FORCIBLE TRANSFER, DEPORTATION AND UNLAWFUL CONFINEMENT OF CIVILIAN PRISONERS FROM KHERSON AND MYKOLAIV OBLASTS OF UKRAINE

COMMUNICATION UNDER ARTICLE 15(2) OF THE ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT

21 May 2026

EUROPEAN PRISON LITIGATION NETWORK

ЗАХИСТ В'ЯЗНІВ УКРАЇНИ

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"What matters to us is not your quality, but your quantity. If anything goes wrong, one step to the right, one step to the left, we will shoot to kill you. Any disobedience or protest will be considered an attempt to escape, and then we will open fire. I don't care what I bring you back with. I don't care if you get there alive or dead. I just want to [make a] report."

– an unidentified Russian convoy officer, during the loading of prisoners in vans at the Hola Prystan correctional colony no. 7, the Kherson oblast of Ukraine, early November 2022

I. Introduction

1. The present Communication is submitted to the Office of the Prosecutor of the International Criminal Court under Article 15(2) of the Rome Statute of the International Criminal Court ("the Rome Statute") by non-governmental organisations – Protection for Prisoners of Ukraine, European Prison Litigation Network and Kharkov Human Rights Protection Group (submitting organisations).

2. The communication is focused on the deportation and forcible transfer, as well as unlawful confinement of detainees who had been serving their sentences in prisons in Kherson and Mykolaiv oblasts of Ukraine at the time of the occupation of the respective territories by the Russian armed forces in February 2022 and were deported by the Russian forces to the occupied Crimea and Russia in November 2022.

A. Submitting Organisations

Protection for Prisoners of Ukraine ("PPU") is a Ukrainian human rights NGO founded by former prisoners that investigates and documents cases of torture and ill-treatment of prisoners in Ukraine, provides counselling and legal assistance to torture victims and their families, and conducts monitoring visits to places of detention. The PPU also carries out remote monitoring of places of detention in the occupied territories of Ukraine and in Russia.

European Prison Litigation Network ("EPLN") is a French international NGO that brings together 30 national civil society organisations from 20 countries working to defend the fundamental rights of prisoners in Europe. EPLN defends and promotes the fundamental rights of prisoners across the continent and works to reduce the use of imprisonment. It researches and analyses changes in legislation and their impact on prisoners' rights and life in prison, and seeks to give a voice to prisoners and their advocates. EPLN has participatory status with the Council of Europe. EPLN has been working in Ukraine since 2017. In 2019-2021, EPLN co-led the "Coalition to Fight Violence in Prisons", which aimed to bring together European civil society organisations involved in monitoring places of detention. In 2022, this collaboration has enabled the ongoing joint documentation of war crimes against the Ukrainian prison population.

Kharkiv Human Rights Protection Group (KhPG) was founded in 1993 and is one of Ukraine's leading human rights organisations, working to protect fundamental rights, including the right to life, freedom from torture, and freedom from arbitrary detention, with particular attention to vulnerable groups, including prisoners. Following Russia's full-scale invasion of Ukraine, KHPG has been systematically documenting war crimes and crimes against humanity committed by Russian forces. KHPG has prior experience with ICC submissions. KHPG is a co-founder of the Tribunal for Putin (T4P) initiative, established in March 2022, which documents atrocity crimes falling within ICC jurisdiction with a view to bringing perpetrators to justice.

B. Methodology

3. The present communication covers the situation of the deportation to Crimea and Russia of civilian prisoners who had been serving their sentences in correctional facilities in Kherson and Mykolaiv oblasts of Ukraine. It also addresses certain aspects of their detention in Ukraine under the Russian occupation in March-November 2022, their post-deportation detention in Russia, and the return to Ukraine of some of them, as well as the relevant legislative and administrative measures, and courts' practice in Russia.

4. The following sources of information were used for preparing the communication:

- interviews, both face-to-face and remote, with victims and witnesses – detainees (convicted prisoners and pre-trial detainees), their relatives, and prison staff,
- replies to inquiries from the official authorities, including the Ministry of Justice of Ukraine, State Penitentiary Service of Ukraine, the Ombudsman of Ukraine, and administrations of places of detention,
- official documents and responses sporadically produced by the Federal Service for the Enforcement of Sentences of Russia (the "FSIN"),

5. The submitting organisations interviewed over 400 detainees (former and current) who have been held in the places of detention under the Russian occupation and returned to the government-controlled areas of Ukraine either from the non-government-controlled areas (NGCA), upon release, or upon the liberation of the respective territories by the Ukrainian armed forces, or from Russia, after being transferred there and subsequently released.

6. Victims and witnesses who had been detained under the Russian occupation and continue to be held in custody by the Ukrainian authorities (most of them – prisoners convicted by the Ukrainian courts before the occupation), notably those who were evacuated from Kherson oblast upon its liberation, were interviewed by the submitting organisations during their visits to prisons in the GCA.

7. Transcripts of interviews are stored and analysed in a secure, tailor-made database created with the support of HURIDOCS.

8. The submitting organisations obtained informed consent from all victims and witnesses interviewed, authorising the use and dissemination of their testimonies. The submitting organisations took all necessary measures to protect the confidentiality of the interviewees. The findings based on the analysis of the interviews were corroborated by data provided by the Ukrainian penitentiary service, victims' families, and public reports and statements. The submitting organisations also analysed over one hundred publicly available judgments and decisions of the domestic courts of the Russian Federation, as well as letters, certificates, case-file materials, and other documentary evidence. Findings were included in this communication, provided they meet the "reasonable grounds to believe" standard, where, based on a body of available information, an ordinarily prudent observer would have reasonable grounds to believe that an event took place as described.

C. Executive Summary

9. Deprived of their liberty, the prisoners in Kherson and Mykolaiv oblasts of Ukraine became easy prey for the Russian invasion. After several months of occupation, almost the entire prison population of Kherson oblast (approximately 1,800 prisoners) was forcibly deported to Russia without any clear purpose and in flagrant violation of international human rights and humanitarian law. This communication sets out the factual and legal basis demonstrating that these acts constitute war crimes and crimes against humanity and requests the Office of the Prosecutor to take the necessary action.

10. In early November 2022, shortly before withdrawing from Kherson, Russian forces transferred about 1,800 prisoners serving sentences imposed by Ukrainian courts from prisons in the Kherson and Mykolaiv oblasts to occupied Crimea and from it – to Russia. Most of the transferred prisoners were ill-treated during transfer or upon arrival at the Russian penal colonies. Once in Russia, they were dispersed among multiple correctional colonies, held separately from the general prison population, deprived of contact with their families, and detained without any lawful basis. Some were eventually released only to be immediately re-detained on spurious grounds of "immigration violations", often for prolonged periods and in poor conditions. But even after ultimately regaining their freedom, the journey home would pose significant difficulties for exhausted people who often lack any identification documents. In many cases, former detainees were forced to spend weeks stranded at checkpoints.

11. The legal analysis in this communication demonstrates that these events disclose serious and overlapping violations of international humanitarian law (IHL), international human rights law (IHRL), and international criminal law:

12. *Unlawful confinement under IHL (GC IV).* The detention of prisoners became unlawful the moment Russian forces took control of the respective facilities. As the occupying power, Russia was required to maintain Ukraine's existing penal regime (Fourth Hague Convention, Article 43; GC IV, Article 64). In view of Russia's active disruption and dismantling of the Ukrainian legal order in the occupied territories, Ukrainian sentences could no longer be lawfully enforced.[1] Prisoners were effectively removed from the Ukrainian justice system and held without any permissible grounds under GC IV. Russia did not invoke, and could not have invoked, any of the limited grounds for internment under GC IV (Articles 42, 43, 64, 68, 70, 78), nor did it comply with the procedural guarantees applicable to internment. Russian authorities also failed to establish any legal mechanism to review detention or allow prisoners to leave the occupied territory, contrary to Articles 35-37 and 77 of GC IV.

13. *Prohibition of deportations and transfers of protected persons (GC IV, Art. 49).* The transfer of prisoners from occupied territory to Russia was carried out without security or imperative military reasons and did not qualify as a legitimate evacuation under Article 49 of GC IV.[2] International bodies, including the ECtHR, OHCHR, WGAD, and OSCE Moscow Mechanism, have confirmed that such deportations are prohibited and constitute grave breaches of the Geneva Conventions.[3] Article 76 GC IV reinforces that convicted persons must serve sentences in the occupied territory; this rule applies a fortiori to those convicted under the law of the occupied State.

14. *Retroactive exercise of criminal jurisdiction.*[4] The subsequent attempt by the Russian Federation to "legalise" the detention of transferred prisoners – principally through Federal Law No. 395-FZ – failed to provide any lawful basis for it. The law retroactively recognised pre-occupation Ukrainian judgments but could not extend Russian criminal jurisdiction into occupied territory or authorise the enforcement of sentences imposed before occupation, from the standpoint of international law. International bodies, notably the UN Human Rights Committee (in its Crimea-related jurisprudence), have confirmed that such retroactive imposition of jurisdiction is incompatible with Article 15 ICCPR, contributes to arbitrary detention, and violates the principle of legality.[5] Inside Russia, domestic courts converted Ukrainian sentences or opened immigration proceedings, but these measures did not cure the original unlawfulness of detention and often aggravated it.

15. *The acts meet the legal definitions of international crimes under the Rome Statute:*

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[1] Section III(H)(v).
[2] Section III(H)(vii).
[3] Section III(F).
[4] Section III(H)(v)(b).
[5] Section III(F)(iii).

War crimes: The unlawful confinement of protected persons and their unlawful deportation or transfer constitute grave breaches of the Geneva Conventions and war crimes under Article 8(2)(a)(vii) of the Rome Statute.

Crimes against humanity: The scale, systematic nature, discriminatory character, and impact of these acts amount to imprisonment or other severe deprivation of physical liberty in violation of fundamental international law (Article 7(1)(e)), as well as deportation of civilians (Article 7(1)(d)). The detention and transfers took place in the context of a widespread and systematic attack against the civilian population in occupied Ukrainian territories.

16. The communication also demonstrates that the Court's jurisdiction *ratione loci* is fully engaged: the actus reus of both deportation/forcible transfer and unlawful confinement began on the territory of Ukraine, a State Party. The continuing confinement in Russia is intrinsically linked to the initial unlawful transfer. The contextual elements of the alleged crimes – international armed conflict; protected person status; widespread or systematic attack – are present.

17. Taken together, the facts and legal analysis establish reasonable grounds to believe that the Russian armed forces, the FSIN, and associated civilian and military officials committed war crimes and, in view of the context of systematic and widespread attacks against civilians, crimes against humanity through the unlawful confinement, deportation, and forced transfer of Ukrainian prisoners. The submitting organisations, therefore, call on the Prosecutor to initiate the appropriate investigative steps and to ensure accountability for these serious violations.

II. Facts

A. Prison population of Kherson and Mykolaiv oblasts in the wake of the Russian military aggression of 2022

18. According to Ukrainian prison data obtained by the PPU, at the time of the occupation of Kherson by Russian forces, there were between 1,853 and 2,225 prisoners detained in the penitentiary facilities in the Kherson and Mykolaiv oblasts of Ukraine. In February and May 2022, all penitentiary institutions in the Kherson oblast were occupied by Russian military forces and armed forces affiliated with / subordinate to them. Information on the facilities, the dates of their occupation and the number of prisoners in each of them is summarised in the table below.

Facility	Date of the occupation[6]	Number of prisoners

[6] Dates of occupation were identified by the submitting organisations based on interviews of prisoners who had been left in the region after the retreat of the Russian forces, or who subsequently returned to Ukraine after being released in Russia.

Darivka correctional facility (no. 10)	28 February 2022	704[7]
Snihurivka correctional facility (no. 5)	28 May 2022	98[8]
Northern (Pivnichna) correctional facility (no. 90)	11 May 2022	Between 838 and 882 – later reportedly increased to 1,500 persons[9]
Hola Prystan correctional facility (no. 7)	3 March 2022	Between 238 and 258[10]
Kherson Pre-trial Detention Centre	1-11 May 2022	Between 285 and 460, including civilian detainees[11]

B. Dismantling the Ukrainian legal order in the occupied prisons and disrupting the normal functioning of the prison facilities

19. As reported by the United Nations Human Rights Monitoring Mission in Ukraine (HRMMU), after the beginning of the full-scale invasion, in violation of the laws of occupation and its obligations under international law, that require the occupying Power to minimize changes to the status quo ante,[12] the occupying authorities of the Russian Federation have, in the occupied territory of Ukraine imposed wholesale the systems of governance, law enforcement, judiciary, and administration,[13] as well as implemented Russian legislation in its entirety across the territory of Ukraine which they occupied, leading, in particular to detention of civilians as well as restrictions on fundamental freedoms.[14] The imposition of the Russian political, legislative, and administrative order in the occupied territory of Donetsk, Luhansk, Kherson and Zaporizhzhia regions was completed after 30 September 2022, when the respective territories

[7] For details, see para. 43.
[8] For details, see para. 36.
[9] For details, see para. 40.
[10] For details, see para. 46.
[11] For details, see para. 45.
[12] OHCHR, Human Rights Situation During the Russian Occupation of Territory of Ukraine and its Aftermath, 24 February 2022 – 31 December 2023, 20 March 2024, para. 4, available at: https://ukraine.ohchr.org/sites/default/files/2024-04/2024-03-20%20OHCHR%20Report%20on%20Occupation%20and%20Aftermath_EN.pdf.
[13] OHCHR, Fact Sheet, Three years since the full-scale invasion of Ukraine: Key facts and findings about the impact on human rights 24 February 2022 to February 2025, February 2025, available at: https://ukraine.ohchr.org/sites/default/files/2025-02/Human%20rights%203%20years%20into%20Russia%27s%20full-scale%20invasion%20of%20Ukraine_factsheet%20%28ENG%29.pdf.
[14] OHCHR, Report on the Human Rights Situation in Ukraine, 1 September – 30 November 2024, p. 23, available at: https://ukraine.ohchr.org/sites/default/files/2025-02/2024-12-31%20OHCHR%2041st%20periodic%20report%20on%20Ukraine.pdf.

were illegally annexed as a result of so-called referendums held there from 23 to 27 September 2022.[15]

20. The Russian forces used intimidation and violence to coerce members of key public sector professions to cooperate with the Russian occupying authorities. They applied laws and administrative systems of the Russian Federation to all spheres of life. Those who resisted risked detention, violence and other reprisals.[16]

21. Russian occupying authorities and armed forces also targeted persons working in numerous other professions, especially civil servants. They used a variety of coercive methods to pressure individuals to continue their work under the authority of the Russian Federation.[17] The Russian Federation imposed its own legal and judicial system on the occupied territory, in breach of the IHL (Under Art. 66 of the Fourth Geneva Convention ("GC IV"), the occupying Power may establish military courts to sit in occupied territory and apply penal measures adopted in accordance with Article 64 of GC IV; however, with regard to all other offences, it should ensure the functioning of regular courts). In September 2023, the Supreme Court of the Russian Federation announced the operationalisation of the Russian court system in the occupied territory of Donetsk, Luhansk, Zaporizhzhia and Kherson regions of Ukraine. By 31 December 2023, it had appointed 436 judges, the majority from the Russian Federation. The establishment of courts presided over by judges from the Russian Federation applying Russian law resulted in complete Russian judicial control projected over the occupied territory.[18]

22. After 24 February 2022, Ukraine lost control over 11 penitentiary institutions, including five indicated above, which were or remain to be located in the NGCA of Ukraine, in addition to 28 prisons in the occupied Donetsk and Luhansk oblasts, which were occupied before February 2022. At the early stage of the Russian occupation, places of detention in the NGCA remained under the control of the Ukrainian authorities, and Russian armed forces had little interaction with the administrations of places of detention. However, already in March-May 2022, the administrations and, more generally, the staff of places of detention faced a dilemma: to leave their service or to collaborate with the occupying authorities.[19]

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[15] OHCHR, Human Rights Situation During the Russian Occupation of Territory of Ukraine and its Aftermath, 24 February 2022 – 31 December 2023, 20 March 2024, para. 33, available at: https://ukraine.ohchr.org/sites/default/files/2024-04/2024-03-20%20OHCHR%20Report%20on%20Occupation%20and%20Aftermath_EN.pdf.
[16] Ibid., para. 4.
[17] Ibid. paras. 81-103.
[18] Ibid., para. 111.
[19] Dignity, European Prison Litigation Network, Kharkiv Human Rights Protection Group, Ukraine Without Torture, Protection for Prisoners of Ukraine, "Nine Circles of Hell", Places of Detention in Ukraine under the Russian Occupation. March 2022 – December 2022, p. 13, available at: https://dignity.dk/wp-content/uploads/42-Nine-circles-of-hell.pdf.

23. According to the findings of HRMMU:[20]

> Penitentiary staff were in a particularly delicate position since it was essential that they remained at their posts for the safety of prisoners held in their institutions and the public at large. Following an order from the Ministry of Justice of Ukraine, penitentiary staff of Penal Colony no. 9 in Kherson continued working under Ukrainian laws and system after the full-scale armed attack by the Russian Federation. In May 2022, the occupying authorities informed the staff that the facility would operate under the Russian Federation commencing on 1 June [2022]. On 13 May [2022], the Ministry of Justice ordered the facility's staff to leave their posts. However, the Russian occupying authorities refused their resignations and threatened to harm them and their families. Russian armed forces told one staff member that they would kill him and his family if he did not continue serving in the colony, told another that if he wanted to keep his family safe, he should go on duty, and warned a third that "we know your family". Russian soldiers went to the home of a staff member who failed to come to work, handcuffed him and took him to a forest. They ordered him to return to work the following day and threatened that, if he tried to leave occupied territory, he would be stopped at the first checkpoint and forced to watch them shoot his family and throw their bodies into the river.
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> [Penitentiary staff in Kherson region] had no way to depart from occupied territory because Russian armed forces at multiple checkpoints had lists of people, including penitentiary staff, who were prohibited from leaving. After the facility started operating under the Russian Federation, on 1 June 2022, one staff member objected vocally and was detained; one month later, his body was found. Others who tried to stop working were detained by Russian armed forces, beaten, subjected to mock executions, and received threats against their families including rape (One interlocutor noted to OHCHR that personnel files had remained in the detention facility, which contained addresses and information of family members of staff, placing them at risk. Because of the fear instilled by this violence, other staff members continued working.

24. The occupation of the penitentiary facilities by the Russian forces has led to the disruption of their normal functioning and their militarisation (i.e., de facto repurposing for the needs of the Russian army and treatment of convicted inmates as a readily available free labour force). Once the Russian occupation took root and gained control over the administration of penitentiary institutions, they began to spread an atmosphere of fear to ensure that prisoners were compliant with their rule. For example, upon entry to Kherson Pre-trial Detention Centre on 11 May 2022, Russian soldiers exploded grenades and killed a prisoner. They used torture to intimidate prisoners soon after. They searched for informal prison leaders and other specific categories of prisoners in order to torture them as a punishment for their affiliations and past crimes.[21]

25. The prison guards, led by warden Ihor Guryakov, resisted for more than two months from the beginning of the full-scale invasion, insisting that they would continue to work according to Ukrainian laws. But during the May raid by Russian forces, organised under the pretext of suppressing a riot and preventing a mass escape of prisoners, Guryakov was captured and spent three days in a cellar. Guryakov was then filmed by Russian state media admitting that he had

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[20] OHCHR, Human Rights Situation During the Russian Occupation of Territory of Ukraine and its Aftermath, 24 February 2022 – 31 December 2023, 20 March 2024, paras. 104 and 176, available at: https://ukraine.ohchr.org/sites/default/files/2024-04/2024-03-20%20OHCHR%20Report%20on%20Occupation%20and%20Aftermath_EN.pdf.

[21] Dignity, European Prison Litigation Network, Kharkiv Human Rights Protection Group, Ukraine Without Torture, Protection for Prisoners of Ukraine, "Nine Circles of Hell", Places of Detention in Ukraine under the Russian Occupation. March 2022 – December 2022, p. 13, available at: https://dignity.dk/wp-content/uploads/42-Nine-circles-of-hell.pdf.

tried to organise the riot on the orders of the Ukrainian security services and had now agreed to work under Russian leadership.[22] In Pivnichna Colony no. 90 (Kherson region), the beginning of the Russian administration looked similar: all detainees were regularly subjected to beatings and verbal abuse. In addition, the Russian armed forces deployed their warehouses and a production site in the colony's workshop zone. Prison staff and the head of Hola Prystan Colony no. 7 were replaced shortly after the occupation, reportedly due to the refusal of some of the Ukrainian prison officers to collaborate with the occupying forces. Prisoners detained in the colony were also regularly subjected to severe beatings, allegedly by the Russian OMON spetsnaz. Immediately after the occupation of the facility, the quality and quantity of food provided to the inmates were significantly reduced.[23]

26. Prisoners who were former Ukrainian soldiers or who submitted requests to join the Ukrainian army were at particular risk during the occupation. Many prisoners were consequently tortured for their willingness to defend their country. Russian armed forces searched for this category of prisoners first. They were severely beaten, interrogated, and in many cases disappeared.[24]

27. As reported by prisoners interviewed by the submitting organisations, a considerable number of them were forced to work, under threats of violence, for the Russian armed forces deployed at the facilities. Prisoners were tasked with making repairs, producing barbed wire and anti-tank barriers, digging trenches and building fortifications in and around administrative buildings (police, security service, sports school in Kherson), processing wood (for that purpose, a sawmill was organised in Colony no. 7), and/or working as loaders. Prisoners engaged in forced labour were poorly fed, and even sick prisoners were forced to work. According to some of the prisoners, Colony no. 7 was looted by the Russian forces, and the prisoners were forced to bake bread for Russian soldiers.[25]

28. During the invasion, in addition to the widespread recruitment of Russian prisoners, the Russian army tried to recruit Ukrainian prisoners to fight in the war. For example, such recruitment took place in Kherson Colony no. 61.[26] As part of the general intense pressure on the local population of the occupied part of Ukraine to obtain Russian citizenship and passports,[27] Russian prison

[22] Opendemocracy, "A long road to freedom: How Russia stole 2,000 Ukrainian prisoners", 10 November 2023, available at: https://www.opendemocracy.net/en/odr/ukrainian-prisoners-stuck-in-russia-forced-deportation-kherson-stolen-liberation/.
[23] Dignity, European Prison Litigation Network, Kharkiv Human Rights Protection Group, Ukraine Without Torture, Protection for Prisoners of Ukraine, "Nine Circles of Hell", Places of Detention in Ukraine under the Russian Occupation. March 2022 – December 2022, p. 13, available at: https://dignity.dk/wp-content/uploads/42-Nine-circles-of-hell.pdf.
[24] Ibid., p. 15.
[25] Ibid., pp. 17-18.
[26] Ibid., p. 15.
[27] OHCHR, Human Rights Situation During the Russian Occupation of Territory of Ukraine and its Aftermath, 24 February 2022 – 31 December 2023, 20 March 2024, para. 115 et seq., available at:

administrations in the occupied Ukraine also actively pressured inmates to accept Russian nationality. Some prisoners accepted it voluntarily, and were then forced to vote in sham referenda. Those who refused to take a passport or to vote in the referendums often were subjected to threats of physical violence and severe beatings.[28]

29. Russian forces turned some correctional facilities into ammunition depots and garages for armed vehicles. In at least three cases, missile launchers were reportedly deployed next to penitentiary institutions (Darivka Colony no. 10, Kherson Colony no. 61 (adjacent to Kherson pre-trial detention center), and Northern (Pivnichna) Colony no. 90), strongly indicating that the Russian armed forces used prisoners and prison staff as human shields. In August 2022, several prisoners independently reported that in Darivka Colony no. 10 Russian armed forces established an ammunition depot. Later, similar reports came from Pivnichna Colony no. 90. At the end of August 2022, explosions near the Pivnichna colony no. 90, caused by the detonation of the ammunition depot of the Russian Armed Forces, were reported. The explosions took place in the workshop zone of the prison. After this incident, prisoners faced retaliation on the part of the administration.[29]

30. According to the findings of the Ukrainian investigative authorities, prisons in the occupied Kherson were ultimately controlled by the Russian State Security Service (the FSB). Thus, since 7 May 2022, prisons were subordinated to the "directorate of the execution of sentences" of the Kherson Region, established by Colonel Viktor Bedrik, the military commandant of the occupied Kherson oblast. Bedrik appointed Yevhen (Yevgeny) Sobolev,[30] a former Ukrainian prison officer, the head of the directorate, and subordinated him to the head of the military-civilian administration, Vladimir Saldo. According to the Ukrainian investigation, Bedrik himself was appointed by the Russian FSB operative – Sergey Viktorovich Sinitsyn (aka "Sabir"), working at the 9th Department of the operative information of the FSB.[31]

31. As reported by Open Democracy, "as the prisoners were brought under Russian rule, they not only faced the rules of an occupying army, but a shift in the time-old traditions of post-Soviet prisons. Until [the occupation], life in Colony No. 90 had been determined by a balance between the prison administration's code of conduct and *ponyatiya* – the unwritten rules of the criminal

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https://ukraine.ohchr.org/sites/default/files/2024-04/2024-03-20%20OHCHR%20Report%20on%20Occupation%20and%20Aftermath_EN.pdf.

[28] Dignity, European Prison Litigation Network, Kharkiv Human Rights Protection Group, Ukraine Without Torture, Protection for Prisoners of Ukraine, "Nine Circles of Hell", Places of Detention in Ukraine under the Russian Occupation. March 2022 – December 2022, pp. 16-17, available at: https://dignity.dk/wp-content/uploads/42-Nine-circles-of-hell.pdf.

[29] Ibid., pp. 18-19.

[30] See Section II(K), paras. 77 and 78.

[31] For the publicly available investigation based, *inter alia*, on the materials of the Ukrainian investigative authorities, see: Liga.net. "Spider-Man – Who and How Created a Network of Torture Chambers in Occupied Kherson Oblast", 11 November 2023, available at: https://projects.liga.net/torture-chambers-eng/.

community known as 'the thieves'. That was thrown into disarray by the Russian invasion. Russian officials first brought an "enforcer" from the [informal caste] of thieves to Colony No. 90. The man, who had been in Krasnodar prison, "promised the boys: there will be telephones, drugs, and other 'warm stuff' [food, clothes], as long as the prisoners do not get involved in politics." Under Russian control, Colony No. 90 became tougher every day: searches became more frequent, and prisoners could be beaten or sent to a punishment cell for rudeness. In the summer, prisoners were persistently asked to apply for Russian passports. Those who refused or criticised the occupation were transferred to a pre-trial detention centre where, under torture, they were forced to confess to connections with the Ukrainian army and security services. An assassination attempt against [the head of the colony] Sobolev, likely by Ukrainian partisans, in June led to another wave of repression at the prison."[32]

32. Gradually, Ukrainian inscriptions in the colony were replaced by Russian ones, and state insignia disappeared and were replaced with Russian ones. According to prisoners interviewed by Russian investigative media Mediazona, employees admitted that at morning meetings they were required to "praise Russia." Sobolev, the head of the colony, having sworn allegiance to the new power, ultimately assumed the position of the head of the Russian Federal Penitentiary Service department in the newly formed Kherson region. "From the first of June, we completely transitioned to the Russian language. We replaced all the flags. We are fully integrating into the Russian Federation," he reported in the summer of 2022.[33] According to the inmates, Sobolev gave all staff members until May 25 to decide whether they would transfer to the Federal Penitentiary Service of Russia or not. "If someone wants to stay, write an application, and you will be accepted into the Federal Penitentiary Service."[34]

C. Transfer of prisoners within the Kherson and Mykolaiv oblasts (March – October 2022)

33. For several months, beginning in March 2022, the Russian occupation authorities were transferring convicted prisoners between the penal colonies of the Kherson region, finally accumulating them in colony no. 7 (Hola Prystan) in Stara Zburivka, located on the left bank of the Dnipro River, about 50 kilometres from Kherson – which had been occupied on 3 March 2022.

34. Specifically, prisoners from colonies no. 5 (Snihurivka, Mykolaiv oblast, functioning as a prison hospital and accommodating prisoners with various illnesses, including open tuberculosis) and

[32] Opendemocracy, "A long road to freedom: How Russia stole 2,000 Ukrainian prisoners", 10 November 2023, available at: https://www.opendemocracy.net/en/odr/ukrainian-prisoners-stuck-in-russia-forced-deportation-kherson-stolen-liberation/.
[33] Mediazona, "'You are Russians now; you'll be issued passports.' Forced transfer of Ukrainian prisoners from Kherson to Russia amidst military retreat", 25 September 2023, available at: https://en.zona.media/article/2023/09/25/khersontrip-trl.
[34] Ibid.

some of the prisoners from colony no. 10 (Darivka, Kherson oblast) were transferred directly to colony no. 7 (Hola Prystan, also functioning before the invasion as a tuberculosis hospital) in May 2022. Other prisoners from colony no. 10 (Darivka) and some prisoners held in the Kherson remand prison (SIZO) – mostly those who had already been convicted but were being held in the SIZO pending appeal of their cases – were transferred to colony no. 90 (Kherson, the "Northern" / Pivnichna colony). Finally, around 20 October 2022, prisoners from colony no. 90 (Kherson) were also transferred to colony no. 7 (Hola Prystan).[35]

35. Based on the general analysis of the testimonies of prisoners, interviewed by the submitting organisations, the procedure of transfer can be summarised as follows.

i. Snihurivka correctional facility no. 5

36. On 28 May 2022, Snihurivka Correctional Facility no. 5 (Mykolaiv Oblast, Tsentralne village) came under Russian occupation. At that time, it housed 98 prisoners, including 10 serving life sentences and 2 detainees held on remand. According to testimonies collected by the submitting organisations,[36] Russian military personnel, accompanied by prison staff, entered the facility around 10 a.m. Prisoners were ordered to board military "Ural" trucks in haste. Gunfire was heard; several shots were reportedly fired into the prison dormitory buildings ("barracks"). Detainees were pushed, struck in the back with rifle butts, and some were kicked by soldiers. The prison gates were blocked by a Russian tank, while armed soldiers, accompanied by service dogs and at least one machine gun, surrounded the compound. Soldiers lined up at the entrances to the dormitories, forming "corridors" through which the prisoners were forced to walk. Several soldiers, masked and dressed in dark green uniforms with Russian insignia, entered the dormitories, shouting at prisoners, pointing guns at them, and ordering them into the trucks. Shots were fired into the ceiling for intimidation. Prisoners were not allowed to take personal belongings. Once loaded into the trucks, the soldiers counted them.

