



## **Draft Internal Update on War Crimes Committed by Russian Armed Forces in Ukraine**

As of 17 April 2023

1. Since 24 February 2022, Ukrainian prosecutors have estimated more than 70,000 war crimes committed by Russian Armed Forces in the territory of Ukraine<sup>1</sup>. Crimes have been indiscriminate, affecting Ukrainian military and civilians alike.
2. The conflict is having a devastating toll on the civilian population. As of 10 April 2023, the Office of the High Commissioner of the United Nations Human Rights (OHCHR) recorded 22,734 civilian casualties: 8,490 killed and 14,244 injured<sup>2</sup>. 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. The United Nations High Commissioner for Refugees (UNHCR) reported about eight million refugees from Ukraine across Europe, of which around 90% were women and children. In addition, about 5.4 million people are currently displaced across Ukraine<sup>3</sup>.
3. The conflict has impacted people's right to health, education, adequate housing, food, and water. Some vulnerable groups, such as older persons, children, persons with disabilities, and persons belonging to minorities, have been particularly affected. No region of Ukraine has been spared by the conflict.
4. On 15 March 2023, the United Nations Human Rights Council released a report<sup>4</sup> of the Independent International Commission of Inquiry on Ukraine, established on 4 March 2022, under resolution 49/1, and whose aim is to investigate and collect data of 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, and to establish the facts, circumstances and root causes of any of such violations and abuses.

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<sup>1</sup> <https://www.reuters.com/world/europe/how-are-war-crimes-ukraine-being-investigated-2023-02-23/>

<sup>2</sup> <https://www.ohchr.org/en/news/2023/04/ukraine-civilian-casualty-update-10-april-2023>

<sup>3</sup> <https://www.unhcr.org/news/press/2023/2/63f78c0a4/unhcr-year-russian-invasion-insecurity-clouds-return-intentions-isplaced.html>

<sup>4</sup> [https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/coiukraine/A\\_HRC\\_52\\_62\\_AUV\\_EN.pdf](https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/coiukraine/A_HRC_52_62_AUV_EN.pdf)

5. Based on the Report of the Independent International Commission of Inquiry on Ukraine below is a summary of the verified violations of international human rights law, international humanitarian law, and international law in various regions of Ukraine, many of which amount to war crimes, committed by Russian authorities.
6. At the end of this document, as an Annex, there are the Conclusions and Recommendations of the Report of the Independent International Commission of Inquiry on Ukraine.

## **1) Violations committed during the conduct of hostilities**

### **Unlawful Attacks in the Territory Controlled by the Ukrainian Government**

7. Investigations indicated that Russian Forces have made use of explosive weapons in populated areas controlled by the Ukrainian Government, in an attempt to capture Ukrainian towns. Attacks have hit residential buildings, including, among many others, hospitals, schools, shops, theaters, hotels, kindergartens, train stations.
8. According to international law, attacks that are not specifically directed towards military targets are considered indiscriminate. The Commission determined that most of these attacks were indiscriminate as no military objective could be found for said targets, as well as the Russian Armed Forces failed to take the proper precautions when considering the presence of civilians in the attacked areas.
9. The Commission has also found that four different types of explosive weapons were used by Russian Armed Forces against civilian targets since the outbreak of the invasion. Such explosive weapons are: unhinged bombs dropped from aircraft, inaccurate long-range anti-ship missiles (Kh-22 and Kh-32), cluster munitions, and multiple launch rocket systems.

### **Unlawful Attacks in the Territory Controlled by the Russian Armed Forces**

10. The Commission has found instances where Ukrainian armed forces likely used cluster munitions and rocket delivered anti-personnel land mines in the regions of Izium and Kharkiv, from March to September 2022. Ukraine is a state party to the Anti-Personnel Land Mines Convention, prohibiting the use, stockpiling, production, and transfer of said weapons.

### **Attacks Against Ukrainian Energy-Related Infrastructures**

11. Between 10 October 2022 and 1 February 2023, Russian attacks on Ukrainian-related infrastructures have significantly intensified. Russia has launched 13 different attack waves, hitting 20 out of 24 Ukrainian regions.

12. While prior attacks were directed at fuel and electric infrastructures on the railway system, preventing Ukrainian forces from mobilizing equipment and personnel, after Russian Armed Forces have directed their missile attacks towards nuclear powerplants and other infrastructures related to the transfer of energy and heating distributed to civilians. The disruption of electric substations, powerplants and other electricity-related infrastructures has significantly harmed the civilian population.
13. Millions of Ukrainian civilians have been left with impaired access to energy, heating, water, sanitation, food, and healthcare. Hence preventing the population from having access to their basic needs to survive.
14. Russian attacks have been disproportionate and indiscriminate. Therefore, the Commission has deemed that Russian actions constitute war crimes, due to excessive incidental death, injury, and damage.

