraine and to propose recommendations to the Government and other actors to address emerging human rights issues as well as the root causes of the situation that was unravelling".⁵⁷⁶ Its mandate is extended every six months. At present, the Mission has offices in Kyiv, Dnipro, Odesa, Poltava and Uzhorod. It also has satellite teams in Chisinau, Moldova and Krakow, Poland. The Mission's staff includes almost 90 persons.⁵⁷⁷

880. Since 2014, the Mission has issued (by November 2022) 34 periodic reports, nine briefing notes, seven thematic reports and four updates on the human rights situation in Ukraine.⁵⁷⁸ It has also provided legal expertise and reviewed draft laws in Ukraine. Turning specifically to the events after 24 February 2022, the Mission has increased the frequency of its public updates on civilian casualty figures, i.e., those killed and injured.⁵⁷⁹ Based on its investigations, it has also issued reports and statements regarding accountability for violations of international human rights law and international humanitarian law, both relating to specific periods and selected topics.⁵⁸⁰

881. *The Commission's assessment:* The Mission has extensive institutional knowledge and experience about the situation in Ukraine, having observed the situation from within the country since 2014. Its many thorough reports have contributed to informed discussions about the situation in Ukraine, for instance within the UN system, by national decision-makers, in the media, and amongst the public at large. The information contained in those reports are also important to shed light on the need for criminal as well as non-judicial accountability. It is therefore important that the Mission continues its work with sufficient resources.

population (children) and that of unlawful transfer of population (children) from occupied areas of Ukraine to the Russian Federation.

⁵⁷⁵ See International Commission of Jurists, *The Future of Accountability Mechanisms: Twenty Recommendations*, (Geneva, 2021), pp. 8-9 (Recommendations 11-12, respectively).

⁵⁷⁶ A/HRC/27/75, para. 7.

⁵⁷⁷ OHCHR, UN Human Rights in Ukraine.

⁵⁷⁸ Ibid.

⁵⁷⁹ See, for instance, OHCHR, Civilian casualties in Ukraine from 24 February 2022 to 15 February 2023, 21 February 2023.

⁵⁸⁰ See OHCHR, Report on the human rights situation in Ukraine, 1 February to 31 July 2022, 27 September 2022; OHCHR, "Ukraine / Russia: Prisoners of war", press briefing notes, 15 November 2022; and OHCHR, Update on the Human Rights Situation in Ukraine, 1 August - 31 October 2022, 2 December 2022. See also OHCHR, Killings of civilians: summary executions and attacks on individual civilians in Kyiv, Chernihiv, and Sumy regions in the context of the Russian Federation's armed attack against Ukraine – 24 February-31 October 2022, 7 December 2022.

882. The Commission notes that the Mission has been granted access to the areas under the control of the Ukrainian territories but not to the territories under the effective control of the Russian Federation. In view of the necessity to carry out full investigations, the Commission *recommends* to the Russian Federation that the Mission, like other international investigating entities, be granted access to the former so-called Donetsk and Luhansk Peoples' Republics and other occupied territories.

Moscow Mechanism of the Organization for Security and Co-operation in Europe

883. The Moscow Mechanism was developed at the Conference on the Human Dimension in Moscow in 1991. The Mechanism provides for the Organization for Security and Co-operation in Europe participating States to establish *ad hoc* missions of independent experts to assist in the resolution of a specific human dimension problem. The experts are expected to submit their observations as soon as possible, preferably within three weeks after the Mechanism was established.⁵⁸¹ The expert missions are supported by the Office for Democratic Institutions and Human Rights of the Organization for Security and Co-operation in Europe, in Warsaw.⁵⁸²

884. The events from 24 February 2022 onwards in Ukraine had, as of the submission of the Commission's report to the Human Rights Council, been the topic of two reports by the Moscow Mechanism, which was invoked on 3 March and 2 June 2022 by 45 participating States of the Organization for Security and Co-operation in Europe. The mandates related to possible contraventions of the Organization for Security and Co-operation in Europe commitments, and violations and abuses of international human rights law and international humanitarian law. The mission was requested to collect, consolidate, and analyse this information with a view to presenting it to relevant accountability mechanisms, as well as existing or future courts or tribunals.⁵⁸³

885. The mandate of 3 March 2022 resulted in a report of 12 April 2022. Even if it had not been possible to verify all allegations, the three appointed experts found clear patterns of international humanitarian law violations by the Russian armed forces in their conduct of hostilities, and credible evidence that violations of even the most fundamental human rights had been committed mostly in the areas under the effective control of the Russian Federation. Some violations and problems were also identified regarding practices of Ukraine, such as the treatment of prisoners of war, originally considered criminals, and treated in ways that are incompatible with Geneva Convention III.⁵⁸⁴

886. The second Moscow Mechanism mandate of 2 June 2022 built on the first report and included but was not limited to violations in certain cities and regions. It led to a report of 14 July 2022 that largely confirmed the conclusions reached by the first mission. The experts found clear patterns of serious violations of international humanitarian law attributable mostly to the Russian armed forces in many areas which its investigations referred to. International human rights law had been extensively violated in the conflict in Ukraine. Most, albeit not all, violations had been committed in the territories under the effective control of

⁵⁸¹ Organization for Security and Co-operation in Europe, Moscow Mechanism.

⁵⁸² Organization for Security and Co-operation in Europe, Human dimension mechanisms. The OSCE Special Monitoring Mission to Ukraine, which started its activities on 21 March 2014, discontinued its operations on 31 March 2022 and is not included in this report.

⁵⁸³ Organization for Security and Co-operation in Europe, Report on violations of international humanitarian and human rights law, war crimes and crimes against humanity committed in Ukraine since 24 February 2022 (Moscow's Mechanism), 13 April 2022, pp. i and 1-2. On 4 May 2023, after the submission of the Commission's report to the Human Rights Council, a third Moscow Mechanism mission issued its report entitled 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.

⁵⁸⁴ Organization for Security and Co-operation in Europe, Report on violations of international humanitarian and human rights law, war crimes and crimes against humanity committed in Ukraine since 24 February 2022 (Moscow's Mechanism), 13 April 2022, pp. i and 93.

the Russian Federation, including the territories of the former so-called Donetsk and Luhansk People's Republics, and were largely attributable to the Russian Federation.⁵⁸⁵

887. *The Commission's assessment:* The two mandates of the Moscow Mechanism relating to the events from 24 February 2022 until the end of the Commission's first mandate have been broad, both substantively and geographically. The reports provide extensive information about violations of international humanitarian law and human rights law in Ukraine. The independent experts have collected and assessed information and evidence with a view to presenting it to existing and future accountability mechanisms. The Commission has taken this material into account during its work.

888. The short timeframe, preferably three weeks, and limited resources for such reports reduce the expert mission's possibilities to conduct visits in Ukraine. Most of the information referred to in the expert missions' reports is based on documentary sources, even if they have conducted videoconferences and brief visits. On the other hand, there is now a large number of entities carrying out investigations on the ground in Ukraine, such as the International Criminal Court, the United Nations Human Rights Monitoring Mission in *Ukraine*, the Office for Democratic Institutions and Human Rights of the Organization for Security and Co-operation in Europe, the Ukrainian Prosecutor General and prosecutorial authorities from other national jurisdictions. This has led to an increasing amount of information and evidence about violations of international humanitarian law and human rights law.

889. It is for the participating States of the Organization for Security and Co-operation in Europe to decide whether to invoke the Moscow Mechanism. If this is considered, the Commission recommends that the mandate of an expert mission should be specific rather than general and be formulated in view of the other investigative work that is carried out in Ukraine. Such coordination between entities with similar mandates will reduce the risk of duplication of work and may contribute to increasing the total output of the investigations in Ukraine.⁵⁸⁶

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

890. Shortly after 24 February 2022, the Office for Democratic Institutions and Human Rights of the Organization for Security and Co-operation in Europe launched its Ukraine Monitoring Initiative to monitor and document violations of international human rights law and international humanitarian law affecting the lives of civilians and prisoners of war.⁵⁸⁷

891. On 20 July 2022, after the second Moscow Mechanism report, the Office for Democratic Institutions and Human Rights issued an interim report on reported violations of international humanitarian law and international human rights law in Ukraine, based on three monitoring missions within Ukraine. According to its findings, the hostilities by the Russian Federation, during the reporting period, had been characterized by conduct a general disregard for the basic principles of distinction, proportionality and precautions set out by international humanitarian law, which may amount to war crimes and crimes against humanity. There were also indications that, to a much more limited extent, the Ukrainian armed forces failed to comply, during the reporting period, with specific international humanitarian law rules on the conduct of hostilities.⁵⁸⁸

892. The Office for Democratic Institutions and Human Rights issued an updated assessment of alleged violations on 14 December 2022, generally focusing on events until 1 November 2022. It largely confirmed and supplemented the findings of the first interim report. At that point in time, the Office for Democratic Institutions and Human Rights had

⁵⁸⁵ Organization for Security and Co-operation in Europe, Report on Violations of International Humanitarian and Human Rights Law, War Crimes and Crimes Against Humanity Committed in Ukraine (1 April - 25 June 2022) (Moscow Mechanism), 14 July 2022, pp. 4-7, 114-115.

⁵⁸⁶ In this context, the Commission notes that the mandate of the third Moscow Mechanism was limited to forceable transfer or deportation of children.

⁵⁸⁷ Organization for Security and Co-operation in Europe, Office for Democratic Institutions and Human Rights Interim Report on reported violations of international humanitarian law and international human rights law in Ukraine, 20 July 2022, para. 2.

⁵⁸⁸ *Ibid.*, para. 5.

conducted 120 in-person interviews in Ukraine and Estonia with witnesses and survivors of alleged violations.⁵⁸⁹

893. It should be added that the Office for Democratic Institutions and Human Rights now has four main ongoing focuses in relation to accountability for the armed conflict in Ukraine. First, monitoring and documentation of violations (for instance, its July and December 2022 interim reports). Second, providing assistance to civil society organizations with monitoring of violations. Third, assisting Ukrainian authorities with capacity building. Fourth, offering assistance and expert advice to the judiciary and legal professionals on international standards relevant to war crimes adjudication.

894. *The Commission's assessment:* The Office for Democratic Institutions and Human Rights has submitted two comprehensive reports on violations of international humanitarian law and human rights law in Ukraine, based on direct evidence, including interviews on the ground. Such material may assist the work of existing and future accountability measures. The mandates are broad and cover in principle the entire territory of Ukraine. The Commission *recommends* that the Office for Democratic Institutions and Human Rights continue to exchange information with other entities operating in the country with a view to increased coordination of investigations.

Fact-Finding Mission regarding the 29 July 2022 Incident at Olenivka

895. On 3 August 2022, the United Nations Secretary-General announced his decision to launch a three-member Fact-Finding Mission regarding the 29 July 2022 Incident at Olenivka following requests from the Governments of Ukraine and the Russian Federation. The Fact-Finding Mission was supposed to ascertain the facts regarding the deaths of dozens of prisoners of war at a facility in Olenivka, and report to the Secretary-General upon completion of its work.⁵⁹⁰ One of the challenges for the Fact-Finding Mission was gaining access to the Olenivka area, which is in the Donetsk region.

