

Memorandum on the human rights consequences of the war in Ukraine

Summary

The present memorandum draws on the fact-finding and human rights monitoring work carried out by Commissioner Dunja Mijatović in response to the Russian Federation's armed attack against Ukraine, in particular her visit to Ukraine from 2 to 7 May 2022. In the course of the visit, the Commissioner held discussions with central and local government authorities, human rights defenders, representatives of civil society and international organisations. She also conducted interviews with victims and witnesses of serious human rights violations and their relatives and travelled to several localities in the Kyiv region which had previously been under the control of the Russian troops or witnessed heavy fighting.

The Russian Federation's armed attack on Ukraine has resulted in **serious and massive violations of human rights and international humanitarian law**, with disastrous effects on the enjoyment of virtually all human rights by people in Ukraine. In particular, the Commissioner has been confronted with **compelling evidence of patterns of violations** of the right to life, including arbitrary killings and enforced disappearances, as well as violations of the right to property, including massive destruction of civilian infrastructure; violations of the prohibition of torture and ill-treatment, in particular gender-based violence and war-related sexual violence; and violations of the right to liberty and security, including abductions and arbitrary or *incommunicado* detention. Identifiable patterns of certain types of violations of international humanitarian law, including attacks of a widespread or systematic character, point to the possible qualification of many such violations as war crimes or crimes against humanity.

Thousands of people have been **killed or injured** in Ukraine since February 2022. While most such violations were reportedly caused by the use of wide-impact explosive weapons, cluster munitions or unguided rockets in densely populated areas, Russian troops reportedly also engaged in extrajudicial killings by targeting or firing randomly on civilians. Some of the victims were allegedly **tortured or ill-treated** prior to being executed. In many areas, **civilian infrastructure**, including hospitals and schools, was destroyed or heavily damaged by Russian forces. The shelling cut off the supplies of electricity, gas, food, water and other basic necessities, trapping many civilians in desperate conditions. Many areas that are mined or littered with unexploded ordnance remain unsafe for the return of inhabitants.

Hundreds of cases of **enforced disappearance, abductions, *incommunicado* detention, or missing persons** have been reported amongst human rights defenders, local officials, journalists, volunteers, civil society activists, veterans, or ordinary civilians, in areas of Ukraine under the control of Russian or Russian-controlled troops. There have also been some reported cases of possible enforced disappearances or abductions in the territory controlled by the Ukrainian government. The Commissioner further received information about the widespread practice of forcible transfer of Ukrainian citizens to non-government-controlled areas of Ukraine or to the territory of the Russian Federation, through the so-called '**filtration**' process. This practice, which appears to carry many characteristics of the international crime of **forcible transfer of population**, should be promptly investigated. All humanitarian evacuations should be

voluntary, safe, and informed. Members of the international community should support any efforts which may facilitate the return of all Ukrainian citizens who have been transferred in this way against their will.

The Commissioner has received numerous reports of **war-related sexual violence** allegedly committed by Russian troops. While all such allegations should be investigated without delay, the priority should be to create safe conditions for survivors, ensure their effective access to redress, and prioritise respect for their dignity and well-being. Council of Europe member states should remove any barriers that survivors of war-related sexual violence from Ukraine may face in accessing sexual and reproductive health care services. Ukraine's recent ratification of the Istanbul Convention provides an additional tool for the protection of victims of war-related sexual violence.

The situation of several categories of vulnerable persons requires special and urgent attention. The war and the ensuing destruction and insecurity has resulted in the violation of the right to life of hundreds of **children**, as well as their ability to enjoy basic rights, including healthcare and education. It has also had a particularly disproportionate impact on Ukraine's **older persons**, especially women. Many of them have been unable or unwilling to evacuate to safety, and some reportedly lost their lives due to the spill over effects of the war, including the inability to access adequate medical care. Many **persons with disabilities**, including children, have allegedly been separated from support networks or left without proper care due to the war. Moreover, the war has resulted in the massive **internal and external displacement** of millions of people, putting many of them at a heightened risk of human trafficking, exploitation, and abuse. The international community should continue to support them and the countries and communities hosting them in the long-term, paying special attention to the needs of vulnerable groups. Multiple attacks on **journalists and media workers** covering the war in Ukraine have also been reported, with some evidence suggesting that some of those killed or injured may have been deliberately targeted by Russian forces.

The Commissioner has repeatedly stressed the importance of **accountability**. Whilst fully recognising the Russian Federation's responsibility for the armed attack which has caused immense human suffering and destruction in Ukraine, the Commissioner emphasises that both the Russian Federation and Ukraine are bound by international human rights and humanitarian law and their national criminal justice systems are primarily responsible for investigating and prosecuting the perpetrators of grave breaches of international humanitarian law and gross violations of human rights. The Commissioner welcomes the actions taken by the Ukrainian authorities toward collecting evidence and advancing accountability for the atrocities which have been committed in Ukraine since February 2022, and encourages them to move forward with the ongoing process of aligning the country's relevant legal framework with the relevant international standards. The involvement of regional and international mechanisms, including the International Criminal Court and investigations by other states using the principle of universal jurisdiction, is an important additional component of ensuring accountability. Furthermore, although the Russian Federation is no longer a member of the Council of Europe, the Commissioner emphasises that the country continues to be bound by the European Convention on Human Rights until **16 September 2022**.

Given the difficulties of operating in the context of an active armed conflict, the Commissioner welcomes the support and advice that many states, international organisations and institutions have provided to the Ukrainian authorities in the field of investigation of grave international crimes, in particular in the area of **securing evidence**. She emphasises the importance of **effective coordination in the field of justice** among national and international actors and the need to prioritise the interests of **victims** and their families. The Commissioner pays special tribute to the courage and commitment of Ukraine's **human rights defenders** documenting and addressing violations of human rights and international humanitarian law, and calls on the international community to continue supporting their work.

The Commissioner stresses that only the **fair and impartial application of justice** will serve the interests of victims and strengthen respect for human rights and international humanitarian law. It is of crucial importance that both the Russian Federation and Ukraine investigate and prosecute the perpetrators of grave breaches of international humanitarian law and gross human rights

violations, regardless of their identity or affiliation and in line with the international standards. Delivering justice for the victims of the war in Ukraine will require **steadfast and long-term commitment** of the actors involved. The Commissioner urges ongoing cooperation and support for the work of the International Criminal Court and, in the Council of Europe context, the continued provision of long-term support to the Ukrainian justice system.

Introduction

1. On 24 February 2022, Russian Federation troops invaded Ukraine, a fellow member state of the Council of Europe, thereby escalating the pre-existing armed conflict, ongoing since 2014. From day one, this renewed attack has resulted in terrible loss of human life and dire human suffering, exposing millions of people in Ukraine and beyond to violence, displacement, and serious violations of human rights and international humanitarian law (IHL). It has also rapidly led to the suspension and, eventually, on 16 March 2022, [exclusion](#) of the Russian Federation from the Council of Europe.
2. From the first days of the invasion, the Council of Europe Commissioner for Human Rights, Dunja Mijatović (the Commissioner), has been actively engaged in response to its consequences for human rights. From 6 to 8 March 2022, she carried out an emergency [mission](#) to the Republic of Moldova to urge for more support to assist people fleeing the war in Ukraine and the countries of arrival. This was then followed by a series of parallel [missions](#) that the Commissioner and her Office carried out in March 2022 to several countries receiving people fleeing Ukraine (the Czech Republic, Hungary, Poland, Romania and the Slovak Republic). From 2 to 7 May 2022, the Commissioner carried out a [visit](#) to Ukraine.
3. The Commissioner's engagement further included meetings with Ukraine's human rights defenders and civil society, members of Ukraine's Parliament, the Parliamentary Commissioner for Human Rights (an ombudsman), Ukraine's Prosecutor General, the Office of the Prosecutor of the International Criminal Court (ICC), and international governmental and non-governmental organisations. The Commissioner further published several [statements](#) on specific human rights issues and the situation of particularly vulnerable persons.
4. During her visit to Ukraine, the Commissioner met with the First Deputy Minister for Foreign Affairs, Emine Dzhaparova, the Minister of Justice, Denys Maliuska, the Deputy Head of the Office of the President of Ukraine, Ihor Zhovkva, the Prosecutor General of Ukraine, Iryna Venediktova, the then Parliamentary Commissioner for Human Rights, Lyudmyla Denisova, the Government's Commissioner for Gender Equality Policy, Kateryna Levchenko, and the mayor of Kyiv, Vitali Klitschko. She also met with the Chairman of the Crimean Tatar Mejlis, Refat Chubarov, multiple human rights defenders and representatives of civil society, international organisations, non-governmental organisations, and conducted interviews with victims and witnesses of serious human rights violations and their relatives. During the visit, the Commissioner also visited Bucha, Borodyanka and Irpin, in the Kyiv region, which have been particularly affected by hostilities, and met with local mayors and municipal officials from these localities. The Commissioner is grateful to all the interlocutors she met during her visit and wishes to particularly thank the UN Human Rights Monitoring Mission in Ukraine ([HRMMU](#)) for its important work and assistance provided to her Office.
5. The Commissioner's visit took place during an active military conflict. The resultant security situation was additionally complicated by various logistical challenges, including the closure of airspace over Ukraine to civilian air traffic and the acute shortage of fuel. In this light, the commitment shown by Ukrainian authorities to organise and facilitate her visit deserves the highest recognition. The Commissioner is deeply grateful to the Ukrainian officials in Strasbourg and in Kyiv for providing her and her delegation with exceptionally comprehensive security protection and logistical arrangements throughout the duration of the visit and thus enabling the Commissioner to actively perform human rights monitoring in full compliance with her mandate.
6. The present memorandum aims to address some of the humanitarian and human rights consequences of the war and to highlight issues which, in the Commissioner's view, require urgent

attention.¹ It first outlines some of the patterns of violations of human rights and international humanitarian law identified by the Commissioner in her fact-finding and monitoring work, in particular her visit to areas of the Kyiv region which have been amongst those most affected by the war (Section I). Section II of the memorandum then focuses on some particularly vulnerable categories of persons. In Section III, the Commissioner addresses certain issues related to accountability for gross human rights violations and international crimes, in particular the available mechanisms and key benchmarks for a successful response in the face of multiple difficulties.