37. The ten life-sentenced prisoners were "especially badly beaten and abused."[37] They were handcuffed with their hands behind their backs, gathered in the courtyard, and forced to kneel. Russian soldiers demanded that those convicted of sexual offences identify themselves. Each prisoner was then kicked and struck with rifle butts. Weapons were held to their heads while questions were asked, and shots were fired either at the wall or close to the prisoners' heads to intimidate them.

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[35] Ibid.
[36] Testimonies nos. VNF5096-4578, VSQ0356-5746, BLO8031-9492, BGN0337-1054, RNK7268-8966, OLR4862-5332, EUQ5045-4794, IPE0370-9755, BYN8294-1731, KNI5097-6318, YRI4231-6787, JST0213-6878. Hereinafter the numbers of testimonies refer to the respective entries in the database of testimonies collected and operated by PPU and EPLN jointly with DIGNITY, Kharkiv Human Rights Protection Group and Ukrainian Helsinki Human Rights Union.
[37] Testimonies nos. BLO8031-9492, IPE0370-9755, KNI5097-6318.

38. All prisoners were transported out of Colony No. 5 in the backs of the trucks. The life prisoners, handcuffed behind their backs, were forced to lie face down on the truck floors. The convoy was escorted by Russian armoured vehicles. The prisoners were warned that if anyone attempted to escape, they would all be shot. During the transfer, the inmates were eventually moved into yellow buses and driven to Hola Prystan Correctional Facility No. 7, approximately 50 kilometres from Kherson.

39. Upon arrival at Colony No. 7, two life prisoners testified[38] that they were lined up against a wall, handcuffed, stretched out facing the wall, and beaten with truncheons on their legs and buttocks for 20–30 minutes. Additional beatings took place once they were placed in separate cells. One life prisoner reported being confined with three others in a single cell, where they were beaten by prison staff. For the next two to three weeks, beatings became routine. Prisoners were kept in severely overcrowded premises, with insufficient fresh air, and life prisoners were systematically denied medical assistance.

ii. Northern (Pivnichna) correctional colony no. 90

40. Russian military forces entered Northern (Pivnichna) Correctional Colony No. 90 (Kherson) several times from March 2022 onwards.[39] On 11 May 2022 it came under the full control of Russian occupation forces. At that time, it housed between 838 and 882 prisoners, a number later reportedly increased to 1,500 following the transfer of inmates from Correctional Colony No. 10 and the Kherson remand prison. Testimonies indicate that at least 730 prisoners from Colony No. 90 were eventually transferred to Russia. Prisoners were used as forced labour, compelled to work without days off, pay, or limits on working hours. They were made to produce barbed wire and to work at a sawmill inside the colony, where processed wood was later used for constructing trenches.[40] Other inmates were reportedly involved in repairing Russian armoured vehicles, including tanks and "Grad" rocket launchers,[41] while some were taken to Kherson to fortify administrative buildings.[42] Prisoners expressing pro-Ukrainian views were beaten, placed in solitary confinement, or subjected to mock executions.[43] Beatings were also inflicted for minor disciplinary violations.[44]

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[38] Testimonies nos. IPE0370-9755, KNI5097-6318.
[39] Testimonies nos. ZYT9991-7258, REC2732-7611.
[40] Testimony no. VKK5058-5232, LAT3008-3088, JEN2077-6049, JUL7330-7885, IAQ4102-0511, XCK6288-4830, SDE1557-6426, QOX6096-9142, SAD7258-1937, IAQ4102-0511.
[41] Testimonies nos.TFZ4441-4054, SCI6670-8165, IEO9065-3553.
[42] Testimonies nos. FVI1335-7386, JEN2077-6049, AHP5044-5203, FZQ6880-3397, XMD0467-6834, AHP5044-5203.
[43] Mediazona, ""You are Russians now; you'll be issued passports." Forced transfer of Ukrainian prisoners from Kherson to Russia amidst military retreat", 25 September 2023, available at: https://en.zona.media/article/2023/09/25/khersontrip-trl. Testimonies nos. KCJ1143-0653, IAQ4102-0511, SAD7258-1937.
[44] Testimony no. QSU7415-3068.

41. In September-October 2022, inmates from Northern Correctional Facility No. 90 were transferred to Hola Prystan Correctional Facility No. 7 (Stara Zburivka, Kherson Oblast), which had become a hub for the transfer of prisoners from multiple facilities across Kherson Oblast. This led to severe overcrowding and shortages of food and medicine.[45] The transfer was carried out jointly by Ukrainian prison officers collaborating with the occupiers, Russian military personnel, and *Rosgvardia* (National Guard of Russia, referred to by some prisoners as OMON). Russian FSIN prison vans were allegedly used, although some detainees noted that these may have been Ukrainian vans repainted to resemble Russian ones. Some prisoners were allowed to bring personal belongings, while others were loaded into vans without warning and denied the opportunity to take spare clothes or other items. The transfer personnel were armed with automatic rifles and two machine guns, and the vans were escorted by armoured vehicles. Prisoners reported being warned that "if they do anything wrong, the personnel will shoot to kill" and that the authorities "cared about quantity, not quality." During the transfer, colony staff allegedly burned unidentified documents, forcing prisoners to assist. Transfers were carried out in at least two groups over a 10-day interval, between 20 October and 1 November 2022, reportedly due to an insufficient number of vans. According to detainees from the final group, unlike earlier transfers, they were first transported in vans to the Kherson embankment, then ferried across the Dnipro River by boat – likely because bridges were no longer usable, having been destroyed shortly afterwards.[46] From there, they were escorted on foot by prison officers to Colony No. 7. The transfer was reportedly coordinated by a local prison officer known as "Yurevich," frequently mentioned in prisoners' statements.

42. At the end of October 2022, a separate group of prisoners was removed without warning from Correctional Colony No. 90 and transferred to the Kherson pre-trial detention centre (SIZO). This operation was carried out by collaborators – Ukrainian prison officers who had joined the occupying authorities – together with Russian military personnel. Prisoners were transported in Ukrainian prison vans and trucks not designed for human transfer. Upon arrival at the SIZO, they were beaten by prison guards.[47]

iii. Darivka correctional facility no. 10

43. Darivka Correctional Facility No. 10, Kherson Region, came under the control of Russian occupying forces on 28 February 2022. At that time, it accommodated 704 prisoners, including 552 convicted inmates, 59 undergoing medical treatment, and 92 suspects held on remand.

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[45] Testimonies no. DNU7776-7965, HKT7745-1777, ZEL2823-8593, SDE1557-6426.
[46] CNN, "Ukrainian troops sweep into key city of Kherson after Russian forces retreat, dealing blow to Putin", 11 November 2022, available at: https://edition.cnn.com/2022/11/11/europe/russian-troops-leave-kherson-region-intl/index.html.
[47] Testimonies nos. TDD7079-0361, ENL4039-4193, KTC6591-6857, DNU7776-7965, HKT7745-1777, ZEL2823-8593, SDE1557-6426.

According to consistent testimonies from prisoners interviewed by PPU, the actual number of detainees in Colony No. 10 may have been as high as 800, including approximately 50 women later transferred to the Kherson remand prison. Based on the analysis of these statements, at least 600 individuals were ultimately transferred from Colony No. 10 to Russia.

44. In mid-May 2022, the occupying forces began using the colony to house military personnel and as a depot for repairing military vehicles. By late May-early June 2022, all inmates had been transferred to Hola Prystan Correctional Facility No. 7 (Stara Zburivka, Kherson Oblast) and to Northern Correctional Colony No. 90 (Kherson).[48] The prisoners were transported in separate groups: those taken to Northern Colony No. 90 were moved in at least three convoys, each consisting of four or five buses. According to testimonies, the transfers were carried out jointly by Ukrainian prison officers who had collaborated with the occupying forces, along with Russian military personnel wearing *Rosgvardia* insignia, masks, and carrying automatic rifles. The buses were escorted by armoured vehicles. Prisoners reported no mass beatings or systematic ill-treatment during the transfers. Some stated that they had been lightly struck by Russian military personnel while being loaded onto the buses. Upon arrival at Correctional Colony No. 7, detainees were not subjected to beatings; however, several reported being warned that they would be shot if they "did anything wrong.

iv. Kherson remand prison

45. Kherson SIZO (remand prison) held at least 285 prisoners, including 15 serving life sentences and 41 "transit" prisoners awaiting transfer to other facilities. According to some testimonies, the total number of detainees may have reached 460, including civilian prisoners. Between May and September 2022, an estimated 70 prisoners were transferred from the Kherson pre-trial detention centre to Northern Correctional Colony No. 90 in several groups, without prior warning. The transfers were carried out in KAMAZ prison vans marked with the word *FSIN* (Russian Federal Service for the Execution of Sentences (Federal Penitentiary Service) / *ФСИН – Федеральная Служба Исполнения Наказаний*). According to testimonies, the operation was conducted by Ukrainian prison officers who had joined the occupation administration, together with Russian military personnel bearing OMON (Special Police Unit) insignia. The personnel wore masks and helmets and spoke with Russian accents. Prisoners were forbidden to look at the soldiers and were ordered to keep their eyes on the ground.[49]

v. Hola Prystan correctional facility no. 7 (Stara Zburivka)

46. Hola Prystan Correctional Facility No. 7 (Stara Zburivka, Kherson oblast, Ukraine) was first entered by Russian forces in March 2022, but did not come under their full control until late

[48] Testimonies nos. GCR5780-6530, ZLH7397-5536, HWC2718-4732, IQS1897-2989, PIX0390-2994, PZQ4302-7903, SXB4115-9594, SUX0199-7102, WDK4274-9004, AXK4214-1055, QAI1433-7455.
[49] Testimonies nos. JIY1343-2990, BFA8537-6963, OXD6075-1653, JNO9799-1379.

May-early June. At the time, it held between 238 and 258 prisoners, including 225 convicted inmates and 4 suspects/remand detainees. By 1 May 2022 at the latest, the remaining Ukrainian staff had been replaced by officers of the FSIN. The occupation authorities then began transferring prisoners from other correctional facilities in the Kherson and Mykolaiv regions to Hola Prystan No. 7, which resulted in severe overcrowding and acute shortages of food and medicine. Prisoners with open forms of tuberculosis were held together with healthy inmates.[50]

47. In late May-early June 2022, inmates were subjected to mass beatings by Russian special forces. Around 30-40 armed prison officers, reportedly brought in from several colonies, entered the facility under the coordination and escort of Russian servicemen. Moving from one dormitory to another, they beat prisoners with batons, unleashed service dogs on them, seized personal belongings, and tore down Ukrainian flags from the walls. Prisoners transferred from Snihurivka Correctional Facility No. 5 testified that similar "intimidation actions" took place four days after their arrival at Colony No. 7 (i.e. in early June), and that all prisoners were regularly ill-treated, in the same manner as the life-sentenced inmates upon their arrival (see above).[51]

48. Life-sentenced prisoners were confined in cell-type premises for several months, until early November 2022, when Russian armed forces and FSIN officers began mass transfers of prisoners from Hola Prystan No. 7 to occupied Crimea, and from there onwards to Russia.

D. Transfer of prisoners to the occupied Crimea and Russia

i. Introduction

49. On 9 November 2022, the Russian authorities announced a retreat of Russian forces from Kherson, which had been under occupation since 2 March 2022.[52] In mid-November 2022 first reports came from relatives of prisoners convicted by Ukrainian courts who had been serving their sentences in Kherson prisons that they had been transferred to penal facilities in Russia.[53] A few days before the Russian withdrawal from Kherson, in November 2022, the Russian armed

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[50] Testimonies nos. WNZ9846-4234, CZN9295-6839, AFE4430-4780, LAR8481-0361, ZEF0951-6715, WFE6151-9560, DGD0708-9483, YSF2346-9406.

[51] For the accounts of systemic torture in ill-treatment in Hola Prystan correctional colony no. 7, which began in summer 2022, see: Mediazona, ""You are Russians now; you'll be issued passports." Forced transfer of Ukrainian prisoners from Kherson to Russia amidst military retreat", 25 September 2023, available at: https://en.zona.media/article/2023/09/25/khersontrip-trl; Testimonies nos. FSB4758-1868, AFE4430-4780, FXE0722-2896, LAR8481-0361, ZEF0951-6715.

[52] NY Times, "Russia Orders Retreat From Kherson, a Serious Reversal in the Ukraine War", 9 November 2022, available at: https://www.nytimes.com/2022/11/09/world/europe/ukraine-russia-kherson-retreat.html;
NY Times, "First Ukraine City Falls as Russia Strikes More Civilian Targets", 2 March 2022, available at: https://www.nytimes.com/2022/03/02/world/europe/kherson-ukraine-russia.html.

[53] For the summary of the early accounts see: The Times, "Russia moves Ukrainian Kherson prisoners to penal camps", 30 November 2022, available at: https://www.thetimes.co.uk/article/russia-moves-ukrainian-kherson-prisoners-to-penal-camps-kf2fw2svh; Sirena, "Мама нас куда-то увозят" (Mama, they're taking us somewhere), 29 November 2022, available at: https://telegra.ph/Mama-nas-kuda-to-uvozyat-11-29.

forces and the Federal Penitentiary Service began to transfer prisoners from colony no. 7 (Stara Zburivka) to the occupied Crimea and Henichesk (Kherson oblast).

50. According to the testimonies of transferred prisoners, interviewed by the submitting organisations upon their release and return to Ukraine, as well as the findings of the Ukrainian domestic investigation, the transfer had been carried out by the Crimean Department of the Russian Service for the Execution of Sentences (the FSIN), the former Ukrainian prisoner officers,[54] and the FSIN special operations unit "Akula" (Shark).[55] The process was reportedly overseen by a representative of the FSB.[56]

51. Apart from those transferred, Ukrainian police reported 457 prisoners released by the Russian occupying forces from remand prisons in Kherson (suspects and accused, as well as life-sentenced prisoners) shortly before their withdrawal from the city in November 2022.[57] On 11 November 2022, the administrative building of the Kherson pre-trial detention centre was set on fire[58] by the Russian forces, possibly in an attempt to destroy the evidence of torture of civilians and prisoners which took place in the remand centre (as reported by two victims interviewed by CNN).[59]

ii. Prisoners transferred to Chonhar

52. In parallel, or shortly before the mass transfer of prisoners from correctional facility no. 7 to Russia via Crimea (see below), several smaller groups of prisoners (comprising around 20 persons each) were taken by prison vans, accompanied by Russian military vehicles, in the direction of Henichesk (Kherson oblast, near Crimea), specifically to the "Coral" recreational centre in the town of Shchastlivtsevo. All the equipment from the workshops of colonies nos. 90 and 7 was also moved to "Coral".[60]

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[54] See Annex.

[55] The information is available, e.g., in the bill of indictment against the head of the colony no. 7, Oleksiy Soroka, see also testimonies nos. SIS9531-3013, XJP2160-8403, YSF2346-9406, TTM9767-9420. Hereinafter the numbers of testimonies refer to the respective entries in the database of testimonies collected and operated by PPU and EPLN jointly with DIGNITY, Kharkiv Human Rights Protection Group and Ukrainian Helsinki Human Rights Union.

[56] Testimony no. TJL4093-3990.

[57] Ukrainska Pravda, "Third of prisoners released by Russians in Kherson returned to remand centre", 15 November 2022, available at: https://www.pravda.com.ua/eng/news/2022/11/15/7376442/; Radio Free Europe / Radio Liberty, 'Beaten Very Badly': Now In Legal Limbo, Ukrainian Inmates Freed When Russia Left Kherson Describe Life Under Occupation, 6 February 2023, available at: https://www.rferl.org/a/russia-kherson-inmates-occupation-at-large-brutality-abuse/32258907.html.

[58] Ukrainska Pravda, "Pre-trial detention centre in Kherson on fire", 11 November 2022, available at: https://www.pravda.com.ua/eng/news/2022/11/11/7376000/.

[59] CNN, "Former detainees in liberated Kherson allege Russian brutality, torture under occupation", 18 November 2022, available at: https://edition.cnn.com/2022/11/18/europe/ukraine-kherson-russian-brutality-allegation-intl-cmd/index.html

[60] Testimonies nos. DNU7776-7965, DRU4759-2521, XCK6288-4830, NNA1356-2334, GVW4474-4750, DJB8962-4677, TBN8615-5712, HKT7745-1777, GUZ2818-6542.

53. These prisoners were used as a labour force in the construction of a new remand prison in Chonhar (Kherson Oblast).[61] Other groups of "Kherson prisoners" were later transferred from the territory of Russia to this remand prison. In total, between 130 and 240 prisoners were held in Chonhar, some of whom were later released. Some of the prisoners were housed in the former café at the nearby "Coral" recreation centre in the town of Shchastlivtsevo. Several prisoners mentioned that they had been "harshly received" upon arrival, and reported regular beatings, intimidation, strip searches, and a generally oppressive atmosphere with iron discipline imposed by the prison administration.[62] Prisoners also reported harsh working conditions and lack of food, medical care, and limited access to showers.[63] Prisoners who refused to work were beaten.[64] According to several prisoners, beating were carried out by "Grom" (Thunder) special unit.[65]

iii. Transfer of prisoners to Simferopol and to Russia

54. For most of the prisoners, who were taken to Russia in several groups comprising 200-300 people each, from the penal colony No.7 via Crimea, the first brief stop was at the pre-trial detention centre no. 2 (SIZO-2) in Simferopol (occupied Crimea), located on the territory of penal colony no. 102. The prisoners were suddenly transferred to Simferopol in early November 2022, without prior warning. They were not informed of their destination and did not give consent to the transfer.[66] The prisoners were transported to Crimea in overcrowded FSIN "KAMAZ" vans, without food, water, fresh air, or access to toilets. They were forced to urinate and defecate into plastic bottles.[67] No personal belongings were allowed. The loading of prisoners at Colony No. 7 lasted between three and six hours.[68] Prisoners suffering from tuberculosis were transported together with healthy inmates. Some prisoners were transported for more than 30 hours, spending much of that time at a checkpoint between Kherson oblast and Crimea, where they were not permitted to leave the vans. Others were held for around six hours in the vans at Colony No. 7 before the convoy departed. In general, the transfer lasted over 24

[61] Testimony nos. DNU7776-7965, DRU4759-2521, XCK6288-2830, NNA1356-2334, GVW4474-4750. On this matter, see also CrimeaSOS, "Новое СИЗО в селе Чонгар работает уже около месяца" (The new pre-trial detention centre in Chongar village has been in operation for about a month now), 8 June 2023, available at: https://krymsos.com/ru/krymsos-nove-sizo-v-seli-chongar-praczyuye-vzhe-blyzko-misyaczya/.
[62] Testimonies nos. QBZ6165-9838, SDE1557-6426, XSV7100-7591
[63] Testimonies nos. FZQ6880-3397, SDE1557-6426, TXN6213-3733, GVW4474-4750.
[64] Testimony no. TXN6213-3733
[65] Testimonies nos. KTL3785-0222, CJB0200-8449. Most likely, prisoners were referring the FSIN spetsnaz unit "Grom" of the Kaluga Regional Department of the FSIN, which indeed appeared to be deployed in the occupied territories of Ukraine (see, Gtrk-kaluga.ru, "Сотрудники спецназа "Гром" провели урок мужества для калужских кадетов" (Grom Special Forces officers held a courage lesson for Kaluga cadets), 19 April 2024, available at: https://gtrk-kaluga.ru/news/obschestvo/news-47120.
[66] Testimonies nos. TMG9309-3423, TQN0965-9966
[67] Testimony no. LYE8551-7764.
[68] Testimony no. FXE0722-2896.

hours,[69] with some groups being transported overnight.[70] During loading, prisoners were threatened with execution,[71] and some were beaten by prison guards.[72] FSIN officers repeatedly declared that they "cared about the quantity [of prisoners], not their quality"[73] and that it "did not matter whether they arrived alive or dead."[74] Life-sentenced prisoners were transported last and separately from the others.

55. Upon arrival at SIZO-2 in Simferopol, all prisoners were forced to run in a bent position, heads down and arms twisted behind their backs, through two rows of prison guards who verbally abused them and beat them with truncheons, punches, and kicks to their backs and buttocks.[75] Some were forced to stand against a wall in a stretched position for at least thirty minutes.[76] Prisoners were placed in empty cells with no beds or mattresses, sleeping on the floor or in the courtyard. Injured inmates received no medical care.[77] Many had no shoes or proper clothing and were deprived of food and water.[78]

56. All prisoners were strip-searched, photographed, and fingerprinted.[79] Those with tattoos were subjected to additional beatings.[80] Prisoners spent from several hours to several days at Simferopol SIZO-2, where they were repeatedly searched and beaten,[81] before being transferred via Kerch to Russia. At Kerch, they were briefly held in Correctional Colony No. 2,[82] where, according to testimonies, they were strip-searched again, forced to wear Russian prison uniforms, and deprived of religious items.[83] From Kerch, they were transported across the Kerch Bridge into Russia. During these transfers, they either received no food at all or were given only minimal portions.[84] According to subsequent findings, some prisoners transferred from Kherson were left behind in IK-2 Sevastopol (occupied Crimea).

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[69] Testimony no. DUH3338-5308.
[70] Testimony no. WNZ9846-4234.
[71] Testimonies nos. QOX6096-9142, KLU9335-7290, TJL4093-3990, SVJ2581-0100, YSF2346-9406.
[72] Testimony no. TTM9767-9420.
[73] Testimonies nos. KLU9335-7290, TJL4093-3990, XJP2160-8403.
[74] Testimony no. YZY5125-4489
[75] Testimony nos. DJB8962-4677, TBN8615-5712, HKT7745-1777, GUZ2818-6542.
[76] Testimonies nos. IMA2302-3693 and MRN3826-0779.
[77] Testimony no. IMA2302-3693.
[78] Testimonies nos. TMG9309-3423, IMA2302-3693, TQN0965-9966, FSB9248-4583, TMG9309-3423
[79] Testimones nos. TMG9309-3423 and FXE0722-2896
[80] Testimony no. NCA8822-0600.
[81] Testimony no. TMG9309-3423.
[82] Testimony no. FSB9248-4583.
[83] Testimony no. LYE8551-7764.
[84] Mediazona, ""You are Russians now; you'll be issued passports." Forced transfer of Ukrainian prisoners from Kherson to Russia amidst military retreat", 25 September 2023, available at: https://en.zona.media/article/2023/09/25/khersontrip-trl.

E. Situation of Kherson prisoners in penal colonies in Russia

57. From Crimea, most of the prisoners were sent to penal colonies in Russia, including:

- Krasnodar Region: IK-2 (at least 250 prisoners), IK-4 (at least 50 prisoners), IK-5 (at least 300 prisoners), IK-11 (at least 98 prisoners), and IK-14 (at least 250 prisoners),
- Volgograd Region: IK-12, IK-19 (at least 150 prisoners), IK-25 (to which mostly the prisoners with tuberculosis were allegedly taken), IK-26 (at least 110 prisoners), and LIU-23 (medical prison facility),
- Rostov Region: Prison tuberculosis hospital no. 19 (at least 5 prisoners – transferred from LIU-20, LIU-20 (at least 150 prisoners),[85]
- Mordovia Republic: IK-6 (7 persons)
- Correctional colonies in Vladimir, Saratov and, allegedly, Sverdlovsk Region.

58. Upon arrival at Russian penal colonies, prisoners were subjected to "welcome beatings," which appeared to be standard practice in many, if not all, colonies.[86] These beatings were carried out by special units of the Ministry of Internal Affairs ("OMON" and "SOBR"), as well as FSIN personnel,[87] including, reportedly, the "Akula" (Shark) special unit in IK-5 (Krasnodar Region).[88] As in SIZO-2 Simferopol, prisoners were forced to squat and run through corridors of servicemen while being beaten and verbally abused.[89] They were then strip-searched, shaved, and often subjected to additional beatings, especially those with tattoos or who expressed pro-Ukrainian views.[90] In IK-14 (Krasnodar Region), the prison administration told detainees they

[85] For the public accounts, see: Meduza, "Ukrainian prisoners, potentially numbering in the thousands, taken to Russia", 29 November 2022, available at: https://meduza.io/en/news/2022/11/30/ukrainian-prisoners-potentially-numbering-in-the-thousands-taken-to-russia; Sirena, "Мама нас куда-то увозят" (Mama, they're taking us somewhere), 29 November 2022, available at: https://telegra.ph/Mama-nas-kuda-to-uvozyat-11-29. The destinations were confirmed by the submitting organisations and their partners directly with prisoners or their relatives. See also: Agentstvo, "Что, в Европу захотели? Все, Европа кончилась": как вторжение России изменило жизнь в украинской колонии. Рассказ заключенного ("What, you want to go to Europe? That's it, Europe is over": how Russia's invasion changed life in a Ukrainian penal colony. A prisoner's story), 16 February 2023, available at: https://www.agents.media/koloniya-posle-vtorzheniya/.

[86] This information is corroborated by findings of the OHCHR: Ninety-nine interviewees also experienced so-called "welcome beatings" upon arrival at detention facilities and/or acts of torture and ill-treatment during regular routines…. For example, a man described that upon arriving at a transit facility in the Russian Federation in June 2024, the whole group of detainees was forced to crawl and later kneel on asphalt for prolonged periods of time. They were beaten, including with sticks, and kicked at the same time. OHCHR, "Treatment of civilians deprived of their liberty in the context of the armed attack by the Russian Federation against Ukraine", 23 September 2025, pp. 8-9, available at: https://ukraine.ohchr.org/sites/default/files/2025-10/2025-09-22%20Treatment%20of%20civilians_ENG.pdf.

[87] Testimonies nos. WNZ7296-5754, IMA2302-3693, SCI6670-8165, KFK4653-2700, OYQ9693-4233.

[88] Testimonies nos. FLJ6958-7065, ZEL2823-8593.

[89] Testimonies nos. IMA2302-3693, GDE4934-9644, GCR5780-6530, QLO9533-8920, UJD5182-2409, OYE7184-7528.

[90] Testimonies nos. FSB9248-4583, JGE9212-2020. See also, The Times, "Russia moves Ukrainian Kherson prisoners to penal camps", 30 November 2022, available at: https://www.thetimes.co.uk/article/russia-moves-ukrainian-kherson-prisoners-to-penal-camps-kf2fw2svh; Sirena, "Мама нас куда-то увозят" (Mama, they're taking us somewhere), 29

had been transferred to Russia "for their own safety," and written statements to this effect were allegedly obtained from some prisoners.[91]

59. In certain facilities, beatings continued throughout detention – during mass searches,[92] when prisoners refused to accept Russian citizenship, expressed pro-Ukrainian views,[93] or refused to hand over personal belongings or religious literature.[94] Detainees temporarily held in Krasnodar detention centre reported the use of tasers for speaking in Ukrainian. In Volgograd, prisoners were forced to learn the Russian national anthem and patriotic songs.[95] No medical care was provided to those injured in the beatings. Prisoners in different colonies endured harsh conditions, compulsory labour for little or no pay,[96] and systematic denial of medical assistance.[97] Some were reportedly offered recruitment into the Wagner Group, a paramilitary formation that had been enlisting inmates from Russian (or Russian-controlled) penitentiary facilities in 2022-2023.[98]

60. In Russian colonies, transferred prisoners were held separately from Russian inmates or other foreign nationals serving sentences in Russia. They were not permitted to contact their families or other prisoners. In some cases, prisoners were formally allowed to send letters, but many could not afford the postage.[99] Relatives, in turn, were generally unable to obtain official confirmation of transfers from FSIN. The only channel of communication available to prisoners held in colonies in the Krasnodar Region was through mobile phones illicitly provided by "regular" inmates. In the Volgograd Region, even this possibility was absent.

61. Submitting organisations and their partners have organised and maintained the collection and exchange of information among the relatives of transferred prisoners. In parallel, individual

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November 2022, available at: https://telegra.ph/Mama-nas-kuda-to-uvozyat-11-29. These public accounts were corroborated by prisoners' testimonies collected by the submitting organisations.

[91] Testimony no. WNZ7296-5754.

[92] Testimony no. GUZ2818-6542, JGE9212-2020, ZEL2823-8593. In IK-5 Krasnodar Region subsequent searches and beatings were carried out by the "Akula" and "Ural" special units of the FSIN.