896. In early 2023, the United Nations Spokesperson announced that the Secretary-General had decided to disband the Fact-Finding Mission in the absence of conditions required for the deployment of the Mission to the site. Reference was made to the lack of solid and clear safety and access guarantees from both sides. The Secretary-General stands ready to reconstitute the team should the necessary guarantees be provided.⁵⁹¹

897. *The Commission's assessment:* The difficulties in connection with the Olenivka event emphasize how full cooperation of all relevant national authorities is indispensable for efficient fact-finding. This is also illustrated with respect to other entities, such as the problems encountered by United Nations Human Rights Monitoring Mission in *Ukraine* and by this Commission to obtain access to the occupied territories (see paras. 881 and 32, respectively). In order to have a full investigation, the Commission *recommends* that Ukraine and the Russian Federation provide solid and clear guarantees of safety and access to Olenivka.

F. Coordination mechanisms for accountability actors

898. Many entities are seeking to support accountability measures. Such accountability actors are diverse and include State and non-State entities, both national and international in origin. Shortly after the events of 24 February 2022, it was recognized that coordination of accountability actors was necessary and beneficial for several reasons. Principally, robust coordination can minimize both victim re-traumatization from multiple actors engaging them and, in general, duplicative efforts, while increasing efficient use of finite resources during an ongoing armed conflict.

⁵⁸⁹ Organization for Security and Co-operation in Europe, ODIHR Second Interim Report on reported violations of international humanitarian law and international human rights law in Ukraine, 14 December 2022, pp. 4-7.

⁵⁹⁰ United Nations Secretary-General, "Members of Fact-finding Mission regarding Incident at Olenivka, Ukraine, on 29 July 2022", statement, 22 August 2022.

⁵⁹¹ Stéphane Dujarric, Spokesman for United Nations Secretary-General "Highlights of the noon-briefing", 5 January 2023.

899. The following describes three of the main State-driven coordination mechanisms. Since the goal of such mechanisms is to work collaboratively on accountability measures, the Commission considers it more beneficial to provide its assessment of coordination efforts in general, as opposed to separate assessments of the three mechanisms below.

Joint Investigation Team

900. On 25 March 2022, the Joint Investigation Team on alleged core international crimes committed in Ukraine was established through the European Union Agency for Criminal Justice Cooperation.⁵⁹² In general, Joint Investigation Teams are common mechanisms for international cooperation regarding investigations; in 2021, there were 254 Joint Investigation Teams.⁵⁹³ Each Joint Investigation Team is based on an agreement between authorities of two or more States for the purpose of carrying out a particular criminal investigation; usually composed of prosecutors and law enforcement authorities from the respective States, whereas Eurojust provides operational, legal and financial support.⁵⁹⁴ Joint Investigation Teams also have closer access to support from the European Network for investigation and prosecution of genocide, crimes against humanity and war crimes (also known as the Genocide Network), which is hosted by European Union Agency for Criminal Justice Cooperation. The Genocide Network facilitates close cooperation between national authorities specifically investigating and prosecuting cases of these core international crimes.⁵⁹⁵

901. Lithuania, Poland and Ukraine established the Joint Investigation Team for Ukraine and it was later joined by Estonia, Latvia, Slovakia and Romania.⁵⁹⁶ For the first time, the Office of the Prosecutor of the International Criminal Court joined a Joint Investigation Team. The agreement with the Office of the Prosecutor is meant to enable real-time coordination and cooperation with the seven States in connection with their respective investigations.⁵⁹⁷ Additionally, the European Union Agency for Criminal Justice Cooperation has emphasized the need for coordination of all investigations regarding alleged core international crimes in Ukraine, including with non- Joint Investigation Team States.⁵⁹⁸ During the Joint Investigation Teams' first year, the European Union Agency for Criminal Justice Cooperation hosted 14 coordination meetings of the Joint Investigation Team and other national authorities.⁵⁹⁹

902. The Joint Investigation Team for Ukraine will have access to Eurojust's new Core International Crimes Evidence Database, which began operations on 23 February 2023. The Core International Crimes Evidence Database is designed to support national and international investigations by securely preserving, storing and analysing evidence of core international crimes. Although the impetus for the Core International Crimes Evidence Database was the armed conflict in Ukraine, it is meant to assist investigations of crimes in various conflicts. Only national authorities from European Union Member States and countries with Liaison Prosecutors at Eurojust will be able to submit information or evidence on a voluntary basis to the Core International Crimes Evidence Database. According to Eurojust, the Core International Crimes Evidence Database will be used to perform targeted searches for evidence related to a specific event or location, identify parallel investigations,

⁵⁹² Eurojust, "Eurojust supports joint investigation team into alleged core international crimes in Ukraine", press release, 28 March 2022. Eurojust assists in coordinating investigations of serious cross-border crime in Europe and beyond, involving two or more EU States: European Union, European Union Agency for Criminal Justice Cooperation (Eurojust); Eurojust, About us.

⁵⁹³ Eurojust, Eurojust Annual Report 2021, Support to 254 joint investigation teams, 2022.

⁵⁹⁴ Eurojust, Joint investigation teams.

⁵⁹⁵ Eurojust, Genocide Network.

⁵⁹⁶ Eurojust, "Estonia, Latvia and Slovakia become members of joint investigation team on alleged core international crimes in Ukraine", press release, 31 May 2022; Eurojust, "Romania becomes seventh member of joint investigation team on alleged core international crimes committed in Ukraine", press release, 13 October 2022.

⁵⁹⁷ Eurojust, "ICC participates in joint investigation team supported by Eurojust on alleged core international crimes in Ukraine", press release, 25 April 2022.

⁵⁹⁸ Eurojust, "Slovak Prime Minister visits Eurojust to discuss support to joint investigation team on Ukraine", press release, 21 November 2022.

⁵⁹⁹ Eurojust, "International Centre for the Prosecution of the Crime of Aggression made official at United for Justice Conference in Ukraine", press release, 5 March 2023.

and prepare thematic reports on specific aspects of investigations such as sexual and gender-based violence.⁶⁰⁰

903. On 5 March 2023, the seven States involved in the Joint Investigation Team for Ukraine amended their agreement to include, as a support structure, the newly created International Centre for the Prosecution of the Crime of Aggression. The International Centre for the Prosecution of the Crime of Aggression, which is situated in The Hague, Netherlands, will focus on supporting and enhancing investigations into the crime of aggression by securing evidence and facilitating case building.⁶⁰¹ The creation of the International Centre for the Prosecution of the Crime of Aggression was first announced on 2 February 2023 by the President of the European Commission.⁶⁰²

Atrocity Crimes Advisory Group

904. On 25 May 2022, the European Union, the United States and the United Kingdom announced the establishment of the Atrocity Crimes Advisory Group. Its overarching mission is to support the war crimes unit of the Office of the Prosecutor General in Ukraine. The Atrocity Crimes Advisory Group is an operational hub meant to coordinate their respective support for accountability efforts in Ukraine.⁶⁰³ In 2023, Canada joined the group.⁶⁰⁴

905. Atrocity Crimes Advisory Group's activities include two main elements: an Advisory Group to the Office of the General and Mobile Justice Teams. The Advisory Group consists of, among others, experienced war crimes prosecutors, investigators and analysts, who provide expertise, mentoring, advice and operational support to the Office of the Prosecutor General, Mobile Justice Teams, State and non-State actors. The Mobile Justice Teams are composed of international and Ukrainian experts and deploy at the Office of the Prosecutor General's request to assist Ukrainian investigators. In conjunction with these two main elements, the Atrocity Crimes Advisory Group operates through implementing partners such as the European Union Advisory Mission in Ukraine, Global Rights Compliance and the European Union Project Pravo-Justice II.⁶⁰⁵

Dialogue Group on Accountability for Ukraine

906. At the Ukraine Accountability Conference in The Hague on 14 July 2022, ministerial representatives of 45 States discussed establishing a mechanism for coordination.⁶⁰⁶ The proposed mechanism – Dialogue Group on Accountability for Ukraine (Dialogue Group) – has the “objective of promoting dialogue across the various national, European and international accountability and documentation initiatives relevant to the situation in Ukraine, as well as the identification of opportunities for enhanced coherence of action in these efforts, where appropriate”.⁶⁰⁷

907. The Political Declaration issued at the end of the July 2022 conference also discussed other points, including completion of a comprehensive mapping process of the technical needs of Ukraine; provision of additional capacity-building and other support to those

⁶⁰⁰ Eurojust, Core International Crimes Evidence Database (CICED), 23 February 2023.

⁶⁰¹ Eurojust, “International Centre for the Prosecution of the Crime of Aggression made official at United for Justice Conference in Ukraine”, press release, 5 March 2023.

⁶⁰² European Commission, Directorate-General for Neighbourhood and Enlargement Negotiations, “Statement by President von der Leyen at the joint press conference with Ukrainian President Zelenskyy”, 2 February 2023. See also European Commission, “Statement by President von der Leyen on the establishment of the International Centre for the Prosecution of Crimes of Aggression against Ukraine”, 4 March 2023.

⁶⁰³ European Union External Action Service, “Ukraine: The European Union, the United States, and the United Kingdom establish the Atrocity Crimes Advisory Group (ACA) for Ukraine”, press release, 25 May 2022.

⁶⁰⁴ Global Affairs Canada, “Canada to increase support for security and stabilization efforts in Ukraine”, press release, 24 February 2023.

⁶⁰⁵ European Union External Action Service, Questions and Answers: Atrocity Crimes Advisory Group (ACA) for Ukraine, 25 May 2022.

⁶⁰⁶ Government of the Netherlands, “Ukraine Accountability Conference: a step towards justice”, press release, 14 July 2022.

⁶⁰⁷ Government of the Netherlands, Political Declaration of the Ministerial Ukraine Accountability Conference, 14 July 2022, para. 25.

authorities; and promotion of measures to align interventions from national, regional and international entities aimed at strengthening capacity and resources for investigations in Ukraine. The Declaration emphasised that the Dialogue Group’s work should take into account existing cooperation and coordination mechanisms such as Atrocity Crimes Advisory Group and the Joint Investigation Team.⁶⁰⁸

908. On 3 March 2023 at the United for Justice Conference in Lviv, Ukraine, the Dialogue Group was launched. It will consist of four ‘work flows’, each with its own focus: (i) “the support of international parties for Ukraine”; (ii) “actions being taken by regional and international institutions”; (iii) “national investigations”, and (iv) “ongoing documentation initiatives on the part of civil society”. The work of these streams will feed into an expert-level plenary Dialogue Group meeting and an annual ministerial-level meeting.⁶⁰⁹

The Commission’s Assessment

909. From its early days, the Commission has shared the view that in such a crowded accountability space, coordination is needed among the many actors. Coordination mechanisms should be active, robust and visible. Importantly, practical and structured means of coordination should be a key output, such as European Union’s Judicial Cooperation Unit’s Core International Crimes Evidence Database and the suggested evidence index described in this report (see paras. 866 and 902).⁶¹⁰ The Commission provides the following main observations to assist in strengthening existing coordination efforts.

910. First, coordination of the accountability actors is horizontal as opposed to hierarchical. The actors are seen as equal partners, so this may require more time in reaching consensus. However, actors are encouraged to continue striving for compromise and common ground on issues such as practical ways to support investigative activities in Ukraine. As part of building consensus, coordination mechanisms should ensure that their efforts are visible to all the respective actors, albeit certain aspects may need to be confidential due to particular investigative activities. Horizontal coordination requires mechanisms to ensure that actors are aware of coordination efforts, which enhances the actors’ trust and reliance in the mechanism.