I. Patterns of violations of human rights and international humanitarian law

7. The Russian Federation's invasion of Ukraine has resulted in serious and massive violations of human rights and international humanitarian law, with disastrous effects on the enjoyment of virtually all human rights by the local population (see also paragraph 37 below). On the basis of the information received from various reliable sources and her own observations, the Commissioner has, in particular, been confronted with compelling evidence of patterns of violations of the right to life, including arbitrary killings and enforced disappearances, as well as violations of the right to property, including massive destruction of civilian infrastructure; violations of the prohibition of torture and ill-treatment, in particular gender-based violence and war-related sexual violence; and violations of the right to liberty and security, including abductions and arbitrary or incommunicado detention. Identifiable patterns of certain types of violations of international humanitarian law, including attacks of a widespread or systematic character, coupled with apparent lack of precautionary measures, point to the possible qualification of many such violations as war crimes or crimes against humanity.

a. Violations of the right to life, freedom from torture and ill-treatment, and destruction of civilian infrastructure

8. Providing an exact count of the number of people killed and injured in the course of a raging war is impossible. However, estimated figures have been made available by the Office of the UN High Commissioner for Human Rights (OHCHR), based on information collected by the HRMMU, present in Ukraine since 2014. According to the HRMMU, between 24 February and 3 July 2022, 4,889 people were killed and 6,263 more were injured in Ukraine.² The actual casualty figures are reportedly considerably higher than those documented, which are regularly revised. Most of the deaths and injuries recorded by the HRMMU were reportedly caused by the use of explosive weapons with a wide impact area, including shelling from heavy artillery, multiple launch rocket systems (MLRS), missiles and airstrikes.
9. The brutal [siege](#) laid by Russian forces to Ukraine's south-eastern city of Mariupol has become perhaps the most vivid symbol of a modern-time humanitarian catastrophe and a particularly haunting illustration of Russian forces' apparent disdain for human life, civilian infrastructure, and the most basic rules of armed conflict, including the principles of distinction, proportionality and precaution. Much of the city has been literally razed to the ground in intense attacks allegedly using explosive weapons, such as unguided ballistic rockets, on densely populated urban areas. The shelling of such areas reportedly resulted in the loss of life of thousands of the city's inhabitants and reduced its infrastructure to rubble, including schools, hospitals, and a theatre sheltering several hundred civilians, many of which were children.³ The city's authorities have estimated the civilian death toll to be at least 20,000 to 22,000.⁴ According to Ukrainian authorities, on many occasions, the Russian forces refused to allow the desperately needed life-saving humanitarian and medical aid to reach civilians trapped in Mariupol or to agree to humanitarian corridors to allow those who wish to safely leave the city to areas controlled by the government of Ukraine.

¹ This memorandum was finalised on 4 July 2022.

² Ukraine: civilian casualty [update](#) by the Office of the UN High Commissioner for Human Rights, 4 July 2022.

³ "[Report](#) on Violations of International Humanitarian and Human Rights Law, War Crimes and Crimes Against Humanity Committed in Ukraine since 24 February 2022", OSCE Moscow Mechanism's mission of experts, Organization for Security and Co-operation in Europe, 13 April 2022, pp. 46-8. See also, "AP evidence points to 600 dead in Mariupol theater airstrike", [press article](#), Associated Press, 4 May 2022.

⁴ "Mariupol Civilian Death Count Could Surpass 20,000, Mayor Says", [press article](#), Newsweek, 12 April 2022.

10. Many Ukrainian cities and villages have suffered a similar fate. Hundreds of civilians have reportedly been killed and injured in residential areas of Kharkiv, Ukraine's second-biggest city, targeted since the very beginning of the war by intense and reportedly indiscriminate shelling by Russian troops, allegedly using cluster munitions⁵ and unguided rockets,⁶ often reportedly countered by strikes launched by the Ukrainian forces from within the city's residential neighbourhoods.⁷ Many other cities, like Chernihiv or Sumy, or those located near the frontlines at the time of writing, including Sieverodonetsk or Izium⁸, endured intense and reportedly indiscriminate bombardments that have become a steady feature of the war, lasting many days, weeks or even months in some cases. The Russian Federation reportedly fired unguided rockets carrying cluster sub-munitions at urban areas such as the railway station in [Kramatorsk](#), where dozens of evacuees were killed and hundreds more were injured on 8 April 2022. It also struck other civilian objects, such as the busy shopping mall in the city of [Kremenchuk](#), hit by a missile on 27 June 2022, or a residential building and a holiday resort in [Serhiyivka](#), in Odesa region, hit on 1 July 2022 by missiles which killed at least 21 people and injured another 38, including several children. In many places, bombing cut off the supplies of electricity, gas, food and water as well as access to basic necessities, forcing inhabitants to struggle for survival on scant supplies. Threats of airstrikes and missile attacks trapped many of those who have been unable or unwilling to flee in desperate conditions in cold basements, stairwells, underground shelters, and metro stations. Hospital workers struggled to provide care, reportedly forced by frequent shelling to relocate their patients, including intensive care patients, pregnant women, and children, to bomb shelters or basements. Out of necessity and unable to relocate, some hospitals have been turned into humanitarian hubs.⁹
11. The field visit to certain areas located northwest of Kyiv, which had previously been under the control of the Russian troops or witnessed heavy fighting, provided the Commissioner with an opportunity to observe first-hand the traces of some such egregious violations of human rights and international humanitarian law. Despite the clean-up of some of the debris and the initial demining, the immense human suffering and material damage caused to the affected localities by the shelling and the intense hostilities, and the horrific acts suffered by their inhabitants were painfully evident.
12. According to the Ukrainian authorities, at least 1,200 bodies were recovered in areas of the Kyiv region previously under the control of Russian troops; the HRMMU has been working on documenting at least 300 such cases.¹⁰ In Bucha, a small city located northwest of Kyiv with a pre-war population of 36,000, 278 bodies, civilians in the vast majority, were found following the departure of the Russian troops, according to initial reports.¹¹ This number rose to 416 by the time of the Commissioner's visit, according to the municipal officials she spoke with. An Amnesty International investigation documented 22 cases, of which the majority were reportedly extrajudicial executions, in Bucha and nearby localities.¹² In addition to ordinary inhabitants, local officials were often targeted. The mayor of Motyzhyn village in the Bucha region, Olha Sukhenko, was killed along with members of her family, while mayor of the nearby city of Hostomel, Yuri

⁵ [“Report on Violations of International Humanitarian and Human Rights Law, War Crimes and Crimes Against Humanity Committed in Ukraine since 24 February 2022”](#), OSCE Moscow Mechanism's mission of experts, Organization for Security and Co-operation in Europe, 13 April 2022, pp. 41-41; see also, “Intense and Lasting Harm. Cluster Munition Attacks in Ukraine”, [report](#), Human Rights Watch, 11 May 2022.

⁶ “‘Anyone can die at any time’: Indiscriminate attacks by Russian forces in Kharkiv, Ukraine”, [report](#), Amnesty International, 13 June 2022.

⁷ *Ibid.*

⁸ “Ukraine: Beleaguered town of Izium at breaking point after constant attack from Russian forces – new testimony”, [report](#), Amnesty International, 16 March 2022.

⁹ “Alone under siege: how older women are being left behind in Ukraine”, [press article](#), the Guardian, 16 May 2022.

¹⁰ Ukraine: [Update](#) to the Human Rights Council Special Session by UN High Commissioner for Human Rights, Michelle Bachelet, 12 May 2022. See also, “Situation of human rights in Ukraine in the context of the armed attack by the Russian Federation, 24 February - 15 May 2022”, [report](#), OHCHR, 29 June 2022, paragraph 79.

¹¹ “Ukraine: Russian Forces’ Trail of Death in Bucha. Preserving Evidence Critical for War Crimes Prosecutions”, [report](#), Human Rights Watch, 21 April 2022.

¹² “‘He’s Not Coming Back’: War Crimes in Northwest Areas of Kyiv Oblast”, [briefing](#), Amnesty International, 6 May 2022.

Prylypko, was reportedly shot by Russian troops while traveling in a civilian car together with two local volunteers.¹³

13. According to the local authorities in Bucha and other sources, including the HRMMU, Russian troops fired randomly at local people in the streets as well as at evacuees fleeing in cars. Some victims, like the father of a teenage boy with whom the Commissioner spoke (see below, in paragraph 19), were reportedly shot dead or fired upon while searching for food or basic necessities. In minute detail, the son of the victim described to the Commissioner how he witnessed a Russian soldier fire his rifle at his father at point-blank range, killing him instantly. The boy himself miraculously escaped death after being shot several times, including a missed shot to his head, and being left for dead, lying next to his father's body for several minutes before finally being able to escape. In some cases, Russian troops had allegedly targeted many civilian inhabitants for their real or apparent assistance to Ukraine's army or territorial defence forces, often upon searching their phones for content which they perceived as incriminating. Some of the victims were found with their hands tied and were reportedly tortured or ill-treated prior to being executed. Often, the Russian troops reportedly did not allow for the collection of the victims' bodies, which were left stranded in the streets for days and weeks in some cases. Relatives and friends of the victims were often only able to bury their dead in shallow, temporary graves. Images of some of the bodies were later shown in first international media reports following the Russian troops withdrawal.¹⁴
14. The fierce hostilities in Irpin, Kyiv's residential suburb visited by the Commissioner, caused at least 267 civilian deaths and damage to about a half of its infrastructure, according to the local authorities. Ninety-five percent of Irpin's hundred-thousand population have been evacuated. Fifteen high-rise apartment buildings were reportedly demolished by shelling by Russian troops who, as the Commissioner was told, also launched attacks on schools, a water pumping station, and a local stadium. Overall, the HRMMU verified that at least 482 multi-storey residential buildings and private houses were damaged or destroyed in Bucha, Irpin and Hostomel between February and March 2022.¹⁵ The Commissioner was informed that more than 2,000 private apartments and homes were destroyed or rendered uninhabitable. Prior to their departure, Russian troops also reportedly destroyed or looted some of the municipal equipment and vandalised school and hospital premises. The Commissioner observed the remains of the local cultural centre whose walls were damaged by projectiles and whose roof caved in due to shelling. She was also able to witness the heavy damage sustained by many residential tower blocks and houses in Irpin, with clearly visible impact holes, burned facades, and windowpanes shattered by the blast of explosions.
15. The Commissioner further observed the remains of several residential buildings in the city of Borodyanka, northwest of Kyiv, which the advancing Russian forces reportedly struck by using unguided rockets and heavy aerial bombs. The above-mentioned investigation by Amnesty International found that these clearly indiscriminate strikes killed at least over 40 people.¹⁶ In some cases, entire structures of homes were destroyed; others were left heavily damaged, often beyond any hope of repair. Some sections or walls of the affected buildings have collapsed, exposing their internal structure, while others bore giant impact holes. The facades of many buildings or their internal parts were charred by fire. Some of the nearby communal areas and children's playgrounds have also been damaged by debris and marked off as unsafe. Many of the affected residential buildings have been rendered entirely unusable and abandoned by their inhabitants.¹⁷

¹³ "Gunned down on a mercy mission: Witnesses say Russian troops killed Hostomel mayor and two volunteers", [press article](#), CNN, 6 June 2022; "Ukraine: Russian Forces Fired On Civilian Vehicles. Civilians Killed Trying to Flee, Approaching Checkpoints", [statement](#), Human Rights Watch, 2 May 2022.

¹⁴ "The bodies of Bucha: Images of dead civilians cause outrage worldwide", [press article](#), Reuters, 7 April 2022.