### **Endangering of the Civilian Population**

15. During the conduct of hostilities, Russian Armed Forces have exposed civilians to significant risks. In fact, since the Russian Federation launched the full-scale invasion into Ukraine, Russian Armed Forces have deliberately stationed their troops and equipment into residential areas. Reports indicate that at times they have forced the Ukrainian population to remain in proximity to their military positions.
16. In addition, there have been multiple military operations near and from the Zaporizhzhia nuclear powerplant, which have prompted a serious risk of a nuclear incident from happening. Satellite imagery, from 29 August 2022, has shown that the Russian Armed Forces have positioned some of their equipment less than 150 meters away from the facility's reactor.
17. On other hand, some of the territories controlled by the Ukrainian Armed Forces have shown a lack of separation between military and civilian infrastructure.
18. In the city of Chernihiv, Ukrainian Territorial Defense Forces set up headquarters in two schools, also used to distribute humanitarian aid to the population. On 3 March 2022, an airstrike that hit both schools claimed the lives of military and civilians alike.
19. The Commission has concluded that the parties have endangered civilians by not taking the 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.

## **2) Personal Integrity Violations**

### **Personal Integrity Violations Committed by the Russian Armed Forces**

20. The Commission has documented patterns of war crimes and crimes against humanity conducted against the civilian population of Ukraine. Willful killings, attacks against civilians, summary executions, unlawful confinement, sexual and gender-based violence, torture, inhumane treatment, and the unlawful transfer and deportation of children and detainees are only some of them. Perpetrators of said crimes have mostly targeted individuals for any real or perceived support towards the Ukrainian government and army, as well as to any action considered against Russian Armed Forces.

### **Summary Executions**

21. Evidence indicates that summary executions have been carried out in 17 localities of the Chernihiv, Kharkiv, Kyiv and Sumy regions. The highest number of executions were carried out in the Kyiv region, including the town of Bucha, where a massacre was carried the first months of the invasion. The Commission has confirmed the execution of 65 men, 2 women and a 14-year-old boy.

22. Recent United Nations data indicate that 15 Ukrainian soldiers have been victims of summary executions in recent months. Russian's Wagner Group is accounted with 11 of those killings.

### **Attacks against civilians on the move**

23. In the Kharkiv, Kyiv and Sumy regions there has been a registered pattern of attacks against civilians trying to flee the conflict area. By far, there have been 18 documented cases, most taking place in the Kyiv region.

24. All victims have been identified wearing civilian clothing, unarmed, and driving civilian cars (some of them having "children on board" stickers). The Commission regarded these actions as war crimes due to the failure of the Russian Armed Forces to verify whether some of the objectives were civilian or not.

### **Unlawful Confinement**

25. There have been multiple registered cases of unlawful confinement by the Russian Armed Forces, which have indiscriminately targeted victims of all genders and ages.

26. The Russian Armed Forces have established multiple improvised and permanent detention facilities in the regions of Chernihiv, Donetsk, Kharkiv, Kherson, Kyiv and Zaporizhzhia, and in the territory of the Russian Federation.

27. Procedural requirements for detention were not met. Conditions of detention were consistently inhuman. In numerous cases, the confinement was prolonged, with the longest instance over nine months. Relatives were not informed, and reasons for confinement were not properly communicated.
28. Russian authorities confined persons of different occupations with a majority of young or middle-aged men, including any person formerly associated with Ukrainian Armed Forces, local officials, state personnel, current and former law enforcement employees, activists and journalists, education personnel, employees of the Zaporizhzhia Nuclear Power Plant, volunteers evacuating civilians, and others. They also confined people, who were influential in their communities to force them and local residents to cooperate.
29. Unlawful confinement started at checkpoints or filtration points, staffed by Russian Armed Forces, or in the street. Russian authorities also detained people during house searches or at their workplace. Detention was often a precursor to torture and executions. Perpetrators generally accused the detainees of real or perceived assistance to Ukrainian Armed Forces, or found something that in their view looked suspicious during phone searches. In numerous cases, Russian authorities have detained people without any valid grounds.
30. Among the detention facilities, which the Commission has identified, some were improvised. Cells were overcrowded, lacking light, heat, ventilation, and sanitary conditions. In some cases, detainees had to share the cell with already deceased bodies.
31. Such conditions of detentions can disproportionately affect people depending on their gender. Some women restricted their water and food intake out of shame to use the toilet in front of others. When water was available, there was no privacy. Menstruating women suffered because of lacking hygiene. This can lead to serious infections and diseases.