911. Second, mapping of the various accountability actors and their respective activities is an essential component of coordination. While mapping initiatives have begun, they should be regularly updated as investigations progress, potential new actors become involved, and the situation in Ukraine evolves. Based upon discussions with accountability actors and a coordination mechanism, the Commission understands that actors have worked collegially with each other, but there is a lack of full awareness about each other’s activities. For example, during meetings hosted by the Commission both in-person and online, actors expressed appreciation for the opportunity to share updates about their current work, to learn about the latest work of other actors in the room, and to seek assistance or collaboration from the other actors.

912. Third, coordination should take into consideration that accountability actors have different roles and functions. It may be bilateral or multilateral, depending on the number of actors involved and the nature of the discussion. During a meeting with the Commission, a participant suggested viewing some of the accountability actors in two general categories: first, actors that have mandates to investigate, to make findings and/or to conduct criminal prosecutions (such as national authorities, the Commission or the International Criminal Court); and second, actors who assist the first group (such as Eurojust or Global Rights Compliance). Those in the second group likely have a wider scope as they may also be involved in capacity-building and technical assistance. While there can be coordination of both groups together, it may also be beneficial to have separate coordination within each group given their particular role and needs. The Dialogue Group appears to have taken into

⁶⁰⁸ Ibid., paras. 26(i)-(iii) and 29.

⁶⁰⁹ Eurojust, “International Centre for the Prosecution of the Crime of Aggression made official at United for Justice Conference in Ukraine”, press release, 5 March 2023.

⁶¹⁰ Eurojust’s CISED and the suggested evidence index differ in a few ways, including that the index covers both State and non-State actors (such as civil society organizations) and is meant to describe available evidence as opposed to preserving and storing it.

account the different types of accountability actors in establishing its four ‘workflows’. The Commission looks forward to the outcomes of those workflows.

G. Proposed International Accountability Measures

1. Investigating or prosecuting authorities

International Humanitarian Fact-Finding Commission

913. The International Humanitarian Fact-Finding Commission was established by Article 90 of Additional Protocol I of 1977 to the Geneva Conventions. Its purpose is to: (i) enquire into any facts alleged to be grave or serious violations of the Conventions and the Protocol, and (ii) facilitate, through its good offices, the restoration of an attitude of respect for the Conventions and the Protocol.⁶¹¹ Officially constituted in 1991, the Fact-Finding Commission is a permanent international body with 15 members elected by 76 States that recognize its competence.⁶¹² Both Ukraine and the Russian Federation ratified Additional Protocol I. On 23 October 2019, the Russian Federation informed the Swiss Federal Council that it had decided to withdraw its declaration recognizing *ipso facto* the competence of the Fact-Finding Commission.⁶¹³

914. The Fact-Finding Commission has not been activated pursuant to Article 90. Separate from its treaty mandate, the Organization for Security and Co-operation in Europe requested the Fact-Finding Commission to investigate the death of one paramedic and the injuries to two patrol members of the Organization for Security and Co-operation in Europe’s Special Monitoring Mission to Ukraine due to an explosion on 23 April 2017.⁶¹⁴

915. *The Commission’s assessment:* The Commission notes that the Fact-Finding Commission never has been activated under Article 90 of Additional Protocol I of 1977. As the Russian Federation has withdrawn its *ipso facto* declaration, the only way to activate this procedure in the present context would be through an *ad hoc* acceptance. Even if this is a possibility, the Commission does not consider this likely, at least not at the present stage.⁶¹⁵

Permanent Independent Investigative Mechanism

916. In the wake of the armed conflict in Ukraine, there have been renewed calls for a permanent independent investigative mechanism that has the established resources to quickly collect and preserve evidence of, among other things, violations of international human rights and international humanitarian law. Civil society organizations⁶¹⁶ and research institutes⁶¹⁷, supported by some States, have proposed and supported such a mechanism with world-wide scope focusing on evidence gathering, preservation and analysis for international and domestic criminal proceedings. These proposals are inspired by, among others, three

⁶¹¹ Additional Protocol I of the Geneva Conventions, article 90(2)(c).

⁶¹² International Humanitarian Fact-finding Commission, The IHFFC in a few words.

⁶¹³ Swiss Federal Department of Foreign Affairs, Notification to the Governments of the States Parties to the Geneva Conventions of 12 August 1949 for the Protection of War Victims, 30 October 2019.

⁶¹⁴ Organization for Security and Co-operation in Europe, Executive Summary of the Report of the Independent Forensic Investigation in relation to the Incident affecting an OSCE Special Monitoring Mission to Ukraine (SMM) Patrol on 23 April 2017, 7 September 2017.

⁶¹⁵ In its two reports, the OSCE Moscow mechanism stated that an *ad hoc* acceptance by the Russian Federation would be an option and would helpfully complement the work of other fact-finding mechanisms. See Organization for Security and Co-operation in Europe, Report on violations of international humanitarian and human rights law, war crimes and crimes against humanity committed in Ukraine since 24 February 2022 (Moscow’s Mechanism), 13 April 2022, pp. 90-91; and Organization for Security and Co-operation in Europe, Report on Violations of International Humanitarian and Human Rights Law, War Crimes and Crimes Against Humanity Committed in Ukraine (1 April – 25 June 2022) (Moscow Mechanism), 14 July 2022, p. 110.

⁶¹⁶ For example, the International Commission of Jurists has been advocating for a standing independent investigative mechanism, see most recently: International Commission of Jurists, A Standing Independent Investigative Mechanism (SIIM) should be created to further accountability for gross human rights violations and crimes, 26 September 2022, with further references.

⁶¹⁷ For example, the Oxford Institute for Ethics Law and Armed Conflict, Anchoring Accountability for Mass Atrocities – A Project to Research and Advise on the Permanent Support Needed to Fulfil International Investigative Mandates, May 2022.

recent independent investigative mechanisms for Syria, Da'esh and Myanmar.⁶¹⁸ The discussions have resulted in two possible options.

917. The first option is to establish an Investigative Support Mechanism, independent of the OHCHR. It would act as a service provider to other mandates concerned with accountability, and, when triggered by a competent United Nations body, act as an investigative mechanism of its own; fulfil a coordinating role and provide strategic advice. The second option is to set up an Investigative Support Division within the OHCHR, which would assist in the prompt recruitment and deployment of teams for each United Nations mandated investigation; serve as institutional memory and provide other forms of support.⁶¹⁹

918. *The Commission's assessment:* These two options envisage the establishment of a new permanent entity, either independently of or within the OHCHR. Under the circumstances, it is unlikely that either option can be operationalised in the short-term for Ukraine.

Independent Investigative Mechanism for Ukraine

919. On some occasions, it has been proposed that a United Nations independent investigative mechanism build upon the work of a commission of inquiry. For instance, with respect to Syria and Myanmar, a precursor United Nations commission of inquiry and a fact-finding mission, respectively, existed before the establishment of the International, Impartial and Independent Mechanism for Syria and the Independent Investigative Mechanism for Myanmar.⁶²⁰ These two mechanisms were established by the General Assembly and the Human Rights Council, respectively.⁶²¹

920. Unlike a commission of inquiry that issues public findings based on the 'reasonable grounds to conclude/believe' standard, an investigative mechanism primarily collects, preserves, and analyses evidence to a criminal law standard for the purposes of case-building and/or assisting international and domestic investigations and prosecutions, usually on a more confidential basis. They may also have other functions, such as coordination and cooperation, as well as providing technical assistance to the State concerned and civil society (e.g., training judges, prosecutors, defence counsel, civil society organizations in international criminal law and international humanitarian law).⁶²² An investigative mechanism may have protocols of cooperation with civil society organizations regarding, among other things, principles underlying collaboration, transfer of data to the mechanism, and transfer of data by the mechanism to investigative or prosecutorial authorities.⁶²³

921. *The Commission's assessment:* It would be for the Human Rights Council to decide whether a new investigative mechanism should be established for Ukraine. The Commission notes that on 4 April 2023, the Council renewed the Commission's mandate to continue its investigations. Furthermore, it is noted that new investigative mechanisms after precursory commissions of inquiry have been established in two instances. As regards the specific situation in Ukraine, a large number of national and international entities are presently carrying out investigations there, such as the Prosecutor General of Ukraine, the International

⁶¹⁸ A/RES/71/248; S/RES/2379(2017); A/HRC/RES/39/2.

⁶¹⁹ See, in particular, Frederica d'Alessandra; Ambassador Stephen Rapp, Kirsty Sutherland, and Sareta Ashraph, *Anchoring accountability for mass atrocities – The permanent support needed to fulfil UN investigative mandates*, (Oxford, Oxford Institute for Ethics, Law and Armed Conflicts, May 2022), pp. 95-96.

⁶²⁰ The Independent International Commission of Inquiry on the Syrian Arab Republic, created in 2011, is now working in parallel with Independent, Impartial and Investigative Mechanism for Syria, established in December 2016, see A/RES/71/248. The Fact-Finding Mission for Myanmar (FFMM), set up in 2017, was subsequently replaced by the Independent International Fact-Finding Mission on Myanmar, see A/HRC/RES/39/2. Both mechanisms shall "collect, consolidate, preserve and analyse evidence" of crimes and violations of international law in order to facilitate and expedite "criminal proceedings ... in national, regional or international courts or tribunals".

⁶²¹ A third mechanism – Investigative Team to Promote Accountability for Crimes Committed by Da'esh/Isil (UNITAD), established by the Security Council in 2017 (S/RES/2379(2017)) – was not preceded by any commission of inquiry or fact-finding mission.

⁶²² For example, UNITAD (webpages): Supporting National Authorities, Capacity Building for Iraqi Judges, UNITAD-NGO Dialogue Forum.

⁶²³ For example, Independent, Impartial and Investigative Mechanism for Syria, Protocol of Cooperation between the International, Independent and Impartial Mechanism and Syrian Civil Society Organizations participating in the Lausanne Platform, 2018.

Criminal Court, the OHCHR Monitoring Mission, in addition to the Commission. Therefore, the need for a new investigative mechanism for Ukraine is less than when the mechanisms for Syria and Myanmar were created and the Commission does not recommend this solution.

2. Judicial authorities

Tribunal for the Crime of Aggression

922. According to Human Rights Council resolution. 49/1, the Commission shall investigate alleged violations of human rights and international humanitarian law, and related crimes “in the context of the aggression” against Ukraine, see para. 11(a). The crime of aggression is an international crime according to Article 8 *bis* of the Rome Statute. However, even though the International Criminal Court has received Ukraine’s two declarations recognizing its jurisdiction, it does not have jurisdiction over alleged perpetrators with Russian nationality, as the Russian Federation is not a party to the Statute (see paras. 869870). Nationals of non-State Parties cannot be prosecuted for the crime of aggression under Article 15 *bis*(5) of the Rome Statute.

923. The Commission’s point of departure is that the International Criminal Court, with its general mandate that includes 123 States from all continents, is now the most important criminal court for the investigation and adjudication of international crimes. It is important that States fully support its work – legally, politically, and practically. This includes various forms of cooperation and allocation of resources.