[93] Testimony no. TJL4093-3990.

[94] Testimonies nos. GUZ2818-6542, OYE7184-7528

[95] Mediazona, ""You are Russians now; you'll be issued passports." Forced transfer of Ukrainian prisoners from Kherson to Russia amidst military retreat", 25 September 2023, available at: https://en.zona.media/article/2023/09/25/khersontrip-trl.

[96] Testimonies nos. OYE7184-7528, MWA9416-1928, CNB9884-2666, TRF4863-3118

[97] Testimonies no. GCR5780-6530, GDE4934-9644, TJL4093-3990, ZZG3400-7939, CTB2770-7332, ZEL2823-8593, SUX0199-7102, TQN0965-9966.

[98] See: EPLN, "Prisons in wartime: our report on Wagner Group's recruitments in Russian prisons. Key findings and legal analysis", available at: https://www.prisonlitigation.org/wagner/; See also: Radio Svoboda. "Ув'язнених, вивезених до Росії із окупованих територій, примушують вступати у ПВК 'Вагнер'" (Prisoners taken to Russia from the occupied territories are forced to join the Wagner PMC), 17 March 2023, available at: https://www.radiosvoboda.org/a/vyvezennya-uvyaznenykh-rosiya-prymus-pvk-vahner/32321573.html

[99] Agentstvo, "Украинские правозащитники сообщили о вывозе Россией 2500 заключенных из Херсонской области" (Ukrainian human rights activists report Russia's removal of 2,500 prisoners from Kherson Region), 28 November 2022, available at: https://www.agents.media/ukrainskie-pravozashhitniki-soobshhili-o-nbsp-vyvoze-rossiej-2500-zaklyuchennyh-iz-nbsp-hersonskoj-oblasti/.

inquiries were being lodged with the prison administrations in respect of identified transferred prisoners, and electronic messages were sent to prisoners themselves, through the FSIN online message service, in an attempt to obtain automatic acknowledgements of receipts proving that a particular person is indeed held in a specific facility.[100]

62. The purpose of the transfer of prisoners from Kherson to Russia remains unclear. The deportation of prisoners from Kherson followed a similar forcible transfer of prisoners of war and civilians by the Russian forces from the occupied regions of Ukraine.[101]

63. The Russian authorities chose not to cooperate with the European Court of Human Rights in its examination of the *Ukraine and the Netherlands v. Russia*[102] inter-state case, specifically regarding the mass detention and transfer of civilians in and from occupied Ukrainian territory. They also decided not to communicate with the UN Working Group on Arbitrary Detention when it ruled on the transfer of prisoners from Kherson.[103] This approach essentially allows inferences to be drawn as to the absence of any legitimate reasons or aims justifying these measures (the position taken by the ECtHR).

F. Prisoners transferred back to Crimea from Russia

64. According to reports from relatives of transferred inmates and inmates themselves, since mid-May 2023, several groups of transferred Ukrainian prisoners held by Russian authorities in the correctional colonies of the Krasnodar Region (IK-2, IK-5, IK-11, and IK-14), were transferred to correctional colony no. 126 in Kerch (the occupied Crimea). In total, around 250 prisoners were transferred there since mid-May 2023. The FSIN did not inform prisoners' relatives about the transfer and did not provide an opportunity for prisoners to contact their loved ones. According to information received by the submitting organisations and their partners, prisoners had been ill-treated during the transfer and immediately upon their arrival at colony no. 126 in Kerch.

G. Immigration Detention

65. Some of the prisoners allocated to the correctional colonies in the Krasnodar and Volgograd Regions, upon the expiry of the terms of their sentences imposed by the Ukrainian courts, have

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[100] Sirena, "Мама нас куда-то увозят" (Mama, they're taking us somewhere), 29 November 2022, available at: https://telegra.ph/Mama-nas-kuda-to-uvozyat-11-29

[101] ZMINA, "Russia illegally transfers hostages in the Kherson region: human rights defenders demand a reaction from the world", 21 October 2022, available at: https://zmina.ua/en/statements-en/russia-illegally-transfers-hostages-in-the-kherson-region-human-rights-defenders-demand-a-reaction-from-the-world/.

[102] See below, Section III(F)(v), paras. 141, 142. ECtHR, *Ukraine and the Netherlands v. Russia* [GC], nos. 8019/16 and 3 others, 9 July 2025, available at: https://hudoc.echr.coe.int/?i=001-244292.

[103] See below, Section III(F)(iv), paras. 138-140. A/HRC/WGAD/2025/35 and A/HRC/WGAD/2025/34, available at: https://www.ohchr.org/en/special-procedures/wg-arbitrary-detention/opinions-adopted-working-group-arbitrary-detention/opinions-adopted-working-group-arbitrary-detention-its-102nd-session.

been released only to be immediately re-detained in view of the alleged violations of the Russian migration law. They were charged with the relevant administrative offences, sentenced to fines and administrative removal, and placed in detention centres for illegal migrants (in Gulkevichi, Ust-Labinsk, and Novoukrainskoye in the Krasnodar Region, and in Volgograd). On 5 February 2024, according to the information obtained by the submitting organisations, at least 15 Ukrainian prisoners who were detained in the Volgograd immigration detention centre were transferred to other centres in the territory of Russia, reportedly – in Astrakhan, Saratov, Penza, and Voronezh.

66. In immigration detention centres, prisoners have extremely limited access to health care, even in comparison to correctional facilities. For instance, in correctional colonies, prisoners living with HIV, in general, have access to antiretroviral therapy irrespective of their nationality, whereas in detention centres for migrants, the ART is not provided for inmates in view of their nationality. None of the detention centres in which prisoners transferred from Kherson are being placed have proper medical units, medications, and qualified medical specialists among their staff. The submitting organisations brought the issue to the attention of the UN Human Rights Committee (the CCPR) in two individual communications (no. 4233/2022 *Andrei Artemev v. Russia* and no. 4488/2023 *Kolesnichenko v. Russia*). In both cases, the CCPR granted the authors' requests for interim measures and indicated that the Respondent Government to provide the complainants detained in the immigration detention centres with necessary medical aid.

H. Release and return

67. As established by the submitting organisations, the transferred prisoners, in an effort to get a speedy release, are faced with a major dilemma. Thus, the fastest way to obtain release from immigration detention is to accept Russian citizenship, which the Russian authorities persistently offer to most Ukrainian prisoners. This practice appears to be a part of the general "policy of mass conferral of Russian citizenship to residents of occupied parts of Kherson, Zaporizhzhia, Donetsk, and Luhansk regions", condemned by the OHCHR in the October 2023 Report,[104] and running contrary to the relevant prohibitions of IHL (see para. 103 of the OHCHR October 2023 Report).[105]

68. Acceptance of Russian passports leads to the immediate release of Ukrainian prisoners from immigration detention. Before August 2024 (the beginning of active hostilities in the Kursk

[104] OHCHR, Report on the human rights situation in Ukraine, October 2023, available at: https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/coiukraine/23-10-04-OHCHR-36th-periodic-report-ukraine-en.pdf.

[105] OHCHR, Report on the human rights situation in Ukraine, October 2023, available at: https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/coiukraine/23-10-04-OHCHR-36th-periodic-report-ukraine-en.pdf.

region of Russia) it allowed them to return to Ukraine through the Kolotilovka-Pokrovka Russian-Ukrainian border crossing. Since August 2024, this route, which was not without significant obstacles (limited opening hours, long queues, lack of heated waiting areas), has been closed.[106]

69. Prisoners who do not wish to accept Russian citizenship usually spend several months in the immigration centres before being transferred by the Russian police to entry points on the Russian border with Georgia, where they spend from several days to three and a half months waiting for the border control to decide on their entry. To the best of the submitting organisations' knowledge, none of the prisoners who tried to cross the border of Russia with Schengen Area states were allowed to do so by the border control officers of the respective states, due to the placement of all of the prisoners on the SIS list. The crossing of the Russian-Georgian border by Ukrainian inmates, as well as their subsequent return to Ukraine, is significantly obstructed by their lack of valid travel IDs.[107]

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[106] BBC, "Между российской Колотиловкой и украинской Покровкой: коллапс на пограничном переходе" (Between Russian Kolotilovka and Ukrainian Pokrovka: collapse at the border crossing), 12 October 2023, available at: https://www.bbc.com/russian/articles/cv2l07qrd05o.

[107] As noted by the OHCHR, the State Migration Service of Ukraine cannot formally issue a certificate of return to citizens whose freedom of movement is or was restricted, including in the Russian Federation (OHCHR, Report on the human rights situation in Ukraine, October 2023, para. 95, available at: https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/coiukraine/23-10-04-OHCHR-36th-periodic-report-ukraine-en.pdf). On several occasions the formal obstacles preventing the ex-prisoners from crossing the Russian-Georgian border have led to them spending a significant time in appalling conditions at the border crossing checkpoints. On 30 January 2023, 14 prisoners from Kherson, detained in the temporary detention centre in Volgograd, were taken to the Russian-Latvian border (border control point Ubylinka-Grebneva), but were not allowed to cross the border by the Latvian border control and were escorted back to the detention centre (Delfi, "Россия депортировала 14 украинских заключенных, Латвия их не впустила" (Russia deports 14 Ukrainian prisoners, Latvia does not let them in), 1 February 2023, available at: https://rus.delfi.lv/news/daily/criminal/rossiya-deportirovala-14-ukrainskih-zaklyuchennyh-latviya-ih-ne-vpustila.d?id=55180738).

On 16 August 2023, five former prisoners transferred from Kherson, detained in IK-14 Krasnodar, and subsequently re-detained in the immigration detention centre in Gulkevichi (Krasnodar Region) were escorted to the Russian-Georgian border crossing point in Verkhni Lars. The Georgian border control had denied their entry, after which they spent 11 days near the crossing point, with limited access to food, water, and means of communications, without accommodation or sleeping places. At some point, the Russian security services' officers in plain clothes attempted to kidnap one of the prisoners, but were prevented from doing so due to the intervention of the Georgian border control officers. Ultimately, the group of prisoners was allowed to cross the border, probably in part owing to an interim measures proceedings initiated by the European Court of Human Rights upon the request of EPLN and UnMode (See, Meduza, "'Apparently, we're a threat to the Georgian people' A migration policy gap leaves deported Ukrainians in limbo at the Russia–Georgia border", 15 September 2023, available at: https://meduza.io/en/feature/2023/09/16/apparently-we-re-a-threat-to-the-georgian-people).

Another group of 7 transferred Ukrainian prisoners has spent 14 days at the Russian-Georgian border, with little to no food, restricted access to a toilet, and the absence of sleeping places and medicine. After extensive communication by the submitting organisations with the Ukrainian and Georgian authorities, the prisoners were allowed entry to Georgia on 25 October 2023. At some point, at the end of 2023 or the beginning of 2024, there were up to seventeen prisoners at the border waiting for permission to enter the territory of Georgia. Some of them spent up to 70 days in appalling conditions (OHCHR, Report on the Human Rights Situation in Ukraine, 1 December 2023 – 29 February 2024, 26 March 2024, para. 80, available at: https://ukraine.un.org/sites/default/files/2024-04/report-human-rights-situation-ukraine-1-dec-2023-29-feb-2024.pdf).

I. Identification and assistance in return

70. To date, PPU has established the identity of most of the prisoners (1,800) transferred from Ukraine to Russia and the correctional colonies to which most of them were transferred. Upon the expiration of sentences imposed by the Ukrainian courts, at least 300 prisoners were released from the colonies, and immediately re-arrested and transferred to immigration detention centres in Gulkevichi, Novoukrainskoye, Ust-Labinsk (Krasnodar Region), in Volgograd, and other regions, on account of the alleged breach of the immigration regulations.[108] Other prisoners (around 250 persons) were transferred from correctional colonies in the southern regions of Russia to Kerch (the occupied Crimea), where their sentences were converted by the Russian "Kerch Town Court". The submitting organisations are also aware of at least eight prisoners who died in detention (during transfer, in Russian correctional colonies, or during return).

71. Many prisoners placed in immigration detention or transferred to Kerch were subsequently released. Releases essentially stopped in August 2024, resumed in 2025, and then stopped again in September 2025. Around 450 prisoners returned to Ukraine, mostly via Georgia or the Kolotilovka-Pokrovka checkpoint on the Russia-Ukraine border (which was closed in July-August 2024).

J. Legislative developments and attempts of the Russian authorities to "legalise" the transfer

72. On 31 July 2023, the Russian authorities adopted a federal law (No. 395-FZ) which proclaimed a retrospective extension of the Russian criminal jurisdiction over the occupied Ukrainian regions of Donetsk, Luhansk, Kherson, and Zaporizhzhia, with respect to all crimes committed there both after and before the occupation (Section 2 § 1).[109] In addition, under Section 8, the new law provided that the Russian Federation acknowledges the legal force of all judicial decisions delivered in the annexed territories which entered into force before 30 September 2022, *including in the part concerning the execution of sentences.*

In July 2025, another humanitarian crisis broke out at the Russian-Georgian border, when more than 90 former inmates were stranded there for over two months, suffering from lack of food, water, and essential medical assistance (see: Al Jazeera, "'Unbearable': Ukrainians deported by Russia, stranded at Georgia border", 23 July 2025, available at: https://www.aljazeera.com/amp/features/2025/7/23/unbearable-ukrainians-deported-by-russia-stranded-at-georgia-border).

[108] See Section II(G), paras. 65, 66.

[109] Official Internet Portal of Legal Information, Federal Law of 31 July 2023 No. 395-FZ, "On the application of the provisions of the Criminal Code of the Russian Federation and the Code of Criminal Procedure of the Russian Federation in the territories of the Donetsk People's Republic, the Luhansk People's Republic, the Zaporizhzhia Region and the Kherson Region", available at: http://publication.pravo.gov.ru/document/0001202307310011. The law also provided for a new criminal justification ("if [a criminal conduct] was aimed at protecting the interests of Russia, "Luhansk" and "Donetsk People's Republics", their citizens, population, and organisations" (Section 2 § 2).

73. In that latter part, the newly adopted law echoed the similar legislative exercise undertaken by the Russian authorities in 2014, following the annexation of Crimea, and the subsequent mass "conversion" of Ukrainian courts' sentences under Russian criminal law.[110]

74. Similar proceedings on the "conversion" of sentences were launched in respect of prisoners forcibly transferred from Kherson, in particular, before the Russian "Kerch Town Court" – a district-level "tribunal" operating in Kerch (the occupied Crimea). These proceedings resulted in retrospective application of the Russian criminal law to the deported Ukrainian prisoners – in the absence of any Russia's jurisdictional ties with crimes committed by these individuals (except for the artificial "link" established at the domestic level by the above-cited Federal law (No. 395-FZ)). To date, the submitting organisations have identified around 250 "conversion" cases against prisoners transferred from Kherson. According to the information received by the submitting organisations, prisoners who have more than one year left to serve after the conversion of their sentences are being taken further to other correctional colonies, located in Russia, including to IK-10 and IK-4 in the Saratov Region of Russia.

75. Some of these (and presumably other, yet to be identified) decisions were delivered before the adoption of Federal Law of 31 July 2023 No. 395-FZ and, as it follows from them, omitted any explanation as to the domestic legal grounds for the exercise of the Russian jurisdiction over the prisoners transferred from Ukraine.

76. As established by the submitting organisations, a similar procedure was applied in respect of seven life-sentenced Ukrainian prisoners who were taken to IK-6 in the Republic of Mordovia (Russia). In October 2023, a local court – Torbeevskiy Town Court, converted Ukrainian sentences in respect of four of them and rejected prison administration's requests for conversion in respect of three other prisoners. When rejecting the requests, the court noted, that the prisoners concerned had been convicted by Ukrainian courts from regions, other than the four "covered" by Federal Law of 31 July 2023 No. 395-FZ, and therefore there were no grounds for reclassification of judgments against them. However, after reaching that conclusion, the court

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[110] Thus, Federal Law of 5 May 2014 No. 91-FZ "On application of the provisions of Criminal and Criminal Procedural Codes of the Russian Federation in the territory of Crimea and the federal city of Sevastopol", provided for that the retroactive extension of the Russian criminal jurisdiction on the territory of Crimea, in respect of crimes committed there before 18 March 2014 (date of the illegal annexation) (Official Internet Portal of Legal Information, "Федеральный закон от 05.05.2014 № 91-ФЗ 'О применении положений Уголовного кодекса Российской Федерации и Уголовно-процессуального кодекса Российской Федерации на территориях Республики Крым и города федерального значения Севастополя'", available at: http://publication.pravo.gov.ru/Document/View/0001201405050079?index=0&rangeSize=1
English translation is available at: Cis-legislation, "Federal Law of the Russian Federation of May 5, 2014 No. 91-FZ" // https://cis-legislation.com/document.fwx?rgn=67121). By that act, the Russian authorities also acknowledged the binding legal force of criminal judgments delivered by the Ukrainian courts in Crimea before 18 March 2014, including for the purpose of the execution of sentences (Section 8 of the Federal Law), and subsequently launched numerous proceedings for the "reclassification" of sentences in respect of prisoners detained in Crimea pursuant to criminal judgments of the Ukrainian courts.

failed to explain the legal basis for the prisoners' continued detention, and did not order their release.[111]

K. Domestic investigation in Ukraine

77. On 4 November 2022, the Ukrainian authorities opened an investigation into the forcible transfer/deportation of civilian prisoners from the Kherson and Mykolaiv regions of Ukraine to Crimea and Russia by the Russian armed forces (criminal case no. 12022230000005312). The case was opened under Articles 28 § 2 and 438 § 1 of the Criminal Code of Ukraine – violation of rules of the warfare (including deportation of civilian population) committed by a group of persons upon prior conspiracy On 4 July 2023, Yevgeny Sobolev, the former head of the Northern Penitentiary Colony No. 90, was charged with a number of criminal offenses, including "giving orders to commit other violations of the laws and customs of war, which consisted in the deportation and transfer of protected persons from the Kherson region to the Russian Federation and the temporarily occupied territory of Ukraine without their consent and with the use of coercion".[112] Similar criminal suspicions were brought against Oleksiy Soroka, a former head of the penal colony no. 7 in Hola Prystan.[113] On 19 October 2023, Yevhen Sobolev was convicted in absentia of defection, and on 20 February 2024, he was additionally convicted of high treason.[114] On 22 July 2024, Yevhen Sobolev was designated under the EU Global Human Rights Sanctions Regime.[115] On 13 June 2025, Oleksiy Soroka was convicted, in absentia, by the Kherson City Court of Ukraine of "violations of rules of warfare" (Article 438 of the Criminal Code of Ukraine). The investigation into the forcible transfer is ongoing. Over 240 prisoners and over 140 relatives of deported prisoners have been interviewed and formally recognised as victims in these criminal proceedings.

78. Criminal suspicions in relation to the deportation of prisoners were brought against six persons in total: apart from Sobolev and Soroka, suspicions were brought against a deputy of Sobolev,

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[111] The submitting organisations are able to provide additional details on the Russian "conversion" proceedings, including their dates, texts of several decisions, names of prisoners concerned, upon request.

[112] Office of the Prosecutor General of Ukraine, "Notice of suspicion of committing a criminal offence to Sobolev E.O. and summons to summon Sobolev E.O. for 08/07/2023, 10/07/2023, 11/07/2023", available at: https://www.gp.gov.ua/ua/posts/povidomlennya-pro-pidozru-u-vcinenni-kriminalnogo-pravoporusennya-soboljevu-jeo-ta-povistka-pro-viklik-soboljeva-jeo-na-08072023-10072023-11072023.

[113] Office of the Prosecutor General of Ukraine, "Notice of suspicion and summons to appear for Soroka O.V. on 13.09.2023, 14.09.2023 and 15.09.2023", available at: https://www.gp.gov.ua/ua/posts/povidomlennya-pro-pidozru-ta-povistka-pro-viklik-soroki-ov-na-13092023-14092023-ta-15092023.

[114] Investigator.org.ua, "Евгений Соболев, экс-начальник херсонской колонии, получил еще один заочный приговор суда – за госизмену его лишили свободы пожизненно" (Yevhen Sobolev, former head of the Kherson colony, received another court sentence in absentia - he was imprisoned for life for state treason), 20 February 2024, available at: https://investigator.org.ua/news-2/novosti-vlast/264330/.

[115] Council of the EU, Press release, "Sexual and gender-based violence: Council lists four individuals and two entities under the EU's Global Human Rights Sanctions Regime", 22 July 2024, available at: https://www.consilium.europa.eu/en/press/press-releases/2024/07/22/sexual-and-gender-based-violence-council-lists-four-individuals-and-two-entities-under-the-eu-s-global-human-rights-sanctions-regime/.

as well as the Russia-appointed head of remand prison no. 1 in Kherson, his deputy, and the Russia-appointed head of Hola Prystan colony no. 7. Six cases against these individuals, including the one against Yevhen Sobolev, on charges of forcible transfer / deportation were submitted by the Ukrainian prosecutors to the Kherson City Court of Ukraine with the bills of indictment for examination on the merits. The investigation into the forcible transfer / deportation is still ongoing, as the additional victims keep returning to Ukraine and are being interviewed by the investigative authorities.

III. Legal Considerations

A. International human rights law aspect

79. The Appeals Chamber of the ICC has held that Article 21(3) of the Rome Statute "makes the interpretation as well as the application of the law applicable under the Statute subject to internationally recognised human rights. It requires the exercise of the jurisdiction of the Court in accordance with internationally recognized human rights norms".[116] This finding makes the human rights dimension of the situation reported on in the present communication highly relevant.

i. Forcible transfer/deportation of civilian prisoners from the standpoint of international human rights law

80. According to Article 12 of the ICCPR "[e]veryone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence (para. 1)". Any restrictions on this right must be "provided by law, necessary to protect national security, public order (*ordre public*), public health or morals or the rights and freedoms of others, and consistent with other rights" (para. 3), "no one shall be arbitrarily deprived of the right to enter his own country" (para. 4). These provisions are echoing the guarantees contained in Article 13 of the Universal Declaration of Human Rights.

81. Pursuant to the CCPR General Comment no. 27, to be permissible, restrictions must be provided by law, necessary in a democratic society for the protection of these purposes, and must be consistent with all other rights recognised in the Covenant. Restrictions which are not provided for in the law or are not in conformity with the requirements of Article 12 § 3 would violate the rights guaranteed by Article 12 §§ 1 and 2. The restrictions must not impair the essence of the right to liberty of movement; the laws authorising the application of restrictions should use precise criteria and may not confer unfettered discretion on those charged with their execution.

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[116] Judgment on the Appeal of Mr. Thomas Lubanga Dyilo against the Decision on the Defence Challenge to the Jurisdiction of the Court pursuant to article 19 (2) (a) of the Statute of 3 October 2006, 14 December 2006, ICC-01/04-01/06-772, para. 36.

82. The CCPR specifies further that restrictions must be necessary to protect the legitimate purposes stipulated in Article 12 of the ICCPR and must conform to the principle of proportionality, i.e., they must be appropriate to achieve their protective function, must be the least intrusive instrument amongst those which might achieve the desired result, and must be proportionate to the interest to be protected.[117]

83. The principle of proportionality must be respected not only in the law, but also by the administrative and judicial authorities applying it. States should ensure that reasons for the application of restrictive measures are provided. The application of the restrictions permissible under Article 12 needs to be consistent with the other rights guaranteed in the ICCPR, and with the fundamental principles of equality and non-discrimination.

84. The right of a person to enter his or her own country has special importance in the context of transboundary deportation. As explained by the CCPR, this right, stipulated in Article 12 § 4 of the ICCPR, has various facets. It implies the right to remain in one's own country and to return after. It also implies the prohibition of enforced population transfers or mass expulsions to other countries.[118] The respective guarantees are not restricted solely to nationals of the specific country, but also extend to aliens who have close and enduring connections with the country.

85. In no case may a person be arbitrarily deprived of the right to enter his or her own country. The reference to the concept of arbitrariness in this context is intended to emphasise that it applies to all State action, legislative, administrative, and judicial; it guarantees that even interference provided for by law should be in accordance with the provisions, aims and objectives of the Covenant and should be, in any event, reasonable in the particular circumstances. The CCPR considers that there are few, if any, circumstances in which deprivation of the right to enter one's own country could be reasonable.[119]

86. Forcible transfer or deportation, in addition, encroaches upon the right to respect for private and family life. In the *Ukraine v. Russia (re Crimea)* case, the ECHR has found a violation of Article 8 of the European Convention on account of an administrative practice breaching the right to respect for the family life of Crimean prisoners stemming from their transfer from Crimean prisons to penal facilities located on the territory of the Russian Federation. The ECtHR has found sufficient evidence proving to the appropriate standard of proof that there have been numerous and interconnected instances of transfers of prisoners constituting interference with

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[117] UNHRC, General comment No. 27, CCPR/C/21/Rev.1/Add.9 **, 1 November 1999, available at: https://digitallibrary.un.org/record/366604?ln=ru&v=pdf.
[118] UNHRC, General comment No. 27, CCPR/C/21/Rev.1/Add.9 **, 1 November 1999, available at: https://digitallibrary.un.org/record/366604?ln=ru&v=pdf.
[119] UNHRC, General comment No. 27, CCPR/C/21/Rev.1/Add.9 **, 1 November 1999, available at: https://digitallibrary.un.org/record/366604?ln=ru&v=pdf.

their right to respect for their family life protected by Article 8 of the Convention. The body of evidence before the Court allowed it to conclude beyond reasonable doubt that there was "an accumulation of identical or analogous breaches" of the right to respect of family life "which are sufficiently numerous and interconnected" to amount to "a pattern or system" on a large scale and of considerable intensity and that the regulatory nature of the alleged practice confirmed the existence of both the "repetition of acts" and "official tolerance" elements of the administrative practice. It further held that such transfers were "unlawful" within the meaning of the Convention and that they also constituted a "grave breach" of GC IV (its Art. 49).[120]

ii. Detention of civilian prisoners from the standpoint of international human rights law

87. The UN Working Group on Arbitrary Detention has stated that "in order for a deprivation of liberty to be justified, it must have a legal basis. It is not sufficient for there to be a national law or practice authorising the arrest. The authorities must invoke a legal basis consistent with international human rights standards and apply it to the circumstances of the case" (Opinions No. 6/2020, § 39; No. 33/2020, §§ 53 and 71; and No. 34/2020, § 44). In Communication No. 50/2014, *Mustafa al Hawsawi v. United States of America and Cuba* (opinions adopted on 17-21 November 2014), the WGAD stated, in particular:

> "62. International armed conflicts, including situations of occupation, imply the full applicability of relevant provisions of international humanitarian law and of international human rights law, with the exception of guarantees derogated from, provided such derogations have been declared in accordance with Article 4 of the ICCPR by the State party.
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> …
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> 66. Customary international law prohibits arbitrary detention and arbitrary detention is confirmed as a peremptory norm (jus cogens) in the constant jurisprudence of the Working Group (See also the clarification by the International Court of Justice of the prohibition of torture as a peremptory norm of international law (jus cogens) in Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal), Judgment, I.C.J. Reports 2012, para. 99).
>
> 67. The prohibition of arbitrary detention provides for clear and precise rights and guarantees from which there is no scope for derogations or restrictions under international humanitarian law. Neither can international humanitarian law operate as a principle of interpretation, and it is not lex specialis even in the present context of interpretation. The rules and procedures of international humanitarian law must comply with the prohibition of arbitrary detention in international law, and authorities are always subject to review by international and domestic courts for their compliance."

88. As noted by the CCPR (General Comment no. 35 (CCPR/C/GC/35, 16 December 2014, §§ 10, 11, 14, 15, 32), the right to liberty is not absolute, but its deprivation must not be arbitrary. Arrest or detention lacking legal basis, as well as unauthorised confinement of prisoners beyond the length of their sentences are arbitrary and unlawful. In addition to detention on criminal charges, other regimes involving deprivation of liberty must also be established by law and must

[120] *Ukraine v. Russia (re Crimea)*, ECtHR, Grand Chamber, nos. 20958/14 and 38334/18, §§ 1292-1305, 25 June 2024, available at: https://hudoc.echr.coe.int/?i=001-235139.

be accompanied by procedures that prevent arbitrary detention. The grounds and procedures prescribed by law must not be destructive of the right to liberty of person.

89. Retroactive criminal punishment by detention in violation of article 15 of the ICCPR amounts to arbitrary detention. Any person arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power. That requirement applies in all cases without exception and does not depend on the choice or ability of the detainee to assert it. Incommunicado detention that prevents prompt presentation before a judge inherently violates paragraph 3 of Article 9 of the ICCPR. States parties should permit and facilitate access to counsel for detainees in criminal cases from the outset of their detention.