¹⁵ "Situation of human rights in Ukraine in the context of the armed attack by the Russian Federation, 24 February - 15 May 2022", [report](#), OHCHR, 29 June 2022, paragraph 53.

¹⁶ "He's Not Coming Back!: War Crimes in Northwest Areas of Kyiv Oblast", [briefing](#), Amnesty International, 6 May 2022.

¹⁷ Images of the destruction, taken by the Commissioner's team, can be viewed in the [photo gallery](#) below the press statement of her visit. See also Amnesty International's 360-degree [imagery](#) of the destruction in Borodyanka.

In addition, some extrajudicial killings also reportedly took place in Borodyanka, while heavy destruction and civilian loss of life also have also been reported in the nearby village of Andriivka.

16. Irpin, Bucha and Borodyanka have sadly become the epitomes of destruction and terror of the war. However, the Commissioner stresses that there are many other towns and villages in the wider Kyiv region – Hostomel, Brovary, Bohdanivka, Zalissya, Velyka Dymarka, Peremoha, Katyuzhanka, to name but a few – and elsewhere in Ukraine where, according to credible information received by the Commissioner, serious violations of human rights and international humanitarian law have also occurred. Although the Commissioner could not visit these places at this time, it is important that their inhabitants, too, are provided with access to the necessary assistance, redress, and justice.
17. The Commissioner considers that the ongoing reconstruction of the municipalities and areas scarred by the war, the rebuilding of infrastructure, and the gradual reopening of some public services, are all encouraging signs of resilience. However, she is mindful of the fact that, as stressed by many local authorities, many areas remain unsafe for the mass return of inhabitants. Many residential areas, as well as fields and wooded land, have reportedly been mined or have been littered with unexploded ordnance (UXOs), remains of cluster munitions, or other dangerous devices. Despite some areas having been marked off by warning signage, incidents in which civilians get injured by such remnants of war are said to occur on a daily basis. The Commissioner considers that all areas affected by warfare must now be carefully de-mined and that all remnants of war must be located, removed and destroyed. According to experts, however, demining areas around Kyiv and in other places may take years. It is therefore important that the population, including displaced persons, is clearly informed about the dangers, and international assistance and expertise provided for demining.
18. The Commissioner notes that the brutal acts attributable to the Russian Federation are the origin of the vast destruction and immense human suffering described above, and that they have also created serious barriers for Ukraine to fully and effectively respect, protect and fulfil the human rights of its inhabitants.¹⁸ Although, as of 16 March 2022, the Russian Federation is no longer a member of the Council of Europe, the Commissioner notes that it continues to be bound by the European Convention on Human Rights (see paragraph 65 below). Moreover, it remains a member of the international community and, as such, it is bound by numerous instruments and standards of international human rights law and IHL, which jointly apply in situations of armed conflict.¹⁹ The Commissioner emphasises, in particular, the general obligation of parties to an armed conflict to respect and ensure respect for international human rights law and IHL at all times, timely and effective investigations into all alleged violations, and the prosecution of alleged perpetrators. She further emphasises that parties to the conflict are responsible for the implementation of agreements on ceasefires, delivery of humanitarian assistance, and humanitarian evacuations, which should always be voluntary, informed and conducted in a safe manner.
19. The Commissioner’s findings about the devastating impact of the war on people’s lives were corroborated by the accounts of the victims of human rights violations that she met during the visit. Specifically, she listened to the stories shared by an elderly man from Hostomel, northwest of Kyiv, whose son was reportedly the victim of torture and summary execution; another elderly man, whose son, a volunteer involved in the delivery of humanitarian help and evacuations of the civilian population, was killed alongside several others by a shell fired by a Russian tank; and a teenage boy from Bucha whose unarmed civilian father was killed by a Russian soldier and who himself was shot several times, but survived (see above, in paragraph 13), and the boy’s mother. The Commissioner also heard the account of a municipal worker from Bucha about his detention by Russian troops. The victims described to her in detail the circumstances surrounding the violations suffered by their close ones as well as their own experience. They also clearly expressed the hope that justice for their loss would be served. The Commissioner is full of admiration for the victims’ courage and resilience in the face of the atrocities which they were

¹⁸ “[Report](#) on Violations of International Humanitarian and Human Rights Law, War Crimes and Crimes Against Humanity Committed in Ukraine since 24 February 2022”, OSCE Moscow Mechanism’s mission of experts, Organization for Security and Co-operation in Europe, 13 April 2022, p. 87.

¹⁹ *Ibid.*, p. 53.

made to endure. She is extremely grateful to them for coming forward and sharing their personal stories with her. Considering that the deep wounds inflicted by the war on victims of human rights violations will take a long time to heal, she stresses that not only their material needs but also the massive psychological damage suffered by most of them must be urgently and adequately addressed by experts and in a professional manner.

20. The Commissioner is concerned about repeated reports of ill-treatment of persons believed to be so-called marauders, thieves, and violators of curfew, among others, allegedly as a manifestation of 'popular justice' meted out by unknown persons in government-controlled areas of Ukraine, about which the Commissioner learned herself and which have moreover been reported by the HRMMU.²⁰ She believes that any such incidents, if confirmed, should be duly investigated and the alleged perpetrators made accountable.

b. Enforced disappearances and missing persons

21. The Commissioner is concerned about the high number of persons, including children, who have gone missing in areas controlled by Russian troops prior to their withdrawal from certain areas of Ukraine, as well as cases of people who continue to be held incommunicado by the Russian or Russian-controlled troops following their withdrawal from Ukrainian territory. Documentation efforts by the HRMMU have so far allowed to record at least 270 cases of enforced disappearance or arbitrary detention, the overwhelming majority of which are attributable to Russian and Russian-controlled troops. While some of the alleged victims have reportedly been released and eight were found dead with gunshots or signs of violent death,²¹ the majority of the other documented victims remain missing. As with the cases of extrajudicial killings, the actual number of enforced disappearances and abductions is likely to be considerably higher. The HRMMU has also documented 12 cases of possible enforced disappearances or abductions of people in the territory controlled by the Ukrainian government, of which seven people have reportedly later been released. The Ukrainian authorities, for their part, recorded almost 800 cases of different forms of violations of the right to liberty which may involve more than one victim, whilst Ukraine's police filed more than 9,000 missing person reports since the beginning of the war.²² Civil society organisations met by the Commissioner documented at least 459 cases of civilians arbitrarily detained by Russian troops since the beginning of the invasion, as well as at least 40 victims of enforced disappearances and at least 60 persons who had been abducted and detained in unknown locations but were later released.
22. In particular, the Commissioner was informed that many human rights defenders, local officials, journalists, volunteers, civil society activists, veterans, other persons active in the community, as well as their relatives or closed ones, were reportedly either disappeared or abducted and detained incommunicado by the Russian or Russian-controlled troops in areas of Ukraine under their control, especially in Kyiv and Kherson regions. In many places, as the Commissioner was told, such troops reportedly arrived already pre-equipped with lists of names of people to be rounded up, interrogated, or intimidated. The Commissioner received information from several credible sources that in Kherson, activists who had previously fled from Crimea and resettled in parts of Kherson region received intimidating visits from the Russian or Russian-controlled troops, and that some persons were arbitrarily detained in Kherson and later transferred to detention in Crimea. According to the mayor of Kyiv, 12 local government officials were abducted by Russian troops in the Kyiv region and temporarily replaced by ones appointed by Russian forces. Some of

²⁰ "Situation of human rights in Ukraine in the context of the armed attack by the Russian Federation, 24 February - 15 May 2022", [report](#), OHCHR, 29 June 2022, paragraph 94.

²¹ "[Presentation](#) on Ukraine (Human Rights Council res. 47/22) and interim report of the Secretary-General on the situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol, Ukraine (GA res. 76/179)", UN High Commissioner for Human Rights Michelle Bachelet, 5 July 2022. See also, "Situation of human rights in Ukraine in the context of the armed attack by the Russian Federation, 24 February - 15 May 2022", [report](#), OHCHR, 29 June 2022, paragraph 89.

²² "[Presentation](#) on Ukraine (Human Rights Council res. 47/22) and interim report of the Secretary-General on the situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol, Ukraine (GA res. 76/179)", UN High Commissioner for Human Rights Michelle Bachelet, 5 July 2022. See also, "Hundreds of civilians missing, taken or simply gone: The untold toll of the Ukraine war", [press article](#), Washington Post, 19 June 2022.

the victims were released after several days or weeks. Among those released, many reported having been interrogated, tortured or ill-treated, or forced to record self-incriminating videos while in detention. Furthermore, in specific areas of the Kyiv region, Russian troops reportedly detained civilians they considered suspicious, later taking them with them whilst withdrawing to Belarus and the Russian Federation in order to detain them in penitentiary facilities there,²³ presumably with the intention to use them as prisoners of war in possible future prisoner exchanges, a practice which is prohibited under international law. The Commissioner received reports that at least 200 Ukrainian civilians from the Kyiv region and 100 civilians from the Sumy region were detained by Russian forces in this manner. Some of these persons who were later returned to Ukraine alleged having been ill-treated or refused medical assistance while in detention in the Russian Federation. The Commissioner stresses that all persons who have been deprived of their liberty in an arbitrary manner should be immediately released, and all cases of enforced disappearance or arbitrary or incommunicado detention should be duly investigated and those responsible punished.

c. Transfer of population

23. During the visit, the Commissioner received information that a high number of Ukrainian citizens, including children, from areas under Russian control or territories affected by active hostilities, ended up in non-government-controlled areas of Ukraine or in the territory of the Russian Federation. Some of them have allegedly been captured and forcibly removed. Others were reportedly evacuees given little choice but to evacuate to those territories. Others still may have been misled or persuaded into going there by promises of help or humanitarian assistance.²⁴ Ukrainian authorities estimate the overall number of such persons to be over 1.2 million, a figure roughly equivalent to [UNHCR estimates](#) of approximately 1.18 million as of 13 June 2022. According to a Russian news agency, more than 1 million Ukrainian civilians, including more than 250,000 children, would have crossed into the territory of the Russian Federation since February 2022.²⁵
24. The Commissioner was informed that many Ukrainian men, as well as women under the age of 60, who found themselves in non-government-controlled areas of Ukraine or in the territory of the Russian Federation, are forced to undergo a so-called 'filtration' process in which they are reportedly subjected to intense questioning, cell-phone and body searches, photographed and fingerprinted. Some have reportedly been forced to sign incriminating documents or testimonies. As a result, some persons have reportedly been detained and their fate remains unknown, raising serious concerns of possible enforced disappearance or incommunicado detention. In some cases, families have been separated, and some persons were reportedly prevented from onward travel unless they agreed to being resettled in the Russian Federation.
25. According to information received by the Commissioner, after ending up in the territory of the Russian Federation, Ukrainian nationals have reportedly been taken to various locations across the country and often accommodated in temporary reception centres, sanatoria, or dormitories. The destinations, according to the information received by the Commissioner, include various areas of the Russian Federation, for example, the Nizhegorodskiy, Rostov, Kursk, Samara regions, or areas located as far as the Russian Federation's easternmost Primorskiy Kray region. Some of them are reportedly able to access some basic humanitarian assistance and, in some cases, basic medical care and a one-time social benefit of approximately 10,000 roubles (approximately 130-145 euros), although the Commissioner understands that this may often be linked to declaring an intention to resettle in the Russian Federation.
26. For most Ukrainians who landed in the Russian Federation, leaving its territory is fraught with many, often insurmountable, obstacles. The legal status obtained by some of them, or declarations they may have signed, may, unbeknownst to them, prevent them from leaving the Russian Federation or the region in which they reside. Many Ukrainians face additional, practical issues, such as the lack of valid travel documents or local money or being stranded in very remote

²³ "Ukraine: Bachelet urges protection of civilians, renewed efforts to agree on a ceasefire", [briefing](#) by the UN High Commissioner for Human Rights to the United Nations Security Council, 5 May 2022.