### **Unlawful Transfer and Deportation of Detainees**

32. Russian authorities have also carried the illegal transfer and deportation of detainees from Ukraine to the Russian Federation. Some individuals have been detained as “prisoners of war”, though many of them retain a civilian status. When in Russian Federation, some detainees have been transferred to pre-trial facilities in the regions of Kursk and Bryansk.
33. The Commission has concluded that Russian Armed Forces committed unlawful transfers and deportations of civilians and of other protected persons within Ukraine or to the Russian Federation, respectively. This is a war crime.

## **Torture and Inhuman Treatment**

34. The Commission has found a widespread pattern of torture and inhuman treatment committed by Russian authorities against people detained in the regions of Chernihiv, Donetsk, Kherson, Kyiv and Zaporizhzhia, as well as within the Russian Federation.
35. Torture was particularly severe against current or former members of Ukrainian Armed Forces and associated persons, and their relatives. Local officials, law enforcement personnel, employees of Zaporizhzhia Nuclear Power Plant, and civilians with pro-Ukrainian views have also been victims of torture.
36. The methods of torture by Russian Armed Forces include the tying of hands, feet, and legs, as well as beatings with rifle butts and batons, electric shocks with tasers, rape and prolonged exposure to the cold. In some instances, torture has been followed by executions.
37. Torture has been used as a mean to obtain information about the Ukrainian military, extracting confessions, force victims to cooperate or as a way to inflict “punishment”.
38. Russian authorities have referred to detainees as “Nazis”, “Fascists” and “Terrorists”, forcing them to undergo “de-Nazification” sessions, mainly consisting of severe beatings.
39. In areas where Russian control has been prolonged or at permanent detention centers, authorities have made use of additional and more severe torture methods. Other torture methods include the parrot position, strangulation, suffocation, rape, sexual violence, and electrocution.
40. The Commission has concluded that Russian Armed Forces make use of torture on a systematic and widespread manner. Torture is a crime against humanity. Further investigations are being made at present, under the advice of the Human Rights Council.

## **Sexual and Gender-Based Violence**

41. There are several documented cases of sexual and gender-based violence against women, girls and men, aged from 4 to 82 years old. The Commission has found that Russian authorities have committed sexual violence in mainly two situations: during house-to-house searches and against confined victims. In addition, there are further reports indication that such violence is being used in detention camps within Russian Federation.
42. During the first two months of the conflict, most of these crimes took place in the form of house-to-house searches. Soldiers mostly targeted women, who were alone at home. Rapes took place at gunpoint, including acts of brutality, with perpetrators threatening to kill the victims or their relatives. In some cases, victims were repeatedly raped by one or more soldiers, sometimes forcing relatives to watch, including children.

43. There have been several reported cases of sexual and gender-based violence within zones of confinement, affecting mostly men. Sexual violence has been an important aspect of the torture methods, exercised by Russian Federation authorities. The Commission has also found signs of sexual violence on the bodies of already deceased victims.
44. Russian authorities have resorted to forced nudity for prolonged periods of time. Beyond of what is acceptable in the framework of security verification.
45. Based on the evidence it has collected, the Commission has concluded that in areas they controlled, some members of Russian Federation armed forces committed the war crime of rape and sexual violence, which can amount to torture. Rape and torture are war crimes, and violations of the corresponding human rights obligations. Acts of forced nudity can be a form of sexual violence and may constitute the war crime of outrages upon personal dignity.

### **3) Personal Integrity Violations by Ukrainian Authorities**

#### **Torture and Wounding of Prisoners of War**

46. There are two confirmed incidents in which Ukrainian and/or affiliated forces, shot, wounded and/or tortured captured Russian POWs. According to the Ukrainian Prosecutor General's office a pre-trial investigation has already been opened on the matter, even though no objective data has been found.

#### **Alleged Torture and Ill-Treatment of Collaborators**

47. Since 24 February 2022, the Ukrainian authorities have opened thousands of investigations on allegations of treason and collaboration during armed conflict.
48. The Commission has collected 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. There have been allegations that in detention, Ukrainian authorities have committed torture, ill-treatment, violated procedural rights, and detained persons in inhuman conditions.
49. 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 these allegations, and it recommends further investigations.