924. The International Criminal Court investigations in Ukraine, initiated by the Prosecutor’s decision of 28 February 2022, are considering allegations of genocide, crimes against humanity and war crimes. As international criminal courts normally focus on persons in leadership position, it would not be surprising if this also forms part of the International Criminal Court prosecutorial strategy for Ukraine.⁶²⁴ Should the investigations result in trials against lead perpetrators based on genocide, crimes against humanity or war crimes, it may be argued that evidence relating to acts of aggression can be taken into account during the judicial proceedings, both as context of the crimes and as an aggravating circumstance.

925. However, this course of action will not fully reflect the gravity of the crime of aggression as such, which is a separate crime, different from the three other crimes. No other existing international court can adjudicate allegations of the crime of aggression in the current context of Ukraine.

926. Several proposals have been launched for a special tribunal for the crime of aggression in Ukraine. The Commission’s main focus will be on three main public proposals for such a tribunal, in particular on the proposed way of establishing it. Several parliamentary assemblies and political leaders have, at least in principle, supported the idea of creating such a tribunal.⁶²⁵

⁶²⁴ See footnote 574 above regarding the ICC arrest warrants of 17 March 2023.

⁶²⁵ Resolutions, recommendations and declarations by parliamentary assemblies of international organizations include (i) the Parliamentary Assembly of the Council of Europe: Resolution 2433 (2022), para 11.20; Recommendation 2231(2022), paras. 2.3-2.4; Resolution 2436 (2022), paras. 11.6 and 12.5.1; Resolution 2463 (2022), para. 13.6.1; Resolution 2473 (2022), para. 15.6; Resolution 2482 (2023), para. 7; (ii) the European Parliament: Resolution 2022/2655(RSP), para. 12; Resolution 2022/2825 (RSP), para. 19; Resolution 2022/2851(RSP), para. 23; Resolution 2022/2896 (RSP), para. 11; Resolution 2022/3017 (RSP); (iii) the NATO Parliamentary Assembly: Declaration on standing with Ukraine (111 SESP 22 E ev.1 fin), para. 18(j) and Resolution 479, para. 19(h); and (iv) the OSCE Parliamentary Assembly: Resolution on the Russian Federation’s war of aggression against Ukraine and its people, and its threat to security across the OSCE region (AS(22)DE), paras. 35-36.

As for other international statements, see, for instance, Estonia, Ministry of Foreign Affairs, “Joint Statement of by the Ministers of Foreign Affairs of Estonia, Latvia and Lithuania calling for a European Union effort in support of a “The Special Tribunal for the Punishment of the Crime of Aggression against Ukraine”, 16 October 2022; Parliament of Estonia, “Joint statement on the need to prosecute Russia’s international crimes in Ukraine”, 13 January 2023 ; European Union, “Statement by President Ursula von der Leyen on Russian accountability and the use of Russian frozen assets”, 30 November 2022 (in this statement she proposes to set up a specialised court, backed by the United Nations, to investigate and prosecute Russia’s crime of aggression).

927. This report does not contain an exhaustive review of all public proposals for a special tribunal and is not meant to diminish discussions of other initiatives. For instance, the Public International Law and Policy Group Draft Law for a High War Crimes Court within the Ukrainian legal system, if adopted, would include the crime of aggression (see para. 860). It should also be recalled that in other States with provisions relating to aggression, national courts may consider this crime following investigations by the prosecuting authorities of their countries.

928. The first of the three well-known public proposals (here referred to as *option 1*) was launched following Chatham House discussions on 4 March 2022.⁶²⁶ The initiators presented a statement calling for the creation of a “Special Tribunal for the Punishment of the Crime of Aggression against Ukraine”, including a draft declaration to be issued by States for the establishment of the Special Tribunal.⁶²⁷ Subsequently, the statement has garnered over 100 signatories such as former Heads of State and Government, and judges of international courts.⁶²⁸

929. The proposed special tribunal would be based on the same principles that guided the allies in establishing the International Military Tribunal and the Nuremberg trials. The special tribunal would be mandated to investigate acts of violence by the Russian Federation in Ukraine and determine whether they constitute a crime of aggression. It is suggested that countries should agree to grant jurisdiction arising under national criminal codes and general international law to a dedicated criminal tribunal and confer on its jurisdiction to investigate the perpetrators of the crime of aggression with respect to Ukraine, including those who have materially contributed to or shaped the commission of that crime.⁶²⁹

930. A second proposal (*option 2*) focused on proceeding through the United Nations General Assembly. On 22 June 2022, State representatives, academics and representatives of civil society, at the invitation of the Permanent Missions of Latvia and Liechtenstein to the United Nations, met at the Yale Club in New York for a roundtable discussion exploring the political, technical and legal questions relevant for the creation of “A Special Tribunal for the Crime of Aggression” via such a method. The proposal calls for the General Assembly to recommend the creation of such a tribunal through an agreement between the United Nations and Ukraine, similar to the establishment of the Special Court for Sierra Leone and the Extraordinary Chambers in the Court of Cambodia. The United Nations Secretary-General would operationalize such a recommendation by negotiating and concluding an agreement between the United Nations and Ukraine. Further details follow from the summary of the discussions, which refer to international judges and an international prosecutor, like in the ad-hoc-tribunals established by the Security Council for the former Yugoslavia and Rwanda; it is not proposed to set up a hybrid tribunal with both international and national judges, as

There are also statements by national politicians, such as: Verkhovna Rada of Ukraine, “Resolution of the Verkhovna Rada of Ukraine on the address of the Verkhovna Rada of Ukraine to the United Nations, the European Parliament, the Parliamentary Assembly of the Council of Europe, the NATO Parliamentary Assembly, the OSCE Parliamentary Assembly, the GUAM Parliamentary Assembly, and the national parliaments of foreign countries regarding the creation of a special international tribunal on the crime of aggression against Ukraine”, 7 October 2022 (available only in Ukrainian); Germany; Federal Foreign Office, “‘Strengthening international law in times of crisis’ – Speech by Federal Foreign Minister Annalena Baerbock in The Hague”, 16 January 2023.

⁶²⁶ Chatham House, “A criminal tribunal for aggression in Ukraine - High profile speakers launch a declaration to encourage the creation of a special criminal tribunal”, video, 4 March 2022. The main initiators were Philippe Sands, Gordon Brown and Dapo Akande, see e.g. Philippe Sands, “Putin’s use of military force is a crime of aggression”, *Financial Times*, 28 February 2022; Sam Wolfson, “‘It’s a slam dunk’: Philippe Sands on the case against Putin for the crime of aggression”, *The Guardian*, 31 March 2022

⁶²⁷ Office of Gordon and Sarah Brown, “Statement calling for the creation of a special tribunal for the punishment of the crime of aggression against Ukraine and Declaration on a Special Tribunal for the Punishment of the Crime of Aggression against Ukraine”

⁶²⁸ See, for example, Justice for Ukraine, Signatories.

⁶²⁹ Office of Gordon and Sarah Brown, “Statement calling for the creation of a special tribunal for the punishment of the crime of aggression against Ukraine and Declaration on a Special Tribunal for the Punishment of the Crime of Aggression against Ukraine”, p. 2.

in the Special Court for Sierra Leone and Extraordinary Chambers in the Court of Cambodia.⁶³⁰

931. A third proposal (*option 3*) was launched by the Ukraine Task Force of the Global Accountability Network in September 2022. It is similar to option 2 in that it calls for the United Nations General Assembly to request the Secretary-General to negotiate an agreement with Ukraine to create the tribunal. This proposal provides a draft United Nations General Assembly resolution and a draft statute for the tribunal modelled after the Special Court for Sierra Leone – a hybrid tribunal with both international and national judges. The draft statute contains detailed provisions. For instance, the tribunal’s temporal jurisdiction would be from 20 February 2014 (Article 1). The United Nations Secretary-General would appoint the majority of the judges whereas Ukraine would appoint the others with the concurrence of the Secretary-General (Article 8). That provision also contains alternative footnotes, according to which the Secretary-General would appoint all the judges, and with no reference to the distinction between international and Ukrainian judges.⁶³¹

932. The discussions on the various proposals, and their specific elements, are on-going. On 9 February 2023, at the Council of Europe, the Committee of Ministers’ Deputies held an exchange of views with the United Nations about accountability for human rights violations in Ukraine. On 3-5 March 2023, the Ukrainian authorities organized the United for Justice Conference in the city of Lviv about accountability for core international crimes, focusing on investigations of the crime of aggression.⁶³² The Commission has noted that the resolution adopted by the United Nations General Assembly on 24 February 2023 does not address the issue of a special tribunal.⁶³³ The Commission has also taken note that the Heads of State and Government of the Council of Europe in their Reykjavík Declaration of 17 May 2023 welcomed the progress towards the establishment of a special tribunal for the crime of aggression as highlighted at the Summit of the Special Tribunal’s Core Group chaired by Ukrainian President Zelenskyy.⁶³⁴

933. In recent months, there have been discussions about an internationalized tribunal. On 18 April 2023, the G7 Foreign Ministers supported exploring the creation of an internationalized tribunal based in Ukraine’s judicial system to prosecute the crime of aggression against Ukraine.⁶³⁵ This follows the remarks on 27 March 2023 of the US Ambassador-at-Large for Global Criminal Justice announcing that the US supports the development of such a tribunal.⁶³⁶

934. *The Commission’s assessment:* The proposals to set up a special tribunal to adjudicate the crime of aggression have no equivalent in the ad hoc tribunals established since the 1990s, whose powers did not cover that crime. The three options are all motivated by a wish to fill the existing jurisdictional gap because the International Criminal Court cannot prosecute the crime of aggression with respect to the armed conflict in Ukraine. Option 1 is based on States granting jurisdiction to a dedicated tribunal, whereas options 2 and 3 are premised on the involvement of the General Assembly requesting the establishment of such a tribunal.

935. As mentioned above, the establishment of a new special court has received considerable general support by certain parliamentary assemblies and political leaders.⁶³⁷ This said, most of these statements do not indicate a clear preference for any of the three options. For instance, in the detailed report leading to the resolution adopted on 26 January

⁶³⁰ A/ES-11/7-S/2022/616, Annex pp. 2-4. Further details related to Option 2 have been discussed by various international law academics and practitioners, see Just Security, U.N. General Assembly and International Criminal Tribunal for the Crime of Aggression Against Ukraine.

⁶³¹ Ukraine Taskforce of the Global Accountability Network, Proposal for a Resolution by the United Nations General Assembly & Accompanying Proposal for a Statute of a Special Tribunal for Ukraine on the Crime of Aggression, 7 September 2022, pp. 1, 7, 9-10. Lead writers were Hans Corell, Irvin Cotler, David Crane and Lotta Lampela. See also Hans Corell, “A special tribunal on the crime of aggression – The role of the U.N. General Assembly”, Just Security, 14 February 2023.

⁶³² Council of Europe, “Meeting of the Ministers’ Deputies on 8-9 February 2023”, press release.

⁶³³ A/ES-11/L.7.

⁶³⁴ Council of Europe, Reykjavík Declaration – United around our values, 16-17 May 2023, p. 5.

⁶³⁵ Japan, Ministry of Foreign Affairs, *G7 Japan 2023 Foreign Ministers’ Communiqué*, 18 April 2023, p. 2.

⁶³⁶ United States of America, State Department, *Ambassador Van Schaack’s Remarks on the U.S. Proposal to Prosecute Russian Crimes of Aggression*, 27 March 2023.