²⁴ "Surviving Russia's 'Filtration Camps'", [video report](#), the New York Times, 20 June 2022.

²⁵ "Ukraine probes deportation of children to Russia as possible genocide", [press article](#), Reuters, 3 June 2022.

locations. Many of those who had fled areas of active hostilities are in poor physical and mental health and in urgent need of psychological assistance.

27. Despite these difficulties, some Ukrainian nationals have been able to return to Ukraine via third countries, notably Estonia or Georgia. By 10 May 2022, 19,000 Ukrainians entered Estonia from Russia according to official figures of the Estonian police and border guard. The Commissioner was informed that networks of volunteers, outside and within the Russian Federation, help Ukrainians with leaving the Russian Federation by providing them with basic necessities such as money and emergency accommodation, as well as transportation and legal and practical advice. The Commissioner understands that, within the Russian Federation, persons involved in this praiseworthy work may face considerable personal risks and that some of them have faced harassment by the Russian authorities.²⁶
28. The Commissioner reiterates that all humanitarian evacuations should be voluntary, safe and informed, which entails the evacuees' prior knowledge and agreement on the destination of the evacuation. She observes that the reported circumstances of the evacuation or transfer of many Ukrainian citizens to Russian-controlled territory or the territory of the Russian Federation, in particular the coercive environment in which it appears to occur and the use of deliberate strategies to lead many Ukrainian people to move there, may carry many characteristics of the international crime of forcible transfer of population.²⁷ The Commissioner calls for the prompt investigation of this widespread practice which may have a deep and potentially irreparable impact on the lives of hundreds of thousands of Ukrainian people. She further calls on members of the international community to support any measures and initiatives which may facilitate the speedy return to Ukraine of all Ukrainian citizens who have ended up in Russian-controlled territory or the territory of the Russian Federation against their will.

d. War-related sexual violence

29. The Commissioner has received from many sources numerous reports of war-related sexual violence,²⁸ including rape, gang rape, threats of sexual violence, or coercion to watch an act of sexual violence committed against a partner or a child, allegedly committed by Russian troop members at various locations under their control in Ukraine. She notes that, as of 3 June, the HRMMU received reports of 124 alleged acts of war-related sexual violence across Ukraine, 97 of which allegedly involved women and girls, 19 men, seven boys and one person whose gender was unknown.²⁹
30. By early June, Ukrainian police received about 50 complaints of sexual violence committed by Russian soldiers against civilians in Donetsk, Zaporizhiya, Kyiv, Luhansk, Kharkiv, Kherson and Chernihiv regions and opened 16 criminal investigations into such allegations. However, there are indications that these crimes remain underreported. For example, a civil society organisation active in the prevention of domestic violence, which received 16 allegations of war-related sexual violence through its special hotline, informed the Commissioner that only two of the alleged victims decided to report their cases to the law enforcement authorities. Ukraine's Prosecutor General, whose Office includes a team of prosecutors specially trained to interview victims and witnesses of such crimes, has opened several criminal cases into allegations of sexual violence involving two suspects, and tried one Russian soldier *in absentia* for murder and rape. The Commissioner has noted with interest that on 20 May 2022, the Council of Europe supported an [expert webinar](#) organised for Ukrainian prosecutors on the investigation of war-related sexual violence. Furthermore, the United Nations and the Ukrainian government signed a framework for

²⁶ "The underground networks of Russians helping Ukrainian refugees", [press article](#), Reuters, 11 May 2022.

²⁷ "[Report](#) on Violations of International Humanitarian and Human Rights Law, War Crimes and Crimes Against Humanity Committed in Ukraine since 24 February 2022", OSCE Moscow Mechanism's mission of experts, Organization for Security and Co-operation in Europe, 13 April 2022, p. 24.

²⁸ This memorandum is limited to acts of war-related sexual violence and does not address broader acts of gender-based violence, including domestic violence. However, the Commissioner is mindful that situations of conflict may lead to increased tolerance to violence within the affected population, easier access to weapons, and increased level of domestic violence, to which particular attention must be paid.

²⁹ Sexual Violence 'Most Hidden Crime' Being Committed against Ukrainians, Civil Society Representative Tells Security Council", UN [news item](#), 6 June 2022.

cooperation that supports the design and delivery of priority interventions in the areas of justice and accountability, which addresses comprehensive service provision for survivors, including sexual and reproductive health services, medical and specialised mental health services, legal assistance, and livelihood support, among other things.

31. The Commissioner shares the view expressed by Ukraine's Prosecutor General's that victims and witnesses of sexual violence may be reluctant to speak about their ordeal or to file complaints out of fear or because of trauma or the social stigma associated with sexual violence.³⁰ Notwithstanding the importance that all allegations of war-related sexual violence are investigated without delay, the Commissioner highlights that the creation of safe conditions for victims to come forward and cooperate with law enforcement, including by preserving their privacy and avoiding re-traumatisation, must be prioritised. Survivors of war-related sexual violence must have effective access to redress for the harm suffered, including medical rehabilitation and psychosocial support, as well as access to justice. However, the Commissioner stresses that they should be treated individually in terms of the type of response needed and their wishes in this regard should be always respected.
32. The war has also resulted in the destruction of infrastructure that is critical for assisting such victims. Many hospitals and clinics have been bombed or rendered unusable, creating additional hurdles to lifesaving and time-sensitive health care services, including sexual and reproductive health care. This has also had a serious negative impact on victims of sexual violence. Survivors who fled to other European countries have been confronted by obstacles and delays in accessing such services in host or transit countries. This is often due to pre-existing legal and policy restrictions on sexual and reproductive health and rights, especially in accessing abortion care. The important challenges posed by the war in Ukraine should be an opportunity for member states to reconsider their policies and practices in this area, facilitate the removal of legal and policy barriers that are impeding the provision of essential sexual and reproductive health care and fully guarantee these rights, especially to effectively support the rehabilitation of survivors.
33. The Commissioner observes that obtaining justice for conflict-related sexual violence before national and international courts has been a notoriously difficult task for victims of such crimes in various country contexts in the past,³¹ including in Ukraine. A 2017 HRMMU report on conflict-related sexual violence in Ukraine highlighted a number of challenges that had hampered justice in this area in Ukraine, including the victims' lack of trust, gaps in the national legal framework, or the lack of expertise of the officials tasked with dealing with such crimes.³² Learning from this and other past experiences is crucial to a successful future response to sexual violence committed in this war. With this in mind, on 10 June 2022 the Commissioner facilitated an online meeting between non-governmental organisations from Bosnia and Herzegovina, Croatia, Serbia and Kosovo* with experience in assisting victims of sexual violence, and a group of Ukrainian organisations, professionals and volunteers involved in providing such assistance, to exchange information and provide expert advice on issues related to assistance, support services and reparation for victims of war-related sexual violence.
34. Considering that a multitude of actors are currently involved in various aspects of the response to war-related sexual violence in Ukraine, including law enforcement and investigative authorities, as well as several government officials and members of civil society organisations, the Commissioner stresses that any assistance and support given to the victims must abide by the "do no harm" principle, which entails that the victims' well-being and dignity should be at the core of any such actions. More specifically, she recommends that the authorities ensure well-coordinated and multidisciplinary interventions and thus prevent re-traumatising victims which

³⁰ "Iryna Venediktova on the alleged sexual assault offenses brought against Russian soldiers", Washington Post Live, [video interview](#), 23 May 2022.

³¹ E.g., Mischkowski G & Mlinarevic G, "...and that it doesn't happen to anyone anywhere in the world: the trouble with rape trials – views of witnesses, prosecutors and judges on prosecuting sexualised violence during the war in the former Yugoslavia", [study](#), Medica Mondiale, Cologne, 2009.

³² "Conflict-related sexual violence in Ukraine", UN Human Rights Monitoring Mission in Ukraine, [report](#), 16 February 2017.

* All references to Kosovo, whether to the territory, institutions or population, shall be understood in full compliance with United Nations Security Council Resolution 1244 (1999) and without prejudice to the status of Kosovo.

may occur when they are exposed to multiple interviews with various actors. The victims' dignity and privacy, the security of information that concerns them, and the provision of psychosocial support to these victims are of utmost importance. The Commissioner further recommends that training on the identification of symptoms in survivors of war-related sexual violence be provided to all responders. The impact that war-related sexual violence has on families and children of the survivors must also be adequately addressed.

35. The Commissioner is concerned about reports that details of some cases of war-related sexual violence, including the victims' identity have been made public on social media or in the press. Stressing that such action may result in further stigmatisation and re-traumatisation of the victims, the Commissioner emphasises the importance for journalists and media actors to always report ethically on cases of war-related sexual violence and always respect the victims' rights and dignity.
36. Against this background, the Commissioner welcomes the decision taken by Ukraine's Parliament on 20 June 2022 to ratify the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention). In the Commissioner's view, this long-awaited step will provide an additional important tool and international expertise to ensure better protection of and assistance to the victims of gender-based violence and war-related sexual violence in Ukraine, in peacetime and during the war.

II. The impact of war on the enjoyment of human rights by all

37. The Commissioner notes that the war has severely affected the enjoyment of virtually all human rights by people in Ukraine. Access to life-saving health care, for instance, has been severely impacted due to security concerns, restricted mobility, broken supply chains and mass displacement. According to the World Health Organisation ([WHO](#)), health care facilities have come under frequent attack, depriving people of urgently needed care, endangering health-care providers, and undermining the overall functionality of health systems, ultimately putting many more lives at risk.³³ Access to [food and clean water](#) has become severely hampered for the population, with needs being most acute in contested and encircled areas due to the massive destruction of civilian infrastructure and limited humanitarian access. In comparatively less affected areas, local capacities are overstretched due to growing flows of internally displaced persons (IDPs) which leads to uncertainty over these areas' ability to fulfil future needs.
38. However, in the Commissioner's view, on account of their particular vulnerabilities or because of their having suffered specific human rights violations, the situation of several categories of persons requires special and urgent attention.

a. Children

39. The war and the ensuing destruction and insecurity has resulted in the violation of the rights to life of hundreds of children. According to an HRMMU update, by 3 July 2022, 335 children had lost their lives in the war and a further 521 had been injured.³⁴ According to Ukraine's Prosecutor General, the number of child deaths registered by its services by 15 June 2022 had reached 313.³⁵ Beyond these documented cases, the actual numbers of casualties are estimated to be considerably higher. From the beginning of the war, schools, and hospitals, including maternity hospitals, have come under frequent attack, placing children in particular and imminent danger and undermining their right to life.³⁶
40. UNHCR and UNICEF have estimated that children make up half of all people fleeing Ukraine since the beginning of the war. After only one month, over half of Ukraine's child population had been either internally or externally displaced.³⁷ Beyond the trauma of experiencing war, atrocities and flight, displacement also puts children at a heightened risk of being separated from their

³³ External Situation [Report #15](#), World Health Organisation, 16 June 2022.