#### **4) Violation of the Laws of Occupation**

50. The Russian Federation held so-called “referendums” in the regions of Donetsk, Kherson, Luhansk and Zaporizhzhia from 23 to 27 September 2022, disregarding the Ukrainian Constitution, which regulates the organization of a referendum in Ukraine.
51. This also represented a violation of international humanitarian law, which prescribes that an Occupying Power must respect the laws in force in the territory it occupies. Moreover, the Commission concluded that the annexation of the four regions is unlawful, based upon principles of international law, holding that “[n]o territorial acquisition resulting from the threat or use of force shall be recognized as legal.”
52. Pursuant to the so-called annexation “treaties” between the Russian Federation and the four occupied regions, Russian citizenship was granted in the concerned areas. The Commission was informed of situations in which local residents felt compelled to apply for Russian passports. Civilians of retirement age, in particular, applied for Russian passports, after messages from representatives of Russian authorities, suggesting that they would need to hold a Russian passport to receive or continue to receive pensions. Civil servants and other employees of state services, who sought to keep their employment under the Russian administration, were required to apply for Russian passports as a condition to maintain their positions.
53. The Commission found that the so-called “referendums” have violated international humanitarian law, since they occurred under a climate of fear and coercion. Reports indicate that “electoral staff”, accompanied by armed personnel, went door-to-door with ballot boxes.

#### **5) Forced Transfers and Deportations of Children**

54. Ukrainian and Russian Federation officials have declared that thousands of children have been transferred to the Russian Federation since the beginning of the invasion in February 2022. As of the end of February 2023, the Ukrainian government has identified 16,221 children deported, while Russian authorities have confirmed that only 2,000 Ukrainian children to be in the country.
55. The Commission has identified three main situations in which Russian authorities have transferred Ukrainian children from one area they controlled in Ukraine to another or to the Russian Federation. Transfers affected children who lost parents or temporarily lost contact with them during hostilities; who were separated, following the detention of a parent at a filtration point; and children in institutions. The Commission has reviewed incidents



concerning the transfer of 164 children, aged from 4 to 18 years, from the Donetsk, Kharkiv and Kherson regions

56. Forced transfers and deportations of children into the Russian Federation is a war crime, since international humanitarian law prohibits the evacuation of children by a party to the armed conflict, with the exception of a temporary evacuation, when there are compelling reasons relating to the health or medical treatment of the children or their safety.
57. Article 35 of the UN Convention on Childrens Rights states that “the illicit transfer and non-return of children abroad” is prohibited.
58. When Russian Armed Forces invaded Kherson, Kharkiv, Zaporizhzhia and Mariupol, authorities worked with local collaborators, in order to obtain lists of children’s names in the local hospitals, schools, and orphanages. During Russian retreat from Ukrainian city centers, troops evacuated orphanages and hospitals, taking children with them. Children have also been taken by Russian forces when relatives were captured in a Russian-held area.
59. Parents have been forced by Russian Federation authorities to give consent for their children transfer, becoming complicated to reunite with them, as Russian Federation control has changed throughout the map. Parents were also required to retrieve their children in person, forcing them to undergo logistical, financial and security challenges that require them to travel through active war zones, in order to arrive at the specified destination.
60. In all the incidents examined by the Commission, the onus to trace and find parents or family members fell primarily on the children. Parents and relatives encountered considerable logistical, financial, and security challenges in retrieving their children. In some cases, it took weeks or months for families to be reunited. Witnesses told the Commission that many of the smaller children transferred have not been able to establish contact with their families and might, as a consequence, lose contact with them indefinitely.
61. According to statements, and media reports, Russian officials have taken legal and policy measures regarding Ukrainian children transferred to the Russian Federation. These include the granting of Russian citizenship and the placement of children in foster families, which appears to create a framework in which some of the children may end up remaining permanently in the Russian Federation. In this regard, in May 2022, President Putin signed a decree facilitating applications for Russian citizenship for some categories of children<sup>5</sup>.

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<sup>5</sup> See Decree of the President of the Russian Federation of 30 May 2022 No. 330 on Amendments to the Decree of the President of the Russian Federation dated 24 April 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", article 1.