90. Turning to the issue of the deprivation of liberty in the context of armed conflict and the interplay between human rights and humanitarian law in this matter, the CCPR stated (General Comment no. 35 (CCPR/C/GC/35, 16 December 2014, § 64-65):

> "… article 9 [of the ICCPR – right to liberty and security of person] applies also in situations of armed conflict to which the rules of international humanitarian law are applicable. While rules of international humanitarian law may be relevant for the purposes of the interpretation of article 9, both spheres of law are complementary, not mutually exclusive. Security detention authorized and regulated by and complying with international humanitarian law in principle is not arbitrary. In conflict situations, access by the International Committee of the Red Cross to all places of detention becomes an essential additional safeguard for the rights to liberty and security of person.
>
> 65. Article 9 is not included in the list of non-derogable rights of article 4, paragraph 2, of the Covenant, but there are limits on States parties' power to derogate. States parties derogating from normal procedures required under article 9 in circumstances of armed conflict or other public emergency must ensure that such derogations do not exceed those strictly required by the exigencies of the actual situation. Derogating measures must also be consistent with a State party's other obligations under international law, including provisions of international humanitarian law relating to deprivation of liberty, and non- discriminatory. The prohibitions against taking of hostages, abductions or unacknowledged detention are therefore not subject to derogation."

91. Addressing the legality and arbitrariness of security detention under IHL (sometimes referred to as administrative detention or internment), the CCPR noted (General Comment no. 35 (CCPR/C/GC/35, 16 December 2014, §§ 10, 11, 14, 15, 32), that it presents severe risks of arbitrary deprivation of liberty. Such detention would normally amount to arbitrary detention as other effective measures addressing the threat, including the criminal justice system, would be available. If, under the most exceptional circumstances, a present, direct and imperative threat is invoked to justify the detention of persons considered to present such a threat, the burden of proof lies on States parties to show that the individual poses such a threat and that it cannot be addressed by alternative measures, and that burden increases with the length of the detention. States parties also need to show that detention does not last longer than absolutely necessary, that the overall length of possible detention is limited and that they fully respect the guarantees provided for by article 9 in all cases. Prompt and regular review by a court or other tribunal

possessing the same attributes of independence and impartiality as the judiciary is a necessary guarantee for those conditions, as is access to independent legal advice, preferably selected by the detainee, and disclosure to the detainee of, at least, the essence of the evidence on which the decision is taken.

B. Prohibition of deportations under international humanitarian law

92. The occupying Power is required to respect the existing laws and institutions of the occupied territory as far as possible and to avoid making far-reaching changes to the existing order or intrinsic characteristics of the occupied territory (Hague Regulations, Art. 43; GC IV, Art. 47; AP I, Art. 4; ICRC Commentary to Art. 47 of the GC IV). The continuity of the previously existing legal order preserves to the greatest extent possible the rights that residents enjoyed prior to occupation and facilitates the territory's reintegration at the end of occupation. IHL provides for a general continuity in the composition of the occupied territory's population, as the individual or mass forcible transfers or deportations of protected persons, as well as transfers of the population of the occupying Power into occupied territory, are prohibited (GC IV, Art. 49(6), ICRC Customary IHL, Rule 130).[121]

93. On the matter of geographical distribution and transfer of convicted prisoners, Article 76 of GC IV provides that "protected persons accused of offences shall be detained in the occupied country, and if convicted they shall serve their sentences therein." While this provision refers to the convictions and sentences delivered by the Occupying Power, it appears to be *a fortiori* applicable to prisoners sentenced and imprisoned by the authorities of the occupied country. It is especially evident if Article 76 is read in conjunction with Article 49 of GCIV, on which, as explained by the ICRC in the 1958 Commentary, it is based, and which lays down "the fundamental principle forbidding deportations."

94. According to the ICRC 1958 Commentary, "the prohibition [contained in Article 49] is absolute and allows of no exceptions, apart from those stipulated in paragraph 2",[122] i.e., evacuation of an area by the Occupying Power. Article 147 of GC IV categorises "unlawful deportation and transfer" of protected persons as one of the "grave breaches" of the Convention.

95. Commenting on the forcible transfer of Kherson prisoners, OHCHR recalled that IHL prohibits forcible transfers and deportations, and only permits evacuation in strict circumstances if the security of the population or imperative military reasons so demand. IHL also requires an

[121] OHCHR, Human Rights Situation During the Russian Occupation of Territory of Ukraine and its Aftermath, 24 February 2022 – 31 December 2023, 20 March 2024, para. 21, available at: https://ukraine.ohchr.org/sites/default/files/2024-04/2024-03-20%20OHCHR%20Report%20on%20Occupation%20and%20Aftermath_EN.pdf.

[122] The seriousness of the violation of the prohibition of transfers of all or parts of the population of the occupied territory, explains its criminalisation as one of the war crimes under the Rome Statute (Article 8 § 2 (b) (viii)).

occupying Power to return any evacuated persons to their homes as soon as conditions permit [Article 49 of GC IV].[123] The OSCE Moscow Mechanism has reported "numerous testimonies to the effect that deportation is a forced condition for "voluntary release", noting that "deprivation of liberty of civilians as a measure to achieve their unlawful deportation from occupied territory is clearly unlawful."[124]

C. Evacuation and deportation: applicable international humanitarian law standards

96. Indeed, the occupying Power may temporarily evacuate protected persons from an area if required for the security of the population or imperative military reasons; however, the population must not be displaced out of occupied territory unless impossible to avoid for material reasons (GC IV, Art. 49).

97. In this regard, the Extraordinary Chambers in the Courts of Cambodia, when interpreting the crime of "forced transfer", have noted, with reference to the applicable domestic and international jurisprudence, IHL, and practice of the CCPR, that it involves the

> "intentional, forced displacement of individuals from an area in which they are lawfully present, *not justified by concerns regarding the security of the civilian population or military necessity* [emphasis added]. Forced transfers undertaken in the interest of civilian security or military necessity, just as all measures restricting freedom of movement, 'must conform to the principle of proportionality; they must be appropriate to achieve their protective function; they must be the least intrusive instrument among those which might achieve the desired result; and they must be proportionate to the interest to be protected'. For a transfer to be considered proportional, evacuees must be 'transferred back to their homes as soon as hostilities in the area in question have ceased'. Additionally, those responsible for a transfer 'shall ensure, to the greatest practicable extent, that proper accommodation is provided to receive the protected person, that the removals are effected in satisfactory conditions of hygiene, health, safety and nutrition, and that members of the same family are not separated'. Finally,… displacement is not justifiable where the humanitarian or military situation causing the displacement is itself the result of the accused's own unlawful activity."[125]

98. Therefore, legitimate concerns about the safety and security of the civilian population and military necessity may serve as a plausible justification for the forcible transfer/displacement of the population, effectively drawing the line (along with other factors related to the mode of such transfer or displacement) between the crime of forcible transfer and the evacuation of the population.

99. The Chamber of the Court has held in this regard that "ordering a displacement with the aim of ensuring the safety of the civilian population, such as in cases of epidemics or natural disasters,

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[123] OHCHR, Report on the human rights situation in Ukraine, October 2023, available at: https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/coiukraine/23-10-04-OHCHR-36th-periodic-report-ukraine-en.pdf.

[124] OSCE, Observations of the mission of experts established under the Moscow Mechanism. Report on Violations and abuses of Internation Humanitarian and Human Rights Law, War Crimes and Crimes against Humanity, related to the Arbitrary Deprivation of Liberty of Ukrainian Civilians by the Russian Federation, pp. 67-68, 19 April 2024, available at: https://www.osce.org/files/f/documents/f/4/567367.pdf.

[125] ECCC, Case 002/01, Judgement, 7 August 2014, para. 450, available at: https://www.eccc.gov.kh/sites/default/files/documents/E313_EN.pdf.

would not constitute a crime under Article 8(2)(e)(viii) of the Statute. For the concept of military necessity, the Chamber noted that the reference to '*imperative military reasons*' in the Statute, derived from Article 49 of the Fourth Geneva Convention, is not reproduced in the Elements of Crimes. In this regard, the Chamber recalls that it has defined the concept of military necessity with reference to the relevant provision in Article 14 of the Lieber Code, which describes military necessity as the need to take 'those measures which are indispensable for securing the ends of the war, and which are lawful according to the modern law and usages of war'".[126]

100. Paragraph 2 of Article 49 of GC IV provides that:

> "the Occupying Power may undertake total or partial evacuation of a given area if the security of the population or imperative military reasons so demand. Such evacuations 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. Persons thus evacuated shall be transferred back to their homes as soon as hostilities in the area in question have ceased."

101. The ICTY in the *Krstić*[127] case has formulated several criteria distinguishing forcible transfer from a justifiable evacuation, with the latter implying that the evacuated persons "shall be transferred back to their homes as soon as hostilities in the area in question have ceased" (thus the evacuation must be carried out in a manner conducive to the eventual return of the civilians), the existence of the actual military reason, and the lack of advance planning. In addition, the "atmosphere of terror" in which the alleged evacuation takes place serves as proof that the purpose of the transfer has nothing to do with the safety and security of the population, but that the true goal of the displacement is persecution, including the expulsion of the civilian population. The advance planning, in its turn, demonstrates that the displacement could not have been an action taken in response to an unexpected and imperative military need.[128] As for the "military reason", the ICTY specified in *Blagojević & Jokić*,[129] that it shall be "overriding", and must involve an "actual… military or other significant threat to the physical security of the population" necessitating "imperative" military operation.

102. In *Naletilić & Martinović*,[130] the ICTY held that the justifiable evacuation should involve the actual attempts to return the civilian population after the cessation of hostilities and, at the same time, it must not be accompanied by actions aimed at thwarting the potential return (such as burning down houses). In addition, the civilians, for the displacement to be justified as an

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[126] The Prosecutor v. Bosco Ntaganda, ICC-01/04-02/06-2359, Judgement, 8 July 2019, para. 1098.
[127] Prosecutor v. Radislav Krstić (Trial Chamber Judgment) (n 1), Case no. IT-98-33-T, §§ 524-27, 2 August 2001.
[128] See also, Emma Brandon, "Grave Breaches and Justifications: The War Crime of Forcible Transfer or Deportation of Civilians and the Exception for Evacuations for Imperative Military Reasons", Oslo Law Review, Volume 6, Issue 2, 17 September 2019, https://doi.org/10.18261/issn.2387-3299-2019-02-03.
[129] Prosecutor v. Blagojević & Jokić (Trial Chamber Judgment), Case no. ICTY-02-60-T, §§ 598-599, 17 January 2005.
[130] Prosecutor v. Mladen Naletilic aka "Tuta", Vinko Martinovic aka "Stela" (Trial Judgement), Case no. IT-98-34-T, §§ 512–571, 31 March 2003.

evacuation, must as far as possible be transferred within the occupied territory and not outside of it. These criteria were reiterated in *Brđanin*,[131] in which the ICTY noted that:

> "… decisions to either of the said effects [the security of the population or for imperative military reasons] would have required that persons thus evacuated shall be transferred back to their homes as soon as hostilities in the area in question have ceased, which did not happen in the present case".

As specified in *Blagojević & Jokić*,[132] "the fact that victims subsequently return to the area by their own volition does not have an impact on the criminal responsibility."

103. In *Stakić*[133], the Appeals Chamber of the ICTY emphasised that the circumstances justifying the civilian displacement must not be created by the forces conducting the displacement (e.g., destruction, confiscation, and redistribution of objects necessary for survival from the civilian population, which led to the dire humanitarian situation). This position was, in substance, endorsed by the Court.[134]

104. As an additional requirement (stemming from Article 49 of GC IV, but also reflected in its Articles 36 and 37), "[i]t is incumbent upon the evacuating party to ensure that the civilian population, to the extent possible and practicable, is properly provided for in terms of accommodation, hygiene, health, safety and nutrition."[135]

D. Succession of criminal jurisdiction in the occupied territory and its limits, and grounds for detention of protected persons by the Occupying Power – applicable standards and principles

105. While IHL sets out circumstances in which protected persons can be detained during an international armed conflict (such as on the grounds of civilians' participation in hostilities, assigned residence or interment for imperative reasons of security or absolute necessity, commission of offences violating local penal law), it does not explicitly address the issue of the legality of the continued detention of "pre-conflict prisoners" – convicted and sentenced to imprisonment by the authorities of the occupied state before the occupation – by the occupying power.

106. Since occupation does not lead to a transfer of sovereignty, the occupying Power is required to respect the existing laws and institutions of the occupied territory as far as possible and to avoid

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[131] Prosecutor v. Brđanin (Trial Chamber Judgment), Case no.: ICTY-99-36-T, §§ 539, 546, 556, 1 September 2004.
[132] Prosecutor v. Blagojević & Jokić (Trial Chamber Judgment), Case no. ICTY-02-60-T, §§ 598-599, 17 January 2005.
[133] Prosecutor v. Milomir Stakic (Appeal Judgement), Case no.: IT-97-24-A, §§ 266, 273, 285–287, 22 March 2006
[134] Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the People's Republic of Bangladesh/Republic of the Union of Myanmar, ICC-01/19-27, 14 November 2019, Pre-Trial Chamber III, Decision, para. 98.
[135] Prosecutor v. Blagojević & Jokić (Trial Chamber Judgment), Case no. ICTY-02-60-T, §§ 598-599, 17 January 2005.

making far-reaching changes to the existing order or intrinsic characteristics of the occupied territory.[136]

107. Under Article 43 of the Fourth Hague Convention of 1907, the occupying power "shall take all the measures … to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the [occupied territory]. GC IV, in its Article 64(1), develops further the concept of continuation or the succession of the criminal jurisdiction, by providing that "the penal laws of the occupied territory shall remain in force", except when they are threatening the security of the occupying power or hinder the application of GC IV. The tribunals of the occupied territory shall also continue to function "in respect of all offences covered by the said law", subject to two reservations – obstruction of the application of GC IV, or "the necessity for ensuring the effective administration of justice." Further, the occupying Power may not alter the status of public officials or judges in the occupied territory, nor take any coercive measures against those who abstain from fulfilling their functions for reasons of conscience (GC IV, Art. 54).

108. The continuity of the previously existing legal order preserves to the greatest extent possible the rights that residents enjoyed prior to occupation and facilitates the territory's reintegration at the end of occupation. For example, continuity in criminal laws ensures that sentences remain valid.[137]

109. IHL provides that an occupying Power "may take such measures of control and security in regard to protected persons as may be necessary as a result of the war" (GC IV, Art. 27). Such permissible measures must nonetheless also be proportionate and comply with the duty to treat residents of occupied territory humanely at all times.[138]

110. Article 64(2) of GC IV authorises the occupying power to put in place regulations in the occupied territory, which would be aimed at fulfilling GC IV and maintaining "the orderly government of the territory", and ensuring "security of the Occupying Power" – including the relevant penal provisions.[139] However, such provisions shall not have retroactive effect (Article 65 of GC IV), and the courts of the occupying power, if trying protected persons in the occupied territory, "shall apply only those provisions of law which were applicable prior to the offence" (Article 67, GC IV).

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[136] OHCHR, Human Rights Situation During the Russian Occupation of Territory of Ukraine and its Aftermath, 24 February 2022 – 31 December 2023, 20 March 2024, para. 19, available at: https://ukraine.ohchr.org/sites/default/files/2024-04/2024-03-20%20OHCHR%20Report%20on%20Occupation%20and%20Aftermath_EN.pdf.
[137] Ibid., para. 21.
[138] Ibid., para. 22.
[139] ICRC 1958 Commentary to Article 64 of GCIV, available at: https://ihl-databases.icrc.org/en/ihl-treaties/gciv-1949/article-64/commentary/1958?activeTab=.

111. Violation of criminal laws enacted by the occupying power in the occupied territory, or commission of offences against the occupying power, constitutes, in principle, a valid reason for holding the protected person accountable by the courts of the occupying power and for imprisoning her or him. (Article 68, GC IV).

112. As provided in Article 70 of GC IV (para. 1), "protected persons shall not be arrested, prosecuted or convicted by the Occupying Power for acts committed or for opinions expressed before the occupation, or during a temporary interruption thereof, with the exception of breaches of the laws and customs of war". ICRC Commentary specifies in the relevant part that this rule is "limiting the jurisdiction of the Occupying Power to the period during which it is in actual occupation of the territory… *The Occupying Power is therefore legally entitled to exercise penal jurisdiction in the occupied country in respect of acts which occur during occupation, and in respect of such acts only*" (except for the cases of breaches of the laws and customs of war).[140]

113. Article 71 GC IV provides that accused persons must be promptly informed, in writing, in a language which they understand, of the particulars of the charges preferred against them, and must be brought to trial as rapidly as possible (see also Article 75(3) AP I).

114. Finally, under Articles 76 and 77 of GC IV, protected persons accused or convicted in occupied territory shall be detained and serve their sentences in the occupied territory, and then handed over to the authorities of the liberated territory at the close of the occupation. Article 147 GC IV lists "unlawful confinement" of civilians as a grave breach of the Convention.

Taken together, these provisions, on the one hand, vest with the authorities of the occupying power the function of maintaining penal laws, order, and functioning of the justice in the occupied territory – which shall, as far as possible, be the same as they were before the occupation. On the other hand, considering that "occupation is in principle of a temporary nature",[141] these provisions limit the criminal jurisdiction of the occupying power in the occupied territory in time, prohibiting the enactment of retroactive laws or the prosecution of protected persons for acts committed prior to the occupation.

E. Unlawfulness of detention and transfer of civilian prisoners from the standpoint of the domestic law of the Russian Federation

115. Pursuant to Article 21(1)(c) of the Rome Statute, the Court is not precluded from applying "general principles of law derived by the Court from national laws of legal systems of the world including, as appropriate, the national laws of States that would normally exercise jurisdiction

[140] ICRC 1958 Commentary to Article 70 of GCIV, available at: https://ihl-databases.icrc.org/en/ihl-treaties/gciv-1949/article-70/commentary/1958?activeTab=.
[141] ICRC 1958 Commentary to Article 70 of GCIV, available at: https://ihl-databases.icrc.org/en/ihl-treaties/gciv-1949/article-70/commentary/1958?activeTab=.

over the crime, provided that those principles are not inconsistent with this Statute and with international law and internationally recognized norms and standards." Accordingly, the submitting organisations believe it is important to provide the Court and the Prosecutor's Office with a summary of the applicable Russia's domestic legal framework, under which the actors (or at least some of them) involved in the crimes described in the present submission were supposedly acting. The submitting organisations believe that the relevant domestic legal framework is also relevant for the assessment of the lawfulness and arbitrariness of the acts described in the communication from the standpoint of international law, including the applicable law of the Court, as defined in Article 21.

i. Prisoner transfer

116. The civilian prisoners from Kherson were not legally "integrated" into the Russian penitentiary system at the time of their deportation to Russia, i.e. their detention was not authorised by the Russian domestic courts, and it was only about a year later that the Russian authorities began to gradually "legalise" their detention from the standpoint of domestic law.[142] However, the involvement of the FSIN in the transfer, from its early stages, and the allocation of the prisoners to the penitentiary establishments and remand prisons in the occupied Crimea and in Russia, strongly suggests that Russian domestic regulations governing prisoner transfers were applied to them.

117. The Russian legal framework regulating the prisoner transfer was extensively analysed by the ECtHR in the case of *Polyakova and Others v. Russia.*[143] The European Court has critically analysed the regulatory framework from the standpoint of prisoners' and their families' right to respect for private and family life (Article 8 of the ECHR). The European Court has held that the general rule on the prisoners' distribution, set forth in Article 73 § 1 of the Code on the Execution of Criminal Sentences ("CES"), was in line with the relevant standards of the European Prison Rules insofar as it provided that prisoners must be allocated to penal facilities in their home region or the region where they were convicted (para. 94 of the judgment). Amendments adopted in 2020 further strengthened the guarantees provided by the "general distribution rule" by allowing for the assignment or subsequent transfer of prisoners to facilities located near the place of residence of their relatives.[144]

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[142] See below, Section III(E)(iii), para. 122, where the submitting organisations argue that the relevant procedures in Russia did not in fact cure the unlawfulness of the detention, either under Russian domestic law or under international law.

[143] *Polyakova and Others v. Russia*, ECtHR, nos. 35090/09 and 3 others, 7 March 2017, available at: https://hudoc.echr.coe.int/?i=001-171774.

[144] *Dadusenko and Others v. Russia* (decision), ECtHR, nos. 36027/19 and 3 others, §§ 25-34, 7 September 2021, available at: https://hudoc.echr.coe.int/?i=001-212126.

118. The general distribution rule is subject to a number of exceptions provided for in Articles 73 and 81 of the CES (regulating the subsequent transfer of prisoners), which allow the FSIN to allocate or transfer prisoners to a facility located anywhere in Russia. They include: "exceptional circumstances" (not defined in the text of the CES or in the relevant instructions adopted by the Ministry of Justice of Russia – Order of 26 January 2018, no. 17),[145] health reasons, security reasons, the prisoner's written consent to the transfer, the absence of a penal institution of a certain type in the prisoner's region of origin or in the region of conviction, the "impossibility" of assigning a prisoner to a suitable penal institution in his region of origin or in the region of conviction (Article 73 §§ 1 and 2 of the CES). Other exceptions concern specific categories of prisoners, such as prisoners sentenced to life imprisonment, dangerous recidivists, prisoners sentenced to serve their sentences in prisons (type of penitentiary facilities), prisoners convicted of extremism, terrorism, kidnapping, human trafficking, organisation of criminal groups, banditry, prison disturbances and other crimes specified in Article 73 § 4 of the CES, as well as a vaguely defined category of prisoners who adhere to the "ideology of terrorism" and negatively influence their fellow prisoners. These broad categories of prisoners can also be transferred and assigned to penitentiary institutions located anywhere in Russia.

119. Even before the amendments of 2018 which extended the permissible exceptions from the general distribution rule (notably those provided in Article 73 § 4 of the CES), the ECtHR concluded that "the Russian domestic legal system did not afford adequate legal protection against possible abuses in the field of geographical distribution of prisoners… depriv[ing prisoners] … of the minimum degree of protection to which they were entitled under the rule of law in a democratic society" and that "Articles 73 §§ 2 and 4 and 81 of the CES do not satisfy the "quality of law" requirement".[146] The subsequent amendments have broadened even further the unfettered discretion of the FSIN in the matter of the geographical distribution of the prisoners.

120. While the decisions of the FSIN on the allocation and transfer of detainees are formally subject to domestic judicial review,[147] the civilian detainees from Kherson have been effectively deprived of such an opportunity. Due to their incommunicado detention, they are unable to send letters, complaints and petitions, let alone pay court fees or gain access to any documents and decisions of the FSIN on their transfer. De facto excluded from the Russian procedural and legal framework, they are unable to initiate any proceedings to review the legality of their transfer

[145] Order of the Ministry of Justice of the Russian Federation of 26 January 2018, No. 17 "On Approval of the Procedure for sending prisoners sentenced to imprisonment to serve their sentence in correctional institutions and their transfer from one correctional institution to another", avaialble at: https://base.garant.ru/71874860/.
[146] *Polyakova*, op. cit, paras. 116-19.
[147] *Dadusenko*, op. cit.

under Russian domestic law, which further contributes to the unlawfulness and arbitrariness of their transfer.

ii. Deprivation of liberty and fundamental principles of criminal law

121. The Constitution of the Russian Federation provides:

Article 22

1. Everyone shall have the right to freedom and personal inviolability.

2. Arrest, detention and keeping in custody shall be permissible only under a court order. A person may not be detained for more than 48 hours without a court order.

Article 47

1. Nobody may be deprived of the right to have his (her) case heard in the court and by the judge within whose competence the case is placed by law.

…

Article 48

1. Everyone shall be guaranteed the right to qualified legal assistance. In the cases envisaged by law, legal assistance shall be provided free of charge.

2. Any person detained, taken into custody or accused of committing a crime shall have the right to use the assistance of a lawyer (counsel for the defence) from the moment of being detained, placed in custody or accused.

Article 50

1. Nobody may be convicted twice for one and the same crime.

…

Article 54

1. A law, which introduces or increases liability, shall not have retroactive force.

2. Nobody may bear liability for an action, which was not regarded as a crime when it was committed. If, after an offense has been committed, the extent of liability for it is lifted or mitigated, the new law shall be applied.

Article 55

1. The enumeration in the Constitution of the Russian Federation of the basic rights and freedoms should not be interpreted as a denial or diminution of other universally recognized human and civil rights and freedoms.

2. In the Russian Federation no laws must be adopted which abolish or diminish human and civil rights and freedoms.

3. Human and civil rights and freedoms may be limited by federal law only to the extent necessary for the protection of the basis of the constitutional order, morality, health, rights and lawful interests of other people, and for ensuring the defence of the country and the security of the State.

Article 56

1. In the conditions of a state of emergency, in order to ensure the safety of citizens and the protection of the constitutional order and in accordance with federal constitutional law, certain restrictions may be imposed on human rights and freedoms with an indication of their limits and the period for which they have effect.

iii. Attempt of the Russian authorities to legalise the detention of Kherson prisoners

122. As described above, after the adoption of Federal Law of 31 July 2023 No. 395-FZ, and in some cases – shortly before its enactment, the domestic courts of Russia started converting the Ukrainian judgments against the deported prisoners under the Russian criminal law.[148] In a number of cases, as observed by the submitting organisations, the conversion decisions shortly preceded the expiry of the terms of imprisonment imposed by the Ukrainian courts, or, moreover, resulted in prisoners' release. However, in other cases, deported prisoners continued to be detained after the conversion and, therefore, on the basis of the respective conversion decisions of the Russian courts. Federal Law of 31 July 2023 No. 395-FZ, which was intended to serve as a means of legalisation the detention of the Ukrainian deported civilian prisoners domestically, in fact constitutes a retroactive extension of criminal jurisdiction and renders arbitrary and unlawful any detention based on conversion decisions, similar to those issued by the "Kerch Town Court", in breach of the principle of legality under Article 11 § 2 of the Universal Declaration of Human Rights and Article 15 § 1 of the ICCPR, Article 67 of GC IV and Article 54 § 1 of the Constitution of the Russian Federation. This is particularly the case in the situation of Ukrainian prisoners sentenced to life imprisonment who were transferred to IK-6 in the Republic of Mordovia and whose sentences were converted under Russian law, and also other prisoners whose sentences were converted by the "Kerch Town Court" and who continue to be detained in Russia.

iv. Immigration detention

123. After being re-detained and placed in immigration detention centres, detainees find themselves in a situation of legal uncertainty, subjected to virtually indefinite detention with a view to administrative removal ordered by Russian courts.[149] The Russian legal framework regulating the administrative removal procedure has been criticised internally by the Constitutional Court of Russia (Judgement No. 14-P of 23 May 2017), which found that detainees awaiting administrative removal were not informed of the duration of their detention and were not allowed to challenge it.[150] Amendments to the Code of Administrative Offences, which would provide detained foreigners with a judicial procedure to review their detention, have been pending in the Russian Parliament since 2017.[151] The ECtHR has also repeatedly found this framework to be incompatible with the requirements of Article 5 § 1 of the ECHR, as it subjects

[148] See Section II(J).
[149] See Section II(G).
[150] Statelessness case-law database, "Russia - Constitutional Court, No. 14-P/2017", available at: https://caselaw.statelessness.eu/caselaw/russia-constitutional-court-no-14-p2017
[151] State Duma of the Russian Federation database, Draft Law No. 306915-7 [in Russian], available at: https://sozd.duma.gov.ru/bill/306915-7.

foreigners sentenced to administrative removal to indefinite detention pending removal proceedings.[152]

124. In addition, detainees in immigration detention centres have extremely limited access to health care, even compared to correctional facilities. For example, in penitentiary colonies, prisoners living with HIV generally have access to antiretroviral therapy (ART) regardless of their nationality, whereas in migrant detention centres, ART is not provided to inmates regardless of their nationality. None of the detention centres where prisoners transferred from Kherson are held has adequate medical units, medicines and qualified medical staff. Prisoners living with HIV are in the most vulnerable position, as detainees in immigration detention centres are not provided with the necessary antiretroviral therapy, as clearly demonstrated in two individual communications submitted to the CCPR by the submitting organisations (communications no. 4233/2022 *Andrei Artemev v. Russia* and no. 4488/2023 *Kolesnichenko v. Russia*). In both cases, the CCPR granted the petitioners' requests for interim measures and ordered the respondent Government to provide the necessary medical assistance to the petitioners detained in immigration detention centres.

125. The lack of effective domestic remedies for complaints of unlawful and/or unjustified immigration detention is exacerbated by the frequent refusal of the administration of detention centres to transmit detainees' complaints and requests, as well as the prohibition of the use of personal mobile phones by detainees. The apparent absence of any immigration violations by the Kherson prisoners – as they were forcibly transferred from Ukraine to Russia by the Russian armed forces and penitentiary service against their will – renders their detention in immigration detention centres arbitrary and unlawful.

F. Relevant findings of the international bodies

i. OHCHR (HRMMU)

126. The situation of the forcible transfer of prisoners from Kherson was highlighted by OHCHR and HRMMU in June 2023 Report on detention of civilians in the context of the armed attack

[152] See, e.g., judgments of the ECtHR in cases. *L.M. and Others v. Russia*, §§ 141-42 and 149-52, with further references, and S.*K. v. Russia*, no. 52722/15, §§ 108-09 and § 116, 14 February 2017; see also *M.S.A. and Others v. Russia* [Committee], nos. 29957/14 and 9 others, 12 December 2017 (available in HUDOC database: https://hudoc.echr.coe.int).

by the Russian Federation against Ukraine (para. 80),[153] in October 2023 Report on the human rights situation in Ukraine (paras. 95-97),[154] as well as in the HRMMU report of March 2024.[155]

127. Commenting on the forcible transfer of Kherson prisoners, OHCHR recalled (para. 97 of October 2023 Report) that IHL prohibits forcible transfers and deportations, and only permits evacuation in strict circumstances if the security of the population or imperative military reasons so demand. IHL also requires an occupying Power to return any evacuated persons back to their homes as soon as conditions permit [Article 49 of the Fourth Geneva Convention].