⁶³⁷ See footnote 625 above.

2023 by the Parliamentary Assembly of the Council of Europe, the view is expressed that, as things stand, the final legal form of the instrument should be decided pragmatically, aiming to involve the largest possible number of States, ideally representative of different regions of the world.⁶³⁸ Similarly, the European Parliament's resolution of 19 January 2023 states that the European Union should, in cooperation with other entities, try to find a legally sound, common way forward, and that the exact composition and method of operation of the special tribunal remain to be determined.⁶³⁹

936. The on-going discussions have shown that the possible establishment of a special tribunal for aggression raises a wealth of issues; legal, political, technical and financial. The Commission is neither a political nor a legislative entity. However, being called upon to make recommendations on accountability, and as an independent and impartial body, it will highlight some considerations that in its view should be taken into account during the on-going reflection process.

937. As mentioned above, the International Criminal Court is the most important international criminal court, and the establishment of a special tribunal for aggression should not affect its activities. There would be two independent courts with separate tasks; the crime of aggression is different from genocide, crimes against humanity and war crime. However, some degree of cooperation and coordination between the two institutions may be advisable, for instance with respect to sharing of evidence.

938. In parallel with the discussion of a possible special tribunal for aggression, it has been suggested to revise Article 15 *bis* of the International Criminal Court Statute, which provides that the crime of aggression may not be prosecuted against nationals of non-State Parties (see para. 870).⁶⁴⁰ The deletion of this limitation of the International Criminal Court's jurisdiction would reduce the need for special tribunals. It could also limit criticism based on selectivity on the basis that special tribunals on aggression have not been set up in previous armed conflicts (see para. 939). On the other hand, the Commission notes that only 45 of the 123 parties to the Statute have so far accepted Article 8 *bis* on the crime of aggression,⁶⁴¹ and that no reform proposals were made during the 21st session of the Assembly of State Parties (5-10 December 2022). A reform process will be complicated. Consequently, it is unclear if, or when, such a statutory amendment would come into force. There is also a question whether the reform would make it legally possible for the International Criminal Court to investigate and prosecute allegations of crimes of aggression committed by nationals of the Russian Federation before the entry into force of the amendment.⁶⁴²

939. Turning more specifically to a new special tribunal for aggression, the Commission emphasises the need to avoid doubts about its *legitimacy*, irrespective of which option that will be chosen. This is important both with respect to the tribunal's establishment and its functioning:

940. The *establishment* of the special tribunal can be criticised as an expression of *selectivity* ("selective justice"), as there have been previous situations of aggression where

⁶³⁸ Parliamentary Assembly of the Council of Europe (Committee on Legal Affairs and Human Rights), Legal and Human Rights aspects of the Russian Federation's aggression against Ukraine, Report (Doc. 15689), para. 22. This report led to the adoption by the Parliamentary Assembly of the Council of Europe of its resolution 2482 (2023) on 26 January 2023.

⁶³⁹ European Parliament, Resolution 2022/3017 (RSP), paras. 3 and 6. See also, European Commission, "Ukraine: Commission presents options to make sure that Russia pays for its crimes", press release, 30 November 2022. The European Commission proposed alternative options: A special independent international tribunal based on a multilateral treaty, or a specialised court integrated in a national justice system with international judges – a hybrid court.

⁶⁴⁰ See, for instance, Claus Kress, Stephan Hobe and Angelika Nussberger: "The Ukraine War and the Crime of Aggression: How to Fill the Gaps in the International Legal System", *Just Security*, 23 January 2023. Karim A.A. Khan KC, Prosecutor of the International Criminal Court, in his statement made on 5 December 2022 to the opening plenary of the 21st session of the Assembly of States stated: "We don't want dilution, we want consolidation" (para. 21).

⁶⁴¹ United Nations Treaty Collection (Status of Treaties), Amendments on the crime of aggression to the Rome Statute of the International Criminal Court.

⁶⁴² A more far-reaching proposal – to amend the International Criminal Court Statute so that the General Assembly could refer cases to the International Criminal Court Prosecutor when the Security Council is blocked because of veto, is not considered in this report.

no new institutions were set up, or it was not even proposed.⁶⁴³ As regards aggression, there is, undeniably, some truth in this criticism. On the other hand, with respect to other crimes, the international community did establish ad hoc tribunals because other courts, such as the International Criminal Court, did not exist or could not exercise jurisdiction. Well-known illustrations are the tribunals for the former Yugoslavia, Rwanda, Sierra Leone, and Cambodia. A process aimed at amending the Rome Statute in parallel with the setting up of a new tribunal would demonstrate that the current conflict in Ukraine has shown “the jurisdictional gap” in the International Criminal Court Statute and that the international community is now seeking to fill it, based on a two-pronged approach.

941. A related legitimacy consideration is that a *sufficient number* of globally dispersed States should support the establishment of a special tribunal.⁶⁴⁴ With respect to option 1, this would require a satisfactory number of States granting jurisdiction to the new entity. As regards options 2 and 3, the main focus would be on the number and the regional distribution of votes behind a resolution by the General Assembly. The Commission is inclined to hold the view that a resolution adopted by the United Nations General Assembly, based on precedents from two previous ad hoc tribunals located outside Europe (Special Court for Sierra Leone and the Extraordinary Chambers in the Court of Cambodia), would carry more weight, if supported by a sufficient number of regionally dispersed States. Furthermore, irrespective of the option chosen, it is necessary that Ukraine accept the final model.

942. As regards the *functioning* of a new tribunal, it is obvious that it must be independent, impartial and observe all fair trial rights in international human rights conventions. In this report, the Commission wants to address two aspects:

943. The first issue relates to *immunities* of officials. There seems to be common ground that international customary law on personal and functional immunities does not prevent that the highest officials in a country are subject to criminal proceedings before international courts.⁶⁴⁵ The Commission assumes that this issue will be considered carefully in connection with the options at hand.

944. The second point is about *trials in absentia*, which are not prohibited by international human rights law, provided that certain conditions are met.⁶⁴⁶ However, almost all international criminal tribunals have required the presence of the accused for trial, and for the International Criminal Court this is stated explicitly in Article 63 of the Rome Statute.⁶⁴⁷ Similarly, in view of the gravity of the crime of aggression, as well as for legitimacy reasons, the Commission recommends that a new special tribunal should adopt the same position.

945. More generally, principles of accountability and avoiding impunity call for an investigation and, based upon the evidence, prosecution of individual perpetrators, accused of international crimes, including the crime of aggression. This is important for the victims, for society and the maintenance of international law.

⁶⁴³ See previous International Criminal Court Prosecutor’s article: Luis Moreno Campo: “Ending Selective Justice for the International Crime of Aggression”, Just Security, 31 January 2023.

⁶⁴⁴ See, for instance, European Parliament, Resolution 2022/3017 (RSP), paras. 3 and 4; Parliamentary Assembly of the Council of Europe, Resolution 2482 (2023), para. 6. See more generally about legitimacy: Kai Ambos, “A Ukraine Special Tribunal with Legitimacy Problems?”, Verfassungsblog, 6 January 2023.

⁶⁴⁵ *Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium)*, Judgment, I.C.J. Reports 2002, p. 3, para. 61; Special Court for Sierra Leone, *Prosecutor v. Charles Ganthkay Taylor*, Case No. SCSL-2003-01-I, Decision on Immunity from Jurisdiction, Appeals Chamber, 31 May 2004, paras. 37-59; International Criminal Court, *The Prosecutor v. Omar Hassan Ahmad Al-Bashir*, Judgment in the Jordan Referral re Al-Bashir Appeal, Appeals Chamber, 6 May 2019, para. 113 (and more generally, paras. 100-119). See also Advisory Committee on Public International Law, *Challenges in prosecuting the crime of aggression: jurisdiction and immunities*, Advisory report no. 40, (The Hague, 2022), pp. 10-14 and 16.

⁶⁴⁶ See, for instance, European Court of Human Rights, *Poitrinol v. France*, Application No. 14032/88, Judgment, 23 November 1993, para. 31; *Sejdovic v. Italy*, Application No. 56581/00, Judgment, 1 March 2006, paras. 81-95; and *Idalov v. Russia*, Application 5826/03, Judgment, 22 May 2012 paras. 169-174.

⁶⁴⁷ Proposals have been made to amend the Rome Statute, such as implementing a timeframe for searching for an accused who is the subject of an unsealed arrest warrant and for public announcements of the charges, and then a procedure for possibly initiating proceedings *in absentia*.

946. Since there is currently no international court with jurisdiction to undertake this necessary accountability measure, the Commission supports, in principle, the creation of a tribunal for the crime of aggression. The judicial proceedings would have to be in conformity with international standards, take place before independent and impartial judicial institutions, and be perceived as having the required integrity and legitimacy.⁶⁴⁸ Decision-makers would also have to take into account that the establishment of a new tribunal will be time-consuming, that it may be costly, and that years may pass before accused persons in leadership positions, if apprehended, are brought before the tribunal. The Commission also supports efforts to amend the Rome Statute to allow for broader jurisdiction of the crime of aggression within the Statute.

Part II. Non-Judicial Forms of Accountability

H. Introduction

947. The previous section of this chapter addressed a very important and perhaps the most familiar dimension of accountability, namely, criminal accountability, which, of course, can only be achieved through judicial means. International law, however, includes other types or, better, dimensions, of accountability, including truth, reparation, and guarantees of non-recurrence. While the full satisfaction of these rights will have to await the cessation of the conflict, it is important to recall the existence of these substantive obligations, and that, procedurally, there are measures that can be taken already to either lay the bases for the eventual satisfaction of the corresponding rights, or in any case, to contribute to the well-being of victims and to the gradual satisfaction of their rights.

948. The most effective way of apprehending the scope of accountability under international law is by reviewing the resolution adopted unanimously by the General Assembly in 2005 entitled, “Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.”⁶⁴⁹ After a 17 year-long process of deliberation, the Assembly, in this resolution identifies “mechanisms, modalities, procedures and methods for the implementation of existing legal obligations under international human rights law and international humanitarian law ...”, therefore reaffirming existing international obligations rather than introducing new ones.⁶⁵⁰

949. Given the protracted nature of the process leading to the adoption of the Resolution, the deliberations took note of a wide diversity of legal instruments and experiences, including valuable ‘soft law’ initiatives, such as the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.⁶⁵¹ The Resolution refers directly to ‘harder’ sources and significant experiences, for instance, importantly, the Rome Statute of the International Criminal Court.⁶⁵² The Resolution, of course, also makes reference to older, international humanitarian treaty law obligations, including The Hague Convention, and the Geneva Conventions and their Additional Protocols.⁶⁵³

950. The least surprising part of the Resolution, especially recalling the experience of the three international tribunals that preceded its drafting, is the unambiguous assertion of the victims’ right to *criminal* accountability. It summarizes existing obligations saying, “In cases

⁶⁴⁸ The importance of integrity and legitimacy is discussed in Morten Bergsmo and Viviane E. Dittrich, eds. : *Integrity in International Justice*, (Brussels, Torkel Opsahl Academic EPublisher, 2020).

⁶⁴⁹ A/RES/60/147.

⁶⁵⁰ Thus, while the resolution (as such) is not binding in itself, it refers to sources that are themselves legally binding.

⁶⁵¹ A/RES/40/34, Annex.