62. On 17 March 2023, the ICC issued arrest warrants for Mr. Vladimir Putin, President of the Russian Federation, and Ms. Maria Alekseyevna Lvova-Belova, Commissioner for Children’s Rights in the Office of the President of the Russian Federation. Based on the Prosecution’s applications, the Pre-Trial Chamber II considered that there are reasonable grounds to believe that each suspect bears responsibility for the war crime of unlawful deportation of population (children) and that of unlawful transfer of population (children) from occupied areas of Ukraine to the Russian Federation, in prejudice of Ukrainian children<sup>6</sup>.

## **The Special Tribunal on crime of aggression in Ukraine**

63. On 28 March 2023, the United States announced its support towards the establishment of a Special Tribunal in charge of prosecuting the crime of aggression against Ukraine.

64. The creation of a Special Tribunal has been long supported by, among others, non-governmental organizations, academics, and Member States of the United Nations, in order to fill the gap within the ICC’s jurisdiction.

65. Already last July, the Public International Law and Policy Group (PILPG) made such proposal, in the form of model legislation, to establish a Ukraine High Court for War Crimes. The model legislation<sup>7</sup>, which the PILPG developed in partnership with Ukrainian and international experts, including the law firm Weil, Gotshal & Manges, had the aim to create an “internationalized” domestic court modelled on the existing High Anti-Corruption Court of Ukraine to prosecute high-level cases of war crimes, crimes against humanity, and aggression.

66. The U.S. proposal hues closely to this model.

67. According to Article 125 of the Ukrainian Constitution, it is prohibited to establish “special and extraordinary tribunals”, in order to avoid the creation of temporary courts by executive authorities. However, the prohibition does not apply to internationalized domestic courts established through the legislative process. In fact, in 2018, Ukraine established the High Anti-Corruption Court, which count on international advisers<sup>8</sup>.

68. Other examples of internationalized domestic courts include: the Regulation 64 Panels of Kosovo, the War Crimes Chamber of the Court of Bosnia and Herzegovina, the Special Department for Adjudicating Trials Against Perpetrators of War Crimes of the Belgrade District Court, and the Iraqi High Court, whose prosecutors were assisted by U.S.

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<sup>6</sup> <https://www.icc-cpi.int/situations/ukraine>

<sup>7</sup> <https://static1.squarespace.com/static/5900b58e1b631bffa367167e/t/62d6c27baae10b6ca51cadb7/1658241661209/DRAFT+Ukraine+High+War+Crimes+Court.pdf>

<sup>8</sup> <https://www.u4.no/publications/launching-an-effective-anti-corruption-court>

Department of Justice attorneys, defense counsel were foreign attorneys, and judges were assisted by foreign judges associated with the International Bar Association.

69. What remains to be discussed is the complex legal doctrine of the Head of State immunity.

## **European Parliament Plenary Session – Debate on Russian War Crimes**

70. During the plenary session of the European Parliament on 19 April 2023, cross-party support was seen regarding the current situation in Ukraine. A great majority of MEPs have expressed their support for the ICC issuance of an arrest warrant on Russian President Vladimir Putin and the Children’s Rights Commissioner Ms. Maria Lvova-Belova. MEPs agreed on the illegality surrounding the forcible transfer and deportation of Ukrainian children, with a majority suggesting that this action amounts to war crimes and crimes against humanity, with some calling it a form of cultural genocide.

71. European Union Commissioner Vera Jourova noted that at least 16,000 children have faced forced mass deportation, expressing the need to comply and enforce the issued arrest warrant on Putin. In addition, Ms. Jourova denotes the commitment of the European Union towards this cause, as it has provided the International Criminal Court with €10 million to help improve its prosecution capacities.

72. MEP Marek Woźniak from Poland expressed that the European Union must act against ICC members that will not respect the arrest warrant, with an emphasis on South Africa. Mr. Woźniak supported this statement by saying that the EU should sanction those compliant with Putin’s regime.

73. Petras Austrevičius, a Lithuanian MEP mentioned that the European Union and international community must “use all possible means to locate, identify and return Ukrainian children to their families, as well as to their homeland Ukraine.”

74. The European Parliament also opened a debate on the cases of Vladimir Kara-Murza and Alexei Navalny. The discussion focused on the draft of a document calling for the immediate release of both individuals. The draft also calls for the United Nations Human Rights Committee to open an investigation into acts of inhumane imprisonment, torture, and murder of political opponents. In addition, the resolution also suggests that all member states of the EU should aid Russian citizens who potentially face political prosecution, by providing humanitarian visas.

75. On 20 April 2023, the European Parliament voted in favour of Resolution 2023/2657, calling for the immediate release of Alexei Navalny and Vladimir Kara-Murza, as well as an investigation by the United Nations Human Rights Council.