³⁴ Ukraine: civilian casualty [update](#) by the Office of the UN High Commissioner for Human Rights, 4 July 2022.

³⁵ "The children: lives cut short", [press article](#), the New York Times, 18 June 2022.

³⁶ "Ukraine: More than 20 schools attacked on average every day since escalation of war", [statement](#), Save the Children, 4 April 2022.

³⁷ "More than half Ukraine's children displaced after one month war", [press release](#), UNICEF, 24 March 2022.

parents³⁸ or caregivers, and at risk of human trafficking, exploitation, and abuse. During the first 60 days of the war, a Ukrainian NGO operating a hotline for missing children recorded an immense increase in cases, with more than 2,100 registered reports, some of which concerned more than one child or entire families missing inside Ukraine in that period. 73% of all reported cases concerned Ukraine's Donetsk region, including the city of Mariupol. At least 343 children went missing alone. While some such cases were due to temporary loss of contact, a significant number of them remain unresolved to date.³⁹ Thousands of children, including entire orphanages and children's care institutions, were evacuated from Ukraine's war-affected areas to other locations within Ukraine, or to European countries and beyond. Although in the vast majority of cases, the evacuated children were accompanied by guardians or carers, in certain cases children travelled on their own or in the company of older siblings, adults other than relatives, or in large groups, amplifying the risk of separation.

41. The Commissioner recalls that, in times of crisis, children without proper care are particularly vulnerable to abuse, exploitation, trafficking and neglect. In light of the massive internal and external displacement affecting many Ukrainian children, efforts should be strengthened to prevent and combat trafficking in human beings, in line with the recent recommendations by the Council of Europe's Group of Experts on Action against Trafficking in Human Beings ([GRETA](#)) and the [Lanzarote Committee](#). Border control, law enforcement and child protection authorities in and across the countries concerned should strengthen the identification and registration of unaccompanied and separated children and implement family tracing and reunification procedures, with the assistance of the International Committee of the Red Cross (ICRC), where applicable, for those children to prevent them from being permanently separated from their relatives. This should include enhancing the capacities of safe places for children, in particular family-based solutions, and strengthening referral and guardianship procedures.
42. As mentioned above (in paragraph 23), many children fleeing areas of Ukraine affected by the hostilities or under Russian control, including children from orphanages and care institutions, have reportedly ended up in the territory of the Russian Federation. According to some reports, legislative amendments have been initiated in the Russian Federation to make it easier for such children to acquire Russian citizenship or to be adopted by Russian families,⁴⁰ and Ukraine's Prosecutor General has opened an investigation into allegations of forcible transfer of population, including children.⁴¹ Furthermore, the war has also made it difficult or impossible for parents in some of the war-affected areas to obtain birth certificates for new-borns, which is a fundamental right of all children according to Article 7 of the UN Convention on the Rights of the Child and applicable also in times of war. The Commissioner has noted with concern the reports according to which children born in Mariupol have been issued Russian birth certificates,⁴² and the announcement by the regional administration imposed by the Russian Federation in areas under the effective control of Russian troops in the Kherson region, according to which children born there after 24 February 2022, as well as orphans, would be granted citizenship of the Russian Federation.⁴³ In this regard, she emphasises that international humanitarian law prohibits the changing of children's personal status.⁴⁴ The Commissioner further stresses the particular role of the ICRC to oversee and facilitate the reunification of children displaced by conflict with their parents and established caregivers.
43. In addition to the countless deaths, injuries, trauma, displacement, and at least temporary separation from loved ones suffered by children in Ukraine, the war has had a tremendous impact on their ability to enjoy basic rights by accessing adequate food, water, electricity, healthcare, and

³⁸ "At a Boarding School in Ukraine, Displaced Children Long for Home", [press article](#), the New York Times, 27 June 2022.

³⁹ "Missing Children in Ukraine during the first 60 days of the war", [report](#), Missing Children Europe, 25 May 2022.

⁴⁰ "Opening statement: Press conference by the Commission of Inquiry on Ukraine the conclusion of its first visit to Ukraine, Kyiv, Ukraine", [press statement](#), 15 June 2022.

⁴¹ "Ukraine's Top Prosecutor Says Deportation Of Children To Russia May Be Genocide", [press article](#), RFE/RL, 3 June 2022;

⁴² "Ukrainian Babies Issued Russian Birth Certificates as War Drags on", [press article](#), Newsweek, 29 April 2022.

⁴³ "Moscow says babies born in occupied Kherson will automatically get Russian citizenship.", [press article](#), the New York Times, 16 June 2022.

⁴⁴ See Article 50 of the [Fourth Geneva Convention](#).

education. These deprivations have particularly devastating effects on children who, due to their distinct developmental needs, are especially susceptible to longer-term consequences such as chronic illness, delayed development, prolonged anxiety, or learning disabilities. While all children in Ukraine are affected, the situation is even more dire for particularly vulnerable children, including those with special needs and/or in institutional settings. Throughout Ukraine, many schools and kindergartens have been destroyed – 230 education facilities were damaged or destroyed by 15 May, according to the HRMMU⁴⁵ – or repurposed to provide emergency shelter for IDPs. The Commissioner is heartened by reports that in some areas, schools and kindergartens have been reopened and that some Ukrainian pupils, including those who fled abroad, have also been able to follow classes on-line, as an important part of efforts to protect the right of children to education, play and recreation, including during emergency situations.

b. Older persons

44. The war has had a particularly disproportionate impact on Ukraine's older persons. Many of them, in particular those who are immobilised or rely on others for care, have been unable, or chose not to, evacuate. This is particularly true of many older women, who constitute around two-thirds of those aged over 65 and 71% of those aged above 75 in Ukraine.⁴⁶ As a result, many of those reported as killed in the shelling and hostilities were older persons.⁴⁷ Some older persons, in particular those struggling with chronic health problems, reportedly lost their lives not due directly to hostilities but rather due to the spill over effects of the war, including the inability to access adequate medical care,⁴⁸ humanitarian assistance, including food and water, or obtain basic items or necessary medication on which they depend. In one testimony, the Commissioner heard about the case of an older woman who had died, abandoned and alone, in her apartment in Hostomel whilst the town was under the control of Russian troops. In another, particularly disturbing incident reported by the OHCHR, ten older people died crammed with hundreds of others in an overcrowded basement in a village in the Chernihiv region, forced by Russian troops to stay there for 28 days with no toilet facilities, water or ventilation.⁴⁹
45. In addition, many of the older persons fleeing Ukraine, whom the Commissioner and her team met during their missions to countries neighbouring Ukraine, seemed particularly vulnerable due to health issues, exhaustion, disorientation, lack of access to information, and often required additional help and attention to access assistance. The Commissioner has also received reports that some older persons from Mariupol and other areas under hostilities or control of the Russian troops have ended up in temporary accommodation and nursing homes in the Russian Federation.

c. Persons with disabilities

46. Many persons with disabilities have been separated from their support networks or lost the help of care workers due to the war. In mid-April, the UN Committee on the Rights of Persons with Disabilities estimated the number of persons with disabilities potentially affected by the war at 2.7 million.⁵⁰ It has been reported that many people with disabilities, have been either trapped or abandoned in their homes or care institutions, with no access to medication, food, water, sanitation, and basic necessities. Persons with disabilities also often reportedly had difficulties in

⁴⁵ "Situation of human rights in Ukraine in the context of the armed attack by the Russian Federation, 24 February - 15 May 2022", [report](#), OHCHR, 29 June 2022, paragraph 52.

⁴⁶ "Alone under siege: how older women are being left behind in Ukraine", the Guardian, [press article](#), 16 May 2022.

⁴⁷ "Anyone can die at any time": Indiscriminate attacks by Russian forces in Kharkiv, Ukraine", [report](#), Amnesty International, 13 June 2022, page 12 and onwards.

⁴⁸ By 15 May 2022, the OHCHR verified damage or destruction to 182 medical facilities in Ukraine, see "Situation of human rights in Ukraine in the context of the armed attack by the Russian Federation, 24 February - 15 May 2022", [report](#), OHCHR, 29 June 2022, paragraph 51.

⁴⁹ "Ukraine: [Update](#) to the Human Rights Council Special Session by UN High Commissioner for Human Rights, Michelle Bachelet", OHCHR, 12 May 2022.

⁵⁰ "2.7 million people with disabilities at risk, UN committee warns", [statement](#) by the Committee on the Rights of Persons with Disabilities, 14 April 2022.

accessing shelters or evacuation trains.⁵¹ There have also been reports that in some locations, including in Western Ukraine, some children with severe disabilities, committed to care institutions, have been left without proper care by their caregivers, while children with mild disabilities were evacuated.⁵² In some cases, children were restrained and lacking adequate medical care.

47. Persons with disabilities represent a high percentage of those displaced by the war within Ukraine. In an IOM survey carried out in Ukraine in early May, 23% of IDP respondents indicated that at least one member of the family currently with them was a person with a disability. The Commissioner and her team also encountered many persons with disabilities among those fleeing Ukraine during their monitoring missions to countries neighbouring Ukraine, in particular in transit hubs and temporary reception centres, where their special needs have not always been adequately addressed.
48. The Commissioner emphasises that states-parties to the UN [Convention](#) on the Rights of Persons with Disabilities, which is applicable in situations of armed conflict and humanitarian emergencies, are under a legal obligation to take all necessary measures to ensure the protection, safety and dignity of people with disabilities. This includes, specifically, ensuring immediate access to humanitarian aid, including medication, food and water, inclusion in evacuation plans and adequate access to humanitarian corridors. People with disabilities and older persons among those fleeing Ukraine and IDPs should be provided with adequate support at border crossings, reception centres and in places of accommodation in receiving countries.

d. Externally and internally displaced persons

49. The war has triggered the internal and external displacement of millions of people. Russia's attacks, intense hostilities, the growing loss of civilian lives and increasing reports of violations of human rights and international humanitarian law prompted millions of people in Ukraine to flee to other parts of the country or to seek safety in other countries.⁵³ As of early May 2022, an estimated 12.8 million people have been displaced, the majority of which – between 7.7 and 8 million people, or approximately 18% of the entire population - were internally displaced.⁵⁴ More than 5 million sought shelter in European countries. The Commissioner and her team were able to assess the measures taken by countries receiving people fleeing the war in Ukraine, in particular humanitarian assistance, integration, and the protection of their safety and dignity, in a series of [missions](#) carried out to [Moldova](#), the Czech Republic, Hungary, Poland, Romania, and the Slovak Republic, in March 2022.
50. The Commissioner notes that many displaced people from Ukraine have travelled back to Ukraine, despite the volatile security situation there. In Kyiv, nearly two-thirds of the capital's 3.5 million inhabitants have returned, according to its mayor.⁵⁵ However, with the war still ongoing, the Commissioner considers it necessary that the international community continue to support countries hosting the people displaced from Ukraine in the long-term, paying special attention to the protection needs of vulnerable groups of people. The initial response to the plight of displaced people from Ukraine should be transformed into a sustainable and coordinated response where the protection of human rights for all and the observance of all international obligations take centre stage. Member states which are not neighbouring Ukraine should increase

⁵¹ "Situation of human rights in Ukraine in the context of the armed attack by the Russian Federation", 24 February - 15 May 2022", [report](#), OHCHR, 29 June 2022, paragraph 66.