128. OHCHR further noted (para 95 of the October 2023 Report) the difficulties in terms of prisoners' return to Ukraine from Russia after release, related to the lack of valid travel documents, as they fall under the category of people for whom the State Migration Service of Ukraine does not issue necessary certificates of return.

ii. UN Human Rights Committee

129. On 27 March 2024, the UN Human Rights Committee (the "CCPR") in its views concerning communication no. 3022/2017 (*Bratsylo, Golovko, and Konyukhov v. the Russian Federation*),[156] addressed the situation of the forced naturalisation (imposition of citizenship) and detention of Ukrainian prisoners in the occupied Crimea and their transfer from Crimea to Russia.

130. The authors – Ukrainian nationals – were detained in a remand prison in Crimea at the moment of the Russia's occupation of the peninsula in March 2014. The authors, initially prosecuted and detained by the Ukrainian authorities under the Ukrainian criminal law, were ultimately convicted and sentenced after the occupation of Crimea by the Russian authorities, in accordance with the Russian law, and then sent to serve their prison sentences to a correctional colony in the Rostov Region of Russia (paras. 2.1-2.3).

131. The authors claimed, in particular, that after the occupation of Crimea they had been detained arbitrarily, in breach of Article 9 of the International Covenant on Civil and Political Rights (the "ICCPR"), due to the Government's lack of jurisdiction to execute the sentences rendered by

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[153] OHCHR, Report on detention of civilians in the context of the armed attack by the Russian Federation against Ukraine, June 2023, available at: https://www.ohchr.org/sites/default/files/2023-06/2023-06-27-Ukraine-thematic-report-detention-ENG.pdf.

[154] OHCHR, Report on the human rights situation in Ukraine, October 2023, available at: https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/coiukraine/23-10-04-OHCHR-36th-periodic-report-ukraine-en.pdf.

[155] OHCHR, Human Rights Situation During the 149 Occupation of Territory of Ukraine and its Aftermath, 24 February 2022 – 31 December 2023, 20 March 2024, para. 21, available at: https://ukraine.ohchr.org/sites/default/files/2024-04/2024-03-20%20OHCHR%20Report%20on%20Occupation%20and%20Aftermath_EN.pdf.

[156] The text of the views is available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2F140%2FD%2F3022%2F2017&Lang=en.

the Ukrainian courts, as well as the lack of jurisdiction over crimes committed before the occupation of Crimea (para. 3.1).

132. They further claimed that their subsequent transfer to Russia to serve their sentences, constituted an expulsion from the territory of their nationality – Crimea – i.e., the Ukrainian territory unlawfully occupied by the Russian Federation in March 2014. They argued that their transfer violated Article 12 of the ICCPR, as well as Article 76 of the Fourth Geneva Convention ("GC IV") (para. 3.2). The authors also complained that the Respondent State applied its criminal law to them retroactively, in breach of Article 15 of the ICCPR and Article 65 of GC IV (para. 3.3).

133. The CCPR found that the authors' detention from the moment when the authorities had first applied their criminal legislation to them had become arbitrary in breach of Articles 9(1) and 15(1) of the ICCPR, due to its retroactive application (paras. 8.1-8.6). The CCPR further held that the transfer of the authors from Crimea to Russia to serve their prison sentences was arbitrary and amounted to a violation of Article 12(4) of the ICCPR (right to enter her/his own country) (para. 8.9).

134. The CCPR also held that the transfer of the authors to Russia was a disproportionate measure, taken in disregard to their situation as Ukrainian nationals from Crimea and their status of protected persons under GC IV (para 8.18). In view of this, and in the absence of any plausible justifications for the transfer, the Committee found the authors' transfer to be discriminatory on the grounds of their protected status under GC IV, in breach of Article 26 of the ICCPR (*ibid.*).

135. The Committee noted when addressing the arbitrariness of the authors' detention, "*that there was no international agreement that would allow the State party to prosecute the authors or to execute decisions of Ukrainian courts, and that it was the Ukrainian Criminal Code that was operative on the territory of Crimea at the time of the commission of the crimes*" (emphasis added, para. 8.4).

136. The CCPR concluded (paras. 8.4 and 8.5) that the "Crimean criminal jurisdiction law" (No. 91-FZ) contradicted the provisions of Russia's Criminal Code regulating criminal jurisdiction *ratione temprois* and established a retroactive application of criminal jurisdiction in violation of article 15 of the ICCPR, "which led to [the authors] arbitrary detention and conviction."

iii. Moscow Mechanism of the OSCE

137. The OSCE Moscow Mechanism has noted "a large number of Ukrainian sentenced persons, all Ukrainian civilians, transferred to the Russian Federation, mainly in 2022, who have served

their sentences. The Mission learnt that some of these prisoners had been released only to be immediately re-detained based on alleged violations of Russian migration law under Russian administrative law since they would not have their immigration status regularized, and consequently placed in detention centres for illegal migrants. Many of them have thus found themselves with an impossible choice: to accept Russian citizenship, with the Russian authorities persistently offering such, or to remain in immigration detention without a clear prospect as to how long that would last. The Mission concludes that such re-detention based on grounds that were entirely beyond the control of the concerned persons amount to arbitrary deprivation of liberty. Moreover, the practice of *de facto* forceful imposition of citizenship on victims of war through duress by conditioning liberty from detention on the condition of swearing allegiance to the hostile power through the acceptance of citizenship, violates the norms of IHL."[157]

iv. UN Working Group on Arbitrary Detention

138. On 28 April 2025, the UN Human Rights Council Working Group on Arbitrary Detention rendered two opinions – nos. 34/2025 and 35/2025[158] concerning nine individual applications brought by the submitting organisations on behalf of two groups of Ukrainian prisoners deported to Russia.

139. The Working Group rejected the argument advanced by the submitting organisations, that the detention of victims – convicted by Ukrainian courts and serving sentences in Kherson – became arbitrary immediately upon the occupation of the facilities by Russian forces.[159] Nevertheless, it concluded that the detention of the victims fell under Categories I and V of its classification system – that is, detention lacking legal basis and based on discriminatory grounds. The Working Group emphasised, in particular, that the victims were detained incommunicado, that their transfer to Russia ran contrary to IHL and IHRL and had a deleterious impact on their rights, that their sentences were converted under Russian law, in breach of principle of non-retroactivity, and that their detention was discriminatory, based on their nationality. In the WGAD's view, the detention of the victims was thus in breach of Articles 2, 7, 9, and 11(2) of the Universal Declaration of Human Rights, as well as Articles 2(1), 9, 15, and 26 of the ICCPR.

140. The Russian Government did not respond to the WGAD's communication in this case. Nonetheless, the Working Group called for the immediate release of the six individuals still in

[157] OSCE, Observations of the mission of experts established under the Moscow Mechanism. Report on Violations and abuses of Internation Humanitarian and Human Rights Law, War Crimes and Crimes against Humanity, related to the Arbitrary Deprivation of Liberty of Ukrainian Civilians by the Russian Federation, pp. 67-68, 19 April 2024, available at: https://www.osce.org/files/f/documents/f/4/567367.pdf.

[158] A/HRC/WGAD/2025/35 and A/HRC/WGAD/2025/34, available at: https://www.ohchr.org/en/special-procedures/wg-arbitrary-detention/opinions-adopted-working-group-arbitrary-detention/opinions-adopted-working-group-arbitrary-detention-its-102nd-session.

[159] The submitting organisations address this matter below, in Section III(C)(vi)(b)(1).

detention, requested that Russia ensure an enforceable right to compensation for all six victims, urged Russia to conduct a full and independent investigation into the victims' detention and to take appropriate measures against those responsible. The WGAD also called on the Russian authorities to align their legislation and practice with the findings of this opinion and with their broader international obligations. The WGAD further noted that some of the victims were subjected to inhuman and degrading treatment, as well as forced labour, during detention. The Working Group expressed its very serious concern for the physical and psychological well-being of the victims – life prisoners. It reminded the Russian Government of its obligation to treat all persons deprived of liberty humanely, and called on authorities to "cease engaging in torture of detainees and investigate and punish incidents of torture committed against detainees." The cases remain under the WGAD's supervision.

v. European Court of Human Rights

141. In its judgment in the inter-state case of *Ukraine and the Netherlands v. Russia*, the Grand Chamber of the Court[160] concluded that "the Russian Federation was responsible for an administrative practice of unlawful and arbitrary detention of civilians in violation of Article 5 of the Convention in occupied territory in Ukraine in the period between 11 May 2014 and 16 September 2022." In particular, the Court has held that:

> "1114. The comprehensive and detailed material which the Court has summarised … leaves no doubt as to the prevalence of abductions, kidnappings, arrests and detention across occupied areas of Ukraine.
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> …
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> 1119. The evidence summarised above suggests the purported application, following the 2022 invasion, of the Russian Federal Law on Martial Law in the occupied territories, providing for the internment of foreign citizens "in accordance with generally recognised principles and norms of international law" … . However, the OHCHR had received no information to indicate that the Russian Federation had adopted procedures or practices to uphold the safeguards enshrined in GC IV, in particular the right to challenge the lawfulness of, or to otherwise appeal, internment decisions and to have them reviewed through fair procedures on a regular basis …
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> 1120. … a deprivation of liberty will only be compatible with Article 5 § 1 if it has been imposed for one of the reasons listed in sub-categories (a) to (f) and was in accordance with a procedure prescribed by law.
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> 1121. The [Russian Federation] have not, in these proceedings, identified the purported grounds for the deprivations of liberty of countless civilians between 2014 and 2022 in occupied areas of Ukraine. No arrest warrants or judicial decisions authorising detention have been provided to the Court. The Court has not been informed by the respondent Government of any purported legal basis for the various measures depriving civilians of their liberty, arising from Ukrainian or Russian law, the "laws" of the "DPR" or the "LPR" or from international humanitarian law. In the circumstances of the conflict in Ukraine, the Court is not in a position to identify itself any legal framework enabling deprivation of liberty in occupied areas. Indeed, it is reasonable to conclude from the evidence that in many instances those depriving civilians of their liberty did so with little or no regard for the conditions in which they were permitted by law to do so.
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> 1122. … There is also evidence that the purported legal basis for the filtration measures used to detain civilians across occupied territory following the 2022 invasion was the Russian Federal Law on Martial Law in the occupied territories …. However, the Court does not consider that any of these measures can provide

[160] ECtHR, *Ukraine and the Netherlands v. Russia* [GC], nos. 8019/16 and 3 others, 9 July 2025, available at: https://hudoc.echr.coe.int/?i=001-244292.

> the legal basis for the deprivation of liberty of civilians in Ukraine by the Russian Federation and its agents. … More broadly, while it is true that international humanitarian law permits the internment of civilians in occupied territory in certain circumstances …, the applicable conditions for internment have not been shown to have been satisfied in the present case. The respondent Government have not shown that it was necessary, for imperative reasons of security, to detain any of the civilians to whom the evidence above refers. They have, moreover, failed to show that decisions to detain civilians on security grounds were made according to a regular procedure prescribed by the Russian Federation, in accordance with the provisions of GC IV. In this respect, it is noteworthy that the OHCHR received no information to support the conclusion that, in the post-invasion period, the Russian Federation had adopted procedures or practices to uphold the safeguards enshrined in GC IV, in particular the right to challenge the lawfulness of, or to otherwise appeal, internment decisions and to have them reviewed through fair procedures on a regular basis …. Consequently, the deprivations of liberty effected by separatists throughout the Donbas from 2014 and across occupied territory in Ukraine after the 2022 invasion cannot conceivably be said to have amounted to lawful internment under GC IV. It is therefore not necessary for the Court in this case to address the apparent conflict between the authorisation for internment of civilians under the relevant provisions of international humanitarian law and the exhaustive categories of permissible detention listed in Article 5 § 1 …
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> 1123. The Court is accordingly satisfied beyond any doubt whatsoever that there existed an accumulation of identical or analogous breaches of Article 5 in the period between 11 May 2014 and 16 September 2022 which are sufficiently numerous and interconnected to amount to a pattern or system of unlawful and arbitrary detention of civilians without the most basic procedural safeguards. For the reasons set out below, there is no doubt that these violations of Article 5 were officially tolerated by superiors of the perpetrators and by the higher authorities of the respondent State …. Insofar as they stem from the purported application of legal rules, it is moreover clear that the measures were regulatory in nature and applied across occupied territory."

142. Regarding the transfer and displacement of detained civilians, the Grand Chamber of the ECtHR has held:

> "1158. Some civilians were detained and then removed from occupied Ukrainian territory to detention facilities in Russia. There is no reason for the Court to call into question the findings of the [UN] Commission of Inquiry, made after careful investigation, that transfer of Ukrainian detainees from occupied territory in the Kharkiv, Kherson and Zaporizhzhia regions to detention facilities in Russia took place …
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> …
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> 1162. No reasons have been advanced by the Government [of Russia] for … transfers [of detainees from the occupied regions of Ukraine]. The … Government [of Russia] did not refer to any legal framework or official individual decisions authorising such transfers and regulating their operation. None of the reports discussed above have identified any legal basis for these actions. The Court has already explained why any purported legal acts of the "DPR" and the "LPR" cannot be accepted as "law" for the purposes of the Convention …. It has further explained why, in the absence of any submissions from the respondent Government concerning the validity under international humanitarian law of applying Russian laws to occupied territory in Ukraine, such Russian law cannot be recognised as providing a valid legal basis for interferences with Convention rights (…. See also the Court's conclusion regarding the transfer of detainees from Crimea to the Russian Federation in *Ukraine v. Russia (re Crimea)* … §§ 1296 and 1301).[161] Individual or mass forcible transfers, as well as deportations of civilians 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, under Article 49 GC IV …. Article 76 GC IV also prohibits the transfer of detainees, as civilians accused of offences are to be detained in the occupied country, and if convicted they are to serve their sentences there (ibid.). A transfer of population contrary to these provisions amounts to a "grave breach" of Article 147 GC IV …. The Court does not consider that international humanitarian law provides any legal basis for the transfer of detainees from Ukraine to Russia in the circumstances outlined in the summary of evidence, above.

[161] *Ukraine v. Russia (re Crimea)*, ECtHR, Grand Chamber, nos. 20958/14 and 38334/18, §§ 1292-1305, 25 June 2024, available at: https://hudoc.echr.coe.int/?i=001-235139.

1163. The transfer of detainees from occupied territory to the Russian Federation was therefore not in accordance with the law."

G. Crimes under the Rome Statute: unlawful deportation or transfer and unlawful confinement

i. Jurisdiction

143. The Court opened the investigation into the situation in Ukraine on 2 March 2022. Ukraine has twice exercised its prerogatives to accept the Court's jurisdiction over alleged crimes under the Rome Statute occurring on its territory, pursuant to article 12(3) of the Statute, accepting the jurisdiction of the ICC on an open-ended basis to encompass ongoing alleged crimes committed throughout the territory of Ukraine from 20 February 2014 onwards.[162] On 24 August 2024, Ukraine ratified the Rome Statute of the Court, which officially entered into force in respect of Ukraine on 1 January 2025.[163]

144. All conduct alleged in the present communication, as asserted by the submitting organisations below, amounts to war crimes and crimes against humanity as defined in Articles 7 and 8 of the Rome Statute. The principal facts, events, and actions alleged took place on the territory of Ukraine, from February 2022 onwards. Other facts, actions and events which, on their own, fall outside the Court's jurisdiction *ratione loci* or *ratione personae* are included in the communication "in order to clarify the context, establish by inference the elements of criminal conduct occurring subsequently, or to demonstrate a [consistent] pattern of conduct".[164]

145. Specifically, as regards the jurisdiction *ratione loci* of the Court over the crimes alleged in the present communications, the submitting organisations note that the *actus reus* of both unlawful confinement/deprivation of liberty and deportation (as well as forcible transfer) of the civilian prisoners largely took place in the territory of Ukraine.

146. As specified by Pre-Trial Chamber I, the Court may assert jurisdiction pursuant to article 12(2)(a) of the Statute if at least one element of a crime within the jurisdiction of the Court or part of such a crime is committed on the territory of a State Party to the Statute. The inherently transboundary nature of the crime of deportation further confirms this interpretation of article 12(2)(a) of the Statute. An element of the crime of deportation is forced displacement across international borders, which means that the conduct related to this crime necessarily takes place on the territories of at least two States. The drafters of the Statute did not limit the crime of deportation from one State Party to another State Party. Article 7(2)(d) of the Statute only speaks of displacement from "the area in which they were lawfully present" and the elements of crimes

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[162] The ICC, "Ukraine", available at: https://www.icc-cpi.int/situations/ukraine.
[163] FIDH, "Ukraine set to ratify the Rome Statute and become the International Criminal Court's 125th member state", 28 August 2024, available at: https://www.fidh.org/en/region/europe-central-asia/ukraine/ukraine-set-to-ratify-the-rome-statute-and-become-the-international.
[164] ICTR, The Prosecutor v. Simon Bikindi [ICTR-01-72-T] Judgement of Trial Chamber III, para. 24; See also: Rule 93 of the ICTY Rules of Procedure and Evidence.

generally refer to deportation to "another State". Therefore, the inclusion of the inherently transboundary crime of deportation in the Statute without limitation as to the requirement regarding the destination reflects the intentions of the drafters to, inter alia, allow for the exercise of the Court's jurisdiction when one element of this crime or part of it is committed on the territory of a State Party. In view of this, Pre-Trial Chamber I concluded that acts of deportation initiated in a State not Party to the Statute (through expulsion or other coercive acts) and completed in a State Party to the Statute (by virtue of victims crossing the border to a State) fall within the parameters of article 12(2)(a) of the Statute.[165]

147. Pre-Trial Chamber III later essentially endorsed this approach by stating that "the only clear limitation that follows from the wording of article 12(2)(a) of the Statute is that at least part of the conduct (*i.e.* the *actus reus* of the crime) must take place in the territory of a State Party. Accordingly, provided that part of the *actus reus* takes place within the territory of a State Party, the Court may thus exercise territorial jurisdiction within the limits prescribed by customary international law."[166]

148. The submitting organisations argue, first, that the *actus reus* of both crimes (whether considered under Article 7(1)(d) and (e) or Article 8(2)(a)(vii) of the Statute) began on the territory of Ukraine, in the occupied Kherson Oblast. It was there that the prisoners came under the control of Russia's occupying forces and collaborators from among former Ukrainian prison officers. It was also in Kherson oblast that the deportation commenced, through the concentration of prisoners in Hola Prystan Colony No. 7 and their subsequent transfer to occupied Crimea and, thereafter, to Russia. From the outset, this transfer operation removed any potential legal basis for the prisoners' detention under Russian control.

149. Secondly, the crimes alleged in this submission (deportation and unlawful confinement) are intrinsically interlinked: the continuing detention of prisoners in the Russian Federation directly follows from, and cannot be separated from, the act of transfer/deportation, through which the prisoners were both physically and legally "extracted" from Ukraine's justice and penitentiary system.

150. Thirdly, hundreds of deported prisoners were later transferred from Russian correctional colonies to Kerch, in Russia-occupied Crimea, i.e. the territory of Ukraine, where their sentences were converted under Russian criminal law. This measure formed an essential part of the structure of the alleged crimes, ensuring their continued commission by effecting the ultimate

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[165] Decision on the "Prosecution's Request for a Ruling on Jurisdiction under Article 19(3) of the Statute", Pre-Trial Chamber I, paras. 69-73, 6 September 2018, ICC-RoC46(3)-01/18-37.
[166] Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the People's Republic of Bangladesh/Republic of the Union of Myanmar, para. 61, 14 November 2019, ICC-01/19-27 14-11-2019 3/58 NM PT.

"separation" of deported Ukrainian prisoners from Ukraine's legal system, their formal incorporation into the Russian legal order, and their continued detention under the retroactively applied law of the Russian Federation.

151. Accordingly, the submitting organisations contend that the situation described – namely, the deportation of prisoners and their unlawful confinement – falls within the Court's jurisdiction *ratione loci*.

ii. Admissibility

152. Article 17 of the Rome Statute stipulates the substantive conditions under which a case is inadmissible before the Court. The admissibility test under Article 17 of the Rome Statute calls for a twofold assessment: first, as to whether the relevant States are conducting or have conducted national proceedings in the same matter (complementarity); second, if the conclusion is in the negative, as to whether the gravity threshold is met (gravity).[167]

(a) Complementarity

153. Article 17(1)(a) and (b) provides that the Court shall determine inadmissibility either if the case is being investigated or prosecuted by a State which has jurisdiction on it, unless it is unwilling or unable genuinely to carry out the investigation or prosecution; or if the case has been investigated by a State which has jurisdiction over it and the State has decided not to prosecute the person concerned, unless the decision resulted from the unwillingness or inability of the State genuinely to prosecute. There's no need to assess "unwillingness" or "inability" of the State to investigate or prosecute, if the State has neither carried out an investigation nor prosecution as such, nor has it discontinued the proceedings against the specific person in question, such inaction rendering a case admissible before the Court.[168]

154. Under Article 17(1)(a), the question is not merely a question of "investigation" in the abstract, but whether the same case is being investigated by both the Court and a national jurisdiction.[169] It has also been clarified that for a case to be inadmissible, the national investigation must be tangible, concrete and progressive and must cover the same individuals and substantially the same conduct as alleged in the proceedings before the Court.[170]

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[167] Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the Islamic Republic of Afghanistan, Pre-Trial Chamber II, 12 April 2019, ICC-02/17-33, para. 71.
[168] Decision on the Prosecutor's Application for the Issuance of a Warrant of Arrest for Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud, Pre-Trial Chamber I, 22 May 2018, ICC-01/12-01/18-35-Red2-tENG, para. 26.
[169] *Prosecutor v. William Samoei Ruto, Henry Kiprono Kosgey and Joshua Arap Sang*, "Judgment on the appeal of the Republic of Kenya against the decision of Pre-Trial Chamber II of 30 May 2011 entitled 'Decision on the Application by the Government of Kenya Challenging the Admissibility of the Case Pursuant to Article 19(2)(b) of the Statute'", ICC-01/09-01/11-307, 30 August 2011, para. 38.
[170] Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the Islamic Republic of Afghanistan, Pre-Trial Chamber II, 12 April 2019, ICC-02/17-33, para 72.

155. The words "is being investigated", signify the taking of steps directed at ascertaining whether those suspects are responsible for substantially the same conduct as is the subject of the proceedings before the Court (interviewing witnesses or suspects, collecting documentary evidence, or carrying out forensic analyses). The mere preparedness to take such steps or the investigation of other suspects is not sufficient. This is because unless investigative steps are actually taken in relation to the suspects who are the subject of the proceedings before the Court, it cannot be said that the same case is (currently) under investigation by the Court and by a national jurisdiction, and there is therefore no conflict of jurisdictions. If a State does not investigate a given suspect because of a lack of evidence, then there simply is no conflict of jurisdictions, and no reason why the case should be inadmissible before the Court.[171]

156. The factors listed in article 17 are also relevant for the Prosecutor's decision to initiate an investigation under article 53(1) of the Statute or to seek authorisation for a *proprio motu* investigation under article 15, and for the decision to proceed with a prosecution under article 53(2) of the Statute.[172]

157. The Appeals Chamber held that the defining elements of a concrete case before the Court are the individual named in the warrant of arrest and the conduct giving rise to criminal responsibility under the Statute, such as it is alleged in a warrant of arrest or summons to appear issued under article 58 of the Statute or in the charges brought by the Prosecutor and confirmed by the Pre-Trial Chamber under article 61 of the Statute; and that, accordingly, "for such a case to be inadmissible under article 17(1)(a), the national investigation must cover the same individual and *substantially the same conduct* as alleged in the proceedings before the Court".[173]

158. In this regard, the submitting organisations note that Russia, as one of the states with jurisdiction over the crimes described in the communication, to the best of the submitting organisations knowledge, initiated no investigation into these events. The criminal suspicions brought by the Ukrainian Prosecutor's Office in proceedings to date have been directed against six individuals, all of them former Ukrainian penitentiary officers.[174] The suspects identified in the communication[175] are officials of the Russian Federation. They, or any other senior officials of

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[171] *Prosecutor v. William Samoei Ruto, Henry Kiprono Kosgey and Joshua Arap Sang*, "Judgment on the appeal of the Republic of Kenya against the decision of Pre-Trial Chamber II of 30 May 2011 entitled 'Decision on the Application by the Government of Kenya Challenging the Admissibility of the Case Pursuant to Article 19(2)(b) of the Statute'", ICC-01/09-01/11-307, 30 August 2011, paras. 40 and 43.
[172] *Prosecutor v. William Samoei Ruto, Henry Kiprono Kosgey and Joshua Arap Sang*, "Judgment on the appeal of the Republic of Kenya against the decision of Pre-Trial Chamber II of 30 May 2011 entitled 'Decision on the Application by the Government of Kenya Challenging the Admissibility of the Case Pursuant to Article 19(2)(b) of the Statute'", ICC-01/09-01/11-307, 30 August 2011, para. 38.
[173] Decision on the Prosecutor's Application for the Issuance of a Warrant of Arrest for Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud, Pre-Trial Chamber I, 22 May 2018, ICC-01/12-01/18-35-Red2-tENG, para. 27.
[174] Section II(K) above.
[175] Section III(F) below.

the Russian Federation, including military servicemen, officers of the FSIN, high-ranking military commanders and civilian superiors, who ordered and carried out the deportation, are not, to the best of the submitting organisations' knowledge, subject of any Ukrainian domestic proceedings in relation to the facts and crimes alleged in the present communication. That can be explained, in particular, by the absence, until recently, of the provisions allowing to prosecution of military commanders and other superiors, in the criminal law of Ukraine. The relevant provisions were introduced in the Criminal Code of Ukraine (Article 31[1]) in October 2024, in relation to the ratification of the Rome Statute by Ukraine[176] relevant provisions were introduced in October 2024. Nevertheless, in view of the prohibitions of the *ex post facto* laws and the retroactive criminalisation enshrined in the Constitution of Ukraine (Article 58)[177] and the Criminal Code of Ukraine (Article 5 § 2),[178] they cannot serve as a basis for the prosecution of military commanders and other superiors for the actions committed before the enactment of the amendments.[179] Accordingly, there is no conflict of jurisdictions with respect to these individuals, and Article 17(1)(a) does not render the case inadmissible under this head.

159. The existing Ukrainian proceedings are brought under Article 438 of the Criminal Code of Ukraine ("violation of the laws and customs of warfare"), a broadly formulated provision that does not incorporate the full range of Rome Statute crimes.[180] In particular, Ukrainian criminal law does not, at the relevant time, include a general provision on crimes against humanity. The charges in the Ukrainian investigation relate to deportation and forcible transfer of the prison population as a violation of the laws of war; they do not address the unlawful confinement that began at the moment of occupation, the continuing incommunicado detention in Russia, the retroactive imposition of criminal jurisdiction as a form of unlawful imprisonment and a breach

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[176] Закон України від 09.10.2024 № 4012-IX Про внесення змін до Кримінального та Кримінального процесуального кодексів України у зв'язку з ратифікацією Римського статуту Міжнародного кримінального суду та поправок до нього (Law of Ukraine no. 4012-IX of 9 October 2024 "On the amendments to the Criminal and Criminal Procedural Codes of Ukraine in connection with the ratification of the Rome Statute of the International Criminal Court and the amendments to it), available at: https://zakon.rada.gov.ua/laws/show/4012-20#n10.

[177] Constitution of Ukraine [English translation], available at: https://rm.coe.int/constitution-of-ukraine/168071f58b.

[178] Criminal Code of Ukraine [English translation], available at: https://zakon.rada.gov.ua/laws/show/2341-14?lang=en#Text.

[179] It appears that, prior to these amendments, high-ranking officials issuing the order could have been held responsible as accomplices to the offence (acting as principals or accessories), which would, however, limit the scope of such an investigation and would not constitute an adequate and comprehensive classification of their actions, thus preventing them from being held responsible

[180] As noted by the HRMMU, "further amendments will be required to bring Ukrainian criminal legislation fully in line with the Rome Statute, in particular with regard to provisions on war crimes and the crime of aggression". With a view to further integrate the Rome Statute into the domestic framework, two draft laws were registered with Parliament on 2 September 2024: the draft Law of Ukraine "On criminal liability for international crimes" (Registration No. 11538) and the draft Law of Ukraine "On amendments to the criminal and criminal procedure codes of Ukraine in connection with the adoption of the law of Ukraine 'on criminal liability for international crimes'" (Registration No. 11539). See: OHCHR, Report on the Human Rights Situation in Ukraine, 1 September – 30 November 2024, p. 23, available at: https://ukraine.ohchr.org/sites/default/files/2025-02/2024-12-31%20OHCHR%2041st%20periodic%20report%20on%20Ukraine.pdf.

of the IHL, or the immigration detention that followed release. The conduct described in the present communication and presented before the Office is therefore materially broader than that covered by Ukrainian proceedings.

160. The submitting organisations note,[181] consistent with OTP Policy para. 156, that there is no requirement under the Statute that domestic proceedings deploy identical legal labels to those applicable before the Court. However, where the substantive scope of domestic charges excludes entire categories of conduct constituting Rome Statute crimes, in particular, crimes against humanity under Article 7(1)(d) and (e), and where those crimes are attributable to individuals not covered by domestic proceedings at all, the domestic proceedings cannot be said to constitute the "same case" before the Court, either as to persons or as to conduct.