## ANNEX 1

### Conclusions and recommendations

107. 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.

108. 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.

109. It has concluded 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, willful killings, torture, inhuman treatment, unlawful confinement, rape, as well as unlawful transfers and deportations. The Commission has also found that the Russian armed forces' waves of 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.

110. 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. They include 61 Convention on the Rights of the Child, article 8(1). 62 HRC resolution 49/1, para. 11(e). 63 ICC, Statement of ICC Prosecutor, Karim A.A. Khan QC, on the Situation in Ukraine: Receipt of Referrals from 39 State Parties and the Opening of an Investigation, 2 March 2022. 64 A/RES/60/147; A/RES/40/34. A/HRC/52/62 17 indiscriminate attacks and two incidents of wounding and torture of Russian prisoners of war.

111. 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 a village of the Kharkiv 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."

112. The Commission recommends that the parties to the conflict:

(a) Respect and ensure compliance with 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, politicization, and polarization;
- (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 international human rights law 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.

113. 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 organizations; 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.

114. 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 are 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.

115. 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 on prioritized multisectoral mental health and psychosocial support actions 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) Harmonize 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 prioritize cases on the basis of clear criteria and ensure due process and transparent monitoring.

116. 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 groups representing victims and survivors;

(b) Further integrate the human rights dimensions of the armed conflict in Ukraine more fully into the Security Council’s agenda.

## **Updates based on the Report of the Independent International Commission of Inquiry on Ukraine**

as of 19 October 2023

117. As the armed conflict continues in its second year, it further contributed to the suffering and hardship for thousands of affected civilians. The present update builds on the updated report Independent International Commission of Inquiry on Ukraine, published on 18 October 2023, and outlines preliminary findings since the renewal of its mandate<sup>9</sup>.

118. As of 10 September 2023, the OHCHR recorded 27,149 civilian casualties: 9,614 killed and 17,535 injured. In addition to 6.2 million people, who have left the country as of 3 October 2023, about five million are internally displaced as of June 2023. As of 10 October 2023, the UNHCR reported about 5.8 million refugees from Ukraine in Europe.<sup>10</sup> The United Nations Office for the Coordination of Humanitarian Affairs (OCHA) also estimated that 17.6 million people in Ukraine need humanitarian assistance.

### **1) Violations committed during the conduct of hostilities**

#### **Impact of attacks with explosive weapons on civilian areas**

120. Attacks with explosive weapons in populated areas remained the leading cause of deaths and injuries among the civilian population. As of 10 September 2023, OHCHR estimated that 8,062 persons were killed and 16,610 were injured in such attacks. Such attacks had vast consequences in the provinces of its focus, for instance in the cities of Chernihiv, Sumy and Kharkiv, and impacted all segments of the population.

121. Fighting and attacks affected a significant number of hospitals, which generally have protected status under international humanitarian law. The Commission documented damage to or destruction of five hospitals

#### **Indiscriminate attacks with explosive weapons**

122. The Commission has concluded that several attacks with explosive weapons that it investigated were indiscriminate and that feasible precautions to reduce civilian harm were not taken, in violation of international humanitarian law. The weapons employed in the attacks include missiles and rockets.

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<sup>9</sup> <https://daccess-ods.un.org/tmp/7128862.73860931.html>

<sup>10</sup> <https://data.unhcr.org/en/situations/ukraine>

123. Such attacks are particularly challenging to investigate and to attribute to a perpetrator. The evidence obtained thus far strongly suggests that the Russian armed forces have committed indiscriminate attacks.

### **Attacks Against Ukrainian Energy-Related Infrastructures**

124. In its previous reports, the Commission expressed concern at the impact on civilians of the large-scale waves of attacks on energy infrastructure launched by the Russian Armed Forces. It is currently examining in further detail the consequences of the attacks for the civilian population.

125. With regards to the impact of the breach at the Kakhovka Dam on 6 June 2023, the Commission is investigating the cause of the breach, which had detrimental consequences for the fulfilment of basic human rights of the population in the affected area and triggered additional displacement.

126. According to the latest information received from the Government of Ukraine in the aftermath of the events, 33 persons died, 28 were injured, and over 40 persons were missing. The breach is also expected to have a long-term harmful impact on the economy and the ecology of the region. The Commission will further investigate its short and long-term consequences.