⁶⁵² Adopted at a diplomatic conference in Rome, Italy on 17 July 1998. The Statute entered into force on 1 July 2002 with 60 ratifications.

⁶⁵³ Universal Declaration of Human Rights, article 8; International Covenant on Civil and Political Rights, article 2; International Convention on the Elimination of All Forms of Racial Discrimination, article 6; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, article 14; Convention on the Rights of the Child, article 39; Hague Convention respecting the Laws and Customs of War on Land of 18 October 1907 (Convention IV), article 3; Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) of 8 June 1977, article 91; Rome Statute of the International Criminal Court, articles 68 and 75.

of gross violations of international human rights law and serious violations of international humanitarian law constituting crimes under international law, States have the duty to investigate and, if there is sufficient evidence, the duty to submit to prosecution the person allegedly responsible for the violations and, if found guilty, the duty to punish her or him” (para. 4). It reminds Member States of the duty to collaborate with one another if they are not in a position to fulfil said obligation themselves, encourages them to adopt legislation to make the prosecution of cases under the principle of universal jurisdiction possible, and reminds them that under treaty obligations, statutes of limitation cannot be applied to gross violations of international human rights law and serious violations of international humanitarian law which constitute crimes under international law (para. 9).

I. Reparations

951. For the sake of this report, the most relevant reminder in the resolution concerns the victims’ right to reparation. Of course, inter-state reparations have a long history in international relations. The leading opinion in this regard was set out in the often-cited 1927 judgment of the Permanent Court of International Justice in the *Chorzow Factory* case: “It is a principle of international law that the breach of an engagement involves an obligation to make a reparation in an adequate form.”⁶⁵⁴ Closer to the concerns of this report, are, however, other instruments cited by the Resolution, including international humanitarian treaty law obligations (stemming from treaties to which both Ukraine and the Russian Federation are parties) such as The Hague Convention, Article 3 of which reads, “A belligerent party which violates the provisions of the said Regulations shall, if the case demands, be liable to pay compensation. It shall be responsible for all acts committed by persons forming part of its armed forces.”⁶⁵⁵ The same obligation is reiterated by the Geneva Conventions and their additional protocols. Article 91 of the Additional Protocol I reads “A Party to the conflict which violates the provisions of the Conventions or of this Protocol shall, if the case demands, be liable to pay compensation. It shall be responsible for all acts committed by persons forming part of its armed forces.”⁶⁵⁶

952. The right to reparation for violations of human rights has by now also become firmly entrenched in international human rights law, based on instruments that include the Universal Declaration of Human Rights (Article 8),⁶⁵⁷ the International Covenant on Civil and Political Rights, Article 2(3) of which states that each State Party to the present Covenant undertakes: (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity; (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy; (c) To ensure that the competent authorities shall enforce such remedies when granted.

953. The Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment states in Article 14 that each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible.

954. Other instruments such as the International Convention on the Elimination of Racial Discrimination (Article 6), and the Convention on the Rights of the Child (Article 39) assert the same right. They are all duly mentioned in the “Basic Principles” Resolution.⁶⁵⁸

955. The growing body of jurisprudence on both the substantive and procedural dimensions of the right to reparation demonstrates the consolidation of the victims’ right to reparation in international law. Treaty bodies and national, regional and international courts, including the International Court of Justice, the Inter-American Court of Human Rights, and the European Court of Human Rights, have considered a large number of both individual cases and group claims arising from periods of mass violations, and have developed a rich jurisprudence. That

⁶⁵⁴ *Factory at Chorzów, Jurisdiction, Judgment No. 8, 1927, P.C.I.J., Series A, No. 9*, p. 21

⁶⁵⁵ The Hague Convention, 18 October 1907 (Convention IV).

⁶⁵⁶ Geneva Conventions, 12 August 1949; see also Additional Protocol I of 8 June 1977.

⁶⁵⁷ “Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.”

⁶⁵⁸ As are Articles 68 and 75 of the Rome Statute of the International Criminal Court.

jurisprudence has confirmed that reparation is a broad concept, which includes different categories of initiatives to which victims have rights, namely, restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition.⁶⁵⁹

956. In the addition to the long history of state-to-state reparations, and in particular the ad hoc compensation mechanisms established since the 1990s, most of which included procedures for addressing individual claims,⁶⁶⁰ valuable experience with victim-centred, administrative reparations programs established during the last 40 years as part of transitional justice policies,⁶⁶¹ can provide valuable lessons for an eventual reparations program in Ukraine, the costs of which must be borne by the Russian Federation.

957. Some of the important lessons from these experiences that should be kept in mind include the following: (i) There is no reparation without acknowledgement of responsibility. (ii) Just as there is a difference between development programs and reparations programs, there is a difference between general reconstruction programs and reparations programs. (iii) Victims need to be consulted on the design and implementation of such programs. (iv) ‘Complex’ and ‘coherent’ programs, that is, programs that distribute a wider variety of benefits in a way that the benefits complement and support each other, prove to be more satisfactory to victims and their impact more sustainable than mere compensatory mechanisms.⁶⁶²

958. Although discussions about criminal justice have dominated the discussions about accountability more generally, calls for different forms of reparations have been present since the early stages of the conflict, and over time, action in this domain has started to take shape, both at the international level and within Ukraine.

959. On 20 May 2022, President Zelenskyy called upon States to establish an international claims commission.⁶⁶³ Claims commissions are generally flexible instruments established to resolve mass claims arising from international situations.⁶⁶⁴

960. On 14 November 2022, the United Nations General Assembly adopted resolution A/RES/ES-11/5 entitled “Furtherance of remedy and reparation for aggression against Ukraine”.⁶⁶⁵ The resolution recommends the creation of an international register of damage to serve as a record of evidence and claims information regarding damage, loss or injury to individuals, legal persons and the State of Ukraine due to the unlawful conduct of the Russian Federation. Member States are to create the register. It will not necessarily be part of the United Nations. The resolution states the following about the register:

961. Recommends the creation by Member States, in cooperation with Ukraine, of an international register of damage to serve as a record, in documentary form, of evidence and

⁶⁵⁹ See, A/RES/60/147, para. 19-23. Guarantees of non-repetition have been taken by many, including the Human Rights Committee, to be a category independent of reparation, focusing on prevention rather than redress. In 2004, the Committee held that the purposes of the International Covenant on Civil and Political Rights “would be defeated without an obligation integral to article 2 to take measures to prevent a recurrence of a violation of the Covenant. Accordingly, it has been a frequent practice of the Committee ... to include ... the need for measures, beyond a victim-specific remedy, to be taken to avoid recurrence of the type of violation in question.” See CCPR/C/21/Rev.1/Add.13, para. 17.

⁶⁶⁰ See, e.g., the United Nations Compensation Commission (UNCC) established through Security Resolution 687 in 1991 for claims resulting from the Gulf War (1990-91); the Commission for Real Property Claims of Displaced Persons and Refugees (CRPC), Annex 7 of the Dayton Peace Agreement of 1995; amongst others. See Cristián Correa, Shuichi Furuya, and Clara Sandoval, *Reparation for Victims of Armed Conflict* (Cambridge, Cambridge University Press, 2021), pp. 39-46.

⁶⁶¹ See, e.g., Pablo de Greiff, ed., *The Handbook of Reparations*, (New York, Oxford University Press, 2006).

⁶⁶² See, e.g., *Ibid.*, and OHCHR *Rule of Law Tools for Conflict and Post Conflict States: Reparation Programmes*, (UN Publication, 2008, HR/PUB/08/1).

⁶⁶³ President of Ukraine, We urge the partner states to recognize that Russia must be held financially responsible for the crimes it committed - address by the President of Ukraine, 20 May 2022.

⁶⁶⁴ The best known, and largest Claim Commission thus far is the United Nations Compensation Commission (UNCC) established to address claims stemming from the Iraqi invasion of Kuwait. See, for example, Hans van Houtte, Hans Das, Bart Delmartino, “The United Nations Compensation Commission” in *The Handbook of Reparations*, Pablo de Greiff, ed. (Oxford, Oxford University Press, 2006).

⁶⁶⁵ A/RES/ES-11/5.

claims information on damage, loss or injury to all natural and legal persons concerned, as well as the State of Ukraine, caused by internationally wrongful acts of the Russian Federation in or against Ukraine, as well as to promote and coordinate evidence-gathering.⁶⁶⁶

962. On 30 November 2022, European Commission President von der Leyen proposed the creation of an international agreement for a structure to manage and invest blocked and frozen Russian assets with the proceeds going to Ukraine.⁶⁶⁷ She estimated at the time that the damage suffered by Ukraine was 600 billion euros and the blocked and frozen assets amounted to 319 billion euros.⁶⁶⁸ Furthermore, she stated that “once the sanctions are lifted, these funds should be used so that the Russian Federation pays full compensation for the damages caused to Ukraine”.⁶⁶⁹

963. On 12 May 2023, the Committee of Ministers of the Council of Europe, adopted a Resolution, establishing the Register of Damages first mentioned in the United Nations General Assembly Resolution.⁶⁷⁰ The resolution creates the administrative apparatus of the Registry. According to the resolution, the Register “shall serve as a record, in documentary form, of evidence and claims information on damage, loss or injury caused, on or after 24 February 2022, in the territory of Ukraine within its internationally recognised borders, extending to its territorial waters, to all natural and legal persons concerned, as well as the State of Ukraine, including its regional and local authorities, state-owned or controlled entities, by the Russian Federation’s internationally wrongful acts in or against Ukraine” (Article 1)

964. While the Register has only documentary purposes, and is not meant to distribute any benefits, the resolution goes into some detail defining for example the functions of the Executive Director, the Board, and the ‘Conference of Participants’ (representatives of member states that support the Register); (Articles 5-7).

965. Crucial decisions, about the final shape of a reparations program in Ukraine remain to be taken, including the financing modalities of such a program. There is no question that as the aggressor State, the Russian Federation bears responsibility for the costs of reparations. As paragraph 2 of the General Assembly resolution puts it: “Recognizes that the Russian Federation must be held to account for any violations of international law in or against Ukraine, including its aggression in violation of the Charter of the United Nations, as well as any violations of international humanitarian law and international human rights law, and that it must bear the legal consequences of all of its internationally wrongful acts, including making reparation for the injury, including any damage, caused by such acts”.

966. The great difficulty is how to enforce that obligation on an unwilling State. Calls for the use of Russian Federation assets that have been frozen abroad are frequent, but there is a big step between freezing and confiscating assets, and this partly explains why frozen assets have seldom been sources of financing for reparations efforts.⁶⁷¹

967. The Government of Ukraine has already taken some steps to assist victims that can be interpreted in the key of reparations. It has, for example, provided pensions and other form of social assistance for families who have lost the breadwinner, for those with conflict-related disabilities, and has also made available funeral assistance.

968. Furthermore, three laws on reparations, one that would provide interim reparations for victims of conflict related sexual violence; one to provide assistance for the reconstruction of houses and other properties; and a more general law on reparations for various categories of victims, have been submitted to the Ukrainian parliament. The latter law, for example, would provide compensation for victims of death and disappearance, injuries, disability,

⁶⁶⁶ *Ibid.*, para. 4.

⁶⁶⁷ European Union, “Statement by President Ursula von der Leyen on Russian accountability and the use of Russian frozen assets”, 30 November 2022.