⁵² "Disabled children 'dumped' in Ukrainian institutions", [news report](#), BBC, 4 May 2022; "Left Behind in the War: Dangers Facing Children with Disabilities in Ukraine's Orphanages", [report](#), Disability Rights International, 5 May 2022.

⁵³ "The war has caused the fastest and largest displacement of people in Europe since World War II", [statement](#) by the UN Resident / Humanitarian Coordinator in Ukraine, 24 March 2022.

⁵⁴ "Ukraine: Millions of displaced traumatised and urgently need help, say experts", [statement](#) by UN's independent human rights experts, 5 May 2022. According to the IOM, there were 6,275,000 estimated IDPs in Ukraine as of 23 June 2022, see "Ukraine — Internal Displacement Report — General Population Survey Round 6 (17 June 2022- 23 June 2022)", IOM, 23 June 2022.

⁵⁵ "Getting used to war, Ukraine refugees flood back to Kyiv", [press article](#), France24, 12 May 2022.

their support in terms of both material supplies and assistance in organising a safe onward movement for those who want or need it.

51. According to information received by the Commissioner, some of the local authorities in countries hosting displaced Ukrainians are grappling with considerable difficulties in providing for the basic needs of both the displaced persons and their own residents, in addition to a certain weariness on the part of some host communities. Access to housing, employment, financial aid, and education for people fleeing Ukraine and their overall integration into society are urgent areas for action. If left unaddressed, these problems may lead to tensions and add further stress on governments, displaced persons, and social cohesion. State authorities in countries hosting displaced Ukrainians should continue to work closely together with the local authorities and civil society on the next steps of the humanitarian response, including by providing them with any necessary support. The Commissioner notes that the Special Representative of the Secretary General (SRSG) for migration and refugees is currently preparing proposals for action in member states hosting people fleeing Ukraine, in line with the Council of Europe [Action Plan](#) on Protecting Vulnerable Persons in the Context of Migration and Asylum in Europe, which aims to enhance member states' capacity to identify and address vulnerabilities throughout asylum and migration procedures.⁵⁶ The Council of Europe Department of Social Rights is also working on cooperation activities in the areas of facilitation of protection services to vulnerable displaced persons, anti-discrimination, and support to documenting violations of social rights. In addition, the Council of Europe Department of Implementation of Human Rights, Justice and Legal Co-operation Standards is active in the facilitation of protection services and support to legal professionals assisting displaced persons within Ukraine.
52. The Commissioner notes that many Ukrainian families have been separated as a result of the war and the displacement. Many of those displaced, in particular women, children and older persons, are at particular risk of insecurity, trafficking and violence, especially near border crossing points, in transit hubs, large-scale reception centres, or in shelters. Particular attention should be paid to ensuring the early identification and protection of victims and persons vulnerable to violence, abuse, human trafficking, and exploitation, as well as persons with special needs, including medical and psychological needs, especially among women and children, as well as older persons.

e. Journalists and media workers

53. As of 13 June 2022, the Partner Organisations to the Safety of Journalists [Platform](#) of the Council of Europe had documented multiple attacks on journalists and other media workers, including at least 12 journalists and media workers reportedly killed while covering the war, and at least 13 others who have been injured. Ukrainian civil society organisations documented 243 crimes against journalists committed since the outbreak of the war, with at least 22 journalists killed and dozens of others shot at. The prevalence of casualties among members of the press since the beginning of the war strongly suggests that at least some members of the press appear to have been deliberately targeted by Russian forces. On 1 March 2022, a Russian missile struck Kyiv's main television and radio tower, reportedly claiming the lives of five civilians.⁵⁷ Various reports have also indicated enforced disappearances or abduction of Ukrainian journalists or their relatives by Russian troops; at least four journalists and media workers have allegedly gone missing in Ukraine since 24 February 2022.⁵⁸
54. Additional Protocol I to the Geneva Conventions specifies that journalists who are engaged in professional missions in areas of armed conflict must be considered as civilians and must be protected as such. They are covered by the prohibition on targeting civilians and the obligation to provide effective advance warning before carrying out attacks which may affect the civilian population – as can be the case in attacks on television and radio towers where journalists may

⁵⁶ "Council of Europe and UNHCR: anyone fleeing war or persecution has the right to seek safety and protection", [press statement](#), Council of Europe, 20 June 2022.

⁵⁷ "Who Will Remember the Horrors of Ukraine?", [press article](#), New York Times, 13 June 2022; see also, "Russian Strike on Kyiv TV tower", [investigation report](#), Forensic Architecture, 10 June 2022.

⁵⁸ "OSCE Media Freedom Representative reiterates grave worries regarding safety of journalists in Ukraine", [press release](#), 6 April 2022.

be present. Recommendation [R 96\(4\)](#) of the Committee of Ministers of the Council of Europe on the protection of journalists in situations of conflict and tensions sets out twelve principles on safety, rights and working conditions, as well as a duty to investigate, which should guide state actions and policies. All cases of attacks on journalists must be the subject of an effective official investigation. Such attacks do not just violate or endanger their right to life, but they also prevent them from providing reliable and timely information on issues of public concern, undermining the public's right to information. The Commissioner's recent [human rights comment](#) on the topic of the safety of journalists covering conflicts provides further recommendations on measures that should be taken by states before, during and after a conflict to ensure the safety of journalists to the maximum extent possible.

55. In areas under the control of Russian troops, in particular in Kherson and Kyiv region, mobile communication towers were reportedly damaged or deactivated, cutting communications and creating information blackout zones. During the visit, the Commissioner was also informed about restrictions imposed in government-controlled territory on the activity of several Ukrainian TV channels, in particular Channel 5, Espresso TV, and "Direct" (Pryamiy). Although according to the authorities who the Commissioner spoke to the decision has been motivated by considerations of national security, the owners of the channels deny being informed of the reasons.⁵⁹ The Commissioner recalls that the freedom of expression and information constitutes one of the essential foundations of a democratic society, and stresses that it must be fully protected and nurtured in all of Ukraine's territory.

III. Accountability for war crimes

56. Whilst fully recognising the Russian Federation's responsibility for the armed attack which has caused immense human suffering in Ukraine, the Commissioner emphasises that both the Russian Federation and Ukraine are bound by international human rights and humanitarian law. This includes the legal obligation for both the Russian Federation and Ukraine to investigate and prosecute the perpetrators of grave breaches of international humanitarian law and gross human rights violations, regardless of their affiliation.
57. The Commissioner has repeatedly stressed the importance of accountability and reiterates the need to deliver justice to the victims. Bringing those responsible for serious international crimes to justice is a legal obligation under international law and also a moral duty, especially for victims. Ensuring accountability can also help promote better respect for international humanitarian law and deter violations by sending a strong signal that impunity for international crimes, such as war crimes, crimes against humanity and genocide, is unacceptable. This applies equally to violations committed both by low-level perpetrators and those who bear command responsibility for the crimes.

a. Overview of accountability mechanisms

i. Criminal accountability mechanisms

58. According to the 1949 Geneva Conventions and other international treaties and customary international law,⁶⁰ states have a primary responsibility to bring the persons alleged to have committed, or to have ordered to be committed, grave breaches of such conventions. National criminal justice systems are, therefore, primarily responsible for investigating and prosecuting the perpetrators of grave breaches of international humanitarian law and gross human rights violations.
59. With the above principles in mind, the Commissioner welcomes the swift actions of the Ukrainian national authorities in taking measures to achieve accountability for the grave breaches of

⁵⁹ "'Death to the enemy': Ukraine's news channels unite to cover war", [press article](#), the Guardian, 25 May 2022.

⁶⁰ E.g., "Accountability: prosecuting and punishing gross violations of human rights and serious violations of international humanitarian law in the context of transitional justice processes", [report](#) by the UN Special Rapporteur on the promotion of truth, justice, reparations and guarantees of non-recurrence, 9 July 2021.

humanitarian law and other gross violations of human rights which have occurred in Ukraine since February 2022.

60. During her visit, the Commissioner learned about the large volume of work carried out so far by the Office of Ukraine's Prosecutor General. By the time of writing this memorandum, the Prosecutor General had opened more than 20,000 criminal investigations, primarily into crimes of planning and waging an aggressive war as well as various war crimes. Two trials involving Russian soldiers charged with war crimes committed after 24 February 2022 have already been completed.⁶¹
61. During her visit, the Commissioner also learned about pending legislative amendments aimed at better aligning the Ukrainian legal framework with international humanitarian and criminal law, notably regarding the definitions of international crimes, the availability of universal jurisdiction, statutes of limitations and modes of criminal liability. In May 2021, Ukraine's Parliament adopted law No. 2689 on Amendments to Certain Laws of Ukraine as Regards the Implementation of the Provisions of the International Criminal and Humanitarian Law. However, this law has neither been signed nor vetoed, and instead, a new bill No. 7290 on Amendments to the Criminal Code of Ukraine and the Criminal Procedure Code of Ukraine was tabled in Ukraine's Parliament in April 2022. The Commissioner shares reported concerns about certain shortcomings of the bill, in particular that it does not appear to cover all possible forms of command responsibility.⁶² Underlining the importance of having a comprehensive legal framework to address grave international crimes, the Commissioner encourages Ukraine's authorities to promptly move forward with aligning the country's legal framework with the relevant international standards, taking into account the aforementioned concerns.
62. The International Criminal Court, as the only permanent international criminal tribunal, also has an important role to play in holding to account those responsible for the most serious international crimes. While neither Ukraine nor the Russian Federation have ratified the Rome Statute of the ICC, in 2014 and 2015, Ukraine filed two [declarations](#) accepting the ICC's jurisdiction over alleged crimes under the Rome Statute occurring on its territory. On this basis, beginning in 2014, the Office of the ICC Prosecutor had carried out a preliminary examination into the situation in Ukraine which concluded in December 2020 with a [recommendation](#) to open an investigation into war crimes and crimes against humanity. In March and April 2022, 43 state parties to the Rome Statute referred the situation in Ukraine to the ICC, laying the ground for the opening of that investigation, which was formally [initiated](#) by the ICC Prosecutor on 2 March 2022 and which the Commissioner welcomes. The Commissioner further notes that, on 3 May 2022, Ukraine's Parliament adopted a [law](#) on the Amendments to the Criminal Procedural Code of Ukraine to facilitate cooperation with the ICC. All parties to the conflict should ratify the Rome Statute of the ICC. The Commissioner points out that, once an investigation is open, the ICC has a mandate to investigate crimes within its jurisdiction committed by any of the parties to the conflict. At the same time, the ICC's jurisdiction is complementary to that of states, meaning that it will pursue cases only when national courts are unwilling or unable to prosecute them themselves.⁶³
63. Other states should also investigate and prosecute grave breaches of international humanitarian law committed during the war in Ukraine, either in cases where the alleged perpetrators or victims are their nationals,⁶⁴ or when they are third-party nationals, using the principle of universal

⁶¹ E.g., "First Russian soldier goes on trial in Ukraine for war crimes", [press article](#), The Guardian, 13 May 2022; "Two Russian soldiers plead guilty in new war crimes trial in Ukraine", [press article](#), Reuters, 26 May 2022.