## **2) Personal Integrity Violations**

### **Torture and Inhuman Treatment**

127. In its report to the Human Rights Council, the Commission found that torture was widely used by Russian authorities in seven provinces of Ukraine and in the Russian Federation, and detailed how it was practiced in detention facilities.<sup>11</sup> The new evidence is consistent with and reinforces the Commission's previous findings that the use of torture by the Russian authorities was widespread and systematic.

128. Russian authorities generally committed torture during interrogation sessions. Interrogations were mainly aimed at extracting information, to force the victims to cooperate with the occupying authorities, or as a punishment.

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<sup>11</sup>[https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/coiukraine/A\\_HRC\\_52\\_62\\_AUV\\_EN.pdf](https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/coiukraine/A_HRC_52_62_AUV_EN.pdf)



129. Consistent with the Commission’s previous conclusions, in the cases investigated, perpetrators mainly tortured persons, whom they accused of passing information to the Ukrainian authorities, or of otherwise supporting the Ukrainian armed forces. Victims were men and women of ages ranging from 29 to 57 years, with the majority consisting of men.

130. Russian authorities principally used torture against persons that admitted or that they suspected of providing any form of support to the Ukrainian authorities or the Ukrainian Armed Forces. Others were tortured after they were found to be holding pro-Ukrainian or anti-Russian views or if they refused to cooperate with Russian authorities.

131. The Commission received reports on other methods of torture. These included mock executions, placing the victims’ head in a barrel of water, called “drowning”, the slashing on various parts of the body, depriving detainees of their sleep, forcing a victim to inhale or the injecting of an unknown substance. Two victims died after the latter two practices.

132. Torture often led to long-term physical and psychological trauma and death for the victims and their relatives. In several cases, in addition to torture, Russian Armed Forces violated the victims’ right to life and caused death by way of ill-treatment, and inhuman conditions.

133. Victims and witnesses stated that interrogation sessions and torture were conducted by personnel of the Federal Security Service of the Russian Federation, Russian Armed Forces, personnel of the National Guard of Russia, soldiers of the former so-called Donetsk People’s Republic, and personnel of the Wagner Group.

### **Unlawful Confinement, Transfer and Deportation of Detainees**

134. The Commission documented additional improvised detention facilities in which Russian authorities unlawfully held detainees, routinely used torture, and unlawfully transferred them to one or more detention facilities after initial detention. The Commission found that inhuman conditions and the use of torture continued to be prevalent in all.

### **Sexual and Gender-Based Violence**

135. Following its previously documented cases of sexual and gender-based violence, the Commission focused its recent investigations on Kherson and Zaporizhzhia provinces and found evidence that Russian authorities committed rapes and sexual violence in a district of Kherson province.

136. The cases of rape documented occurred between March 2022 and July 2022, in small villages in the Kherson province, mostly during Russian authorities’ incursions in the homes

of the victims. Perpetrators committed additional acts of violence, including severe beatings, strangling, suffocating, slashing, and shooting next to the victim's head.

137. In a number of cases, family members were present when the rape took place. There are instances in which perpetrators also committed crimes and violations against them, including killing, attempted killing, and torture.

138. Victims stated that the crimes and violations were committed by Russian soldiers, and in some cases specified that perpetrators belonged to units from the former so-called Donetsk and Luhansk People's Republics. However, the interviews of the Commission also show that in a small number of cases, superiors acted against those committing rape or fellow soldiers attempted to stop the perpetrators or to assist the victim.

### **3) Personal Integrity Violations by Ukrainian Authorities**

#### **Arbitrary arrest, detention, and ill-treatment of alleged collaborators by Ukrainian authorities**

139. Since its previous recommendation for further investigations into allegations concerning the treatment of alleged collaborators by Ukrainian authorities, the Commission has documented three such cases: two occurred in March 2022 and a third in March 2023. The victims were men and were arrested arbitrarily. The Commission concluded that in at least one case torture was used against the victim.

140. The Commission continues to investigate additional allegations regarding these incidents as well as other cases.

### **4) Transfers and deportations of children**

141. The Commission investigated further reports regarding transfers of unaccompanied children by Russian authorities to the Russian Federation or to areas they occupied in Ukraine. It notably documented the transfer of 31 children from Ukraine to the Russian Federation in May 2022, and concluded that it was an unlawful deportation and a war crime.

142. The official website maintained by the Government of Ukraine as "the only platform that provides up-to-date, consolidated information" on children who suffer as a result of the armed conflict, recorded 19,546 "deported and/or forcibly displaced persons" as at the end of

September 2023.<sup>12</sup> Two Ukrainian Government officials clarified that this includes figures of children, who crossed the border to the Russian Federation together with parents.