161. Article 17(3) of the Statute provides that a State is "unable" to carry out genuine proceedings when it is "unable to obtain the accused or the necessary evidence and testimony or otherwise unable to carry out its proceedings." Thus, the suspects identified in the communication are senior officials of the Russian Federation. None of them is present on Ukrainian territory, and neither are they subject to extradition to Ukraine under any applicable agreement. Ukraine has no mechanism by which to compel the appearance of Russian federal ministers, senior FSIN officers, or State Duma deputies before its courts. The United Nations Committee Against Torture in its Concluding observations on the seventh periodic report of Ukraine, adopted on 30 April – 1 May 2025[182] (para. 19) has noted a variety of factors impeding accountability for war crimes committed in Ukraine:

> While noting the State party's efforts to establish specialized units to investigate war crimes within the General Prosecutor's Office and the National Police, in addition to the State Security Service competence to do so …, the Committee raises concern about the obstacles faced by victims to achieving justice and the prevailing impunity for these violations, mainly due to the lack or limited capacity and practical ability of the national authorities to access the occupied territory, the loss of crucial evidence and the difficulties to verify the existing evidence under the national legislation, and the limitations of the criminal justice system to deal with more than 160,000 documented war crimes, among other issues. The Committee is further concerned about the reported high number (95%) of criminal proceedings on war crimes conducted *in absentia,* the insufficient guarantees of fair trial, the internal displacement of many victims and witnesses and the ineffective infrastructure to assist them adequately. Furthermore, the Committee notes with concern the received information about the challenges faced by the civilians who returned from the detention by the occupying authorities of the Russian Federation to have their victim status recognized and to access effective remedies, although it appreciates the effective mechanisms and remedies in place for the returned Ukrainian prisoners of war. … It is also concerned about the State party's loss of control over several penitentiary facilities in the occupied territory since 2014, about a transfer of prisoners to the Russian Federation and the difficulties to account for exact figures on such transfers, on cases of torture or ill-treatment during or after such relocation and the impact on their families.

[181] Office of the Prosecutor, Policy on Complementarity and Cooperation, April 2024, para. 156, available at: https://www.icc-cpi.int/sites/default/files/2024-04/2024-comp-policy-eng.pdf
[182] UN CAT, Concluding observations on the seventh periodic report of Ukraine, available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT%2FC%2FUKR%2FCO%2F7&Lang=en.

162. The material evidence in respect of the crimes alleged appears to be primarily located in Russia or in Russia-controlled occupied territories of Ukraine, including in FSIN facilities in Krasnodar, Volgograd, Rostov and Mordovia, and in Crimea. FSIN institutional records, convoy documentation, orders, and Ministry of Justice approvals are at present beyond the reach of Ukrainian investigative authorities. The victims who remain in detention in Russia – estimated at several hundred as of the date of this communication – cannot be interviewed by Ukrainian investigators. The witnesses who have returned to Ukraine have been formally recognised as victims in the domestic proceedings, but the structural asymmetry of the investigation in which the evidence base is located in the territory of the State that committed the crimes, significantly impairs Ukraine's ability to carry out proceedings comprehensively.

163. Ukraine's criminal law does not fully incorporate Rome Statute crimes. The command responsibility provisions introduced in October 2024 (Article 311 of the Criminal Code of Ukraine) cannot apply retroactively to conduct occurring before their enactment, by virtue of the constitutional prohibition on ex post facto laws (Article 58 of the Constitution of Ukraine and Article 5(2) of the Criminal Code). This legal gap is not remediable by domestic proceedings in respect of events occurring before October 2024, which include all the conduct described in this communication.

164. Taken cumulatively, these legal and factual circumstances indicate that Ukraine, while willing to investigate, is not able to carry out, in a genuine and comprehensive manner, the investigation and prosecution of the crimes and individuals identified in this communication, within the meaning of Article 17(1)(a) and (3) of the Statute.

165. Pursuant to the Office of the Prosecutor's Policy on Complementarity and Cooperation,[183] "its goal [is] to establish itself as a global hub for international criminal justice … working closely with situation countries and other States, accountability mechanisms, and other relevant partners to ensure a coordinated and effective effort towards closing the impunity gap for core international crimes".

166. The OTP Policy confirms that "even where the Office investigates and prosecutes in a particular situation, it envisages its work as informing, and as forming part of, a wider array of actions that can be carried out among a plurality of accountability actors".[184] An investigation opened by the Office into the conduct described in this communication would not displace or diminish the Ukrainian proceedings, but on the contrary – strengthen them, by generating evidence, analysis, and investigative products that could be shared with Ukrainian authorities pursuant to Article

[183] Office of the Prosecutor, Policy on Complementarity and Cooperation, April 2024, p. 6, available at: https://www.icc-cpi.int/sites/default/files/2024-04/2024-comp-policy-eng.pdf.
[184] Ibid., para. 36.

93(10) of the Statute; by establishing the legal framework for command responsibility that domestic law cannot currently provide; and by demonstrating the ICC's continued relevance to, and engagement with, the situation in Ukraine beyond the cases already before the Court. In this respect, Ukraine's ratification of the Statute and the existence of active domestic proceedings reinforce rather than preclude the exercise of the Court's jurisdiction.

167. In line with the OTP's Policy, the principle "If States step up, the Office will step out"[185] also applies in reverse: when a State is unable to identify the most responsible individuals due to structural limitations that are neither temporary nor contingent, but rather reflect enduring legal, procedural and jurisdictional gaps, the Office's investigative mandate is engaged. This gap is stemming from structural limits of what any domestic jurisdiction can achieve without Russia's cooperation.

168. The submitting organisations expressly support the continuation and deepening of the Ukrainian domestic investigation and recognise its significant achievements to date. However, the submitting organisations believe that the existence of an ongoing criminal investigation and prosecution of specific individuals in Ukraine in relation to the forcible transfer/deportation of detainees from Kherson does not preclude the Prosecutor and the Court from addressing the case, particularly in the part relating to the responsibility of officials of the Russian Federation.

(b) Gravity

169. A case can further be declared inadmissible under article 17(1)(d) of the Rome Statute if it does not attain "sufficient gravity to justify further action by the Court". The assessment of gravity involves a "generic assessment (general in nature and compatible with the fact that an investigation is yet to be opened) of whether the groups of persons that are likely to form the object of the investigation capture those who may bear the greatest responsibility for the alleged crimes committed." Gravity must further "be assessed from both a "quantitative" and "qualitative" viewpoint and factors such as nature, scale and manner of commission of the alleged crimes, as well as their impact on victims, are indicators of the gravity of a given case:"[186]

- "Scale of the crimes" refers, in general, to the number of victims; "nature of the crimes … revolves around the relative gravity of the possible legal qualifications of the apparent facts, *i.e.* the crimes that are being or could be prosecuted";
- "Manner of commission" refers, *inter alia*, to the means and methods employed by perpetrators, the existence of prior intention, a pre-existing deliberate plan or policy,

[185] Ibid., para. 4.
[186] Decision on the request of the Union of the Comoros to review the Prosecutor's decision not to initiate an investigation, Pre-Trial Chamber I, 16 July 2015, ICC-01/13-34, paras. 21 et seq.

systemic nature of crimes, the elements of particular cruelty and brutality and the level of violence used against victims, attempt to conceal the crime;

- "Impact of the crimes" refers to way in which the lives of victims and their families were affected by the alleged crimes, "physical, psychological or emotional harm suffered by the direct and indirect victims", which "must not be undervalued and needs not be complemented by a more general impact of these crimes beyond that suffered by the victims. While considerations with respect to the impact of the crimes beyond the suffering of the victims could be relevant in order to support a finding of sufficient gravity, it is not required that any such impact, let alone one equally "significant", be discernible such that its absence could be taken into account as outweighing the significant impact of the crimes on the victims and ultimately negating sufficient gravity."[187]

170. On 17 March 2023, ICC Pre-Trial Chamber II issued warrants of arrest for two individuals in the context of the situation in Ukraine: Mr Vladimir Vladimirovich 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 of 22 February 2023, 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.[188]

171. On 12 March 2026, the Office of the Prosecutor opened an investigation into the situation in Lithuania / Belarus in connection with the alleged crimes against humanity, such as deportation (Article 7(1)(d) of the Statute), allegedly committed by Belarusian authorities against the government's oppositionists. The Office has emphasised that, in particular, the potential cases are of sufficient gravity with due regard to their large scale, nature, the manner in which they were committed.[189]

172. This decision demonstrates that the unlawful deportation of civilians, particularly vulnerable groups, reaches the level of gravity required to trigger the Court's intervention. The ruling of Pre-Trial Chamber II is also highly relevant to the situation described in this submission, as both "tracks" of deportations – those targeting children and those targeting incarcerated individuals

[187] Decision on the request of the Union of the Comoros to review the Prosecutor's decision not to initiate an investigation, Pre-Trial Chamber I, 16 July 2015, ICC-01/13-34, paras. 21 et seq.
[188] The ICC, "Ukraine", available at: https://www.icc-cpi.int/situations/ukraine.
[189] ICC Office of the Prosecutor, "The Situation in the Republic of Lithuania / Republic of Belarus Summary of Preliminary Examination Findings", March 2026, available at: https://www.icc-cpi.int/sites/default/files/2026-03/Summary-of-findings-Situation-Lithuania-Belarus.pdf

– most likely form part of a single, large-scale deportation campaign, orchestrated and coordinated by the highest levels of the Russian Government. This, in turn, necessitates their comprehensive and unified investigation.

173. As argued below, the conduct described in the present Communication, falls both under the war crime of unlawful deportation and unlawful confinement and under the crime against humanity of deportation or forcible transfer of population and imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law (articles 8(2)(a)(vii) and 7(1)(d) and (e) of the Statute). The conduct took place as part of the general deportation of the Ukrainian civilians by the Russian Federation forces from the occupied territory of Ukraine.[190] It affected around 1,800 direct victims, as well as their families and loved ones – i.e. indirect victims. The conduct, having regard to its well-organised manner and short time during which it was implemented, resulted from the pre-existing deliberate plan or policy of the Russian authorities. The transfer was carried out in the atmosphere of fear, and numerous victims were subjected to direct physical violence, ill-treatment, and torture.

174. Illegal detention under the occupation, mass transfers between detention facilities in the occupied part of the Kherson region, regular beatings and humiliations, life in cramped prison conditions, without proper access to food and medicine and in an atmosphere of uncertainty about their fate, transfer several hundred kilometres away from home and detention in Russia in isolation from the outside world cumulatively instilled fear, anxiety and a sense of inferiority in the deported Ukrainian prisoners, re-traumatising already extremely vulnerable group of people. These factors also affected their families and loved ones, who were often unable to obtain any information about the whereabouts and situation of their relatives, to speak to them or receive letters from them, let alone visit them in Russia or the occupied Crimea.

175. Taken together, the above circumstances, in the opinion of the submitting organisations, allow to conclude that the alleged conduct attained the level of "sufficient gravity", making the case admissible under article 17(1)(d) of the Rome Statute.

(c) Interests of Justice

176. When opening an investigation and conducting an assessment of the case from the standpoint of article 15 and 53(1) of the Statute, the Prosecutor is obliged, *inter alia*, to consider if the investigation *would not* serve the "interests of justice".

[190] OSCE, Observations of the mission of experts established under the Moscow Mechanism. Report on Violations and abuses of Internation Humanitarian and Human Rights Law, War Crimes and Crimes against Humanity, related to the Arbitrary Deprivation of Liberty of Ukrainian Civilians by the Russian Federation, pp. 67-68, 19 April 2024, available at: https://www.osce.org/files/f/documents/f/4/567367.pdf.

177. "Article 53(1) of the Statute is formulated in the negative – the Prosecutor must consider whether there are "reasons to believe that an investigation would not serve the interests of justice" and need not affirmatively determine that an investigation *would be* in the interests of justice..." (emphasis added). The conclusion on the incompatibility of the case and/or investigation with the interests of justice must further be meticulous, well-founded and based on the information capable of supporting it. Thirdly, this assessment must take into account the gravity of the crimes and the interests of victims as articulated by the victims themselves.[191]

178. Having regard to the gravity of the crimes described in the present Communication, their impact on direct and indirect victims described above, the submitting organisations believe that the investigation into the conduct described in the present Communication would correspond to the "interests of justice" within the meaning of article 53(1) of the Statute. To the best of the submitting organisations' knowledge, there are no other grounds and information allowing a reasonable conclusion that investigating the conduct described in the communication would not serve the interests of justice.

iii. Elements of crime

(a) Unlawful deportation or transfer

179. Under customary IHL, "parties to an international armed conflict may not deport or forcibly transfer the civilian population of an occupied territory, in whole or in part, unless the security of the civilians involved or imperative military reasons so demand."[192] Unlawful deportation and/or transfer of civilians may amount to a crime against humanity or a war crime under the Rome Statute. Firstly, if committed in the context of international armed conflict, the forcible transfer or deportation of civilians may amount to a war crime of "unlawful deportation and transfer", constituting a "grave breach of the Geneva Conventions" (Article 8(2)(a)(vii) of the Rome Statute). Pursuant to the Elements of Crimes of the Court,[193] the crime of unlawful deportation and transfer requires that:

1. The perpetrator deported or transferred one or more persons to another State or to another location.
2. Such person or persons were protected under one or more of the Geneva Conventions of 1949.
3. The perpetrator was aware of the factual circumstances that established that protected status.
4. The conduct took place in the context of and was associated with an international armed conflict.
5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

180. It may also fall under the war crime of "other serious violation of the laws and customs applicable in international armed conflict, within the established framework of international law, namely … the deportation or transfer of all of parts of the population of the occupied territory

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[191] Judgment on the appeal against the decision on the authorisation of an investigation into the situation in the Islamic Republic of Afghanistan, ICC-02/17-138, 5 March 2020, Decision of the Appeals Chamber, para. 49.
[192] ICRC Customary IHL Database, Rule 129, available at: https://ihl-databases.icrc.org/en/customary-ihl/v1/rule129.
[193] Elements of Crimes, Published by the International Criminal Court, available at: https://www.icc-cpi.int/sites/default/files/Publications/Elements-of-Crimes.pdf.

within or outside this territory" (Article 8(2)(b)(viii) of the Rome Statute). Pursuant to the Elements of the Crimes, the victims of the crime under Article 8(2)(b)(viii), in contrast with the forcible transfer or deportation under Article 8(2)(a)(vii) do not need to have the status of "protected persons" under the Geneva Conventions – thus making the prohibition more universally applicable.

181. Secondly, if committed as part of a widespread or systemic attack directed against any civilian population, with knowledge of the attack, the forcible transfer and deportation of population may amount to a crime against humanity prohibited under Article 7(1)(d) of the Rome Statute, defined, as a forced displacements of the person concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law. As held by Pre-Trial Chamber II, "deportation or forcible transfer of population is an open-conduct crime", meaning that a "perpetrator may commit several different conducts which can amount to 'expulsion or other coercive acts'". This entails that, in the context, various types of conduct may, if established to the relevant threshold, qualify as "expulsion or other coercive acts" for the purposes of the crime against humanity of deportation, including deprivation of fundamental rights, killing, sexual violence, torture, enforced disappearance, destruction and looting.[194]

182. Although deportation and forcible transfer are both crimes of enforced displacement and thus related, "the two are *not* synonymous in customary international law. As the Appeals Chamber of the ICTY has repeatedly reaffirmed, the legal distinction between deportation and forcible transfer is that deportation requires "the forced displacement […] across a *de jure* State border or, in certain circumstances, a *de facto* border", whereas forcible transfer does not. Indeed, as a factual matter, deportation will often mean that the victim is not only compelled to leave the State in which they are lawfully present but *to enter* another."[195] According to the interpretation of the Rome Statute by the Prosecutor, endorsed by the Court's Chamber, the important substantive distinction between "transfer" and "deportation"

> "17. … give[s] effect to the different values protected by the two crimes. While both safeguard the right of individuals to "live in their communities and homes", deportation *also* protects a further set of important rights: the right of individuals to live in the particular State in which they were lawfully present – which means living within a particular culture, society, language, set of values, and legal protections. Even if the circumstances of the victims in the originating State may have been less than ideal, they will still generally be better than those available to them in a State to which they are unlawfully deported. Such victims typically will not share the culture, speak the language or enjoy the rights of the citizens of the State into which they are displaced. They will be forced to live in a foreign State, subjected to foreign laws and authorities, and with no role in the political decision-making process. They will not only be deprived of a home and

[194] Decision on the "Prosecution's Request for a Ruling on Jurisdiction under Article 19(3) of the Statute", ICC Pre-Trial Chamber I, 6 September 2018, ICC-RoC46(3)-01/18-37.
[195] Prosecution's Request for a Ruling on Jurisdiction under Article 19(3) of the Statute, para. 16, with further references, ICC-RoC46(3)-01/18-1, 9 April 2018. (granted by the Chamber on 6 September 2018).

> immediate community, but will be forced to become refugees, with all the consequences that such status entails.[196]

183. As another consequence of this distinction, "the crime of deportation is not completed until the victim has been forced to cross a *de jure* or *de facto* international border. By way of contrast, the crime of forcible transfer is completed at such time as the victim is displaced from the place where they are lawfully present to another location."[197]

184. As noted by the ICTY, the *mens rea* of the crime of forcible transfer/deportation does not require the intent to transfer a person permanently.[198]

185. As to the actus reus, pursuant to the Elements of Crimes, "the term "forcibly" is not restricted to physical force, but may include threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power against such person or persons or another person, or by taking advantage of a coercive environment." Lack of genuine choice may be inferred from, inter alia, threatening and intimidating acts that are calculated to deprive the civilian population of exercising its free will.[199] It follows that even in situations in which a person "consent[s] to, or even request[s], their removal", such removals may still be considered to be 'forcible' where that consent is not given "voluntarily and as a result of the individual's free will, assessed in light of the surrounding circumstances of the particular case."[200]

(b) Unlawful confinement

186. Arbitrary deprivation of liberty is incompatible with the requirement of humane treatment of all civilians and persons *hors de combat*.[201] It may amount to the grave breach of GC IV (Article 147 of GC IV) and to the war crime of "unlawful confinement" (Article 8(2)(a)(vii) of the Rome Statute) if committed against person(s) protected under one or more of the Geneva Conventions, if the perpetrator confined or continued to confine one or more persons to a certain location, if the perpetrator was aware of the factual circumstances that established that protected status, if the conduct took place in the context of and was associated with an international armed conflict and if the perpetrator was aware of factual circumstances that established the existence of an armed conflict (Elements of Crimes).

187. The Appeal Chamber of the ICTY, specified that detention or confinement of civilians will be unlawful in the following two circumstances: (i) when a civilian or civilians have been detained

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[196] Ibid., para. 17.
[197] Ibid., para. 26.
[198] Appeal Judgment, ICTY, Stakić Milomir (IT-97-24-A), para. 317, 22 March 2006.
[199] *Prosecutor v. Simić,* ICTY, IT-95-9-T, Judgnment, 17 October 2003
[200] ICTY, *Prosecutor v. Radovan Karadžić*, IT-95-5/18-T, Judgment, 24 March 2016, paras. 488-490; ICTY, *Prosecutor v. Naletilić and Martinović*, IT-98-34-T, Judgment, 31 March 2003, para. 519; *Prosecutor v. Vlastimir Dordević*, IT-05-87/1-A, Judgment, 27 January 2014, para. 27
[201] ICRC Customary IHL Database, Rule 99, available at: https://ihl-databases.icrc.org/en/customary-ihl/v1/rule99.

in contravention of Article 42 of Geneva Convention IV, i.e., they are detained without reasonable grounds to believe that the security of the Detaining Power makes it absolutely necessary; and (ii) where the procedural safeguards required by Article 43 of Geneva Convention IV are not complied with in respect of detained civilians, even where their initial detention may have been justified.[202]

188. Unlawful and/or arbitrary detention can also constitute a crime against humanity in the form of "imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law" if committed "as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack" (Article 7(1)(e) of the Rome Statute). Pursuant to the Elements of Crimes, it requires that:

> 1. The perpetrator imprisoned one or more persons or otherwise severely deprived one or more persons of physical liberty.
> 2. The gravity of the conduct was such that it was in violation of fundamental rules of international law.
> 3. The perpetrator was aware of the factual circumstances that established the gravity of the conduct.
> 4. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.
> 5. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

189. The crime of imprisonment or other severe deprivation of physical liberty, within the meaning of article 7(1)(e) of the Statute, is committed when: (i) the perpetrator imprisoned one or more persons or otherwise severely deprived one or more persons of physical liberty; and (ii) the gravity of the conduct was such that it violated fundamental rules of international law. Importantly, it is required that such deprivation of physical liberty violates fundamental rules of international law, i.e. the person must have been deprived of his or her physical liberty without due process of law. The conduct violates fundamental rules of international law if, for example, there is no legal basis to detain a person or the person is denied any procedural rights.[203]

(c) Contextual element – armed conflict

190. As noted by the Court, "for conduct to qualify as a war crime, a nexus must be established with the armed conflict in question. The nexus requirement serves to distinguish war crimes from crimes that ought to be treated as purely domestic, and it prevents random or isolated criminal occurrences from being characterised as war crimes. … . The perpetrator's conduct need not have taken place as part of hostilities, or at a time or place where fighting was actually taking place, but must have been closely linked to the hostilities or be related to the control carried out over a certain part of the territory by the relevant party to the conflict. The existence of an armed conflict must have, at a minimum, played a substantial part in the perpetrator's ability to commit

[202] *Kordić & Čerkez* (IT-95-14/2), ICTY, Appeal Judgment, 17 December 2004, para. 73.
[203] Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Burundi, ICC-01/17-X-9-US-Exp, 25 October 2017, para. 68.

the crime, the decision to commit it, the purpose of the commission, or the manner in which the crime was committed, as '[w]hat ultimately distinguishes a war crime from a purely domestic offence is that a war crime is shaped by or dependent upon the environment – the armed conflict – in which it is committed'."[204]

(d) Contextual element – widespread or systematic attack against the civilian population

191. In order to constitute a crime against humanity under Article 7 of the Rome Statute, an act "must be committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack." Elements of Crimes specify that "'attack directed against a civilian population' … is … a course of conduct involving the multiple commission of acts referred to in article 7, paragraph 1, of the Statute against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack. The acts need not constitute a military attack. It is understood that "policy to commit such attack" requires that the State or organization actively promote or encourage such an attack against a civilian population."

192. The requirement that the acts form part of a "course of conduct" indicates that Article 7 is meant to cover a series or overall flow of events, as opposed to a mere aggregate of random or isolated acts. The "multiple commission of acts" sets a quantitative threshold involving a certain number of acts falling within the course of conduct. The course of conduct must be "directed against any civilian population", namely a collective, as opposed to individual civilians.[205] The alternative qualifiers of "widespread" or "systematic" serve to characterise the "attack" itself. 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. The term "systematic" reflects the organised nature of the violent acts, referring often to the existence of "patterns of crimes" and the improbability of their random or accidental occurrence.[206]

193. However, as noted by the Appeal Chamber, this does not mean that the Court must have regard to the totality of the activities and military operations of a state or organisation for the purposes of establishing that there was a "course of conduct involving the multiple commission of acts referred to in [article 7,] paragraph 1" or that the attack *targeted a civilian population* [...]. These determinations can be made through an examination of the circumstances and manner in which

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[204] *Situation in the Democratic Republic of the Congo in the Case of the Prosecutor v. Bosco Ntaganda*, ICC, Trial Chamber VI, 8 July 2019, ICC-01/04-02/06-2359, para. 731

[205] Decision on the Prosecutor's request for authorisation of an investigation pursuant to Article 15(3) of the Statute ICC Pre-Trial Chamber I, 15 September 2021, ICC-01/21-12, paras. 73 and 74.

[206] Decision on the Prosecutor's request for authorisation of an investigation pursuant to Article 15(3) of the Statute ICC Pre-Trial Chamber I, 15 September 2021, ICC-01/21-12, paras. 79 and 80.

the criminal acts were carried out. It is not necessary for this purpose to have regard to other military operations or the wider activities of the state or organisation in question, including activities that did not involve the commission of crimes. A single incident or operation in which multiple crimes are committed could amount to a crime against humanity, provided that the relevant contextual elements are met.[207]

194. The civilian population must be the primary target of the attack and not an incidental victim of it. The presence within a civilian population of individuals who do not fall under the definition of "civilians" does not deprive the population of its civilian character. Further, although the attack must be directed against a civilian population, there is no requirement that the individual victims of crimes be civilians; they need only be "persons" under the Elements of Crimes. Finally, there must also be a sufficient nexus to an attack against a "civilian" population.[208]

iv. Concurrence of war crimes and crimes against humanity

195. As indicated by the Trial Chamber of the Court, "the statutory contextual elements of crimes, considered individually, encapsulate distinct interests protected by the corresponding incriminating provisions under the Statute. …war crimes give protection in criminal law to persons in times of armed conflict, whereas crimes against humanity protect persons where there is a widespread and systematic attack on a civilian population. Thus, the two sets of crimes reflect (partly) different forms of criminality, in that they complement, in terms of protected interests, the incrimination of the individual 'specific' crimes – which, in turn, are therefore distinct depending (also) on the relevant contextual elements. In these circumstances, neither of these two sets of crimes can thus be said to be subsumed or consumed in any way by the other. Accordingly, … concurrence of analogous crimes against humanity and war crimes is permissible."[209]

196. Based on this indication, and having regard to the above arguments, the submitting organisations believe that the acts described in the present communication give grounds to the concurrence of the relevant war crime and crime against humanity and can be simultaneously characterised under both Article 8(2)(a)(vii) and 7(1)(d) and (e) of the Statute.

H. Qualification of the facts of the case as crimes under the Rome Statute

i. Application of international human rights law standards to the facts of the case

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[207] 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', ICC Appeals Chamber, 30 March 2021, ICC-01/04-02/06-2666-Red, para. 431.
[208] Decision on the Prosecutor's request for authorisation of an investigation pursuant to Article 15(3) of the Statute ICC Pre-Trial Chamber I, 15 September 2021, ICC-01/21-12, paras. 73 and 74.
[209] Trial Chamber IX, 4 February 2021, ICC-02/04-01/15-1762-Red, paras. 2820-21.

197. The detention of the Kherson prisoners became arbitrary and unlawful from the point of view of international human rights law (Article 9 of the Universal Declaration of Human Rights and Article 9 §§ 1 and 2 of the ICCPR) from the moment when the respective penitentiary institutions of the Kherson and Mykolaiv regions of Ukraine came under Russian occupation. All prisoners transferred from Kherson were detained solely based on the criminal judgments delivered by the Ukrainian courts before the annexation. Occupation of the correctional facilities of Kherson and Mykolaiv oblasts rendered their detention unlawful: as shown below (Section III(H)(v)(a), it entailed a severance of the detention from the Ukrainian legal order and from the sentences that constituted its legal basis. Similarly, their forcible transfer to and detention in the penitentiary facilities in Russia also lacked any legal grounds and therefore amounted to arbitrary detention (see, CCPR General Comment no. 35 (CCPR/C/GC/35), 16 December 2014, § 11). The situation was aggravated by the inhuman treatment to which the detainees were subjected, the lack of judicial control over their detention after the occupation, the denial of their communication with the outside world and in particular with their families (Principles 1, 2, 4, 15, 16, 19 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (A/HRC/10/Add.1)).

198. Furthermore, given the FSIN's almost complete refusal to respond to the submitting organisations' and the detainees' relatives' requests for information about the whereabouts and conditions of the transferred detainees, and given that the detainees have been and continue to be held incommunicado in the Russian colonies, their transfer and detention amounts to an "enforced disappearance" in violation of the Declaration on the Protection of All Persons from Enforced Disappearance and the corresponding *jus cogens* rule.

ii. The existence of a contextual element – armed conflict

199. The armed conflict in Ukraine (at the very least, since 24 February 2022 – the date of the full-scale Russia invasion of Ukraine) has been directly or implicitly characterised as an international armed conflict, by a number of international organisations, including the General Assembly of the United Nations,[210] the International Committee of the Red Cross,[211] the PACE,[212] implicitly

[210] "Aggression against Ukraine", 11th emergency special session, A/RES/ES-11/1, 2 March 2022, available at: https://undocs.org/Home/Mobile?FinalSymbol=A%2FRES%2FES-11%2F1&Language=E&DeviceType=Desktop&LangRequested=False.

[211] See, e.g., "Russia-Ukraine international armed conflict: The Red Cross and Red Crescent response one year on", 23 February 2023, available at: https://www.icrc.org/en/document/russia-ukraine-international-armed-conflict-red-cross-red-crescent-response-one-year.

[212] PACE, "Consequences of the Russian Federation's continued aggression against Ukraine: role and response of the Council of Europe", 4 October 2022, available at: https://pace.coe.int/en/files/30267/html.