⁶² See concerns from parts of civil society, e.g. "Euromaidan SOS: a new government bill № 7290 artificially reduces opportunities to prosecute Russian military commanders and civilian superiors liable for war crimes", [statement](#) by Ukrainian human rights organisations, 20 April 2022. See also, "Situation of human rights in Ukraine in the context of the armed attack by the Russian Federation", 24 February - 15 May 2022", [report](#), OHCHR, 29 June 2022, paragraphs 129-131.

⁶³ Article 17 of the Rome Statute of the ICC.

⁶⁴ France, for example, has opened several investigations on war crimes allegedly committed in Ukraine against its nationals; see, "Guerre en Ukraine : une cinquième enquête ouverte en France pour « crimes de guerre », [press article](#) (in French), Le Figaro, 3 May 2022.

jurisdiction.⁶⁵ Such investigations have already been launched in several countries, including [Germany](#), [Spain](#), [Lithuania](#), [Poland](#), the [United Kingdom](#), and [Sweden](#).

64. In addition to these pre-existing mechanisms, other criminal justice avenues are currently being discussed, including the establishment of a special international tribunal specifically focussing on the crime of aggression.⁶⁶ During the Commissioner's visit, she also learned about the initiative "Breaking the Vicious Circle of Russia's Impunity for Its War Crimes", also referred to as the "Tribunal for Putin" [initiative](#), as well as other proposals, including one to establish a hybrid court within Ukraine's domestic system, with participation of international and national judicial staff to deal with grave international crimes.⁶⁷

ii. Beyond criminal accountability

The European Court of Human Rights

65. The European Court of Human Rights (the ECtHR/the Court) has already been presented with cases relating to acts committed in the context of the war in Ukraine, allegedly amounting to violations of the European Convention on Human Rights (ECHR/the Convention), to which both Ukraine and the Russian Federation are parties. The Commissioner notes that new applications continue to be lodged with the Court. Although the Russian Federation [ceased to be a member](#) of the Council of Europe on 16 March 2022, in a [resolution](#) addressing the consequences of the cessation of the Russian Federation's membership in the Council of Europe, adopted on 22 March 2022, the Court clarified that the country would remain bound by the ECHR until 16 September 2022. The Court further clarified that it remained competent to deal with applications directed against the Russian Federation in relation to alleged violations of the Convention provided that they occurred until that date.⁶⁸
66. Against this background, on 23 June 2022 the Court received Ukrainian authorities' completed inter-state [application](#) against the Russian Federation alleging "mass and gross human-rights violations committed by the Russian Federation in its military operations on the territory of Ukraine since 24 February 2022." In this inter-state case, the Court had already indicated interim measures on 1 March 2022, [ordering](#) the Russian Federation to "refrain from military attacks against civilians and civilian objects, including residential premises, emergency vehicles and other specially protected civilian objects such as schools and hospitals, and to ensure immediately the safety of the medical establishments, personnel and emergency vehicles within the territory under attack or siege by Russian troops."
67. The Court has also received a number of requests for interim measures submitted by individuals affected by the war in Ukraine. On 4 March 2022 the Court [decided](#) to indicate to the Russian Government that "in accordance with their engagements under the Convention, notably in respect of Articles 2, 3 and 8 ECHR, they should ensure unimpeded access of the civilian population to safe evacuation routes, healthcare, food and other essential supplies, rapid and unconstrained passage of humanitarian aid and movement of humanitarian workers". Furthermore, on 30 June

⁶⁵ For more information of the concept of universal jurisdiction, see, e.g.: "Basic facts on Universal Jurisdiction, prepared for the Sixth Committee of the United Nations General Assembly", Human Rights Watch, [Question and Answers](#), 19 October 2009; "Universal jurisdiction over war crimes", International Committee of the Red Cross, [factsheet](#), 2014.

⁶⁶ The idea of setting-up a special international tribunal is supported by the [President of Ukraine](#), several [NGOs](#) and eminent international [lawyers](#). On 28 April 2022, the Parliamentary Assembly of the Council of Europe adopted a [recommendation](#) encouraging member states of the Council of Europe "to participate in setting up an ad hoc international criminal tribunal to prosecute the crime of aggression allegedly committed by the political leaders and military commanders of the Russian Federation against Ukraine". On 19 May 2022, the European Parliament adopted a [resolution](#), calling on the EU to support the creation of a special international tribunal to punish the crime of aggression committed against Ukraine.

⁶⁷ See, *inter alia*, "Ukraine's Nuremberg Moment amid flood of alleged Russian war crimes", [press article](#), Foreign Policy, 10 June 2022.

⁶⁸ This Resolution also provides that "[t]he present Resolution is without prejudice to the consideration of any legal issue, related to the consequences of the cessation of the Russian Federation's membership to the Council of Europe, which may arise in the exercise by the Court of its competence under the Convention to consider cases brought before it."

2022, the Court [granted](#) urgent measures in cases lodged by two British prisoners of war sentenced to death in the so-called “Donetsk People’s Republic”.⁶⁹

68. The Commissioner further notes that, on 1 March 2022, the Ukrainian authorities [notified](#) the Secretary General of the Council of Europe of derogation measures from their obligations under the ECHR.⁷⁰ This entails that Ukraine remains bound by the provisions of the Convention and that the Court would ultimately assess, in each case, alleged violations of human rights during the derogations, if the derogation was justified, and if the State had gone beyond the limit “strictly required by the exigencies” of the situation.⁷¹

Other mechanisms

69. Several other mechanisms have been activated at the global and regional level to seek other forms of accountability beyond criminal accountability, including state accountability and the independent and credible documentation of grave international crimes. In a case brought by Ukraine alleging the wrongful claim of genocide by the Russian Federation to justify its invasion, on 16 March 2022 the International Court of Justice (ICJ) [ordered](#) the Russian Federation to immediately suspend the military operations that it commenced on 24 February 2022 in the territory of Ukraine. In a [resolution](#) adopted on 4 March 2022, the UN Human Rights Council established an independent international Commission of Inquiry tasked with investigating “all alleged violations and abuses of human rights and violations of international humanitarian law, and related crimes, in the context of the Russian aggression against Ukraine, (...) with a view to ensuring that those responsible are held accountable”. The Commission has already begun its work and carried out its first visit to Ukraine.⁷² At the regional level, a [report](#) published on 5 April 2022 by an expert mission under the “Moscow Mechanism” of the Organisation for Security and Co-operation in Europe (OSCE) invoked by Ukraine and supported by 45 participating States, provided detailed information on some of the violations of international humanitarian and human rights law, war crimes and crimes against humanity committed in Ukraine between 24 February and 1 April 2022.

b. Some key principles for effective accountability

70. The Commissioner stresses that the justice mechanisms and processes deployed in relation to the war in Ukraine should ensure that all perpetrators of international crimes that may have been committed in Ukraine (war crimes, crimes against humanity, genocide, and the crimes of aggression) are brought to justice in fair trials, regardless of their identity, affiliation, or official position. She recognises that achieving justice for grave international crimes in the context of an armed conflict is an extremely difficult endeavour, and that this process will greatly depend on the political will and commitment of the parties to the conflict. In the following section, the Commissioner offers some brief observations on how to ensure adequate conditions for the

⁶⁹ The Court indicated, specifically, to the government of the Russian Federation that they should ensure that the death penalty imposed on the applicants was not carried out; ensure appropriate conditions of their detention; and provide them with any necessary medical assistance and medication. The Court also indicated to the government of Ukraine to ensure, in so far as it was possible to do so, respect for the Convention rights of the applicants.

⁷⁰ These [derogations](#) concern the following provisions of the ECHR: Article 5 (right to liberty and security), Article 6 (right to a fair trial), Article 8 (right to respect for private and family life), Article 9 (freedom of thought, conscience and religion), Article 10 (freedom of expression), Article 11 (freedom of assembly and association), Article 13 (right to an effective remedy), Article 14 (prohibition of discrimination), Article 16 (restrictions on political activity of aliens), Article 1 of the Additional Protocol (protection of property), Article 2 of the Additional Protocol (right to education), Article 3 of the Additional Protocol (right to free elections), and Article 2 of Protocol No. 4 (freedom of movement). These derogations were [renewed](#) on three occasions, being, at the time of drafting this memorandum, set to last until 25 August 2022. If an applicant complains that his or her Convention rights were violated during the periods of derogation, the Court may, in accordance with its well-established case-law, examine whether the measures taken by Ukraine can be justified under the substantive articles of the Convention and, if it cannot be so justified, go on to determine whether the derogation was valid.

⁷¹ See for example, ECtHR judgment in the case of *Aksoy v. Turkey*, [Application no. 21987/93](#), judgment of 18 December 1996, paragraph 68.