143. Further, the Commission has not been able to find reliable data from the Russian Federation about transfers of children. As of the end September 2023, there was also no mechanism for the return of transferred children in place between both States. On 23 September 2023, Mr. Sergey Lavrov, Foreign Minister of the Russian Federation, stated, “If those families are found, we will assist with the reunification of those children”. Also, a bulletin issued by Ms. Lvova-Belova’s Office noted that if a child “has a parent with full parental rights, the family has every opportunity to be reunited”.<sup>13</sup> However, apart from a few examples, the Commission has not been informed of Russian initiatives to proactively facilitate all returns.

144. Transfers of children to Russian occupied areas and across the border to the Russian Federation have occurred in a variety of different situations. A well-functioning return process should be oriented around the best interests of the child and should consider the circumstances of each individual situation. However, in the absence of a rigorous recording and verification system, clarity cannot be shed on the true extent of transfers of children in each type of situation. The lack of clarity and transparency regarding the circumstances and categories of children transferred is an impediment to a well-functioning return process.

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<sup>12</sup> <https://childrenofwar.gov.ua/>

<sup>13</sup> <https://india.mid.ru/upload/iblock/0c7/x1ub0akni71rjj5uv9558nyyijl3ozrx.pdf>

## ANNEX 2

### Conclusions and recommendations

140. During its second mandate, the Commission has found evidence showing that Russian authorities have continued to commit numerous violations of international human rights law and international humanitarian law in the context of their armed aggression in Ukraine. It concluded, among others, that Russian authorities have committed indiscriminate attacks against civilians, and the war crimes of torture, willful killing, rape and other sexual violence, and deportation of children, which are also violations of human rights. It has received numerous other allegations, and its investigations are continuing.

141. The Commission also documented three cases in which Ukrainian authorities committed human rights violations against persons they accused of collaborating with Russian authorities.

142. This conflict, like all others, continues to leave in its wake considerable physical and mental trauma. The population faces hardship following the loss of lives, injuries, and the destruction and devastation caused by the armed conflict. The Commission further documented the impact on the civilian population by violations and events related to the armed conflict. This is notably the case of the large-scale attacks against Ukraine's infrastructure carried out by Russian armed forces and of individual attacks affecting civilian objects.

143. Similar to its previous reports, the Commission reiterates the paramount importance of ensuring that perpetrators are held accountable. In addition to judicial measures, it also emphasizes the importance of other dimensions of accountability, including truth, reparations, and guarantees of non-recurrence.

144. The Commission considers that the recommendations it made in its report to the Human Rights Council remain relevant to a very large extent. Accordingly, it reiterates them, and makes additional recommendations, following its latest investigations, to strengthen accountability and for the prevention of further violations.

145. The Commission recommends that the parties to the conflict:

- (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, sexual and gender-based violence, and other forms of ill-treatment;
- (b) Take all feasible precautions to protect civilians and civilian infrastructure, including energy-related infrastructure which were severely damaged after the massive attacks that targeted them from October 2022 to March 2023;
- (c) Comply strictly with international humanitarian law and respect the temporary nature of any transfer or evacuation of children by ensuring their expeditious return;
- (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.

146. The Commission further recommends that the Russian Federation:

- (a) Ensure that all perpetrators, particularly commanders and other superiors, and those ordering, soliciting or inducing the commission of international crimes, are held accountable in accordance with international human rights standards;
- (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 are upheld along with the principle of command responsibility;
- (c) Respect international humanitarian law applicable to occupied territories and refrain from placing any impediment to humanitarian assistance in those territories;
- (d) Cooperate fully with all international monitoring and investigative bodies.

147. The Commission recommends that Ukraine:

- (a) As a preliminary step towards a comprehensive reparations program, establish a victims' registry as an 'institutional portal' for better coordination of government services to victims;
- (b) 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) Consider establishing a DNA registry which would aid in the identification and recovery of missing children;
- (d) Harmonize 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;
- (e) Taking into account both the enormous case load and limited resources, finalize an investigatory and prosecutorial strategy, which will prioritize cases on the basis of clear criteria and ensure due process and transparent monitoring.

148. 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 groups representing victims and survivors;
- (b) Make sure that recognizably necessary national reconstruction programs or property restitution programs are not designed to the detriment of victims' reparations;
- (c) Further integrate the human rights dimensions of the armed conflict in Ukraine more fully into the Security Council's agenda.

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