– by the Prosecutor of the Court,[213] NATO,[214] the EU,[215] OSCE (Chairman-in-Office Rau and Secretary General).[216]

200. The international armed conflict in Ukraine had started before the described events and continues to take place, including in the regions where the described events have occurred. The submitting organisations further argue that the occupation of the penitentiary establishments in Kherson and Mykolaiv oblasts, transfer of detainees between the establishments and their subsequent deportation to Russia have taken place as the direct result of the ongoing conflict and have been closely linked to it. The acts described above lie in the direct causal link with the international armed conflict in Ukraine and could not have been committed in its absence. At different stages, the acts described in the communication involved the representatives of the Russian armed forces, and/or the armed formations affiliated with or subordinate to them, as well as the members of the occupying administration of Kherson whose presence and activities in Ukraine are inseparable from the context of the ongoing international armed conflict.

201. Therefore, acts described in the communication were committed in the context of international armed conflict within the meaning of Article 8(1) of the Statute.

iii. Victims have the status of "protected persons" under the Geneva Conventions

202. Prisoners convicted by the Ukrainian courts who were serving their sentences at the moment of the occupation of Kherson Region by the Russian forces fall under the category of "protected persons" under Article 4 of GC IV, as persons "who at a given moment and in any manner whatsoever, find themselves, in case of a conflict or occupation, in the hands of a Party to the conflict or Occupying Power of which they are not nationals".

203. This conclusion is supported by the findings of the UN Human Rights Committee (the "CCPR") in its views adopted on 27 March 2024 concerning communication no. 3022/2017 (*Bratsylo, Golovko, and Konyukhov v. the Russian Federation*).[217] The CCPR has found that the authors, Ukrainian nationals who had been prosecuted by the Ukrainian authorities and detained in a

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[213] ICC, 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, available at: https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-aa-khan-qc-situation-ukraine-i-have-decided-proceed-opening.

[214] Statement by NATO Heads of State and Government on Russia's attack on Ukraine, available at: https://www.nato.int/cps/en/natohq/official_texts_192489.htm.

[215] European Council, "Joint statement by the members of the European Council", 24 February 2022, available at: https://www.consilium.europa.eu/en/press/press-releases/2022/02/24/joint-statement-by-the-members-of-the-european-council/.

[216] OSCE, "Joint statement by OSCE Chairman-in-Office Rau and Secretary General Schmid on Russia's launch of a military operation in Ukraine", 24 February 2022, available at: https://www.osce.org/chairpersonship/512890.

[217] The text of the views is available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2F140%2FD%2F3022%2F2017&Lang=en.

remand prison in the Crimea at the moment of Russia's occupation of the peninsula in March 2014 – held the status of "protected persons" under the GC IV (paras. 8.6 and 8.18).

iv. The existence of contextual element – widespread or systematic attack against the civilian population

204. The Moscow Mechanism of the OSCE established in its 2024 Report "on violations and abuses of international humanitarian and human rights law, war crimes and crimes against humanity, related to the arbitrary deprivation of liberty of Ukrainian civilians by the Russian Federation"[218] that since February 2014, thousands of Ukrainian civilians have been deprived of liberty by the Russian Federation acting either directly through its organs or, in 2014-2022, through its proxies in the so-called Donetsk and Luhansk People's Republics.

205. This practice was documented in all Ukrainian regions, which, for a shorter or longer period, were under the temporary occupation of the Russian Federation. Strikingly, the arbitrary deprivation of liberty of the Ukrainian civilians by Russia seems to be one of the defining features of this occupation. There were also instances where Ukrainian civilians were detained on account of their alleged affiliation with the Ukrainian armed forces or their alleged involvement in extremist or terrorist acts. While such grounds could be lawful, evidence collected by the OSCE suggests that in most cases, these were mere pretexts, and the detention pursued other purposes such as harassment or reprisals, which again render the detention unlawful and arbitrary.[219]

206. As concluded by the OSCE, the absence of lawful grounds for the deprivation of liberty of Ukrainian civilians is further compounded by the unavailability of virtually all procedural guarantees that are foreseen under international standards to guard against arbitrary detention. Ukrainian civilians arbitrarily deprived of liberty by the Russian Federation were, on a large scale, subjected to prohibited practices, such as torture and sexual violence. They are denied any contact with the outside world, including their families. They are detained incommunicado and have to endure harsh conditions of detention, denied food and water, medical assistance, sleeping places, and forced to sleep on cold floors, without mattresses and bedding.[220]

207. Ukrainian civilians are tried under legislation which should not apply to them in the first place, in violation of the principle of legality and retroactivity. Their procedural rights and the right to

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[218] OSCE, "Report on violations and abuses of international humanitarian and human rights law, war crimes and crimes against humanity, related to the arbitrary deprivation of liberty of Ukrainian civilians by the Russian Federation", 25 April 2024, available at: https://www.osce.org/odihr/567367.

[219] EJIL:Talk! Veronika Bilkova and Elīna Šteinerte, "The Moscow Mechanism Expert Report: On the Arbitrary Deprivation of Liberty of Ukrainian Civilians by the Russian Federation", 23 May 2024, available at: https://www.ejiltalk.org/the-moscow-mechanism-expert-report-on-the-arbitrary-deprivation-of-liberty-of-ukrainian-civilians-by-the-russian-federation/.

[220] Ibid.

defence and legal assistance are not respected, which in and of itself renders detention related to criminal prosecution arbitrary.[221]

208. The Moscow Mechanism, in its report,[222] specifically lists "2000 Ukrainian sentenced persons in Ukrainian prisons [who were] moved to Russia in 2022, some of whom were re-detained despite having served their sentences", as part of the larger group of "Ukrainian civilians in detention by the Russian Federation". It was concluded in the report, that "the practice of arbitrary deprivation of liberty of Ukrainian civilians has occurred on a massive scale and has revealed signs of a systematic, consistent, deliberate pattern of conduct targeting specifically Ukrainian civilians", allowing to "conclude that the contextual element of crime against humanity is present and that at least some instances of the arbitrary deprivation of liberty of Ukrainian civilians may qualify as crimes against humanity."

209. Based on the above criteria and findings, the submitting organisations assert that the acts described in the present communication in themselves reveal a course of conduct targeting a large identifiable group within the civilian population of Ukraine – namely, convicted prisoners; that they were committed in an organised, co-ordinated and systemic manner, as a series of acts – occupation of detention facilities, systemic ill-treatment of detainees, their mass transfer – giving reasonable grounds to suggest the existence of a wider organisational policy of a large-scale nature, and allowing to conclude that they were committed in the context of a widespread attack against civilian population.

v. Lack of grounds and legal basis for victims' detention

(a) Discontinuation of the Ukrainian legal order in the occupied territories

210. The detention of the Ukrainian prisoners by the Russian forces cannot be regarded as the enforcement of the Ukrainian penal law by the occupying power, in accordance with Article 64(1) of GC IV.

211. It is well established in international human rights law that all deprivation of liberty must be "lawful", a category which essentially refers to national law and lays down the obligation to conform to the substantive and procedural rules of national law. This primarily requires any detention to have a legal basis in domestic law, but also relates to the quality of the law, requiring it to be compatible with the rule of law.[223] As demonstrated by the submitting organisations above, with reference to the findings of HRMMU, the Russian authorities, having illegally annexed the territory of Donetsk, Luhansk, Kherson and Zaporizhzhia, in breach of the laws of

[221] Ibid.
[222] OSCE, "Report on violations and abuses of international humanitarian and human rights law, war crimes and crimes against humanity, related to the arbitrary deprivation of liberty of Ukrainian civilians by the Russian Federation", 25 April 2024, available at: https://www.osce.org/odihr/567367. Pp. 17 and 49.
[223] See ECtHR, Del Río Prada v. Spain [GC], no. 42750/09, § 125, ECHR 2013.

occupation, have in the occupied territory of Ukraine imposed wholesale the systems of governance, law enforcement, judiciary, and administration, and implemented Russian legislation in its entirety. The Russian forces used intimidation and violence to coerce members of key public sector professions to cooperate with the Russian occupying authorities. The Russian Federation imposed its own legal and judicial system on the occupied territory, in breach of the IHL.[224]

212. Penitentiary facilities in the occupied territories came under Russian control in March-May 2022. The prison system in the occupied territory was ultimately overseen by the FSB. Ukrainian prison staff were forced to continue their work under threats and direct physical violence. Torture and ill-treatment in the occupied prisons became systematic. Coupled with occasional disappearances of prisoners, this essentially led to the creation of a strong atmosphere of terror among the inmates. Prisoners also experienced food shortages.[225]

213. Prison facilities in Kherson Oblast were militarised – that is, they were converted to meet the needs of the Russian army, while prisoners were subjected to extensive and systematic forced labour. Russian forces set up their warehouses, production facilities, ammunition depots and garages for armed vehicles in the colonies. Prisoners were used to repair vehicles, make barbed wire and anti-tank barriers, dig trenches, build fortifications in and around administrative buildings, process wood, work as loaders, and bake bread for soldiers. Prisoners engaged in forced labour were poorly fed, and even sick prisoners were forced to work. Russian forces also attempted to recruit Ukrainian prisoners to fight in the war against Ukraine and actively pressured them to accept Russian citizenship. In at least three cases, missile launchers were reportedly deployed next to penitentiary institutions, strongly indicating that the Russian armed forces used prisoners and prison staff as human shields.[226]

214. These elements indicate that the Ukrainian legal system in general and its criminal jurisdiction were suspended by the occupying authorities, who took no measures to maintain Ukrainian law in force, including "penal laws". The Russian authorities have not only discontinued the functioning of the Ukrainian courts, in breach of Article 64 of GC VI, but have also effectively disrupted the normal functioning of the penitentiary facilities – imposing on it a system of administration by terror and repurposing it to military needs. The detention of prisoners, from the moment when the respective facilities came under Russian control, was no longer guided by penological purposes, which are essential for the lawfulness of any criminal punishment, including the goals of rehabilitation and resocialisation. Ukrainian prisoners under the occupation were cut off from the legal mechanisms of review and adjustment of sentences, as

[224] See Section II(B).
[225] Ibid.
[226] Ibid.

well as early release. In view of the breach of the continuity of the Ukrainian criminal law in the occupied territories, the prisoners' detention could no longer be regarded as resulting from the enforcement of the prison sentences imposed by Ukrainian courts. The prisoners held in the occupied penitentiary facilities were extracted from the Ukrainian legal system, and their continuing detention lost any connection with the punishment applied against them by the Ukrainian courts. The prisoners were deprived of the opportunity to petition Ukrainian courts and to use other domestic and international remedies available to them under the Ukrainian legal system. The Ukrainian authorities, for their part, were no longer able to effectively exercise their jurisdiction over the prisoners in Kherson.

215. Therefore, the submitting organisations aver that the confinement of the Ukrainian convicted prisoners by the Russian forces does not constitute a legitimate enforcement of Ukrainian sentences, that the Russian forces have not ensured the "succession" or "continuation" of the Ukrainian legal order in the occupied territories, which, therefore, does not allow to justify the prisoners' confinement as continuous enforcement of the penal law of the occupied territory under Article 64(1) of GC IV.

216. Finally, the Russian authorities specifically proclaimed the retroactive nature of their criminal jurisdiction in the territories of Ukraine occupied in 2022 and the applicability of their Criminal Code to all acts committed before 30 September 2022 (Section 2 of Federal Law of 31 July 2023 No. 395-FZ). In doing so, they openly demonstrated the lack of any intention on their part to maintain the Ukrainian penal law.

(b) Unlawful deprivation of liberty in view of retroactive exercise of criminal jurisdiction

217. The submitting organisations emphasise, first of all, that the Ukrainian prisoners have never been accused or convicted by the Russian authorities of any crimes committed against them as an occupying power, during the occupation or even before, or of the breach of any provisions enacted to maintain "the orderly government of the territory". Therefore, their detention from the moment when the respective penal institutions of Kherson and Mykolaiv oblasts of Ukraine came under the control of the Russian and affiliated forces and thereafter is not related to the commission of any offence against the occupying power or to the violation of any criminal law enacted by the occupying power. As such, it was not authorised and cannot be explained from the standpoint of Articles 64(2) and 68 of GC IV.

218. Consequently, and as confirmed by the Russian courts in their conversion judgments, the factual and legal basis for the confinement of the prisoners throughout their detention under the control of the Russian authorities was their respective sentences handed down by the Ukrainian courts before the occupation.

219. As mentioned above, Article 70 of GC IV prohibits the arrest, prosecution or conviction of protected persons by the occupying power for acts committed before the occupation. The annihilation of the applicable sentence-enforcement regime and its replacement by the legal order of the occupying power, entirely excluding any intervention by the courts of the occupied territory, bring the detention at issue within the scope of Article 70's prohibition of arrest for acts committed before the occupation.

220. Accordingly, the submitting organisations believe that the detention of the civilian prisoners was unlawful from the standpoint of IHL, running contrary to the principle of non-retroactivity of the criminal jurisdiction of the occupying power (Article 70 of GC IV), which therefore precludes its justification under Article 31 of the Statute, from the standpoint of the laws of occupation.

221. The subsequent attempt by the Russian authorities to legalise prisoners' detention under the domestic law of Russia – specifically through Federal Law No. 395-FZ – has not led to any substantive legal changes. Indeed, Section 8 of Federal Law No. 395-FZ formally provided that the Russian Federation retroactively acknowledged the legal force of all judicial decisions delivered in the annexed territories, which entered into force before 30 September 2022.

222. In that regard, the CCPR in the similar context of the occupied Crimea, in the above cited case of *Bratsylo and Others*, has reasonably noted that "*there was no international agreement that would allow the State party to prosecute the authors or to execute decisions of Ukrainian courts, and that it was the Ukrainian Criminal Code that was operative on the territory of Crimea at the time of the commission of the crimes*" (para. 8.4).

223. Accordingly, Federal Law No. 395-FZ, in itself, was incapable of retroactively extending the Russian criminal jurisdiction unilaterally. Neither does it provide internationally valid legal grounds for prisoners' continued detention under Russian control. Finally, Law 395-FZ has had a limited scope of application (four Ukrainian regions annexed by Russia in 2022). At the same time, a significant part of the Ukrainian prisoners who came under the control of the Russian authorities had been convicted by Ukrainian courts of other Ukrainian oblasts rather than the four occupied and annexed by Russia in 2022 (e.g., Odessa and Mykolaiv). Accordingly, Federal Law No. 395-FZ explicitly excludes them from the scope of its application, which leaves their detention completely groundless and unlawful even from the flawed standpoint of the Russian domestic law.

(c) The detention of Kherson prisoners did not fall under the "internment or assigned residence" regime

224. Security detention is the most severe measure of control that an occupying Power may resort to in relation to protected persons. It is permissible only when necessary for "imperative reasons of security" (GC IV, Art. 78(1)) and must respect procedural safeguards. As noted by the

HRMMU, the absence of these safeguards by Russian authorities in Ukraine led to arbitrary detention, often coupled with violence. Moreover, civilians who posed no apparent security threat to the occupying Power were among those detained.[227]

225. Nothing in the circumstances of this case indicates that the convicted prisoners confined by the Russian authorities and the forces subordinate to them, and later deported to Russia, were subjected to internment/security detention.

226. Russian authorities have not, at any point, invoked any security reasons necessitating the prisoners' detention (Articles 42 and 78 of GC IV), nor they have they brought the prisoners to liability for any offences against the occupying power (Article 68 of GC IV),[228] and neither have the prisoners requested their voluntary internment (Article 42 § 2 of GC IV). As evidenced by the conversion judgments of the Kerch Town Court and the Torbeevsky Town Court,[229] as well as the administrative expulsion decisions, the domestic authorities have never in any way linked the continued detention of the Ukrainian prisoners to the military conflict or to any state security considerations. As can be seen from the domestic rulings and the Federal Law of 31 July 2023 No. 395-FZ, the Russian authorities formally base the detention of the transferred Ukrainian prisoners either on the fact that they committed crimes / were convicted in Ukraine (before the occupation), or on the fact that they allegedly violated Russian immigration regulations.

227. Finally, no internment decisions were taken by the Russian authorities in accordance with Article 43 of GC IV, and neither were the transferred inmates provided with *habeas corpus* guarantees and other procedural safeguards as required by GC IV, which rendered their

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[227] OHCHR, Human Rights Situation During the Russian Occupation of Territory of Ukraine and its Aftermath, 24 February 2022 – 31 December 2023, 20 March 2024, para. 37, available at: https://ukraine.ohchr.org/sites/default/files/2024-04/2024-03-20%20OHCHR%20Report%20on%20Occupation%20and%20Aftermath_EN.pdf.

[228] Articles 41-43 of GC IV are related to the situation of "aliens in the territory of a party to the conflict" (Section II of GC IV), whereas Articles 68 and 78 of GC IV pertain to the internment in the occupied territories. Pursuant to Articles 42, 68 and 78, internment can be ordered only if the security of the detaining power makes it absolutely necessary, if the protected persons themselves requested it, or if protected persons committed an offence "intended to harm the Occupying Power". According to the ICRC 1958 Commentary to GC IV: "Subversive activity carried on inside the territory of a Party to the conflict or actions which are of direct assistance to an enemy Power both threaten the security of the country; a belligerent may intern people … if it has serious and legitimate reason to think that they are members of organizations whose object is to cause disturbances, or that they may seriously prejudice its security by other means, such as sabotage or espionage; the provisions of Article 5 of [GCIV] may also be applied in such cases. On the other hand, the mere fact that a person is a subject of an enemy Power cannot be considered as threatening the security of the country where he is living; it is not, therefore a valid reason for interning him or placing him in assigned residence. To justify recourse to such measures, the State must have good reason to think that the person concerned, by his activities, knowledge or qualifications, represents a real threat to its present or future security. The [GC IV] stresses the exceptional character of … internment by making [its] application subject to strict conditions; … only absolute necessity, based on the requirements of state security, can justify recourse to [internment], and only then if security cannot be safeguarded by other, less severe means. All considerations not on this basis are strictly excluded." (ICRC 1958 Commentary to Article 42 of GCIV, available at: https://ihl-databases.icrc.org/en/ihl-treaties/gciv-1949/article-42?activeTab=undefined).

[229] Section II(J), Section III(iii).

detention illegal.[230] OHCHR also confirmed that it was not aware that the procedure for internment of civilians was established and applied by the Russian Federation in the occupied territory of Ukraine.[231]

228. Accordingly, the detention of the Ukrainian convicted prisoners by Russian forces and forces subordinated to / affiliated with them does not satisfy the strict conditions of the internment regime, cannot be qualified as such and cannot be justified from the standpoint of the relevant provisions of IHL, in accordance with Article 31 of the Statute.

(d) Obligations of the Russian authorities regarding the return of the prisoners

229. Since there are no legal grounds for the continued detention of the Ukrainian detainees in Russia, no conflicting security considerations, and no obvious national interests, they should be given the unhindered opportunity to leave Russia in accordance with Article 35 of GC IV. Moreover, it appears that in view of the liberation of Kherson and most of the prisons from which the prisoners were transferred, the Russian Government must hand over the prisoners "to the authorities of the liberated territory" (Article 77 of GC IV). The Russian Government should have also established a procedure for considering requests to leave (including appeals against denials) to prevent arbitrary decisions:

> "Belligerent States must specify in advance the conditions under which permission to depart will be granted, and must appoint a responsible authority which will make decisions impartially, as rapidly as possible, and with reasons stated, after the applicant has been given an opportunity of submitting his application and explaining the grounds on which he makes it.
>
> …

[230] Decisions regarding internment must be made in a regular procedure to be prescribed by the occupying Power in accordance with the provisions of the GC IV. This procedure shall include the right of appeal for the parties concerned. Appeals shall be decided with the least possible delay. In the event of the decision being upheld, it shall be subjected to periodical review, if possible, every six months, by a competent body set up by the said Power. Internment orders must be based on an individualised assessment and mass internment without such assessments is prohibited; interned persons have a right to be promptly informed about the reasons for internment and to be registered and held in a recognised place of internment; information about internees must be transferred to the families and Central Tracing Agency; and internment must cease as soon as the reasons for it cease to exist. Moreover, the detaining power shall, within the shortest possible period, give its National Information Bureau information on protected persons who are kept in custody for more than two weeks, or who are interned. The detaining power should also respect fundamental procedural guarantees provided for by IHRL, in particular by providing access to independent legal counsel, preferably of the detainee's own choosing, and disclosing the essence of the evidence on which the decision to detain is taken (GC IV, Articles 41, 42, 78, 106, 132, 136; AP I, Article 75(3)) (See, OHCHR, Human Rights Situation During the Russian Occupation of Territory of Ukraine and its Aftermath, 24 February 2022 – 31 December 2023, 20 March 2024, p. 11, available at: https://ukraine.ohchr.org/sites/default/files/2024-04/2024-03-20%20OHCHR%20Report%20on%20Occupation%20and%20Aftermath_EN.pdf; ICRC 1958 Commentary to Article 42 of GCIV, available at: https://ihl-databases.icrc.org/en/ihl-treaties/gciv-1949/article-78/commentary/1958?activeTab=).

[231] OHCHR, "Treatment of civilians deprived of their liberty in the context of the armed attack by the Russian Federation against Ukraine", 23 September 2025, p. 5, available at: https://ukraine.ohchr.org/sites/default/files/2025-10/2025-09-22%20Treatment%20of%20civilians_ENG.pdf.

> The main point, however, is … to be quite certain that each case will be examined objectively and thoroughly and that the rights of the protected person will be fairly weighed against the legitimate interests of the State of residence."[232]

230. It is further incumbent on the Russian authorities to ensure that such departures "be carried out in satisfactory conditions as regards safety, hygiene, sanitation and food" (Article 36 of GC IV).

231. During their detention in Russia, the safety of Ukrainian prisoners is additionally guaranteed by Article 37 of GC IV, which provides for their right to humane treatment during detention. Finally, if not immediately, then at least after their release from the penitentiary institutions, the Ukrainian prisoners have the right to freely request to leave the territory of Russia (Article 37 § 2 GC IV). However, this guarantee is completely negated by the practice of unfounded immigration detention of prisoners after the expiration of the terms of sentences imposed on them by the Ukrainian courts.

(e) Conclusion

232. Based on the above, the submitting organisations submit that the confinement of the Ukrainian prisoners by the Russian forces from the moment of the occupation of the respective Ukrainian penal facilities onwards, had no legal grounds under IHL. This conclusion is supported by the findings of the Grand Chamber of the ECtHR in *Ukraine and the Netherlands v. Russia*, which having assessed the mass practice of detention of civilians by the Russian Federation in the occupied territories of Ukraine, has held that:

> "1122. … More broadly, while it is true that international humanitarian law permits the internment of civilians in occupied territory in certain circumstances …, the applicable conditions for internment have not been shown to have been satisfied in the present case. The [Russian Federation] have not shown that it was necessary, for imperative reasons of security, to detain any of the civilians to whom the evidence above refers. They have, moreover, failed to show that decisions to detain civilians on security grounds were made according to a regular procedure prescribed by the Russian Federation, in accordance with the provisions of GC IV. In this respect, it is noteworthy that the OHCHR received no information to support the conclusion that, in the post-invasion period, the Russian Federation had adopted procedures or practices to uphold the safeguards enshrined in GC IV, in particular the right to challenge the lawfulness of, or to otherwise appeal, internment decisions and to have them reviewed through fair procedures on a regular basis …. Consequently, the deprivations of liberty effected by separatists throughout the Donbas from 2014 and across occupied territory in Ukraine after the 2022 invasion cannot conceivably be said to have amounted to lawful internment under GC IV."[233]

vi. Unlawful confinement of victims - classification

233. Ukrainian prisoners serving sentences in prison facilities in the Kherson and Mykolaiv oblasts of Ukraine at the time of Russian occupation were deprived of their liberty arbitrarily and unlawfully, in breach of applicable international humanitarian law provisions. As protected persons under GC IV, they were confined to penitentiary facilities in the occupied Ukrainian

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[232] ICRC 1958 Commentary to Article 35 of GCIV, available at: https://ihl-databases.icrc.org/en/ihl-treaties/gciv-1949/article-35/commentary/1958?activeTab=undefined.

[233] ECtHR, *Ukraine and the Netherlands v. Russia* [GC], nos. 8019/16 and 3 others, 9 July 2025, available at: https://hudoc.echr.coe.int/?i=001-244292.

oblasts of Kherson and Crimea, and subsequently in Russia. The perpetrators – the Russian armed forces, the FSIN and collaborators from among the former Ukrainian prison officers – were aware of their protected status. This took place in the context of, and was associated with, an international armed conflict in Ukraine, in which the respective facilities and prisoners came under Russian occupation.

234. As demonstrated above, the victims' detention was not in compliance with GC IV, was not based on reasonable grounds and was not necessary in view of the security risks and was not accompanied by essential procedural guarantees[234].

235. Accordingly, the factual circumstances of the case disclose the existence of interconnected objective and subjective elements allowing for the classification of the internment of the victims as the war crime of "unlawful confinement" (Article 8(2)(a)(vii) of the Rome Statute).

236. The lack of a legal basis for victims' detention, the absence of due process for their detention, and the number of victims – make the situation sufficiently grave, to attain, in view of the demonstrated context of a widespread and systematic attack against civilian population, in the framework of which the detention took place, the level of gravity necessary to classify it as a crime against humanity of imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law (Article 7(1)(e) of the Rome Statute).

vii. Forcible transfer/deportation did not constitute a legitimate evacuation

237. To classify the transfer of victims as deportation or forcible transfer, it is essential to distinguish it from a legitimate evacuation, dictated by "the security of the civilians involved or imperative military reasons."[235]

(a) Introduction

238. From the information and documents collected by the investigating authorities of Ukraine and examined by the submitting organisations, it follows that the transfer of civilian prisoners from Kherson could have been part of the general "evacuation" of the population from Kherson by the Russian authorities and was carried out by the occupying administrations and the FSIN. At the same time, the reasons, the manner in which it was carried out, the timeframe and the purpose (or lack thereof) demonstrate that the transfer of prisoners did not meet the criteria of a justified evacuation under Article 49 of GC IV.

239. In mid-October 2022, in the midst of the Ukrainian counteroffensive, the Russian authorities began the transfer of the civilian population from Kherson, as it seems, under the pretext of

[234] *Kordić & Čerkez* (IT-95-14/2), ICTY, Appeal Judgment, 17 December 2004, para. 73.
[235] ICRC Customary IHL Database, Rule 129, available at: https://ihl-databases.icrc.org/en/customary-ihl/v1/rule129.

"evacuation".[236] The mass transfer of the civilian population was at least directly approved (if not ordered) by Vladimir Putin.[237] From the early stages of this displacement, there were reports of people being forcibly removed from their homes.[238] According to the Kremlin-installed Kherson "officials", by early November 2022, 70,000 civilians had been "evacuated",[239] sent to the occupied Crimea and on to Russia.[240] The head of the occupying administration of the city of Kakhovka announced that from 6 November 2022, "measures of forced evacuation will be applied to the people who remain".[241]

240. Vladimir Saldo, a Russian-installed "governor" of the Kherson region, claimed that the transfer was due to the threat of a "massive rocket attack" by Ukrainian forces on a local dam.[242] The dam was indeed destroyed some seven months later, on June 6, 2023, causing an environmental disaster, with evidence pointing to the explosion being carried out by Russian forces.[243] Other reasons given by the occupying authorities were "the situation at the front and the threat of shelling and alleged plans for 'terrorist attacks'".[244]

(b) Transfer was not temporary

241. Based on the above requirements and criteria for legitimate "evacuation", the submitting organisations point out, firstly, that an evacuation that becomes permanent and where there is no attempt to return the civilian population after the cessation of hostilities cannot be a lawful evacuation for imperative military reasons.

242. Not only have the Russian authorities failed to take any measures to return the transferred prisoners,[245] but they have created additional obstacles to the return of the prisoners even after

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[236] Reuters, "Russia to evacuate 10,000 a day from Ukraine's Kherson Region", available at: https://www.reuters.com/world/europe/russia-evacuate-10000-day-ukraines-kherson-region-2022-10-19/.

[237] Reuters, "Putin endorses evacuation of parts of Ukraine's Kherson region", 5 November 2022, available at: https://www.reuters.com/world/europe/grain-ships-sail-ukraine-ports-russian-missiles-knock-out-power-across-country-2022-10-31/.

[238] The Moscow Times, "Russia Begins Kherson 'Evacuations' as Ukrainian Forces Advance", 19 October 2022, available at: https://www.themoscowtimes.com/2022/10/19/russia-begins-kherson-evacuations-as-ukrainian-forces-advance-a79131.

[239] The Moscow Times, "Pro-Moscow Force Renews Evacuation of Ukraine's Kherson", 2 November 2022, available at: https://www.themoscowtimes.com/2022/11/01/pro-moscow-force-renews-evacuation-of-ukraines-kherson-a79258.

[240] The New York Times, "Civilians fleeing Kherson are advised to travel to Russia or Crimea", 13 October 2022, available at: https://www.nytimes.com/2022/10/13/world/europe/russia-kherson-ukraine-evacuation.html.

[241] The Moscow Times, "Pro-Moscow Force Renews Evacuation of Ukraine's Kherson", 2 November 2022, available at: https://www.themoscowtimes.com/2022/11/01/pro-moscow-force-renews-evacuation-of-ukraines-kherson-a79258.

[242] The Moscow Times, "Pro-Moscow Force Renews Evacuation of Ukraine's Kherson", 2 November 2022, available at: https://www.themoscowtimes.com/2022/11/01/pro-moscow-force-renews-evacuation-of-ukraines-kherson-a79258.