⁷² “Opening statement: Press conference by the Commission of Inquiry on Ukraine the conclusion of its first visit to Ukraine, Kyiv, Ukraine”, [press release](#), 15 June 2022.

effective prosecution of war crimes, with a view to achieving accountability for the perpetrators, and redress for the victims, through processes at the international and national level.

i. Securing the evidence

71. Securing evidence is the essential first step in order to move toward prosecutions before national and international courts. All parties to the conflict have the obligation to carry out impartial and effective investigations into allegations of grave breaches of IHL and gross human rights violations.
72. During her visit to Ukraine, the Ukrainian authorities described to the Commissioner some of the challenges faced in this regard, as well as the steps they have taken to address them, and the support they have received. The Office of Ukraine's Prosecutor General has many years of experience investigating conflict-related violence, and in 2019 it established a Department for Supervision in Criminal Proceedings of the Crimes Committed in Armed Conflict, with specialised knowledge and training.⁷³ The Ukrainian authorities also launched a [website](#) to enable victims and witnesses to report violations of human rights and IHL.
73. However, operating in the context of an active armed conflict raises serious challenges relating to access to areas where war crimes have been committed, as well as security for investigative and judicial personnel, victims and witnesses. In such circumstances, the risk that some evidence may be destroyed or lost is particularly high. Furthermore, effective investigations into potentially great numbers of international crimes require specialised expertise in multiple areas that are atypical for many national police and justice officials.⁷⁴ In particular, it may include a higher level of proficiency in international humanitarian law and international criminal law, expertise in ballistics and forensics, as well as experience in the collection of linkage evidence to establish command responsibility. The Commissioner further observes that, in addition to material evidence and testimonies formally collected by investigators, the war in Ukraine is characterised by the widespread availability of open-source information, including private videos, photos and chats posted on social media by victims, witnesses, and perpetrators, as well as satellite imagery. The volume of information that could be collected in this way is massive, which creates difficulties for the proper verification of sources and storage of evidence.
74. Given these difficulties, the Commissioner welcomes the initiatives that many states, international organisations and institutions have taken to provide technical support and legal advice to the Ukrainian law enforcement and investigative authorities in the field of investigations of grave international crimes. For example, the [Council of Europe](#) adapted its ongoing cooperation project "Human rights compliant criminal justice system in Ukraine" to strengthen assistance in relation to international crimes, in particular by creating an Expert Advisory Group in support of Ukraine's Prosecutor General's Office. In March 2022, a [Legal Task Force](#) on Accountability for Crimes committed in Ukraine was created, composed of leading international legal experts. In April 2022, [France](#) deployed a team of forensic experts and specialised DNA equipment. The United Kingdom's Attorney General [appointed](#) an independent adviser to Ukraine's Prosecutor General. The [EU](#) amended the mandate of the EU Advisory Mission to Ukraine to provide support for the investigation and prosecution of international crimes. Various institutions and technology companies have offered to make available or create software for the proper archiving of evidence.
75. In May 2022 the Office of the ICC Prosecutor also deployed a team of 42 investigators, forensic experts and support personnel, seconded by the Netherlands, to advance its investigation into crimes falling under the jurisdiction of the ICC and to support the national authorities.⁷⁵ The ICC has also announced the opening of an office in Kyiv.
76. The Commissioner further pays tribute to the courage and commitment of the human rights defenders, who have been carrying their dedicated fact-finding and monitoring work inside and

⁷³ "Ukraine: International Crimes Bill adopted, Law could strengthen effective prosecution of war crimes", [press release](#), Human Rights Watch, 21 May 2021.

⁷⁴ "Ukraine's prosecutors wrestle with a new role: war crimes investigators", [press article](#), BBC, 11 June 2022.

⁷⁵ "ICC Prosecutor Karim A.A. Khan QC announces deployment of forensics and investigative team to Ukraine, welcomes strong cooperation with the Government of the Netherlands", [press statement](#), 17 May 2022.

outside Ukraine throughout the course of the war, documenting and addressing patterns of violations of human rights and international humanitarian law. She was pleased to witness the support offered to some of them by the international community, including financial and material support, personal protective equipment, and communications equipment. However, she notes that human rights monitoring work has been made very difficult, especially in areas under active hostilities. The Commissioner remains committed to working with human rights defenders and Ukraine's civil society and she calls on the international community to continue supporting their indispensable work.

ii. A victim-centred approach

77. The interests of victims and their families should be the primary consideration guiding accountability efforts within all available justice mechanisms, from the start of investigations to ensuring proper reparations. The Commissioner stresses that victims have a right to rehabilitation and redress, in line with the UN Resolution on Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights and Serious Violations of International Humanitarian Law, and many other instruments of international law.⁷⁶ Adequate, effective and prompt reparation helps restore the human dignity of victims and enables them to rebuild their lives and livelihoods.
78. Treating victims, their families, and witnesses of crimes with sensitivity and compassion, ensuring their protection and caring for their needs in the context of investigations should be another priority. During her visit, the Commissioner noted with interest that the Office of Ukraine's Prosecutor General has a team of specialised prosecutors trained in interviewing vulnerable witnesses, notably victims of sexual violence. Ensuring the presence of psychologists during interviews conducted during investigations should be a priority for all justice mechanisms to protect the mental well-being of victims and vulnerable witnesses. Victims and their families should also receive information at regular intervals about the progress of all ongoing investigations.
79. The prompt identification of human remains, their dignified treatment and return to the families, is of paramount importance. The mortuary services in the Kyiv region, for a certain time understandably overwhelmed by the high number of bodies of the victims that they had to treat following the withdrawal of the Russian troops, are currently facing the difficult task of collecting information allowing for the proper identification of the human remains. In this regard, the Commissioner welcomes in particular the involvement, at the invitation of the Ukrainian Government, of the International Commission on Missing Persons ([ICMP](#)) and its mechanism aimed at supporting the efforts of locating missing persons in Ukraine with, *inter alia*, data reporting and collection of genetic material samples, the provision of technical and material support, including mortuary-based analyses and evidence-gathering, and the facilitation of coordination amongst stakeholders.⁷⁷

iii. Effective coordination in the field of justice

80. The large-scale nature of atrocities committed as a result of the Russian Federation's armed attack on Ukraine would be overwhelming for any justice system. Therefore, the involvement of multiple actors and mechanisms in the process of collection of evidence and documentation of international crimes is a very welcome development. However, effective coordination among national and international actors is essential to ensure the proper handling of evidence and to avoid re-traumatising victims and witnesses. Coordination of the provision of assistance to the Ukrainian judicial authorities in the field of investigation and prosecution of international crimes is

⁷⁶ Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law ([Resolution](#) adopted by the UN General Assembly on 16 December 2005). The right to redress is also explicitly recognised in the Universal [Declaration](#) of Human Rights (Article 8), the International [Covenant](#) on Civil and Political Rights (Article 2), the [Convention](#) against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Article 14), the Additional [Protocol I](#) to the Geneva Conventions of 1949 (Article 91), the [Rome Statute](#) of the ICC (Article 68), etc.

⁷⁷ "ICMP Moves Forward with Program to Help Ukraine Account for Thousands of Missing", [press release](#), ICMP, 30 May 2022.

also necessary to avoid duplication of efforts and ensure best use of resources. In this regard, the Commissioner notes with interest the announcement by the EU, the United Kingdom, and the United States of the creation of an Atrocity Crimes Advisory Group for Ukraine, with the aim of ensuring effective coordination of their support.⁷⁸ The establishment by the investigative authorities of Ukraine and five European member states (Estonia, Latvia, Lithuania, Poland and Slovakia) of a Joint Investigative Team (JIT), under the auspices of the EU Eurojust, which the ICC has since [joined](#), is aimed at enabling a structured and swift exchange of information⁷⁹ and constitutes another positive development.

iv. The imperative of fair and impartial justice

81. The Commissioner stresses that only the fair and impartial application of justice will serve the interests of victims and strengthen respect for human rights and international humanitarian law. During her visit, the Commissioner stressed with the Ukrainian authorities that it is of crucial importance that all parties to the conflict respect international humanitarian law, and welcomed the public statements already made to that end by the Ukrainian authorities, including Ukraine's Prosecutor General.⁸⁰ While international humanitarian law both allows for and requires investigations conducted into war crimes committed by combatants of the adverse party, the Commissioner stresses again the legal obligation of all parties to an armed conflict to impartially bring to account those responsible for international crimes, regardless of their identity or affiliation.
82. For justice to be done, and be seen to be done, it is also key that trials for international crimes respect international standards on the right of suspects to a fair trial enshrined in international human rights law as well as IHL.⁸¹ While it may not be feasible to implement all aspects of the right to a fair trial in times of war, the following guarantees should be respected at a minimum for all suspects: the right to an independent and impartial tribunal, the prohibition of arbitrary deprivation of liberty, presumption of innocence, the right not to be compelled to testify against oneself or to confess guilt, and the right to information and to a defence.⁸²
83. The Commissioner observes that some of the first investigations and trials since the February invasion of Ukraine have involved prisoners of war. She recalls that under international humanitarian and criminal law and in accordance with the practice of international criminal tribunals, ordinary soldiers cannot be prosecuted for participating in hostilities on behalf of a State.⁸³ Furthermore, under the Third Geneva Convention, prisoners of wars are entitled to several protections in the context of trials. These include the right to an independent tribunal, to be shielded from public curiosity, not to be subjected to mental or physical torture, to mount an effective defence and not to be subjected to collective punishment.⁸⁴ Trials of prisoners of war must furthermore be open to supervision and control by independent monitors.
84. Against this background, the Commissioner was dismayed by reports of a trial allegedly conducted in the Ukrainian city of Donetsk under Russian control, in which three captured foreign combatants fighting in the Ukrainian army were reportedly prosecuted for their participation in the war and sentenced to death. She observes that, by interim measures granted on 16 June 2022, the ECHR indicated to the government of the Russian Federation that it should ensure, among other things, that the imposed death penalty was not carried out.

⁷⁸ "EU, US and UK establish Atrocity Crimes Advisory Group (ACA) for Ukraine: joint statement", [press release](#), 25 May 2022.

⁷⁹ "Estonia, Latvia and Slovakia become members of joint investigation team on alleged core international crimes in Ukraine", [press release](#), Eurojust, 31 May 2022; "Ukraine, ICC and Eurojust: how will that work?", [press article](#), JusticeInfo.net, 5 May 2022.

⁸⁰ "De possibles exactions commises par des militaires ukrainiens", [press article](#) (in French), *Le Monde*, 8 April 2022.

⁸¹ International Committee of the Red Cross (ICRC) [database](#) on customary international humanitarian law, Rule 100. Fair Trial Guarantees: "No one may be convicted or sentenced, except pursuant to a fair trial affording all essential judicial guarantees".

⁸² See, [First Geneva Convention](#), Article 49; [Second Geneva Convention](#), Article 50, [Third Geneva Convention](#), Articles 102-108; [Additional Protocol I](#), Article 75; [Additional Protocol II](#), Article 6.

⁸³ See, [Third Geneva Convention](#), ICRC [Commentary of 2020](#), para. 20.

⁸⁴ See, [Third Geneva Convention](#), Articles 13, 17, 84, 87, 99 and 105.

v. Long-term commitment to justice

85. Delivering justice for the victims will require steadfast commitment in the long-term even if political developments and priorities may shift. While the parties to the conflict are under the obligation to bring to account those responsible for grave international crimes, given the task ahead the involvement of regional and international accountability mechanisms is an important additional component of ensuring accountability. The Commissioner urges ongoing cooperation and support for the work of the ICC, through appropriate funding and support for the Court's effective functioning, including its outreach and witness protection mechanisms. In the Council of Europe context, this should also imply the continued provision of long-term support to the efforts of the Ukrainian justice system to investigate gross human rights violations and grave breaches of international humanitarian law.