⁶⁶⁸ *Ibid.*

⁶⁶⁹ *Ibid.*

⁶⁷⁰ Council of Europe, Committee of Ministers, Resolution establishing the Enlarged Partial Agreement on the Register of Damage Caused by the Aggression of the Russian Federation Against Ukraine, CM/Res(2023)3, 12 May 2023.

⁶⁷¹ Even when assets are seized by a state to be transferred to another, there is some reluctance to ‘ earmark’ what the receiving state should do with the assets transferred. Victims’ reparations do not usually stack high in the list of priorities under these circumstances.

various forms of conflict related violence including sexual violence, human trafficking, torture, imprisonment, captivity, forced labour, deportation, child abduction and forced displacement, as well as psychological trauma.⁶⁷²

969. *The Commission's assessment:* The Commission welcomes that planning for reparations both at the international and the national level have started. It would like, however, to offer the following observations and recommendations. While national reconstruction plans, property restitution, and victims reparations are related projects, they are not identical. The General Assembly and the Council of Europe resolutions on the Register of Damages are not completely clear about the differences (and in their lack of reference to victims, lean more towards the tallying of damages characteristic of reconstruction and property restitution).

970. The reconstruction of Ukraine is, of course, going to be a gargantuan task especially taking into account the long-standing attacks on the country's civilian infrastructure (see paras. 267-272).⁶⁷³ Quite aside from the reconstruction project, which might take the familiar form of inter-state reparation, there is, as we have seen, a right of individual victims to reparations.

971. Designing a full-fledged reparations program under conditions of ongoing conflict is virtually impossible: it is impossible to plan for a program when the universe of victims keeps growing, it is impossible to engage in the sort of meaningful and sustained consultations with victims that are necessary for the establishment of a successful program; and of course, the conditions for the provision of a complex set of reparative benefits do not obtain as the country's infrastructure is under severe attack.

972. Nevertheless, there are initiatives that can be started, some of which will help to lay the bases of a future reparations program and make a contribution to the well-being of victims (without transferring the ultimate responsibility for bearing the costs of reparations from the Russian Federation to the Ukrainian government). The first is to establish a registry of victims (which is not the same as a registry of damages). There is no reparations program that can function without such registry. In this case, given the on-going nature of the conflict, the registry *per force* must be open-ended. It must be 'user-friendly,' procedurally light on users, and initially concentrate on the harms and violations that are more central to the victims' dignity and well-being rather than on property issues.⁶⁷⁴

973. The Registry should not be conceived merely as a list but should ideally be an 'institutional portal' to organize various support initiatives already provided by the government, but in a disaggregated and uncoordinated way. It is very difficult for victims to navigate different bureaucratic hurdles, especially when they have suffered great harms and for example, are internally displaced. It would make a big difference to them if there was a 'one-stop shop' that would provide assistance with legal matters (e.g., lost documents), educational issues, health needs, interim economic support, etc. This does require institutional coordination, but it is not unfeasible at all, and it is something that the international community can support.

974. Countries that have engaged in such efforts have found it necessary to establish inter-ministerial groups led by either the Prime Minister's or the President's office, as the case might be, in order to guarantee that the coordination indeed takes place. The Commission is

⁶⁷² See, e.g., Luke Moffett, *Reparations Options for the War in Ukraine*, (Belfast, Queen's University Belfast, November 2022).

⁶⁷³ Six months after the conflict started, the World Bank and the European Union estimated that the reconstruction costs would add up to US \$349 billion (a figure that of course grows and that indeed has done so at a faster pace with increased attacks on basic infrastructure. The figure did not include the US \$5 billion monthly budgetary support the Government of Ukraine needs). See, e.g., The World Bank, "Ukraine recovery and reconstruction estimated \$349 billion", press release, 9 September 2022. A year after the conflict started that sum had increased to between \$450 Billion to \$1 trillion. See, e.g., Michael Landesmann, "What Future for the Economic Reconstruction of Ukraine?", Vienna Institute for International Economic Studies, 15 March 2023.

⁶⁷⁴ While property restitution is important indeed, experience shows that when property issues and other violations are addressed by the same program, property restitution tends to displace reparations for other forms of violations. A simple solution to this problem is to establish two different (but coordinated) programs, one for violations for example of life, physical integrity, and other freedoms, and another for property-related issues.

aware of the proposals made by the International Organization for Migration and by the International Claims and Reparations Project of Columbia Law School and is encouraged by the fact that the topic of victims' reparations is receiving some attention from the government. The Commission however, encourages a step-wise process that takes full account of the fact that under conflict situations a full-fledged reparation program cannot be designed, let alone delivered. While the Commission encourages advance planning and the taking of preparatory steps, it warns against awakening expectations on the part of victims in the absence of certainty that those expectations can be fully satisfied. In particular, assumptions about sources of financing (e.g., recovered assets) that may not materialize, should temper the planning and sequencing of the type of benefits and the classes of beneficiaries that may be served by a reparations plan at any given point.

975. Consistent with the idea of prioritizing benefits and beneficiaries, it would make a significant difference to the well-being of victims to work on the provision of mental health and psychosocial support—accessible through the same institutional portal just mentioned. That there is a need for doing so there can be no doubt; “according to Ukraine’s Health Ministry, more than 90 per cent of Ukrainians have one or more symptoms of post-traumatic stress disorder due to the ongoing war. It is estimated that only three in every 100 Ukrainians with post-traumatic stress disorder are receiving support.”⁶⁷⁵ The Commission has visited civil society organizations that are providing such services in Ukraine. Given the magnitude of needs, however, such initiatives need to be scaled up significantly, coordinated, and ultimately connected with the institutional network of the State (even if the end-providers continue to be civil society organizations).

976. Again, the Commission is aware of the operational roadmap entitled “Ukrainian Prioritized Multisectoral Mental Health and Psychosocial Support Actions During and After the War” and is encouraged by the attention this topic is receiving.⁶⁷⁶ Making the roadmap a reality calls for the allocation of resources to the relevant services, and moreover, to enhancing coordination between service providers, establishing legal regulations, and the means for monitoring and evaluating services to be provided to an extremely vulnerable population at sufficient scale. This is another task where the international community would be wise to spend some efforts and lend both expertise and resources. Making sure that Ukrainian refugees are not left out of long-term support programming is also crucial. Support programs are often short-term crisis interventions. However, the mental-health needs of the Ukrainian population that moved abroad under duress and frequently after witnessing or experiencing acts of violence do not cease.

J. Truth

977. In addition to the brief summaries of the rights of victims regarding criminal accountability and reparations even in cases of conflict when international humanitarian law or international human rights laws are violated, the Basic Principles critically reminds us that there are other elements of accountability to which victims also have rights. Those include a right to *truth*, which the resolution puts succinctly in the following terms: “victims and their representatives should be entitled to seek and obtain information on the causes leading to their victimization and on the causes and conditions pertaining to the gross violations of international human rights law and serious violations of international humanitarian law and to learn the truth in regard to these violations” (para. 24).

978. The sources of the right to truth cited by the Basic Principles are, as in the case of the other rights the Resolution identifies, varied.⁶⁷⁷ They include treaty body commentaries,⁶⁷⁸ Human Rights Council Resolutions,⁶⁷⁹ Reports of Special Procedures,⁶⁸⁰ as well other

⁶⁷⁵ Neil Bowdler (Radio Free Europe radio Liberty), “Psychologists battle to help Ukraine’s shell-shocked population”, video, 11 October 2022

⁶⁷⁶ For example, see World Health Organization, Ukraine endorses roadmap on mental health during the war, 9 December 2022 (“[The roadmap] was developed as part of the implementation of the national mental health programme initiated by the First Lady of Ukraine [Olena Zelenska] earlier this year, supported by [the World Health Organization]”).

⁶⁷⁷ On the right to truth generally, see, E/CN.4/2006/91.

⁶⁷⁸ For example, CAT/C/COL/CO/4, para. 27.

⁶⁷⁹ A/HRC/RES/12/12, para. 1; and A/HRC/RES/9/11, para. 1.

⁶⁸⁰ A/HRC/7/3/Add.3, para. 82; A/HRC/14/23, para. 24; A/HRC/16/48, para. 39; A/HRC/22/52, paras. 23-26 and 32-34; A/HRC/24/42.

international instruments, such as the Convention on the Protection of All Persons from Enforced Disappearances.⁶⁸¹

979. Regional Courts have developed ample jurisprudence relying upon and elaborating the right to truth. The Inter-American Commission and Court of Human Rights were at the forefront of developing jurisprudence on the right to truth of the victim, his/her next of kin, and the whole of society. In relation to the collective nature of this right, the Commission observed that “[e]very society has the inalienable right to know the truth about past events, as well as the motives and circumstances in which aberrant crimes came to be committed, in order to prevent repetition of such acts in the future”.⁶⁸² In a more recent judgment, the Court framed the right to truth in the form of a positive State obligation stressing that “the next of kin of the victims and society as a whole must be informed of everything that has happened in connection with the said violations.”⁶⁸³ The African Commission on Human and Peoples’ Rights has recognized the right to truth as an aspect of the right to an effective remedy for a violation of the African Convention.⁶⁸⁴ In connection with gross human rights violations committed in the context of countering terrorism, the European Court of Human Rights acknowledged the right to truth not only for victims and their families but for the general public as well.⁶⁸⁵

980. This substantive right to information is operationalized frequently in national conflicts via the establishment of truth commissions. There is no single mechanism that has been used to turn this into a procedural right in the case of international conflicts, where a combination of fact-finding and investigatory commissions, along judicial fact-finding, as well as the unofficial efforts by civil society organizations, seek to contribute to the satisfaction of this right. For victims, truth (regarding various issues, foremost amongst which is the whereabouts of people who have been disappeared) is essential. While vast experience has been accumulated by the more than 50 countries that have established truth commissions in the wake of massive human rights abuses, sometimes in the context of internal conflict, in cases of international conflict there is much work to be done in order to satisfy the victims’ right to truth.

981. The right to truth is another one the full realization of which will have to wait the cessation of the conflict and will also require the collaboration of Russian Federation authorities. Again, a full reckoning cannot possibly be achieved under conditions of open and massive conflict. Some truth is emerging from various sources official and unofficial, judicial and non-judicial. But these are fragments of a broader story, the full details of which need Russian sources and cooperation.

982. But just as the fact that the full realization of the right to reparation will need to await the cessation of conflict and involves the satisfaction of legal obligations by the Russian Federation does not mean that there are no measures that can be initiated at present which will contribute to the realization of that right, the same applies regarding the right to truth.

983. For example, all conflicts generate important needs concerning information about missing persons.⁶⁸⁶ In contrast to, for example, other national conflicts between State forces and more or less informal non-State parties, there is no question that in the case of the aggression against Ukraine, the Geneva Conventions apply. This means that provisions of

⁶⁸¹ See, e.g., CED/C/7.

⁶⁸² Inter-American Commission on Human Rights (IACommHR), Annual Report, 1985-86, AS Doc. No. OEA/Ser.L/V/II.68, Doc. 8 rev. 1, 26 September 1986, p. 193.

⁶⁸³ Inter-American Court of Human Rights, *Myrna Mack Chang v. Guatemala*, (Reparations and Costs), (Ser.C.) No. 91 (2002), 22 February 2002, paras. 75 and 77.

⁶⁸⁴ The *Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa* highlight that the right to an effective remedy includes “access to the factual information concerning the violations” (section C(b)(3)).