[243] AP News, "Russia had means, motive and opportunity to destroy Ukraine dam, drone photos and information show", 18 June 2023, available at: https://apnews.com/article/ukraine-russia-war-kakhovka-dam-collapse-investigation-f5b76fe1ddbf98aa5ff7e4dfd3199c38.

[244] Inquirer.com, "Russian-installed authorities order evacuation of Kherson", 22 October 2022, available at: https://www.inquirer.com/news/nation-world/russia-ukraine-war-kherson-evacuation-20221022.html.

[245] Except for the return of 15 Kherson prisoners, as part of a larger group of convicted Ukrainian nationals held in Russia, in May 2025 as part of prisoners' swap (see, Suspline, "Обмін 1000 на 1000: РФ повернула Україні 15 в'язнів, яких

(some of them) were released from the Russian colonies – including subsequent prolonged immigration detention applied to almost all of the prisoners, with rarest exceptions, and the systemic failure to provide prisoners with documents for crossing the border.[246]

243. In addition, the widespread practice of conversion of Ukrainian sentences to Russian criminal law and the Federal Law No. 395-FZ on recognition of Ukrainian sentences for the purpose of their further execution,[247] reflect the intention of the Russian authorities to integrate the Ukrainian prison population from the occupied territories into the Russian legal and penal system (which is vividly demonstrated by the case of the seven life prisoners), thus subjecting them to permanent prolonged detention in Russia.[248]

244. The absence of any measures aimed at the return of the transferred civilian prisoners and the permanent nature of their transfer (which is not altered by the fact that some of the prisoners managed to return home with the assistance of the submitting organisations or travelled to third countries), drastically distinguish the transfer of civilian prisoners from the evacuation permitted under Article 49 of GC IV.

245. Finally, the submitting organisations are unaware of any attempts by the Russian authorities to inform the ICRC, in the absence of a Protecting Power, of the evacuation, in accordance with Article 49 para. 4 of GC IV. Failure to fulfil this requirement further contributes to the inapplicability of the evacuation justification to the situation of the transfer of the Ukrainian civilian prisoners.

(c) The situation causing the displacement was the result of the unlawful activities of the Russian officials

246. Secondly, it must be emphasised that the transfer of Ukrainian prisoners was a part of the widespread and systemic attack against the Ukrainian civilian population, which, in particular, took the form of mass forcible transfers and deportations of civilians.[249] As reported by the UN Independent Commission of Inquiry on Ukraine, from the beginning of the full-scale invasion of Ukraine, the authorities of the Russian Federation have committed a wide range of violations of international human rights law and international humanitarian law in many provinces of Ukraine and in the Russian Federation, include wilful killings, attacks on civilians (including

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депортувала під час відступу з Херсонщини та Миколаївщини" (Exchange of 1,000 for 1,000: Russia returns 15 prisoners to Ukraine who were deported during its retreat from Kherson and Mykolaiv regions), 27 May 2025, available at: https://suspilne.media/1028291-obmin-1000-na-1000-rf-povernula-15-ukrainskih-vazniv-akih-deportuvala-pid-cas-vidstupu-z-hersonsini-ta-mikolaivsini/?utm_source=copylink&utm_medium=ps

[246] See Sections II(G) – (I), Section III(E)(iv).

[247] Section II(J).

[248] See para. 76.

[249] Amnesty International, "Like a Prison Convoy": Russia's unlawful Transfer and Abuse of Civilians in Ukraine during 'Filtration'", 10 November 2022, available at: https://www.amnesty.org/en/documents/eur50/6136/2022/en/; Human Rights Watch, ""We Had No Choice" – "Filtration" and the Crime of Forcibly Transferring Ukrainian Civilians to Russia", 1 September 2022, available at: https://www.hrw.org/report/2022/09/01/we-had-no-choice/filtration-and-crime-forcibly-transferring-ukrainian-civilians.

attacks against evacuating civilians), unlawful confinement, torture, rape and the forced unlawful transfer of detainees. Violations were also committed against persons deported from Ukraine to the Russian Federation.[250]

247. The Commission concluded that the armed forces of the Russian Federation have carried out attacks with explosive weapons in populated areas with an apparent disregard for civilian harm and suffering. It documented indiscriminate and disproportionate attacks and a failure to take precautions, in violation of international humanitarian law. The use of explosive weapons with wide-area effects in populated areas was one of the main causes of civilian casualties. Such attacks damaged or destroyed thousands of residential buildings, more than 3,000 educational institutions, and more than 600 medical facilities. The waves of attacks by the armed forces of the Russian Federation, starting on 10 October 2022, on the energy-related infrastructure of Ukraine and the use of torture by the authorities of the Russian Federation, according to the Commission, may amount to crimes against humanity. Ukrainian cities and localities became the scenes of heavy warfare. Some attacks, including those targeting the country's critical infrastructure, have affected the entire country, including areas far from the front lines. Populations under occupation reported grave human rights violations. Amid widespread condemnation of the events in Bucha, in Kyiv Province, the General Assembly adopted a resolution calling for the suspension of the Russian Federation from the Human Rights Council.[251]

248. The armed conflict has taken a devastating toll on the civilian population. As of 15 February 2023, according to the Office of the United Nations High Commissioner for Human Rights (OHCHR), 8,006 civilians had been killed and 13,287 injured in Ukraine since 24 February 2022. OHCHR believes that the actual figures are considerably higher.13 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, the Office of the United Nations High Commissioner for Refugees (UNHCR) had reported approximately 8 million refugees from Ukraine across Europe, of which approximately 90 per cent were women and children.14 In addition, approximately 5.4 million people are currently displaced across Ukraine.15 Nearly 18 million people in Ukraine are in need of humanitarian assistance and endured particularly harsh conditions during the winter months. The conflict has affected people's right to health, education, adequate housing, food and water. Some vulnerable groups, such as older persons,

[250] Report of the Independent International Commission of Inquiry on Ukraine, A/HRC/52/62, 25 September 2023, Introduction; paras. 14, 15, 48, 57, 58.
[251] Ibid., Introduction; paras. 14, 15, 23, 26, 44.

children, persons with disabilities and persons belonging to minority groups, have been particularly affected. No region of the country has been spared by the conflict.[252]

249. In view of the general, repetitive, widespread and systemic attacks by the Russian armed forces on civilian population of Ukraine, it must be noted, that the Russian authorities and their officials are precluded from justifying the displacement by reference to humanitarian or military situation (e.g., "situation on the front and the threat of shelling", allegations of plans for 'terrorist attacks'" and the "risks of a massive missile attack by Ukrainian forces on the [Kakhovka] Dam"[253] as the situation "causing the displacement is itself the result of the accused's own unlawful activity."[254]

(d) Transfer was part of the policy and was planned in advance

250. The above findings provide sufficient elements to reasonably assume that the transfer was "carried out in furtherance of a well-organised policy" and was a goal in itself – criteria which further distinguish justified evacuation from forcible transfer or deportation, as noted by the ICTY in *Krstić*.[255] Although the prisoners were not notified of the transfer in advance (a common practice in the Russian penal system),[256] the transfer appeared to have been planned beforehand. It was well coordinated and carried out by Russian forces (including special operations forces) brought for this purpose from Crimea and Russian territory.

(e) Civilians should have been transferred within the occupied territory

251. As noted by the ICTY in the above-cited judgments in *Naletilić & Martinović* and *Brđanin*, "the civilians, for the displacement to be justified as evacuation, must as far as possible be transferred within the occupied territory and not outside of it". To the best of the submitting organisations' knowledge, the Russian authorities never claimed any major obstacles preventing the transfer of prisoners exclusively within the occupied Ukrainian territories, including the occupied part of Kherson oblast and the Crimea, further from the front lines. The fact that the prisoners were transported thousands of kilometres from Kherson to the distant Russian correctional colonies, in the absence of any apparent reason for that, further prevents the prospective accused from invoking legitimate evacuation as a justification for the forcible transfer/deportation.

(f) Transfer was carried out in the "atmosphere of terror" and was "forcible"

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[252] Ibid., para. 20.
[253] See above, para. 240.
[254] See above-cited positions of the ECCC (Case 002/01, Judgement, 7 August 2014, para. 450) and the Appeals Chamber of the ICTY in *Stakić*.
[255] Prosecutor v. Radislav Krstić (Trial Chamber Judgment) (n 1), Case no. IT-98-33-T, §§ 524-27, 2 August 2001.
[256] Disappearing en route: a legal black hole in Russia's prisoner transfer system. IPHR, State Capture: Research and Action, EPLN, April 2024, https://www.prisonlitigation.org/articles/report-enforced-disappearance/.

252. The concordant testimonies of transferred prisoners who had subsequently returned from Russia and were interviewed by the submitting organisations[257] demonstrate that many of them were beaten up, verbally abused, and shouted at by the Russian servicemen who carried out the transfer. The detainees were ill-treated publicly, in front of their fellow inmates, most probably to "set an example" and instil fear and obedience in the entire group.

253. As noted above, ICTY in the *Krstić*[258] case has found that the "atmosphere of terror" in which the alleged evacuation takes place demonstrates that the purpose of transfer has nothing to do with safety and security of population, but that the true goal of the displacement is persecution, including the expelling of civilian population. The submitting organisations assert that none of the prisoners were given an alternative to stay, or asked to give their consent to the transfer, whereas the circumstances of transfer, including widespread beatings, humiliation, verbal and physical threats and abuses to which the prisoners were subjected, amount to the "atmosphere of terror" which further makes the transfer of the Kherson prisoners incompatible with the notion of a justified evacuation.

(g) Conclusion

254. The submitting organisations emphasise that the Russian authorities (including the Moscow-backed occupation authorities in Kherson), despite publicly claiming that the population is "evacuated" from Kherson, had never clearly explained the reasons behind this "evacuation". Their explanations varied from the vaguely formulated "situation on the front and the threat of shelling and alleged plans for 'terrorist attacks'" to the "risk of a massive missile attack by Ukrainian forces on a local dam".[259] Not once have they publicly claimed the existence of an "overriding military reason" and the "significant threat to the physical security of the population" necessitating "imperative military operation" – i.e., the necessary basic conditions for the justified evacuation.[260] Given the widespread and systemic attack against civilian population of Ukraine, which has caused the situation necessitating civilians' displacement; permanent nature of the transfer, including systemic failure to return the transferred group, creation of obstacles for prisoners' return, and failure to notify the Protective power; the fact that that the prisoners were transferred to distant penal colonies located in Russia, in the absence of obstacles for their transfer with the occupied territories; the existence of a well organised policy and indications that the transfer was planned in advance; the forcible nature of the prisoners' transfer and the fact that it was carried out in the atmosphere of terror – the forcible

[257] Section II(C), (D), (E).
[258] Prosecutor v. Radislav Krstić (Trial Chamber Judgment) (n 1), Case no. IT-98-33-T, §§ 524-30, 2 August 2001.
[259] See above, paras. 240 and 249.
[260] Section III(C).

transfer / deportation of civilian prisoners from Kherson cannot be justified as a legitimate evacuation.

255. Finally, the submitting organisations refer to the conclusions of the Grand Chamber of the ECtHR in *Ukraine and the Netherlands v. Russia*,[261] which has held that the transfer of detained civilians in the occupied territories of Ukraine in 2014-2022 had no legal basis under international humanitarian law.

viii. Forcible transfer/deportation - classification

256. As demonstrated above, the forcible transfer and deportation of victims lacked the essential elements to justify it as a legitimate evacuation. The victims formed an identifiable group of the civilian population residing in the occupied territory of Ukraine, and benefited from the status of "protected persons" under GC IV. The deportation was committed in the context of the international armed conflict in Ukraine, of which perpetrators – the FSIN, Russian armed forces, and collaborators from the former Ukrainian prison officers – were aware. The victims were transferred, against their will, in the atmosphere of terror, with the use of violence, first to "another location" – within the Kherson oblast and then in the occupied Crimea, and, subsequently, to "another State" – the Russian Federation, from where some of them were taken back to the occupied Crimea.[262]

257. Secondly, as demonstrated above, the forcible transfer/deportation also took place in the context of a broader systemic attack against the civilian population.[263]

258. Accordingly, the factual circumstances of the case disclose the elements allowing to classify the transfer of the victims as a war crime of "unlawful deportation and transfer", (Article 8(2)(a)(vii) of the Rome Statute) and as a crime against humanity of "deportation or forcible transfer of population" (Article 7(1)(d) of the Rome Statute).

ix. Lack of grounds for "excluding criminal responsibility" (question of potential justifications)

259. Articles 31-33 of the Statute set out several defences applicable to international crimes, such as insanity, intoxication, self-defence, duress and necessity, superior orders, mistakes of fact and law. Their list is not exhaustive, as Article 31(3) provides for that the Court may consider grounds for excluding criminal responsibility other than those referred to in Article 31(1), where such grounds are derived from applicable law of the Court as defined in Article 21 of the Statute (including, *inter alia*, "the established principles of the international law of armed conflict" – Article 21(1)(b)).

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[261] ECtHR, *Ukraine and the Netherlands v. Russia* [GC], nos. 8019/16 and 3 others, § 1162, 9 July 2025, available at: https://hudoc.echr.coe.int/?i=001-244292.
[262] Section II(C), (D), (F).
[263] Section III(H)(iii).

260. At this stage, it is not possible to address every defence that the prospective accused may theoretically advance. However, a number of principal potential justifications – referring to the existence of legal grounds and pressing need both for detention and forcible transfer – may negate the criminality of the conduct described in this submission (both forcible transfer/deportation and the unlawful confinement). Submitting organisations believe that the above considerations essentially address them, through demonstrating the lack of grounds and reasons for detention of the victims, as well as the absence of legitimate grounds for the transfer of population and the manner of transfer incompatible with legitimate evacuation.

F. Responsible persons

261. As submitted above, the FSIN personnel, including convoy formations, transport, special operations unit, as well as the staff and administrations of correctional institutions and remand prisons were directly involved in the transfer and confinement of the Ukrainian prisoners.

262. It is the understanding of the submitting organisations, based on Article 81 § 2 of the Code on the Execution of Criminal Sentences of Russia and the Procedure for sending prisoners sentenced to deprivation of liberty to serve their sentences in correctional institutions and transferring them from one correctional institution to another" adopted by the Order of the Ministry of Justice of Russia of 26 January 2018 No. 17,[264] that the decision on the transfer / deportation of prisoners from Kherson could have been taken only by the Central Office of the FSIN, as the only authority, which decides in accordance with the Code and the Procedure, on the transfer of convicted prisoners from penitentiary facilities located in one region of Russia to penitentiary facilities located in another region (see, for instance paras. 4, 4(1), 6, 9, 13, 21 of the Procedure).

263. Further, Regulations of the FSIN[265] provides for that the Director of the FSIN "organises the work of [the service] and bears personal responsibility for the exercise of the functions assigned to the FSIN …, as well as for the implementation of the state policy in the [penitentiary] sphere…, organisation and implementation" (para. 11). Deputy directors of FSIN, organise and co-ordinate the exercise of the FSIN functions, in accordance with the distribution of duties among them, sign orders and other acts, control and coordinate the work the FSIN Departments, territorial bodies, and facilities, when needed (paras. 12-15). Heads of "structural units" (departments or services) of the FSIN directly manage the relevant units and are personally

[264] Procedure for sending prisoners sentenced to deprivation of liberty to serve their sentences in correctional institutions and transferring them from one correctional institution to another adopted by the Order of the Ministry of Justice of Russia of 26 January 2018 No. 17, available at: https://base.garant.ru/71874860/.
[265] Order of the FSIN of 14 August 2020, No. 555, available at: https://base.garant.ru/74716448/53f89421bbdaf741eb2d1ecc4ddb4c33/.

responsible for the realisations of unit's functions and prerogatives, as well as for the discipline with the unit (para. 17).

264. The Disciplinary Guidelines of the FSIN (*Дисциплинарный Устав*),[266] set forth the principles of internal subordination, discipline, and the mandatory character of orders given by superiors, up to the Director of the FSIN (paras. 3-5). The Guidelines also specify, that the superiors with the FSIN system shall ensure the subordinates'' compliance with the law of the Russian Federation (para. 7). It also specifies disciplinary measures applied in the FSIN system and the procedure for their application (Section V of the Guidelines). The Federal Law "On the service in the penitentiary system of the Russian Federation"[267] in its Section 4, provides that subordination is the paramount principle of the FSIN system. FSIN personnel also have ranks identical to the military ranks (Section 8 of the Federal Law).

265. Regulation on the FSIN (Decree of the President of Russia of 13 October 2004, no. 1314),[268] provides (para. 1 *in fine*) that the Service is subordinate to the Ministry of Justice. Pursuant to the Regulation on the Ministry of Justice,[269] the Ministry coordinates and controls the activity of its subordinate services, including the FSIN (para. 4). The Ministry is a federal executive body authorised to act, in particular, in the area of activities of penal system of Russia (para. 19(7)). The Minister, among other powers, "gives binding directions and instructions to … the head of [the] FSIN of Russia, as well as organises control over the execution of such instructions and directions (para. 27(2)); approves decisions of the director of the FSIN on establishment, reorganisation and dissolution of the FSIN territorial bodies (para. 27(18)), as well as the regulations on these bodies (para. 28(3)) and the decisions on the appointment of the regional heads of the FSIN (para. 27(20)); suspends or quashes unlawful decisions of the FSIN (para. 27(19)); approves annual work plans and reports of the FSIN, as well as its efficiency indicators (para. 28(1)); the Minister decides on the creation, reorganisation, and liquidation of remand prisons, their designed capacity, the change of regime and type of the penitentiary facilities, their liquidation (para. 29(3)-(5)); the Minister submits for the Presidential approval the structure of the FSIN and the candidature for the position of its director (para. 30(2) and (3)), as well as draft regulations on the FSIN (para. 31).

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[266] Order of the Ministry of Justice of 12 September 2019, No. 202 "On the approval of the disciplinary guidelines of the penitentiary system of Russia", available at: https://ivo.garant.ru/#%2Fdocument%2F72737656%2Fparagraph%2F1%3A0.
[267] Federal Law of 19 July 2018, No. 197-FZ, available at: https://ivo.garant.ru/#%2Fdocument%2F71992738%2Fparagraph%2F27%3A0.
[268] Decree of the President of Russia of 13 October 2004, no. 1314, available at: https://base.garant.ru/12137239/.
[269] Decree of the President of the Russian Federation of 13 January 2023, no. 10, available at: https://www.consultant.ru/cons/cgi/online.cgi?req=doc&base=LAW&n=459092&dst=100013#APG30nUqS90qSAJy1.

266. Taken cumulatively, these provisions allow to reasonably conclude that such massive, instantaneous, "cross-regional" transfer of prisoners (involving both the territories of Ukraine occupied and annexed by Russia as separate "constitute entities" – "Kherson Region", the "Republic of Crimea", and the "City of Sevastopol", and the "mainland" Russian territories), could not be carried out without direct, explicit, and unambiguous order from the Central Office of the FSIN, supervised, directed and approved by the Minister of Justice. In view of their functions and powers described above, and by virtue of Article 25(3)(b) of the Statute, it makes, at the top level:

- the Minister of Justice of the Russian Federation – Konstantin Anatolyevich CHUYCHENKO (*Константин Анатольевич ЧУЙЧЕНКО*),[270]
- the Director of the FSIN – Arkadiy Aleksandrovich GOSTEV (*Аркадий Александрович ГОСТЕВ*),[271]
- the first Deputy Director – Valery Gennadyevich BOYARINEV (*Валерий Геннадьевич БОЯРИНЕВ*),[272] who oversees the Directorate of the Execution of Sentences,
- the Head of the Convoy Service – Sergey Yuryevich YELISEEV (*Сергей Юрьевич ЕЛИСЕЕВ*),[273] who controls the Convoy service of the FSIN,[274]

responsible for ordering the commission of crimes described in this communication, namely war crime of unlawful confinement (article 8(2)(a)(vii) of the Statute) and/or crime against humanity of imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law (article 7(1)(e) of the Statute), as well as war crime of forcible transfer and deportation (article 8(2)(a)(vii) of the Statute) and/or crime against humanity of deportation of population may amount to a crime against humanity article 7(1)(d) of the Statute).

267. The submitting organisations further note that, according to the concordant testimonies of deported prisoners, and the findings of the Ukrainian investigation,[275] the deportation and unlawful confinement of prisoners was implemented and executed by the Crimean Department

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[270] DOB: 12 July 1965, nationality: Russian Federation, rank: 1st class Active State Councillor of the Russian Federation – civilian service rank, information available at: https://tass.ru/info/20794753.
[271] DOB: 1961, nationality: Russian Federation, rank: General of the internal service of the Russian Federation, information available at: https://fsin.gov.ru/fsin/leaders/director/ / https://web.archive.org/web/20240614001152/https://fsin.gov.ru/fsin/leaders/director/.
[272] DOB: 2 September 1970, nationality: Russian Federation, rank: General colonel of the internal service of the Russian Federation, information available at: https://fsin.gov.ru/fsin/leaders/deputy_director/.
[273] Rank: General-colonel, no other data available, photos can be retrieved at: https://gorod-kamyshlov.ru/news/media/2018/6/8/novyij-nachalnik-gufsin-i-ofitseryi-fsin-posetili-sizo-v-kamyishlove/.
[274] FSIN, Structure, available at: https://fsin.gov.ru/fsin/structure/ / https://web.archive.org/web/20240322133244/https://fsin.gov.ru/fsin/structure/.
[275] Section II(C), (D) and (E).

of the Russian Service for the Execution of Sentences (the FSIN), the former Ukrainian prisoner officers, and the FSIN special operations unit "Akula" (Shark), with the involvement of a representative of the Russian Federal Security Service – the FSB, making them involved in and directly responsible for the crimes under the Statute alleged in the present submission.

268. In addition, the submitting organisations believe that in view of the substantive role which Federal Law of 31 July 2023 No. 395-FZ, "On the application of the provisions of the Criminal Code of the Russian Federation and the Code of Criminal Procedure of the Russian Federation in the territories of the Donetsk People's Republic, the Luhansk People's Republic, the Zaporizhzhia Region and the Kherson Region", played in the process of internal legitimation of the prisoners detention and transfer,[276] its initiators:[277]

- Russian State Duma Member – Pavel Vladimirovich KRASHENINNIKOV (*Павел Владимирович КРАШЕНИННИКОВ*),[278]
- Russian State Duma Member – Irina Aleksandrovna PANKINA (*Ирина Александровна ПАНЬКИНА*),[279]
- Senator of the Federation Council – Andrey Aleksandrovich KLISHAS (*Андрей Александрович КЛИШАС*)[280]

bear responsibility through inducing, and/or aiding, abetting or otherwise assisting in the commission of crimes described above. Federal Law No. 395-FZ constituted a legal instrument of crime, aimed at, and most likely designed for creating a semblance of lawfulness of detention of persons captured in and transferred from the occupied territory of Ukraine.

269. If the Prosecutor or the Court would find no sufficient elements for the direct responsibility of the above persons, the submitting organisations argue that, in view of the subordination and internal discipline with the FSIN, and taking into account the functions of these officials and their positions which they held with the FSIN system, they bear responsibility as civilian superiors for the crimes described in this communication, by virtue of Article 28(b) of the Statute.

270. Article 28(b) of the Rome Statute formulates the grounds for the civilian superiors' responsibility for the crimes of their subordinates, introducing the standard of culpability similar

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[276] Section II(J).
[277] SOZD, Draft law No. 246425-8, available at: https://sozd.duma.gov.ru/bill/246425-8.
[278] DOB: 21 June 1964, nationality: Russian Federation, information available at: http://duma.gov.ru/duma/persons/99100761/.
[279] DOB: 8 March 1986, nationality: Russian Federation, information available at: http://duma.gov.ru/duma/persons/1056045/.
[280] DOB: 9 November 1972, nationality: Russian Federation, information available at: http://council.gov.ru/structure/persons/295/.

to the so-called "wilful blindness" formulated by the *ad hoc* tribunals, or to the standard of recklessness.[281] Pursuant to Article 28(b) of the Statute, civilian superiors are criminally responsible for "crimes within the jurisdiction of the Court committed by subordinates under his or her effective authority and control, as a result of his or her failure to exercise control properly over such subordinates".

271. Effective authority and control is "a manifestation of a superior-subordinate relationship between the suspect and the forces or subordinates in a *de jure* or *de facto* hierarchal relationship (chain of command). It is "the material ability [or power] to prevent and punish" the commission of offences, and, as such, failure to exercise such abilities of control gives rise to criminal responsibility if other requirements are met. "Effective control" refers to the material ability to prevent or repress the commission of the crimes or submit the matter to the competent authorities. There are several factors which may indicate the existence of a superior's position of authority and effective control (in the context applicable to non-military commanders): (i) the official position of the suspect; (ii) his power to issue or give orders; (iii) the capacity to ensure compliance with the orders issued (i.e., ensure that they would be executed); …; (vi) the capacity to re-subordinate units or make changes to command structure; (vii) the power to promote, replace, remove or discipline any member of the forces. Effective control must exist at the time of the commission of the crime.[282]

272. Article 28(b), similarly to 28(a) presupposes that the crimes committed resulted from the suspect's failure to exercise control properly over his subordinates (and that these crimes fell under the jurisdiction of the Court). As noted by the Pre-Trial Chamber II in *Bemba*, a failure to "exercise control properly" is a scenario of non-compliance with superiors' duties to prevent, repress or submit the matter to the competent authorities. As to the causality between the superiors' failure and the commission of the respective crimes by subordinates, the Chamber noted that "there is no direct causal link that needs to be established between the superior's omission and the crime committed by his subordinates. Therefore, … it is only necessary to prove that the commander's omission increased the risk of the commission of the crimes charged in order to hold him criminally responsible …[283]

273. Article 28(b) then sets forth three additional criteria establishing a stringent standard for the responsibility of the civilian superiors: (i) the superior either knew or consciously disregarded information which clearly indicated, that the subordinates were committing or about to commit such crimes, (ii) the crimes concerned activities within the effective responsibility and control

[281] Chantal Meloni, Command Responsibility in International Criminal Law, TMC Asser Press, 2010, p. 186.
[282] Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo, Pre-Trial Chamber II, 15 June 2009, ICC-01/05-01/08-424, paras. 412-419.
[283] Ibid., paras. 420-425.

of superior; (iii) the superior failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.

274. Having regard to the positions and the functions which they held with the FSIN system, as well as taking into account the internal subordination and discipline, it can be reasonably concluded, that the persons indicated above, exercised effective control over their subordinates at different levels, ultimately fully controlling all prison transport operations and the functioning of the penitentiary facilities. In view of their key positions, the persons concerned could not but know about the mass, coordinated and swift transfer of prisoners from the occupied territories of Ukraine to Crimea and then to Russia and their illegal confinement under the control of the Russian authorities. These actions (transfer and detention of prisoners) were clearly within the effective responsibility of the superior. The persons concerned, to the best of the submitting organisations' knowledge, took no measures to prevent, repress, or submit the matter to the competent authorities, despite being capable and obliged to do so.

275. Accordingly, the persons indicated above are alternatively (to their direct responsibility for respective orders to commit the crimes under the jurisdiction of the Court) responsible as civilian superiors for crimes committed by their subordinates, by virtue of Article 28(b).

IV. Request

276. The submitting organisations submit that based on the above evidence and arguments, there is a reasonable basis to believe that the following crimes under the Rome Statute of the International Criminal Court took place from February 2022 onwards, in the prisons of the Kherson and Mykolaiv oblasts, the Crimea, and in the correctional facilities of Russia, controlled by the Russian Federation, as well as during the transfer of prison population between these facilities, also under the control of the Russian Federation:

- War crime of unlawful confinement (Rome Statute, article 8(2)(a)(vii)) and/or crime against humanity of imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law (Rome Statute article 7(1)(e)),
- War crime of forcible transfer and deportation (Rome Statute, article 8(2)(a)(vii)) and/or crime against humanity of deportation of population may amount to a crime against humanity (Rome Statute, article 7(1)(d)).

277. The submitting organisations submit that that alleged conduct falls under the temporal and territorial jurisdiction of the Court, and that it attains the threshold of gravity required under article 17(1)(d) of the Statute. The submitting organisations further submit that while the Ukrainian authorities might be willing to investigate and prosecute persons, including Russian

Federation officials, for crimes described in this communication, they are unable to do so, in view of the lacunae in the domestic criminal law, the limited scope of the domestic investigation, and the lack of access to most of the victims, witnesses, and evidence of the crimes (article 17(1)(a) of the Statute). Finally, there are no reasons to believe that the investigation into the conduct would not serve the interests of justice (article 53(1) of the Rome Statute).

278. In view of the foregoing, and noting that the situation in Ukraine is already subject to an open investigation by the Office of the Prosecutor following the referrals by States Parties in March 2022, the submitting organisations, respectfully request the Prosecutor to direct investigative resources and attention to the specific conduct described in this communication within the framework of the existing Ukraine investigation and, in particular, to investigate the individual criminal responsibility of Konstantin Anatolyevich CHUYCHENKO, Arkadiy Aleksandrovich GOSTEV, Valery Gennadyevich BOYARINEV, Sergey Yuryevich YELISEEV, Pavel Vladimirovich KRASHENINNIKOV, Irina Aleksandrovna PANKINA, and Andrey Aleksandrovich KLISHAS, and other involved officials, for the crimes set out above, with a view to seeking arrest warrants for those individuals at the appropriate stage of the investigation.