⁶⁸⁵ European Court of Human Rights, *El-Masri v. the former Yugoslav Republic of Macedonia*, Application No. 39630/09, Judgment, 13 December 2012. The Court emphasizes “the great importance of the present case not only for the applicant and his family, but also for other victims of similar crimes and the general public who had the right to know what had happened” (para. 191).

⁶⁸⁶ See e.g., A/63/299 and A/71/299. See also Monique Crettol, Lina Milner, Anne-Marie La Rosa, and Jill Stockwell, “Establishing mechanisms to clarify the fate and whereabouts of missing persons: A proposed humanitarian approach” *International Review of the Red Cross*, Vol. 99, No. 905, (2017), pp. 589-619.

the Third Convention apply to prisoners of war and provisions of the Fourth Convention apply to civilians.

984. Regarding the Third Geneva Convention, for purposes of contributing to the right to truth, the full compliance with Articles 122 and 123 are most urgent. Both articles regulate the establishment and functioning of instruments that collect and make available information regarding persons covered by Article 4 of the Convention, in this case persons under the control of a Detaining Power. Article 122 mandates the establishment of, and regulates the information collection and flow by, Information Bureaux, and Article 123 calls for the establishment of a Central Prisoners of War Information Agency in a neutral country. These mechanisms are intended to ensure that families know the fate and whereabouts of their relatives and to prevent disappearances.⁶⁸⁷

985. The Fourth Geneva Convention, in Articles 136-139 establishes parallel obligations concerning protected persons held by parties to the conflict, including the establishment of Information Bureaux.

986. The Convention on the Protection of All Persons from Enforced Disappearances also imposes obligations that are relevant to the urgent task of gathering information about missing persons, and in this sense, relevant to the initial steps of satisfying the right to truth.⁶⁸⁸ Article 3 of the Convention expresses the obligation on the part of States to investigate disappearances both those associated to its own agents and those that may have been the responsibility of others. The full set of obligations and corresponding rights are spelled out in the “Guiding principles for the search for disappeared persons,” adopted by the Committee on Enforced Disappearances in 2018.⁶⁸⁹

987. Ordinary judicial and investigative authorities are seldom adequate to the task of addressing the problem of missing persons left in the wake of conflict; part of the problem has to do with the immense caseload, part of it with lack of the necessary competencies (including sufficient and appropriate forensic competencies), but also with functional factors; judicial and related investigative authorities, are by design, more interested in the identification of perpetrators than on the resolution of the fate and whereabouts of the victims. Recalling that the resolution of missing person cases cannot be reduced to ‘finding and returning bones,’ but that it involves sensitive issues including high levels of interactions with relatives in order to collect *ante mortem* information, the investigation of facts that come from a wide variety of sources,⁶⁹⁰ (the sharing of *post mortem* information with family members, the culturally sensitive handling and return of remains, helps to understand the limitations of ordinary judicial bodies in dealing with this problem.⁶⁹¹

988. These limitations help explain why several countries have chosen to establish specialized bodies (‘Missing Persons Units’) to address the challenges of missing persons. These multidisciplinary entities become the point of contact between relatives and authorities and can be an important part (and in many cases, the entry point) to the ‘institutional portal’ that coordinates services and support to victims mentioned above. While their ad hoc nature makes them independent and nimble, and usually more responsive to victims, they are no

⁶⁸⁷ In practice, these functions are usually performed by the International Committee of the Red Cross Central Tracing Agency, one of the many reasons why granting the institution untrammelled access to sensitive combat areas, including detention facilities is so crucial. See, for example, International Committee of the Red Cross, *Commentary on the Third Geneva Convention* 2nd Edition, (Cambridge, Cambridge University Press, 2021), Part V, especially pp. 1707-1765 on articles 122 and 123.

⁶⁸⁸ United Nations, *Treaty Series*, vol. 2716, No. 48088, p. 3; The convention entered into force on 23 December 2010.

⁶⁸⁹ See, CED/C/7 (2018).

⁶⁹⁰ Such sources include national authorities and institutions such as police, army, hospitals, cemeteries and forensic institutions; witnesses, anonymous or not; members of the families concerned; victims; the adverse party or parties; or even the perpetrators themselves, as well as international bodies including multinational forces, international/regional organizations and entities, and international/foreign tribunals. Neither the large number nor some of these are the usual interlocutors of national judicial authorities. See Monique Crettol et al., “Establishing mechanisms to clarify the fate and whereabouts of missing persons”, p. 612.

⁶⁹¹ See, e.g., Mercedes Salado Puerto et al., “The search process: Integrating the investigation and identification of missing and unidentified persons”, *Forensic Science International: Synergy*, Vol. 3, 2021.

panacea, but they do help, and when they do, constitute a first step in satisfying the right to truth and providing additional support to victims.⁶⁹²

989. The Commission has concentrated in this section mainly in actionable first steps that can start to give procedural reality to the substantive rights of victims beyond their right to criminal justice, consistent with a well-established wide understanding of accountability that is victim-centred. It does not mean to suggest that these initial steps fully satisfy the rights to reparations and to truth. About the right to non-repetition, which as mentioned before, some take to be a part of reparation, some an independent right, the Commission will make similarly initial recommendations in the section on the root causes of the conflict.

VIII. Conclusions and recommendations⁶⁹³

990. The armed conflict in Ukraine has had devastating effects at various levels, most notably on individuals, communities, the society, the environment, and the economy of Ukraine. It has affected considerably the enjoyment of almost all human rights. People live in a climate of unbearable uncertainty and fear. Scores of survivors are coping with the immediate consequences of violent events and large-scale damage. In addition to the many physical injuries that will need time to heal, the deep psychological impact will have long-lasting effects.

991. The Commission is concerned with the number, the geographic spread, and the gravity of human rights violations and corresponding international crimes which it has documented during its mandate. These have affected men, women, boys and girls of all backgrounds and ages.

992. It has concluded that that Russian authorities have committed numerous violations of international humanitarian law and violations of international human rights law, in addition to a wide range of war crimes, including the war crime of excessive incidental death, injury, or damage, wilful killings, torture, inhuman treatment, unlawful confinement, rape, as well as unlawful transfers and deportations. The Commission has also found that the Russian armed forces attacks, starting 10 October 2022, on Ukraine's energy-related infrastructure and the use of torture by Russian authorities may amount to crimes against humanity.

993. In a limited number of cases, the Commission has found that the Ukrainian armed forces were likely responsible for violations of international humanitarian law and human rights law, and for some incidents which qualify as war crimes. The former include indiscriminate attacks and two incidents of wounding and torture of Russian prisoners of war.

994. Beyond sharing their deep loss and trauma with the Commission, survivors have highlighted the importance of identifying those responsible and bringing them to account. One man, whose father was executed by Russian armed forces in the Iziium region, told the Commission: *"They punished innocent people; now those who are guilty, if they are still alive, need to be punished to the fullest extent."*

995. The Commission recommends that the parties to the conflict:

- (a) Respect and ensure compliance of all obligations stipulated in relevant treaties and customary international law regarding international humanitarian law, international human rights law and international criminal law;
- (b) Comply with all the obligations enshrined in international humanitarian law, including keeping accurate records of all people under the control of each party and exchanging information on that basis;
- (c) Ensure that the International Committee of the Red Cross has unrestricted access to carry out its work in accordance with its mandate under international law;
- (d) Protect and respect the space for humanitarian action from disinformation, politization, and polarization;

⁶⁹² See, e.g., the useful comparative study of search commissions in Latin America by Verónica Hinestroza, Iris Jave, and Rainer Huhle "Comisiones de búsqueda en América Latina" (Mexico, GIZ/FED, September 2021).

⁶⁹³ The conclusions and recommendations of this report remain the same as those in the Commission's 16 March 2023 report to the Human Rights Council (A/HRC/52/62).

(e) Take all feasible measures, in line with international standards, to locate all those disappeared or missing – women, men, girls and boys, establish their fate and ensure communication with their families;

(f) Ensure the timely, effective, thorough, independent, impartial and transparent investigation and prosecution of all allegations of international crimes, violations of human rights and international humanitarian law, including sexual and gender-based violence and violence against children;

(g) Hold all perpetrators accountable through judicial proceedings in accordance with international human rights standards;

(h) Take all necessary steps in order to ensure that all victims' right to truth is satisfied and that they eventually obtain redress and remedy, including compensation and rehabilitation;

(i) Ratify international instruments to which they are not yet party and which will strengthen the protection of civilians in armed conflict.

996. The Commission recommends that the Russian Federation immediately:

(a) Cease aggression and all acts of violence committed against civilians in violation of applicable international human rights and international humanitarian law and end the use of torture and other forms of ill-treatment, including sexual and gender-based violence;

(b) Take all feasible precautions to protect civilians and civilian infrastructure and end massive attacks against energy-related infrastructure in Ukraine;

(c) Provide reliable and comprehensive information about the number and the whereabouts of all children that have been transferred within or deported from Ukraine to the Russian Federation for whatever reason; facilitate effective communication between children and their families, and promptly and proactively initiate their return to Ukraine in accordance with their best interests and with international obligations using technical assistance from international organisations; and prevent any further transfers within and deportation of children from Ukraine.

(d) Release or return to Ukraine all Ukrainian civilians who have been deported to the Russian Federation and are detained there as a consequence of the armed conflict.

997. The Commission further recommends that the Russian Federation:

(a) Ensure that all perpetrators, including commanders and other superiors, and those ordering, soliciting or inducing the commission of international crimes, are held accountable;

(b) Take the necessary measures to prevent the commission of such violations and crimes, in particular through unequivocal instructions to all branches of the armed forces and other entities participating in the armed conflict with a view to ensure that military discipline and respect for international human rights and humanitarian law is upheld along with the principle of command responsibility;

(c) Limit the use of private military and security companies in the conflict, as experience shows that these, on the one hand, lying outside formal lines of command, and on the other, having a great incentive to compete with one another, and with regular forces, frequently engage in violations of international law, and are generally less accountable than regular forces;

(d) Respect international humanitarian law applicable to occupied territories and refrain from placing any impediment to humanitarian assistance in those territories;

(e) Cooperate fully with all international monitoring and investigative bodies.

998. The Commission recommends that Ukraine:

(a) As a preliminary step towards a comprehensive reparations program, establish a victim registry as an 'institutional portal' for better coordination of available government services to victims;

(b) In light of its "Operational Roadmap", comprehensively address mental health and psychosocial needs resulting from the armed conflict by tackling access and allocation of resources to the relevant services as well as enhancing their institutional coordination, legal regulation, monitoring, and evaluation;

(c) Harmonise its legislation related to war crimes where it is not in conformity with international standards, and amend its criminal code to clarify the definition of "collaborative activity" to avoid legal uncertainty and harm to social cohesion;

(d) Taking into account both the enormous case load and limited resources, develop an investigatory and prosecutorial strategy, which will prioritise cases on the basis of clear criteria and ensure due process and transparent monitoring.

999. The Commission recommends that other States and regional and international organizations:

(a) Strengthen national, regional and international accountability mechanisms (both judicial and non-judicial), including by improving their coordination, and supporting the effective participation of civil society and victims' and survivors' groups;

(b) Further integrate the human rights dimensions of the armed conflict in Ukraine more fully into the Security Council's agenda.
